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Bairbre Meaney

From the inside out: an idiographic account of the policy making process that produced the Irish work place smoking ban

Abstract

A National policy making process is a difficult thing to observe, but it is recorded, in a unique way that has been largely overlooked in empirical research. The internal record kept by civil service policy makers is rarely used as a primary source of data for studies of the policy making process. It is a contention of this thesis that such records are a unique and potentially valuable source of data for those interested in the public policy making process.

In this research, the official record kept by civil servants, during the development of the policy which brought about the world's first workplace smoking ban, is used as the main source of data about the policy making process involved. The contents of 241 official government files has been accessed, analysed and used to create a detailed description of the policy making process they record. The data from these paper records are supplemented by interview data from key informants directly involved with the Irish workplace smoking ban policy making process. The use of these bureaucratic records as a source of data for policy research, their strengths and limitations, and the methods their use requires, are key focuses in this research.

The analysis of the file contents provides a rich description of the policy making process, from the internal perspective provided by the data, and adds to existing knowledge about the Irish workplace smoking ban.

A policy analysis of the data was conducted to identify the key elements in this policy making process. A framework comprised of four key challenges for civil servants involved in a policy making process is presented. The challenges identified are compliance, accountability, management and power, which this analysis has identified as important for civil service policy makers during a policy making process. Further research drawing on a similar data source would test and develop the usefulness of the framework as a means of identifying and analysing a bureaucratic perspective on public policy making.

Thesis Title

From the inside out: an idiographic account of the policy making process that produced the Irish work place smoking ban.

A thesis submitted for the degree of Doctor in Philosophy by

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2015

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Declaration

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Summary

This research goes inside the black box of the civil service policy making world, revealing the processes, procedures, engagements and exchanges that occur when a national policy is being developed, and identifying the challenges relevant to civil service policy makers in the policy making process.

This thesis presents is an idiographic account of the policy making process involved in the development of the Irish work place smoking ban. The source of data used in the research is the official record kept by civil servants during the development of this policy, supplemented with key informant interviews. The use of bureaucratic records as a source of data for policy research, and the particular treatments and precautions it's use requires are a key focus in this research. Theoretical concepts of the bureaucratic policy maker and the environment in which she works to produce public policy are explored. The positionality of the researcher is a consideration throughout the research, reflecting the significance of the 'insider' status held.

The research methods used in this research are qualitative and focus on documentary analysis. The content of 241 official government files has been used to create a resource containing a detailed description of the contents of the papers on these files. The analysis of the file contents provides a rich description of the policy making process from the bureaucratic perspective provided by the data, and this analysis is presented using the mechanism of Lewin's three stage model of change. The interactions of policy makers with key stakeholders, the Minister, other government departments, and agencies are described. A policy analysis of the data was conducted to identify the key elements of the process in relation to the policy context, content, actors and power. Further analysis was undertaken to develop a framework applicable to civil service policy makers. This framework contains four challenges –compliance, accountability, management and power-which could be tested using similar data sources, in order to establish and expand their utility.

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This research draws principally on the official government files created in the Department of Health and Children (DoHC) in the years from 2000-2004,and I wish to acknowledge the support I have received from civil servants working in DoHC who enabled me to undertake this work. In addition, the generous assistance of the staff of the Records Management Unit of the DoHC made identifying and accessing a large number of files possible and I thank them for their help in this regard. I also wish to thank the Corporate Services Unit of the DoHC for facilitating the storage of 28 boxes of files for a period of three years, and for accommodating me with office space in which to conduct the bulk of the work. I particularly wish to acknowledge and thank the interview participants in this research who gave of their time and shared their memories generously.

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This thesis is dedicated to the memory of my parents, Nick and Phyllis Maguire, and my niece Ruth Maguire, who will not have the opportunity to fulfil her undoubted potential.

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Glossary of Terms/Acronyms

Asec Gen	Assistant Secretary General
ASH	Action on Smoking and Health, anti - tobacco advocacy organisation
APO	Assistant Principal Officer
Bunreacht na hÉireann	The Constitution of Ireland
CION	Commission of the European Union
CMO	Chief Medical Officer
CRAFTS	Central Records and File Tracking System
CPI	Consumer Price Index
CTL	Centre for Tobacco Litigation
Dáil Éireann	National assembly (Irish)
DETE	Department of Environment, Trade and Enterprise
DJELR	Department of Justice, Equality and Law Reform
DFA	Department of Foreign Affairs
DoH	Department of Health
DoHC	Department of Health and Children
EHO	Environmental Health Officer
EHU	Environmental Health Unit (DoHC)

ESTOC	European Smokeless Tobacco Council
ETS	Environmental Tobacco Smoke
EU	European Union
FCTC	Framework Convention on Tobacco Control
Fianna Fáil	Irish political party
Fine Gael	Irish political party
FSAI	Food Safety Authority of Ireland
Garda Síochána	Irish policy force
HAS	Health and Safety Authority
HB	Health Board
HECOS	Health and Economic Consequences of Smoking model
HPU	Health Promotion Unit (DoHC)
HRB	Health Research Board
IBEC	Irish Business and Employer's Confederation
ICMOA	Irish Cigarette Machine Operators Association
ICS	Irish Cancer Society
ICTU	Irish Congress of Trade Unions
IHF	Irish Heart Foundation
IHF	Irish Hotel Federation

IMPACT	Irish Municipal Public and Civil Trade Union
INB	International Negotiating Body (For the Framework Convention on Tobacco Control)
INTO	Irish National Teachers Organisation
IRNA	Irish Retailers National Association
ITMAC	Irish Tobacco Manufactures Advisory Committee
IVF	Irish Vintners Federation
LVA	Licensed Vintners Association
Oireachtas	Parliament
OTC	Office of Tobacco Control
PAIR	Pub Atmosphere Improves Results
Perm Rep	Permanent Representative to the EU
PO	Principal Officer
PQs	Parliamentary Questions
Reps System	Representation System-a database for recording letters of representation sent to the Minister
Ruaní Aire	Private Secretary (Irish)
Sec Gen	Secretary General
Séannad Éireann	Senate of Ireland (Irish)
SIPTU	Services Industrial Professional and Technical Union

STAG	Smoking Target Action Group
TATFS	Towards a Tobacco Free Society
Tánaiste	Irish Deputy Prime Minister (Irish)
Taoiseach	Prime Minister (Irish)
T.D.	Teachta Dála-member of Dáil Éireann (Irish)
TCU	Tobacco Control Unit (DoHC)
TFC	Tobacco Free Council
WBI	World Wide Brands Incorporated
WHA	World Health Assembly
WHO	World Health Organisation

Chapter 1 Introduction and overview of thesis

1.0 Introduction

The policy making process is hard to observe, but it is recorded, and the purpose of this research is to assess what that record can tell us about the process. The policy in question is the development of the Irish workplace smoking ban, which came into effect on March 29th 2004. This significant piece of public health policy was heralded by an announcement, made by a new Minister for Health and Children in 2000 shortly after taking office, that smoking cessation and tobacco control would be prioritised by his Department. During the intervening years, civil servants working in the Department of Health and Children (DoHC) developed what became the world's first work place smoking ban policy. It is the contention of this thesis that the files routinely created by civil servants offer a unique and rich source of data about the policy making process, because they contain a detailed record of the work undertaken by policy makers during the development and implementation of a policy. Over 200 government files, created by policy makers in the DoHC between the years 2000 and 2004, have been identified, accessed and analysed in this research. The methods employed, the analysis undertaken, and the findings generated from that analysis, the conclusions drawn about both these findings and the data source in relation to the policy making process, are presented in this thesis.

Despite a profusion of theoretical and conceptual models of the policy making process, the environment within which civil servants work and the precise nature of their part in the process remains poorly understood. Various methods have been used to generate data in studies of the policy making process, typically including a mixture of interviews with policy makers, analysis of published policy documents, and increasingly, access to internal documents, through the avenue provided by Freedom of Information legislation. Nevertheless one of the most enduring and well used metaphors for bureaucratic policymaking is the 'black box', implying an implicit mysteriousness about the way in which government departments function

(Connaughton,2011). The black box was originally conceptualised as a central part of an internal model of the policy making process (Easton,1965). Easton's original model depicts the inputs to the system–the demands, supports and resources available-as being processed, through the institutions of Government, (the 'black box') into specific policy outputs. The latter are the goods and services that people demand and which, when the model was devised, only governments could provide. The metaphor is useful here as it pinpoints the precise focus for this research, which is inside the policy making process, where decision making occurs and is recorded in the type of files that comprise the main data source used in this research.

Misunderstanding of the reality of the policy making process confines the academic understanding of the process to the theoretical or conceptual models which abound in the literature. It also reduces researchers' ability to identify effective means of influencing or improving the policy making process. This can result in lost opportunities to insert research evidence into the process at an appropriate stage, failure to account for all the relevant elements in policy analyses, misinterpretation of policy decisions, or a failure to critique policy actions that receive little or no attention in the public arena.

In order to address this gap in understanding, this research goes inside the policy making process, using the records created by civil servants as part of their work to present a particular policy making process.

1.1 Inside the black box

The civil service is the archetype of the bureaucratic organisation, and adheres to many of the classic characteristics associated with that structure. It is hierarchical, organised, rule bound, administrative, and, importantly for this study, bases its official business on documents (Weber,1991).

The civil service records used in this research are collected in over 200 hard copy files, created during and through the development of the smoking ban policy. These files have been accessed and analysed to answer the following research questions:

- How can the records assembled by civil servants during a policy making process be analysed when they are treated as a single data source?
- What can the records assembled by civil servants during a policy making process tell us about that process?
- Can the analysis of civil service records inform researchers about the policy making process in general?

These questions were operationalized to meet the following research aims:

1. Describe a novel data source and convert it into a text base resource for research purposes
2. Identify key themes in the data that are relevant to the research question
3. Position the key themes in the policy making process, linking them to each other
4. Provide an account of the major themes identified using the analysed data to explain, illustrate and track the policy making process
5. Present the policy process within a policy analysis framework
6. Draw conclusions about the utility of this data source for illuminating the policy making process

1.2 Two strands of interest

As evident in the research questions and aims, there are two strands of interest in this research. The first is the process involved in developing the Irish work place smoking ban. This focus required a detailed analysis of the data source which identifies the significant policy 'facts'-the actions, decisions, actors, influences, and strategies relating to this specific policy. The presentation of the results of this analysis is structured using Lewin's three stage model of change, adapted to represent three stages spanning the timeframe 2000-2004, through which the policy making process moved as smoking in the workplace became legally unacceptable in Ireland. Chapters 5-7 outline in detail the themes and categories which emerged deductively from the thematic analysis of the data.

The second focus in this research is on the ability of the data source to explain the policy making process at a policy analysis level. The themes and categories are analysed using Walt and Gilson's Policy Analysis Triangle, which allows the content of the policy to be presented alongside the context, process and actors relevant to the policy. Conclusions are drawn about the key actors, influences, drivers and barriers relating to the successful policy development and implementation of the policy.

Finally the main themes and categories identified are mapped to the key concepts which emerged as relevant for civil servants involved in this policy making process. It is the contention of this thesis that these factors are applicable across policy making environments and awareness of these concerns can result in a deeper understanding of the policy making process.

1.3 Contribution to knowledge

This thesis contributes to knowledge in several ways.

- An archive of the contents of a unique data source has been created which can be used for further research.
- A guide to extracting information systematically has been created, which could be used with other sets of records relating to other policy examples.
- A contribution to knowledge about the development of the Irish workplace smoking ban has been made, deduced from the data source used and reinforced by supplemental data gathered from key policy makers involved in the process.
- Key concepts relating to civil servants working on national level policy have been identified through this analysis, which can be applied across all policy making environments in which civil servants are among the principal policy makers.

1.4 Overview of thesis

Chapter 2 provides a background to the policy making environment in which the Irish workplace smoking ban was developed. This includes the immediate

environment in the Department of Health and Children, the wider national environment into which the policy was introduced and the international political and tobacco control environments which influenced the development of Irish policy.

Chapter 3 is the literature review for the study. In order to study conceptualisations of the role of the policy maker in the policy making process, two distinct but highly interrelated strands of the literature on public policy making are utilized. The first strand concerns how the public policy became an academic field of study. The second and connected literature looks at the concerns in public policy literature, and particularly at conceptions of the policy maker within the field. Approaches, theories and models employed in empirical research which specifically includes policy makers are discussed. In addition, the concept of power and the approaches to analysing its influence on the policy making process are discussed. The bureaucratic approach to the understanding of the process is reviewed, with particular reference to its impact on academic concepts of policy making and policy makers.

The methodological approach and the methods used are discussed in Chapter 4. The philosophical underpinnings of the research are explained and the specific ethical considerations in this research are discussed. The position of the researcher and the advantages and disadvantages of an insider position are also discussed. The function and role of the file in the policy making environment is discussed and details of data management are provided. Approaches to analysis of this type of data are considered and the approach selected in this thesis is explicated. The latter was guided by theoretical concepts of the nature and role of the document, which are also discussed. The use of the categories of Lewin's three stage model of change is discussed and the rationale for the use of key informant interviews is given. The policy analysis tool, Walt and Gilson's Policy Analysis Triangle, is introduced.

Chapters 5-7 detail the thematic analysis of the file material, utilising Lewin's model which conceptualises change as occurring over three stages, the unfreezing stage, the mobilisation stage and the refreezing stage. In this

thesis the concepts are used to represent stages in a policy process, and each chapter details the key activities identified from the records which occurred at each stage. Each example given is referenced to a specific document and file. Text boxes inserted throughout these chapters contain data gathered from supplemental interviews with key policy makers.

Chapter 8 discusses the findings from the analysis, and describes the use of Walt and Gilson's Policy Analysis Triangle to present the policy process which produced the Irish work place smoking ban policy. The main findings from this analysis are discussed.

Chapter 9 further develops the analysis by conceptualising key categories which relate specifically to the civil servants recording the policy making process. A model of the main concerns for civil servants in this policy making process is offered, which could be tested in further studies of other policy making processes. The limitations and strengths of the data are also highlighted.

Chapter 10 draws conclusions about the research and assesses the utility of the data source used in the research as a source of information about the policy making process. The contribution to knowledge is further explored and recommendations for further research are made.

The following chapter provides a more detailed background to the policy making environment in which this policy was developed, and sketches the wider context in which that process, leading to the world's first workplace smoking ban, was undertaken.

Chapter 2 The Policy Making Environment

'In a very real sense, public employees put flesh on the bare bones of government' (Rose,1984:127).

2.0 Introduction

This chapter provides a background to the policy making environment in which the Irish workplace smoking ban was developed. This includes a description of the organisational structure of the Department of Health and Children (DoHC) and the hierarchical grade structure which operates across the Irish civil service. The creation of legislation and the processes around which it is agreed and enacted are outlined. The second part of the chapter focuses on tobacco control policy in Ireland, and a brief history of tobacco control up to the year 2000, where the focus of the research begins. The wider international context of tobacco control is discussed and different perspectives on the Irish experience are provided.

2.1 Background to the Irish health system

From 1922 to 1947, public health services in Ireland were the responsibility of the Department of Local Government and Public Health. In 1947 the first Department of Health was established under the Ministers and Secretaries (Amendment) Act 1946 (Government of Ireland, 1946). The politics of health care in the following decades has been described by one commentator as moving from

> ..the roots of the Mother and Child scheme[1] in the 1940's, to the convulsions of the 1950's, the lowered ambitions of the 1960's, the defeated reform of the 1970's, the cutbacks of the

[1]The Mother and Child scheme was introduced in the Health Act of 1947 which provided for the free treatment of mothers before and after birth and for children during their school years. The scheme was championed by Dr Noel Browne, the second Irish Minister for Health, but was successfully opposed by the Catholic bishops. The scheme was amended significantly in the 1953 Health Bill to offer free care to mothers before and after birth, for infants up to six weeks and for children up to the age of six.

> 1980s , the consolidation of two-tier care at the opening of the 1990s and its survival through the boom years of that decade. (Wren,2003:6)

The defeated reform of the 1970s refers to the first major legislative reform of the health service, which came in 1970 with the Health Act 1970 (Government of Ireland,1970).

> The Health Act, 1970 was intended to provide a framework for the harmonious development of public and professional interests in health services: the mutual suspicion of the past was to be replaced by teamwork. The price of 'taking health out of politics' was to increase the role of those interest groups which had most at stake in the system and most power. It also meant the formation of an alliance in the treatment of disease rather than in the protection of health. (Barrington, 1989: 278)

The 1970 Act established eight health boards and gave centralised responsibility for running the health service to the Department of Health. Burke (2009) believes that a concern for health has never permeated 'the public or political psyche' in Ireland, and that improving public health has been far down the political agenda. The single exception Burke notes to this lack of action on public health is the workplace smoking ban, commenting that 'Michéal Martin's smoking ban was a complete exception to the rule and it is a perfect exemplar of how a single policy change can protect health and change behaviour'(Burke, 2009:231). Burke is referring here to the successful development and implementation of this piece of public health policy, rather than any lack of written policy or stated intention to improve public health. Significant polices aimed at improving health at the population level had been published since the 1990's. Examples include Shaping a healthier future (DoHC,1994), which was a national strategy for the delivery of health care services; the National strategy on cancer services in Ireland (DoHC,1996), and Building Healthier Hearts, (DoHC,1999), a policy document addressing cardiovascular health in Ireland. Each of these policies contained commitments to health promotion and specified actions in relation

to tobacco control and smoking cessation programmes. But Burke has pinpointed the unique factor that makes the work place smoking ban an interesting, though untypical, example of policy making, which is its successful implementation. The knowledge about the damaging effects of smoking and the use of tobacco products was already available and influencing national policy. This research examines the policy making experience at a level of detail that allows the process of policy making to be made visible, and the key elements to be identified.

2.2 The Department of Health and Children - structure and policy remit

In 1998 the Department of Health and Children published a manual to assist members of the public to access information held by the DoHC, in accordance with Section 15 of the Freedom of Information Act 1997 (Government of Ireland, 1997). This document described the structure and organisation of the department as follows:

> The Department of Health and Children comprises a number of divisions, each representing a key area of the Department's work. A division is typically overseen by an Assistant Secretary or Director. Each division may then be sub-divided into units, which are typically overseen by a Principal Officer. Units may in turn be sub-divided into sections, usually overseen by an Assistant Principal Officer (DoHC, 1998:5)

The same document describes the purpose of the Department at that time as having overall responsibility for the development of health policy, and for the planning of health services. The objectives of the Department are listed as being:

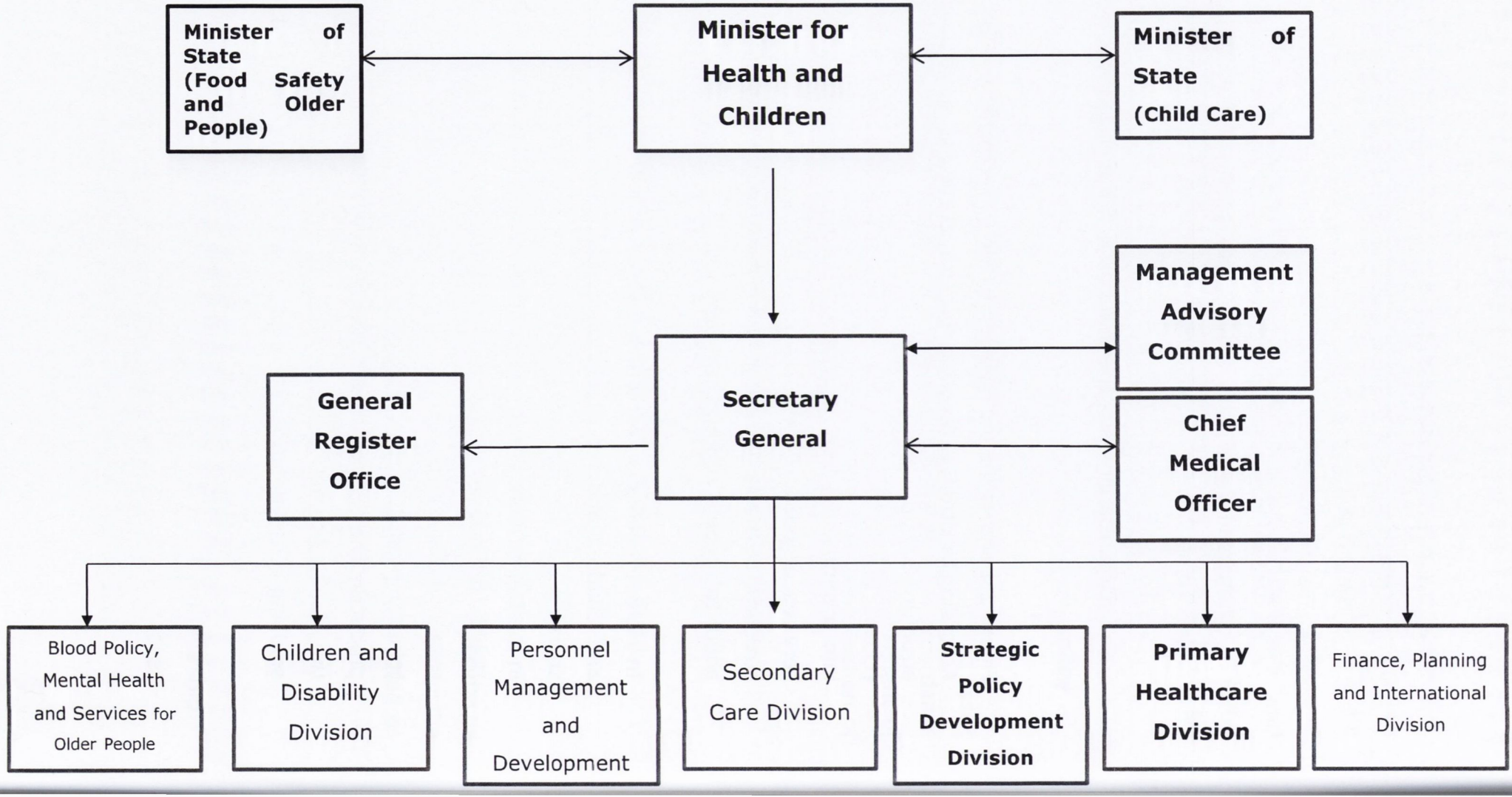
- To support the Minister in the formulation , development and evaluation of health policy and in the discharge of all other Ministerial functions;
- To plan the strategic development of services, through partnership and consultation with health boards, the voluntary sector, other relevant government departments and other interests;

- To encourage the attainment of the highest standards of effectiveness, efficiency, equity, quality and value for money in the health delivery system;
- To strengthen accountability at all levels of the health service;
- To encourage the continuing development of a customer service ethos in the delivery of health services;
- To optimise staff performance, training and development ;
- To represent the Irish interest in European Union, World Health Organisation and other international fora relating to health matters;

Figure 2.1 shows the organisation of the Department in 1998.
According to Litton, in his considerations of the civil service, an organisation's structure is its design for the division of labour that will accomplish its tasks (Litton, 2012). The organisation structure is designed to break down tasks into a series of jobs, integrated and linked together to produce whatever services or public good is required. Therefore it is worth examining the structure of the Government Department where tobacco control policy was about to become an important task.

In 1998, immediately preceding the appointment of a new Minister for Health and Children and the activation of the policy that led to the work place smoking ban, responsibility for tobacco control was located in two Divisions in the Department. These were the Primary Care Division, in which the Public Health Unit housed the Environmental Health Unit (EHU). The latter Unit had responsibility for developing and implementing controls on smoking, on tobacco product prices, and on the advertising and promotion of tobacco products. The Strategic Policy Development Division of the DoHC contained the Health Promotion Unit (HPU), co-ordinating national programmes on smoking cessation and other public health issues (DoHC, 1998).

Figure 2-1 DoHC Organisation Chart 1998

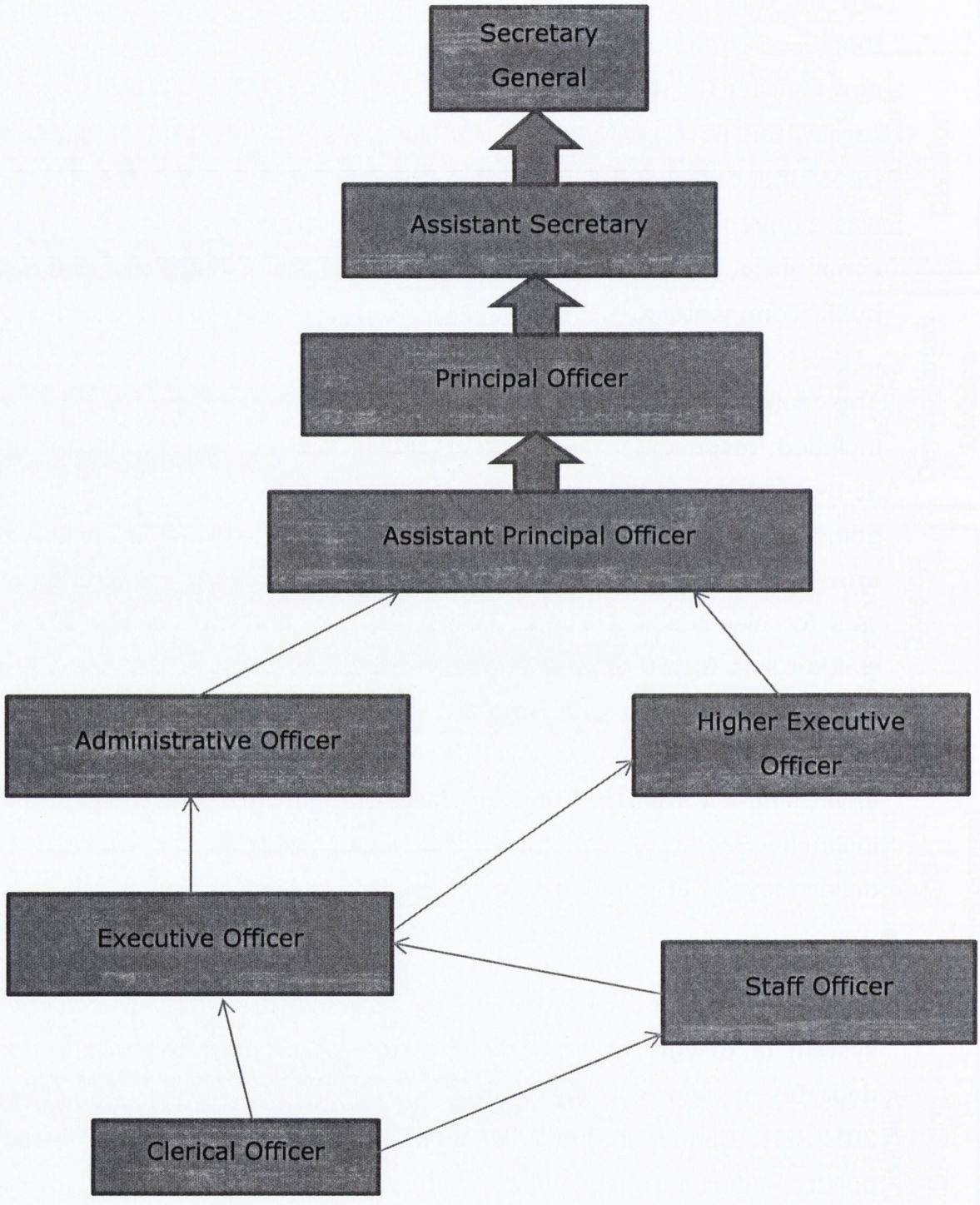


The hierarchical structure of the Civil Service is one of its defining features, preserved within the divisions shown in the organisation chart in Figure 2.1, and the Units incorporated in each division. In 2000, the starting point for this research, a new Secretary General was appointed to the DoHC, under a new Minister for Health and Children. Reflecting on this precise period in his career, this now retired Secretary General has stated that, on entering the Department of Health and Children, the key characteristic which he believed was required of him was 'an ability to project a strong sense of direction and communication in an environment beset by crisis management and negative public commentary' (Kelly,2007:23).

The challenges facing both the new Secretary General and the new Minister included: responding to the findings of a Tribunal of Inquiry into the scandal at the Irish blood bank; the aftermath of a nurses strike in 1997; the on-going crisis in acute hospitals, reflected in pressures on Accident and Emergency Departments and growing public criticism of the lengthy waiting lists for elective procedures. There was also ongoing concern about long waiting lists for other services e.g. orthodontics and disability services, as well as constant pressure from the courts regarding the shortage of places for young people in care, which was the responsibility of DoHC. The environment within the Department at this juncture was described by the incoming Secretary General as 'fractious' , with significant mistrust and divided loyalty at top management level (Kelly, 2007).

In practical terms, the work of the Department, is 'carried on through a system of delegation from the Minister to the Secretary General of the department and on down through the various grades' (Connaughton, 2012:63). Connaughton has identified three types of actors as central to the political–administrative nexus of policy making within government departments-ministers and junior ministers, senior civil servants and special advisers (Connaughton,2012). This triad have been called the 'proximate policy–makers' in acknowledgment of their central, if not exclusive, contribution and influence over public policy making (Chubb,1992:155).

Figure 2.2 Civil Service Grade Structure



Page and Jenkins focus on the 'rank and file' of the civil service in their consideration of hierarchy in the policy making environment (Page and Jenkins, 2005). By doing so they hope to provide a contrast to what they see as a largely two dimensional world of policy making presented when the main distinction made between actors is institutional. When people with different institutional affiliations, such as different departments and government organisations, and stakeholder and interest groups are 'patched together ' in studies of the policy making process, a relatively flat decision making arena emerges. Another part of the argument made by Page and Jenkins is that the rank and file among policy makers, whom they refer to as 'first-floor bureaucrats, exercise a similar autonomy as that ascribed by Lipsky's to 'street level bureaucrats' (Lipsky,2010), those working in education, policing, social work and other 'vital public services'. Page and Jenkins argue that in a similar way, 'first floor' bureaucrats are often not under the close scrutiny and direction of their superiors, and can shape policymaking as they exercise their discretion. It is argued in this thesis that the data source used in this research reflects the actions of such 'first floor bureaucrats' in relation to a particular policy making process.

The data source in use in this research is, officially, a record of the work of the departmental unit in which the policy work took place. Using such a resource means that no premature decisions need to be taken about who is important in the process, or what is the appropriate level of policy making to be investigated. Potentially, such a record will not distinguish between high and low level policy makers, but will present, when analysed, a full picture of the involvement of everyone who participated and contributed. Useful to understanding the record of that process is a summary of one of the key mechanisms through which this policy was realised, the legislative process, which is outlined in the next section.

2.3 The legislative process in a government department

Irish political institutions are based for the most part on what is referred to as the Westminster, or Whitehall, model, which copies the general principles

of a British-style parliamentary democracy. In the Irish parliamentary system the Presidency, the Oireachtas, (Parliament) the Cabinet and the Courts exercise specific powers in accordance with a written constitution, Bunreacht na hÉireann, which dates from 1937. A key characteristic of the Westminster model, which Ireland possesses also, is the fusion of the executive function of Government with the legislative arm, i.e. the executive of government (the Cabinet) is drawn from among elected members of parliament (Collins et al.,2007). The Irish Constitution details the composition and operation of the houses of the Oireachtas, the Dail and the Seanad, and lays out the powers of both for making laws. Article 15.2.1 of the Constitution stipulates that 'the sole and exclusive power of making laws is ....vested in the Oireachtas'. In practice the government of the day dominates decisions about legislation, and controls the introduction and amendment of Bills to the Oireachtas. As noted by O'Malley:

> Though the Dáil and Seanad have on paper some significant power to propose, amend and pass legislation, in effect all the legislation proposed by government is passed by the Oireachtas with limited amendment, and nearly all legislation that is passed by the Oireachtas emanates from government (O'Malley,2012:35)

Proposing, preparing and enacting legislation is the responsibility of Ministers of the State, who are also members of Cabinet , under powers given to them by the Minister and Secretaries Acts 1924-2007 (2007) and the Public Service Management Act 1997 (1997). A short explanation of the legislative process typically used in the DoHC in the 2000-2004 period is provided in Box 2.1A [2]

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[2] This section is based on information generously supplied by civil servants working in legal sections of government departments. I am indebted to them for their patient explanations of a complex process. Further details of the legislative process are available in the Cabinet Handbook, accessible at http://www.taoiseach.gov.ie/eng/Publications/Publications_Archive/Publications_2007/Cabinet_Handbook.html

Box 2.1A The Legislative Process in DoHC

1. Decisions are made by the Minister / Department that legislation is required. The approval of the Government is sought to draft the Heads of Bill and General Scheme. When this approval is confirmed the Bill will be listed on Section C * of the Government Legislation Programme and there is an expectation that the Heads will be produced expeditiously
2. The Legislation Unit of the Attorney General's Office (AGs), the Departmental policy unit responsible for the policy area, and the Department's Legal Section are involved with the preparation of draft Heads of Bill. The AG's Legislation Unit is charged with the preparation of Heads of Bill, and is involved in the development of policy as the Heads are drafted. The Legislation Unit will keep the Legal Section advised of developments in the preparation of these Heads.
3. The draft Heads, when prepared, are furnished to the relevant policy unit for consideration. At this stage, the policy issues are determined, which involves ongoing consultation with the Legislation Unit.
4. When the policy is determined, legal advice is sought. The process for Heads of Bill is to consult with the Department's Legal Section , and in turn' to seek legal advice from Advisory Counsel in the AGs Office.
5. In accordance with the legal advice received, and with the agreement of the relevant policy unit, the Heads and General Scheme are completed. The Heads and General Scheme are then brought before the Government to seek approval to draft the Bill in accordance with the Heads. If approval is granted, Parliamentary Counsel (PC) is appointed to draft the legislation - if the Bill is on the A list**of the Government Legislation Programme, PC is usually appointed promptly.
6. Once published, time is sought to bring the Bill through the Houses of the Oireachtas. Delays can be experienced in getting Dáil time to process a Bill. Some Bills/ Departments are given priority over others.

*__Section C__ Lists Bills in respect of which heads have yet to be approved by Government

**__Section A__ Lists Bills expected to be published from the start of the Dáil Session to the beginning of the next Session. (The 'A' in the title of the list indicates that a Bill is ready to go to the Houses of the Oireachtas-ie that its draft heads have been approved by Government, PC has been assigned to work on them and a draft Bill has been produced. This applies to all Bills and has nothing to do with the importance of the legislation. It is a mechanism for the Leader of the House to identify and anticipate the time that is required to deal with legislation in any one session

Tobacco Control legislation in DoHC

The principal Box 2.1A lays out the process involved in bringing forward legislation in the Department of Health and Children. The DoHC produces legislation using this Corporatist model[3], in which each unit produces legislation relevant to its own area of responsibility.

2.4 Tobacco Control Policy in Ireland

The 'Smoke Free at work initiative' was introduced by the Minister for Health and Children in March 2004. The primary purpose of the measure was to protect the health of workers and the public from exposure to toxic environmental tobacco smoke. Table 2.1 summarises the history of tobacco control policy actions in DoHC from the establishment of the Department in 1964 up to 2004, when the workplace smoking ban was implemented.

Policy activity in the early days of tobacco control in Ireland was characterised by voluntary codes, and the DoHC focus was on removing tobacco product advertising from the public domain.

The Tobacco (Health Promotion and Protection) Act, 1988 (1998) furnished the Minister for Health with the statutory framework to proscribe smoking in clearly defined public places, including on public transport, in health premises, in schools and in publicly owned buildings to which the public have access.

In 1993 the Minister for Health, Brendan Howlin TD, reconstituted the Consultative Committee on Smoking in the Workplace to consider what steps should be taken to reduce the exposure of employees to environmental tobacco smoke (ETS) or passive smoking. Represented on that Committee were the Irish Congress of Trade Unions (ICTU), Irish Business and Employers Confederation (IBEC), the Health and Safety Authority, the Irish Heart

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[3] The alternative model is that used in the Department of Justice, Equality and Law Reform, which observes strict differentiation between policy units and legislation units. The latter are used solely to develop legislation, independent of a specific policy unit. This model is employed in Departments bringing forward multiple and /or complex legislation under tight time schedules

Foundation, the Irish Cancer Society, ASH Ireland and the Departments of Health and Children, Enterprise, Trade and Employment. The idea of a legally empowered, outright ban on smoking in the work place was rejected by this Committee, as it was considered to be too difficult to enforce and that the "climate was not right" to extend the smoking regulations already in force in the work place generally.

In 1994 a new national health strategy, 'Shaping a healthier future', was published (DoHC, 1994). This document set as one of its health promotion targets in relation to smoking, a 1% reduction per year in the percentage of those who smoked. The overall target was to increase the number of non-smokers aged fifteen and over to 80 % of the population by the year 2000. The first of the five listed ways of achieving this target was the extension of environmental controls over tobacco, especially in the workplace (1994).

In 1995 new Regulations were introduced to extend places where smoking is banned. These included child care facilities, all health care premises; Bingo/Bridge/Snooker halls; public areas in retail financial agencies, banks etc; public areas in hairdressing salons/barber shops; taxis and hackneys, aircraft/ferries and 50% of seating in restaurants.

1999 saw a parliamentary enquiry into the effects of tobacco undertaken by a Joint Oireachtas Committee on Health and Children. This Committee was multi-party in its composition, and heard evidence from wide range of groups and individuals including department officials; the European Commissioner, public servants, representatives of NGOs and of the tobacco industry, and academics working in the field of tobacco research. In November 1999 the Committee published its report, A National Anti-Smoking Strategy-A report on Health and Smoking (Oireachtas Joint Committee on Health and Children, 1999).

In response, a Tobacco Free Policy Review Group was established by the then Minister for Health and Children, Mr Brian Cowen, TD. This group was charged with carrying out a fundamental review of the evidence relating to health and

tobacco, and to make recommendations to the Minister for Health and Children. In 2000, this Committee produced a report called 'Towards a Tobacco Free Society' which was adopted as Government policy soon after its publication (DoHC, 2000).

In 2001 The Public Health (Tobacco) Bill 2001 (2001b) was introduced. The provisions in the Bill allowed the Minister for Health and Children to prohibit smoking in all places, including the workplace, by way of Regulation.

In 2002 the Public Health (Tobacco) Act 2002 (Government of Ireland, 2002) supported by the opposition parties, was passed by Dáil Éireann, and signed into law. Among the recommendations of the policy Review Group report was one for the establishment of the Office of Tobacco Control (OTC). This statutory body was set up in May 2002 under Section 2 of the Public Health (Tobacco) Act, 2002 (Government of Ireland, 2002). The report also advanced a recommendation to establish a research institute which was, eventually, to become the Tobacco Free Research Institute of Ireland.

The Health and Safety Authority (HSA) and the Office of Tobacco Control jointly commissioned an independent review of the scientific evidence on Environmental Tobacco Smoke (ETS). The group, under the chairmanship of Dr Shane Allwright, was requested to

> Identify and report on the degree of consensus that exists among leading international scientific authorities on the question of the hazard and risk posed by environmental tobacco smoke to human health in the workplace (Allwright et al., 2002)

The report was made available in January 2003. The authors concluded that ETS causes heart disease, cancer and respiratory problems; that employees need to be protected from the harmful effects of ETS; that ventilation is ineffective and that legislative measures are required.

The Smoke Free at Work initiative was introduced by the Minister for Health and Children, Michael Martin TD, on the 29th March 2004, under provisions in the Public Health (Tobacco) Acts, 2002 (Government of Ireland, 2002) and 2004 (Government of Ireland, 2004b). The primary purpose of the legislation was to protect the health of workers and to protect the public from exposure to toxic environmental tobacco smoke.

2.5 International context of tobacco control

Tobacco control has been a concern for individual countries since early studies began to link cancer with cigarette smoking (Doll and Hill, 1950). Although not immediately accepted, a mounting body of evidence of the danger from tobacco use accumulated, as increasingly sophisticated and experimental clinical studies were conducted and reported. By the 1960's an unambiguous connection between tobacco and preventable deaths had been established, in the public mind, in research communities and on the public health agenda. A reduction in the use of tobacco products is now viewed as a legitimate ambition of most national health systems (World Health Organisation, 2014), and increasingly the focus for policy action is on developing countries, where tobacco companies continue to seek new markets.

The global nature of the tobacco industry has provoked an international response to the issue, and the World Health Organisation developing the first framework convention on health in response to the perceived tobacco epidemic, the Framework Convention on Tobacco Control (FCTC) (WHO, 2003). The intended influence on WHO member states of the FCTC is outlined in Article 8 of the Convention, which states

> Each Party shall adopt and implement in areas of existing national jurisdiction as determined by national law and actively promote at other jurisdictional levels the adoption and implementation of effective legislative, executive, administrative and/or other measures, providing for protection from exposure to tobacco smoke in indoor workplaces, public transport, indoor public places and, as appropriate, other public places' **(WHO,2003:Art.8)**

Table 2.1 Chronology of tobacco control policy in Ireland 1964-2004

Year	Policy action in relation to tobacco control
1964	Voluntary code on tobacco advertising
1971	Tobacco advertising on TV banned
1978	Tobacco Products (Control of Advertising , Sponsorship and Sales Promotion) Act 1978
1979	Tobacco advertising on Radio banned
1988	Tobacco (Health Promotion and Protection) Act 1988
1990	Tobacco (Health Promotion and Protection) Regulations, 1990, introduced
1991	Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion)Regulations, 1991
1992	Voluntary Code launched in 1992 in the booklet 'Clean Air at Work (code developed by a consultative Committee est (not clear by whom) to examine the possibility of extending smoke controls in the workplace and agreed a voluntary code)
1992	Launch of ASH Ireland
1993	Consultative Committee on Smoking in the Workplace is reconstituted
1994	Health Strategy sets a 1% per year target for reduction in numbers of people who smoke
1995	Regulations extend the numbers and types of places where smoking is banned or where smoke free areas must be provided
1996	1996 Tobacco Products (Control of Advertising, Sponsorship and Sales Promotion) (Amendment) Regulations, 1996
1998	Smoking in the public sector workplace banned
1999	A Multi-party **Joint** Oireachtas Committee on Health and Children commence a hearing on smoking and health and publish the report *A National Anti-Smoking Strategy:A Report on Health and Smoking* Tobacco Free Policy Review Group established to review the evidence on smoking and health and to make recommendations (Smoke Free Policy Group) Group chaired by Prof David Kennedy set up in March 1999 at the request of the Minister for H&C to examine a proposal for the est. of a Tobacco Research Centre
2000	Report of the Tobacco Free Policy Review Group, Towards a Tobacco Free Society , published and adopted as Government Policy The Health (Miscellaneous Provision) Act introduced which raised the legal age at which tobacco products could be sold to a person to 18 years
2001	The Public Health (Tobacco) Bill 2001 published The Research Institute for a Tobacco Free Society established
2002	Public Health (Tobacco) Act 2002 signed into law. Section 2 of this Act was enacted in May 2002, establishing the Office of Tobacco Control (OTC) as a statutory body.
2003	Tobacco Smoking (Prohibition) Regulations introduced, specifying licensed premises and registered clubs individually and setting 26th January 2004 as the date for the 2002 Act to become operational
2004	Smoke Free at work initiative introduced Ireland hold European Presidency

As can be seen from Table 2.1, Irish policy makers addressed the issue of tobacco control in an incremental manner, with some periods of relatively little activity (1964-1988) followed by periods when significant progress was made (1990-1996). This is not an unusual pattern of policy activity in relation to tobacco control, which transformed from a national to a global issue during the last half of the 20th Century.

The publication of the 1964 US Surgeon General's Report (1964), which contained a comprehensive summary of evidence on the harmful effects of cigarette smoking on human health, is generally considered to be a watershed event in the history of tobacco control (Holford and Clark, 2012; Studlar, 2006). Despite the significance of this unequivocal acknowledgement of the detrimental effects of tobacco consumption on health, tobacco control legislation only gathered momentum in the 1980's. Studlar (2006) has traced the implementation of control measures in industrialised countries, including Ireland, through the decades since the 1970s. The results of this work is reproduced in Table 2.2, which shows the number of individual actions taken by each country in the decades between 1970 and 2003, and the number of actions taken cumulatively over that period.

The type of action referred to in this table include: educational campaigns; the imposition of high taxation; health warning labels on packages, broadcast bans, and other advertising restrictions; point of sale restrictions; and sponsorship and promotions restrictions. Although some of these measures took the form of voluntary agreements with the tobacco industry, Studlar nevertheless refers to the decades between 1970 and 2003 as the period in which smoking, tobacco and in some cases tobacco companies and their advertising practices, were 'denormalised'. He also comments that

> In the 1980s some countries, notably Canada, Australia, and Ireland, joined the ranks of tobacco control leaders while others rested on their laurels. Yet others, including many on the continent of Europe, remained laggards in their total efforts as well as in many specific measures. Only in the period starting in 1990 did the number of measures employed by several countries begin to

cumulate in a manner that could be called "comprehensive." (Studlar, 2006:377)

Table 2.2 Tobacco Control Measures by Country, 1970-2003

Country	Individual Actions in each Decade				Cumulative Actions over decades			
	1970	1980	1990	2003	**1970**	**1980**	**1990**	**2003**
Australia	1	2	6	16	1	3	9	25
Canada	0	0	10	21	0	0	10	31
Denmark	0	0	2	12	0	0	2	14
Finland	1	7	0	7	1	8	8	15
France	0	9	2	11	0	9	11	22
Germany	1	5	1	4	1	6	7	11
Ireland	**0**	**2**	**14**	**8**	**0**	**2**	**16**	**24**
Italy	2	0	2	6	2	2	4	10
Japan	1	0	2	0	1	1	3	3
New Zealand	2	4	2	22	2	6	8	30
Norway	0	6	4	5	0	6	10	15
Sweden	0	9	3	7	0	9	12	19
United Kingdom	1	1	3	7	1	2	5	12
United States	5	0	8	12	5	5	13	25
Totals	14	45	59	138	14	59	118	256

Source (Studlar, 2006:379)

2.5.1 International Factors

Two factors have been identified as influential on the development of tobacco control measures. One was the initiation of formal negotiations on an international treaty aimed at reducing the health threat posed by tobacco consumption. This initiative, by the member states of the World Health Organisation, 'institutionalised' national interest in addressing the public health risk posed by tobacco consumption in 1999. The negotiation process for the FCTC contributed to the development of epistemic communities, comprised of networks of professionals with expertise in global tobacco

control (Marmudu, 2011), and to the diffusion of policy innovations in relation to tobacco control measures (Studlar, 2006). The initiative culminated in the adoption and ratification of the Framework Convention on Tobacco Control by the WHO in 2003. Studlar notes that:

> The process of negotiating the FCTC has also made governments, especially the health ministry officials who have been responsible for the negotiations, aware of instruments and developments in a broader international circle. In addition to countries and NGOs, the European Commission has also participated in the negotiations (Studlar,2006:385)

The second influential factor, noted by Studlar above, was the participation of the European Union (EU) in the negotiations. This had implications for both the member states of that organisation and the wider WHO membership. For member states of the EU, there were two opportunities to influence the outcome of negotiations, as the representatives of the independent states from which they came, and as members of European Union. The opportunity provided by this dual representation was used by those in favour of the FCTC and tighter tobacco controls, and by those strongly opposed to it. A constraining factor on both was the obligation to comply with EU Directives, once these had been agreed. The latter took precedent over national laws and sometimes resulted in member states being compelled to take actions that were not in keeping with their own stand point.

Germany has consistently opposed tobacco control measures at national and at EU level, a position which commentators have ascribed to a combination of factors. These include a cultural rejection of attempts to control personal behaviour, believed to also reflect a reaction to anti- tobacco stance of Nazi Germany (Gruning et al., 2008); the significant economic benefits of nurturing a strong tobacco industry in terms of employment and tax receipts; and an 'almost autarkic' research community, which was large and diverse and sufficiently well-funded to be self-contained, reducing the successful diffusion of tobacco control innovations experienced by other EU countries. Gruning et al describe this as

> 'autarkic epistemic isolation'. It leads to an isolated epistemic community and helps to explain why models of 'policy learning' for tobacco policies do not hold in Germany and why so little policy transfer has taken place (Grunning et al.,2008: 156)

Unlike Germany, the late 1990's saw Ireland among the EU and WHO member states most committed to taking strong tobacco control measures, and to reducing the health risks posed by the use of tobacco products to the populations they served. This research provides the opportunity to trace the influence of this commitment on the Irish policy making process, as recorded by those policy makers who participated in it.

2.6 Perspectives on the Irish work place smoking ban

The record of how Ireland came to develop, introduce and successfully implement a work place smoking ban policy is the focus of this research. This example of policy making has been examined from several perspectives, including that of epidemiologists and health service researchers investigating various aspects of the ban and its outcomes. These include research into bar workers perceptions of air quality before and after the ban, (Pursell et al., 2007) and its effects on their own smoking habits (Mullally et al., 2009); the measurement of low birth weight and pre term births before and after the ban (Kabir et al., 2009); evaluations of smoking cessation services (Currie et al., 2010) and the effects of the ban on smoking prevalence and smoking attributable deaths (Currie and Clancy, 2011); and an evaluation of the effectiveness of intervention mechanisms in relation to tobacco control (Clancy,2009). The communications aspects of the Irish experience have also been explored, including a consideration of how health communication strategists engaged with the media during the period in which the policy was developed to present a newsworthy but controversial issue to the public (Fahy et al., 2012). Propinquity has made the Irish policy process the object of study in other jurisdictions, with attempts made to map the influence of the Irish smoking ban on the adoption of restrictive second hand smoke policies in Scotland and England (Asare and Studlar, 2009). A policy analysis of the

process has also been undertaken, providing an external perspective on the process of formulating and implementing the work place smoking ban (Currie and Clancy, 2011). Their study identified the political, economic and social context in which Ireland's work place smoking ban was developed and implemented. These findings are discussed further in section 8.6.1, where they are used to provide a contrast to the internal perspective provided in this research.

The chronological progression of tobacco control in Ireland can be presented (see Table 2.1) and many approaches have been taken to understanding the success of the work place smoking ban (see papers above). This research provides an additional perspective on the policy making process that led to the work place smoking ban. Those given the task at that time, of controlling and reducing the use of tobacco products, and the health effects it had on the population at large, recorded their work and this record provides the data source for this research.

2.7 Summary of Chapter 2

This chapter has described the policy making environment in which Irish tobacco control legislation was devised and implemented. Both the organisational structure of the DoHC and the grade structure within its policy units are presented. One of the principal policy mechanisms used in the development of tobacco control policy and ultimately of the work place smoking ban is the introduction of legislation. A summary of the process through which this mechanism is used by civil servants is outlined. The progress of Irish tobacco control policy measures has been outlined, and two influential international elements have been discussed. This includes Ireland's place among the international tobacco control policy community in the period in focus in this research, and the dual role resulting from membership of and the participation of the European Union. The Irish work place smoking ban has attracted academic attention from both Irish and international researchers, and some of the resultant studies have been

included here to illustrate the different perspectives brought to bear on this policy making process.

A wider range of perspectives and theoretical approaches to analysing the policy making process is provided in Chapter 3, which reviews the relevant literature. The Bureaucratic approach to understanding the policy making process is discussed, and related to the Irish policy making process. Relevant aspects of the record making and record keeping practices are also outlined in this chapter, with a focus on theoretical approaches to working with documents as a primary data source.

Chapter 3 Policy making in the literature

3.0 Introduction

The research aims of this study are addressed through the analysis of the documentation compiled into an official record of the work of civil servants during the development of the Irish workplace smoking ban policy. The civil service is at the centre of public policy making, contributing to all aspects of the development and implementation of policy decisions. Close links with political decision makers direct the work of the civil servants working in policy making government departments. This thesis argues that an examination of the record of this work can provide insight not available from other sources into the policy making process.

The argument is developed in five separate but linked sections. First the evolution of academic interest in the policy making process is outlined, with particular reference to the development of the sub field of political science known as policy analysis. Definitions and common understandings of the terms policy, public policy and policy making are provided. Second, approaches to the academic study of the policy making process are discussed, and three prominent theories –rational choice, institutionalism and network theory–are presented, highlighting the concepts of the policy maker they promote and the main models derived from them. These approaches have been chosen because they each focus on a different but important element of that process. Rationalism and Public Choice Theory focus on how the policy maker makes decisions, and uses the knowledge available to him to assist in the process. Institutionalism takes account of the social constructions surrounding and influencing the policy maker –the norms, beliefs, rules and culture of the institution to which he/she belongs to. Network Theory looks at how the policy maker, or the policy broker as conceived of in this approach, interacts with other participants in a policy making process.

Third, the concept of power is discussed in relation to how it has been perceived and described and the influence it is perceived to have in analysis

of the policy making process. Fourth, the bureaucratic approach to understanding the policy making process is discussed, including the theoretical origins of the concept of bureaucracy, the impact of New Public Management reform on concepts of bureaucracy and bureaucrats, and how researchers have studied the contribution of bureaucrats to the policy making process. Fifth, the literature relevant to the data source identified for this idiographic study of a policy making process is reviewed.

3.1 Academic interest in the policy making process

The academic study of the public policy making process has evolved over time, and different functions have been assigned to this type of enquiry, correlating to a changing understanding of the role of the state in the lives of citizens.

Following the Second World War emergent social issues became the subjects of political consideration, and academic researchers seeking to 'speak truth to power' began to critically assess the public policy making process (Hupe and Hill, 2012). In that era, Lasswell conceived the idea of policy science as an interdisciplinary, problem-solving means of studying the complexity of the social problems facing decision makers and their solutions to them (Lasswell, 1970). He established context, multi-method inquiry and practical problem solving as tools of enquiry in a delineated field of study termed the 'policy sciences' (Turnbull, 2006). In a reversal of the nineteenth and twentieth century emphasis on specialisation, Lasswell's purpose was to bring a policy focus to the social sciences and to produce knowledge applicable to the public policy process.

This delineation of a specific 'policy orientation' was initially criticised as the concern of a positivistic technocrat. Subsequently Lasswell has been identified as a hero of the post positivist school of policy studies (Torgerson, 1985), principally because of his insistence on the contextual re-orientation of policy analyses. Such a stance firmly rejects a positivist ideal of a neutral, detached observation of a policy process. A student of policy science of the type

envisioned by Lasswell, would be engaged, through a process of contextual–configurative analysis, in the 'all-encompassing totality' of the policy making process. This process required the individual researcher, and the field of policy sciences as a whole, to commit to an act of 'creative orientation' (Lasswell, 1970:13) when seeking to understand or explain the public policy process.

This literature review will look at how policy makers have been considered in theories, models and frameworks developed to study the policy making process. The three approaches examined, Rationalism, Institutionalism and Network theory, have been selected because they are theoretically well developed and each provides a range of empirical examples in which conceptions of the policy makers and policy making can be discerned. First the common understanding of public policy will be discussed.

3.2 Definitions of policy

In a general sense there is some definitional agreement about what the term policy refers to, although for some it is not a self-evident term (Heclo, 1972) and for others the term is so widely used as to obscure meaning (Exworthy,2008). Typically, policy is understood as the formalised courses of action established to address particular problems or to facilitate the pursuit of particular strategies or goals (Hodgson and Irving, 2007). Policy is not automatically the remit of an organisation and has also been defined, succinctly, as a standing decision by an authoritative source such as a government, a corporation, or the head of a family (Shafritz and Borick, 2008). Anderson, for instance, defined policy as a purposive course of action that an individual or group consistently follows in dealing with a problem (Anderson, 1975). Although this is a broad description, applicable to any organisation, social grouping or individual addressing a specific issue, it contains the elements of purpose and consistency, which distinguish such action from unplanned or spontaneous problem solving activities. Buse et al reject Andersons's definition because it excludes unintended courses of action, thereby omitting policies that result from no action or from a series of

separate decisions taken over time (Buse et al.,2009). For others, uncertainty is part of the policy makers remit, and their activities are defined as 'a form of collective puzzlement on society's behalf' (Heclo, 1974:305).

Bauer's explanation of decisions termed 'policy' includes the notion of time, and also stipulates the requirement for specific knowledge and sustained consideration for decision making. Referring to the labels we apply to the decisions and actions we take, Bauer noted that, especially for 'those which have the widest ramifications and the longest time perspective, and which generally require the most information and contemplation, we tend to reserve the word policy' (Baurer, 1968:2) . The complexity of policy and its ability to embody something of its creator is hinted at in the understanding articulated by Easton, who noted that 'a policy ...consists of a web of decisions and actions that allocate ...values' (Easton, 1953:153). In a similar way Jenkins conceived policy as ' a set of interrelated decisions ...concerning the selections of goals and the means of achieving them within a specific situation' (Jenkins, 1978:15).

From the many definitions of policy that the literature offers, the elements of purposefulness, and consideration over a period of time helps to delineate policy from other types of planning or decision making. Outside the literature it has been suggested that the term should be applied to 'something more than a galvanic twitch...policy is not about surviving till Friday' (Ignatieff, 1992, in Walt, 1994:40). Parsons puts it succinctly when he says 'A policy is an attempt to define and structure a basis for action or inaction' (Parsons, 1995:2). Adding a second concept, that of public, focuses definition on the areas where policy might be developed, implemented or evaluated by academic study. Some of the key points about public policy are presented below.

3.2.1 Public policy

While the term 'policy' has a general use, the term 'public policy' implies a more specific meaning about what is referred to and who will be taking action. Bryant quotes Pal's (2006) helpful idea about public policy:

> The idea of public policy is that the issue is not a private affair but one that needs to be addressed by the larger society in the public domain' (Pal, in Bryant, 2009:1)

When policy in the public domain is considered, the influence and responsibility of the state or the government is usually central. For some the term 'public policy' functions discursively, 'as both the scholar's favourite example of ideology, and our most enduring, hoped-for site of truly democratic social change' (Byrnes, 2006:73). Dubnick and Bardes summed up this vast field of influence in his sparse description of public policy as 'what governments do or say' (Dubnick and Bardes, 1983:2). Add to that Thomas Dye's contention that 'public policy is whatever governments choose to do or not to do' (Dye,2001:2) and the field broadens again to encompass as policy issues that remain, deliberately, un-actioned. For Heclo, the term policy needed to encompass an additional dimension, 'both what is intended and what occurs as a result of the intention' finding that 'any use which excluded unintended results...would surely be impoverished' (Heclo, 1972:85). Howlett finds Dye's definition useful because it underscores the notions that policies are conscious choices and not accidents or accidental occurrences- they result from government decisions and not those of other actors in society such as private companies or other non-governmental organizations (Howlett, 2011). Equally, the definition provided by Shafritz and Borick encompass the concept of government decision making and the activity engaged in (i.e. the processes) as a result, as '...the totality of the processes by which a government decides to deal or not to deal with a particular problem or concern' (Shafritz and Borick, 2008:62). The vastness is not reduced by Heclo's placement of public policy, in terms of analysis, as a concept in the middle range, applicable to something bigger than individual decisions but smaller than social movements (Heclo, 1972).

For the purposes of this thesis the term 'public policy' refers to the policy made at the national level, by government, and this use of the term implies the range of contexts and issues that are the concern of government policy

makers. All the definitions and concepts discussed here draw attention to the concerns of the authors, and highlight the aspect of public policy that appears most salient to them. The 'public' nature of the issue, the ideology attending both understandings of the issues and of the policy process; government responsibility-focussed, unintended or neglected; decision making and power in the process are all valid concerns for those interested in how public policy is made. The appeal of public policy as a field of study is discussed below.

3.3 Academic interest in public policy

Knowledge has always been seen as a key element in the policy making process, and authors have acknowledged its importance as they attempt to connect the act of making public policy with their own dominant concerns. Machiavelli, for instance, was interested in power, and positioned himself as an advisor to the key decision maker in renaissance Italy. He warned that a prince, especially a new one, may often be forced, in order to maintain the state, to act 'contrary to faith, friendship, humanity and religion' and that he should strive to become a 'great pretender and dissembler' in order to practice the art of policy (Machiavelli, 1995). Specifically, Machiavelli advised the Prince that action should be based on his own knowledge of the reality of politics and power. This advice has been interpreted as an indication of Machiavelli's awareness that good-quality information, and its proper interpretation, allows decision makers to control public affairs. Francis Bacon, writing in 1557, also championed his main concerns, knowledge and learning, as the key elements in gaining and exercising power. Bacon believed that good policy was based on the understanding that to exercise power, sustained authority and legitimacy was necessary and that it could be achieved by support and agreement, rather than by antagonism. For Bacon, power was the exercise of knowledge, a concept he presciently encapsulated in the phrase 'knowledge is power' (Hupe and Hill, 2012).

Such early understandings of the role of knowledge in the policy making process has also been interpreted as 'anticipating a later concern to describe

and analyse, embodied in an aspiration to develop an applicable science of politics' (Hupe and Hill, 2012:xxii).

Howlett et al offer an explanation of why public policy is a worthy topic for academic interest when they say

> We study it to understand how .....individual decisions add up and work together, ..., if a recognizable pattern of policy making and policy content can be discerned by studying multiple decisions, or are they just random or quasi-random accumulations of past decisions, like building new cities atop the ruins of old ones? (Howlett et al., 2009:2)

While Hogwood and Gunn also take an interest in the decision making process, they make a distinction between making decisions and making policy (Hogwood and Gunn, 1984). For them, policy is larger than decision, and will often be the result of a series of decisions, among which there can be one crucial decision, a 'moment of choice', that influences the direction and outcome of the policy. To understand the policy, and the moment of choice, requires a study of the decisions made before and after the crucial moment. Hogwood and Gunn also consider that 'the whole concept of decision makers may be challenged occasionally when it seems that the events and the larger environment have forced a particular policy direction upon the agencies of government' (Hogwood and Gunn, 1984:19).

The next section looks at how public policy as an academic field of study has been theorised. Weible et al have recently defined policy process research as the study of 'the development of public policy over time and the context, events and individuals surrounding this development' (Weible et al., 2012:2). They also refer to the absurdity of assuming that a single framework or theory can explain all the facets and effects of so complex and multifaceted a process. Nevertheless some theoretical approaches to the academic study of the policy making process have produced useful concepts, models and

frameworks which to aid comprehension in this field. These are discussed in the next section.

3.3.1 Approaches to the study of public policy making

A perspectival distinction runs deep in the academic field which studies public policy, evident in early differentiations made in conceptualisations of policy making processes. The approaches to the study of public policy making which will be explored here, and which have influenced the focus, methods and questions asked in empirical research in this field, are rationalism, institutionalism and network theory. Arguably, these approaches all have the policy maker at the centre of their interpretation of the policy making process. Certainly each theory, and the frameworks and models derived from it, provide a specific, articulated image of the concerns and motivation of the policy maker. In this discussion the main conceptualisation of policy makers will be considered in each approach. Following that the contribution of the bureaucratic approach will be assessed.

Carole Weiss uses Meltsner's 1975 description of policy making when drawing attention to the stance of contributors to the policy making process. Weiss quotes, 'Policymaking is a big pot which many stir, and policy analysts like the heady sense of power that comes from being among the stirrers' (Weiss, 2010:531). Policy analysts feeling such a heady sense of power are likely to be engaged in the type of analysis described by Hill as analysis *for* policy, i.e. analysis focussed on improving the quality of the policy making process. Earlier analytical efforts were focussed on analysis *of* policy, (Hill, 2009), an interest which had its origins in the prescriptive approach to policy making that dominated Western democratic governments since the end of the second World War until the 1980's. From the perspective of policy analysis, this period was the peak of social science positivism, (Torgerson, 1986) and during these decades the responsibility of a public policy maker was to find the right policy, solve any design difficulties and use it to make progress in solving specific societal problems. John (2000) attributes the scholarly neglect of 'policy making' in this period to the domination of the behaviouralist tradition in political science. This resulted in a focus on elements of the

political process -such as voting patterns, election strategies, and interest group activity-that were observable, measurable and understandable through analysis of their sociological and cultural determinants.

The process of policy making, defined by John as 'how the machinery of the state and political actors interact to produce public actions', (John, 2000:1) is more complex and more difficult to observe. But it was to this process that attention turned when analysis for, rather than of, policy became the focus of policy analysis. Three key theories of the policy making process are outlined below, with the principal models derived and used by proponents of each one.

3.3.2 The Rational Actor

The good citizen was originally viewed as a combination of *homo economicus* and *homo politicus,* operating under a combination of assumptions which allowed him to maximise his interests in the market place while pursuing his own notion of the public interest in politics (Dye, 2013). The policy maker as *Homo economicus* is likewise conceptualised as

> an individual or collective decision maker who weighs the costs and benefits of all available alternatives and takes actions that are motivated by a concern with the efficient use of resources' (Dunn, 2012:45).

Green and Shapiro (Green and Shapiro, 1994) identified four features of Rational Actor Theory (RAT) which facilitate this particular concept of the policy maker.

1) RAT involves utility maximisation, or expected utility maximisation, when conditions are uncertain. This means that, when confronted with a number of options, the rational actor will select the option which affords him the greatest welfare

2) RAT requires consistency in relation to choice selection- each individual must be capable of ranking the options available in terms of the welfare they offer. The options must be transitive, i.e. selecting

one implies that other choices are also made. (E.g. if option A is preferred to option B and option B is preferred to option C, it is implied that option A is preferred to option C)

3) The relevant unit of study for a RAT study of the political process is the individual, not groups of individuals.

4) The RAT model offers universality, in that it applies to all persons at all times.

The principles of Rational Actor Theory have been used by policy analysts and researchers investigating the policy making process to develop different models, in which individuals are assumed to be goal oriented, and to act in ways that they believe make them better off. These are considered in the following sections.

3.3.3 Public Choice and Rationalism

The theory of public choice emerged from a dissatisfaction with the capacity of traditional political science methods to address basic issues in the political economy (Boorah, 2003). In terms of the academic study of public policy making in the era of public choice, Wildavsky refers to this period as one in which microeconomics replaced sociology as 'the great scavenger of the social sciences', (Wildavsky, 1985:27). Rational choice theory is the application of economic principles to non-market areas, and is, as a concept, synonymous with public choice. It posits the theory that individual choice is the foundation of political action and inaction, borrowing this inspiration, and its methods, from the field of economics (John, 2000). The economic principles which formed the basis for modern economic thought were laid out by Adam Smith in the late eighteenth century in his seminal work The Wealth of Nations (Smith, 1937/1776). This book, and the system it described, answered the question implied by Smith's Hobbsian vision of man as inherently self-interested, necessitating 'oppressive authoritarian government to prevent chaos' (in Monroe and Maher, 1995:2). Smith placed his faith in the power of the free market to maintain stability in the face of such dangerous self-interest, believing that it would serve as an 'invisible hand' to ensure that the common good would emerge (Monroe and Maher, 1995). These assumptions

formed the foundation of classic and later neoclassical economics and have subsequently been transmitted to the rest of social science through the theory of rational action (Monroe and Maher, 1995). Rationalism was the dominant perspective in public policy research during its emergence as a significant sub-field of political science in the post Second World War period (John, 2000).

3.3.4 The policy maker as rational actor

In his seminal book 'Administrative Behaviour' Herbert Simon emphasised the need to understand the connections between decision making, defined as making a choice between alternatives, and a theory of administration, which was concerned with the processes of decision as well as the processes of action (Simon, 1957a). For Simon 'rational' choice involved the selection of alternatives conducive to the achievement of the goals or objectives within organisations, an aspiration which Simon felt was fundamental to giving meaning to administrative behaviour. This perception informs the concept of the policy ma as a rational actor who accumulates information, assesses alternative courses of action, and chooses among them on the basis of the potential of each to achieve the decision makers' preferences (Grindle and Thomas, 1989). In models based on such linear rationality, policy making is presented as a problem solving process which is rational, balanced, objective and analytical and which is generally accepted as having little to do with the reality of policy making (Sutter, 1999, McCaughey and Bruning, 2010; Sabatier, 2007; John, 2000; Simon, 1957b; Colebatch, 2011; Colebatch, 2006).

Hill (2009) perceives a number of difficulties with the rational approach that are centred on the elements that are not and, he believes, cannot be accommodated by it. Among these are the identification and inclusion of the values and objectives that drive the decision making process, and consideration of which goals should be the focus of the policy process, those of the organisation or the goals of the individuals and groups contributing to the process. Hill further notes the reality that decision making rarely proceeds

in such a logical, comprehensive and purposive manner (Hill, 2009). Simon may have been acknowledging some of these critiques when he introduced the idea of bounded rationality in the second edition of his book (Simon, 1957a), which incorporated variations on pure rational actor theory. These are considered below.

3.3.3 Bounded Rationality

Bounded rationality recognises situations in the policy making world where decision makers are limited in their abilities to search for a solution. In this situation they 'satisfice', choosing the alternative that meets or satisfies minimum criteria for solving the problem, rather than searching for an optimal solution (McCaughey and Bruning, 2010). For Simon, human rationality is limited by what is known and what can be known, as well as by the capacity of human beings to learn and adjust their behaviour accordingly. Policy makers must likewise make appropriate valuations based on limited knowledge, and overcome both the psychological and the organisational environments in which they must operate (Parsons, 1995). Simon illustrated the nature of rationality and bounded rationality by the use of two models: economic man and administrative man.

> While economic man maximizes-selects the best alternative from among all those available to him; his cousin, whom we shall call administrative man, satisfices-looks for a course of action that is satisfactory or 'good enough'. ....He makes his choices using a simple picture of the situation that takes into account just a few of the factors that he regards as most relevant and crucial (Simon, 1957:cxxv).

Dahl welcomed the arrival of administrative man, because

> Unlike economic man, to whom an organization is always purely instrumental; organization man finds at least some of his satisfactions in organizational life itself. Unlike economic man and his cousins in administrative theory, game theory, and statistical-decision theory, organization man is not

> completely rational; his rationality is "bounded," but it is by no means absent (Dahl, 1957:247).

Weible and Sabatier (Weible et al., 2009) further consider the cognitive abilities of policy makers who operate using bounded rationality, offering the following caricature of policy participants, who are:

- Goal oriented with goals derived from a variety of sources including interests, beliefs and values, or collective affiliations;
- Limited in their cognitive capacity to process the multitude of stimuli supplied from the environment;
- Reliant upon heuristics to simplify, understand, interpret, and respond to incoming stimuli;
- Affected by their emotions, such as fear and trust, in reasoning, allocating attention, and making behavioural decisions.

3.3.5 Incrementalism

Charles Lindblom also challenged the notion of rationality that dominated in models of policy decision making, largely agreeing with Simon in relation to its limitations as a model for public policy making (Lindblom, 1959). In particular, Lindblom objected to the idea that rational analytical techniques could replace the need in policy making processes for political agreement and consensus. Simon saw potential in the advances being made at the time in computing technology and management science, which he felt could provide new tools and techniques to equip Administrative Man for better decision making. Lindbolm disagreed, considering that technical solutions were 'not workable for complex policy questions' (Lindblom, 1959:81). Instead he proposed recognition of a technique of 'successive limited comparison', in which simplification is achieved by limiting the number of alternatives to be investigated. Ignoring important possible consequences of policies and their values, the policy maker is in effect 'muddling through', with a non-comprehensive analysis of the policy issue.

Policy change in this model proceeds incrementally, involving mutual adjustment and negotiation as well as trial and error; exclusion of information is not systematic but occurs by accident and policy is never made 'once and for all'. Lindblom felt that this approach was superior to 'a futile attempt at superhuman comprehensiveness' and that the test of a good decision is agreement and process rather than goal attainment or meeting objectives (Parsons, 1995:287).

3.3.6 Mixed Scanning

A third approach, proposed by Amitai Etzioni, attempted to combine the idealism of the rational–comprehensive approach with the realism of the incremental models by using a 'mixed–scanning' model (Etzioni, 1967). The model proposes that, when making a decision, policy makers undertake a broad analysis of the policy area rather than a detailed analysis of the options required by rationalist models (Buse et al., 2009). More detailed reviews of options can be undertaken in relation to less important steps that might lead to, or follow, from a fundamental decision. The type of review undertaken, either broad or detailed, are based on a distinction Etzioni makes between fundamental and more routine (incremental) decisions. Fundamental decisions are the large scale decisions which have significant ramifications at a national level. When making this type of decision Etzioni advocated that policy makers should adopt a rationalist approach, whereas more routine decisions can be made in a more incremental fashion.

Etzioni believed that the mixed scanning model provided a good description of the policy process and a way of guiding that process (Walt, 1994). The mixed scanning model is considered to provide a more accurate model of the policy decision making process. It has been critiqued for its lack of clarity around the distinction it makes between major and minor decisions, and the feasibility of making such a distinction credibly, (Buse et al., 2009; Kuruvilla and Dorstewitz, 2010) and for its treatment of the issue of what constitutes a policy problem (Kuruvilla and Dorstewitz, 2010).

3.3.7 Critiques of Rational Approaches to Policy Making

Self (1993) critiqued public choice theory in economics on the grounds of its failure to consider that the dominant role of self-interest might be a consequence of, rather than a cause of, competitive markets. He also identifies two major difficulties presented by the application of economic principles to the political process. One is the non-responsiveness of such systems to individual wants, which makes them unresponsive in a political sense, and therefore not sustainable in a democratic state. The second is the openness of these systems to abuse by self-serving power holders. The failure of the public choice/rational approach to public policy process led to a decline in the branch of analysis that supported it, described by Wildavsky as 'the eclipse of macho-macro analysis' (Wildavsky, 1985:27).

One significant criticism of the incrementalist approach is its inapplicability to crisis policy making- government decisions made in reaction to urgent and unanticipated situation (Dye, 2013). John considers the reason for the failure of the rationality approach to be more fundamental, as no matter how objectively reformers attempted to specify the rational criteria, political factors affect how policy makers select and use policy analysis. As John observes, 'In short, rational decision-making techniques are just as political as policy making itself' (John, 2000:32).

While it failed as a guide to public policy, the conceptualisation of policy makers that rationalism produced, maximisers, statisficers, muddlers and scanners, continue to be utilised in contemporary theories of the policy making process.[4] Recent research into cognitive processing has identified bounded rationality and satisfying as appropriate concepts applicable to the limitations of complex cognitive processing (McCaughey and Bruning, 2010). John (2000) critiques what he considers to be a false debate between

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[4] For example, game theory relies on the concept of the rational actor to explain complex policy choices and uncertainty. Evolutionary game theory applies rational choice theory to understand the movement from policy stability to change and vice versa (John,2003).

advocates of rational and incremental models of decision making. He posits that the dichotomy created between them fails to recognise that both models capture elements of decision making, and that aspects of both types of behaviour modelled occur most of the time, when political and bureaucratic actors make policy choices and carry out implementation decisions (John, 2000).

A second key approach to the study of public policy focussed not on the motivations and capacity of the policy maker but on the influence of the institutions in which he/she operates and in which public policy is formulated.

3.3.8 Institutionalism

The institutions from which public policy emanates have been a focus for theorists and empiricists interested in understanding process in political science. Traditional institutionalism engendered detailed studies of the political, administrative and legal structures within a state, employing mainly descriptive and inductive methods of analysis (Millar, 2003). Institutional analysis has its roots in political sociology, developed from questions raised in that discipline regarding the extent to which human actions are structurally determined (Hill, 2009). Two other fields in the social sciences have contributed to the development of institutionalism as an approach to the study of policy making. The field of economics contributed through the development of an institutional perspective that challenged classic, context–free economic analysis, and the field of history provided the perspective that historical institutionalists used to trace the evolution of policy over long periods of time (Hill, 2009).

Developments in the field of traditional institutionalism led to new institutionalism, which presents institutions as actors, not just arenas for action, as described by the major proponents of the approach

> The core notion is that life is organised by sets of shared meanings and practices that come to be taken as given for a long time. Political actors act and organise themselves in

> accordance with the rules and practices which are socially constructed, publically known, anticipated and accepted. Actions of individuals and collectives occur within these shared meanings and practices, which can be called institutions and ideas (March and Olsen, 1997:141)

The new institutionalism approach is focussed on the role played by institutions in the determination of social or political outcomes, as well as the rules, norms, values and beliefs that guide institutional actors (Hall and Taylor, 1996, Parsons, 1995, Lecours, 2005. A well cited empirical example is Immergut's use of the approach to conduct comparative analysis on 'the rules of the game' surrounding health care planning in France, Switzerland and Sweden. Immergut successfully identified the key veto points at which those opposed to reform in each country made their ultimately successfully challenges to proposed reforms in each health system (Immergut, 1992). Skocpol also took an institutional approach in a study of attitudes to social policy in the US, as manifest in efforts to secure universal health insurance in a federalised system of government (Skocpol, 1994). More recently Duric has concluded that institutions represent a critical variable in policy study and that a renewed interest in institutions and institutional design at the macro level was sparked by the democratisation process of post-communist countries in the 1990's (Duric, 2011).

Hill notes the problem faced by institutionalism as a theory, a problem which he believes confronts all theories emphasising structure, namely that they are better at explaining stability than change (Hill, 2009). Policy analysts have attempted to overcome this limitation by developing strategies to capture change, such as Critical Junctures Theory, which stresses the importance of focusing on formative moments in policy implementation. However, and as described by Collier and Collier, critical junctures can take decades to occur (Collier and Collier, 1991), which presents difficulties for the policy analyse working in real time or in a typically short time frame. March and Olsen suggest that the observation of 'performance crisis' provides a

guide to institutional management of change, i.e. that when government fails to deliver the expected goods or services, public reaction highlights the failure and stimulates change (March and Olsen, 1989).

A third significant approach to understanding and analysing the policy making process incorporates both individual policy makers and those operating within and on behalf of institutions, with all the discursive, cultural and institutional influence that entails. The connections made between and because of a policy process are the subject of Network Analysis Theory, which is considered below.

3.3.9 Network Analysis of the policy process

Much of the discussion about network analysis theory arises from what has been referred to as a sub-government literature, in which the existence of privileged groups with close connections to government maintain a dominant influence over policy (Dowding, 1995). Organising and controlling their members allows these groups to capture government agency responsible for their regulation –the 'agency capture' phenomenon (Adshead, 2003). Small sub-systems are sometimes referred to as 'Iron Triangles', formed from small, very stable and highly exclusive three-way sets of relationships between politicians, bureaucrats and a commercial interests (Buse et al., 2009).

Policy subsystems also contain all those who play a part in the generation, dissemination and evaluation of policy ideas (Parsons, 1995). This can include the components of the iron triangle, interest groups, academic analysts, think-tanks, researchers, journalists and actors in other levels of government. Parsons describes the members of a policy subsystem as 'a set of actors who are involved with a policy problem, rather than simply formal decision–makers'(Parsons, 1995:196). Dowding's critical review of policy network approaches found they offered very little by way of theoretical explanatory power in relation to policy transformation or change (Dowding, 1995). Network approaches produced the heuristically useful metaphors 'policy community' and 'policy networks' to indicate the close links between

civil servants and favoured interest group organisations. But, Dowding contends, 'At the end of the day, the material power and legitimacy of elected government can ride roughshod over any policy community' (Dowding, 1995:144).

Other analysts see network theories in a more constructive light. According to John, network analysis theory claims that the structure of the coalitions across complex policy sectors determines policy outputs, and that the values, power relations and routines in these networks explain the differences across policy sectors, and account for long periods of stability (John, 2000). John detects a parallel with institutionalism in these long periods of stability, in the influences of 'regularised constraints on public action' which operate outside and across public institutions. For John, the difficulty with networks is their static nature, which he believes causes them to be less effective as a constraint on public action than traditional institutions, given the position such networks occupy in the social and political systems to which they belong. This position he terms 'epiphenomenal', as the networks are created as by-products of these systems only, and lack the power to effect the social or political systems that produced them (John, 2003). Sabatier agrees with John's assessment, arguing that the fundamental or core norms and beliefs of an advocacy coalition change relatively infrequently and only in response to major changes in the external environment, such as regime change, or shifts in the macro-economic system (Buse et al., 2009).

Another interpretation of networks which also takes a structural approach stresses the usefulness of making the co-operation between actors the focus of the analysis. The dependency of actors on each other's resources is central to the creation of a network. Klijn and Koppenjan offer the following description of their focus in such studies:

> The network approach assumes that policy is made in complex interaction processes between a large number of actors which takes place within networks of interdependent actors. These actors are mutually dependent as policy can only be realised

> on the basis of co-operation. This co-operation however, is by no means simple or spontaneous, and it requires types of game management and network constitution. (Klijn and Koppenjan, 2006:30)

The most significant policy analysis tool developed from network theory focuses on mapping the changes that occur when policy is created, which 'explicitly identifies beliefs as the causal driver for political behaviour' (Weible et al., 2009:122).

3.3.10 The Advocacy Coalition Framework (ACF)

Sabatier (Sabatier, 1988), and later Sabatier and Jenkins-Smith (Sabatier and Jenkins-Smith, 1993) developed the Advocacy Coalition Framework as a general approach to understanding policy change. The focus of the framework is on the interaction of advocacy coalitions-each consisting of actors from a variety of institutions who share a set of policy beliefs-within a policy subsystem. Policy change is a function of both competition within the subsystem and events outside the subsystem. The framework maps the belief systems of policy elites and analyses the conditions under which policy – orientated learning across coalitions can occur (Sabatier, 2012). Within this framework a concept of a 'policy maker' is redundant, as the struggle between the actors and networks to influence government institutions produces the policy decisions. The most defined role within the Advocacy Coalition Framework is that of the policy brokers-actors concerned with finding feasible compromises between the positions advocated by the multiplicity of coalitions. They might be civil servants with experience in a particular sub-system or an organisation designed to produce agreement in a policy making context. Empirical testing of the ACF has shown that the model works fairly well at explaining policy change over a ten year period in an open, decentralized, federal, pluralistic political systems such as the USA but less well in more closed systems and where there is less interplay between advocacy coalitions (Buse et al., 2009).

Rational actor approaches, new institutionalism and network analysis have been developed, tested and modified by a range of public policy researchers who have focussed on the elements and characteristic of policy making they are most interested in. When choosing a lens with which to examine a policy making process, the researchers understanding of how power is exercised in society will influence the purpose, design and interpretation in the research. The role of power in the policy process is discussed below, as a prelude to a discussion of another approach to the policy making process.

3.4 Power and the policy process

Any consideration of the policy process must include a consideration of power, as approaches to understanding how policy is made will depend on how power is understood to operate and exert influence on the process. The concept of power is a contested one, open to many different interpretations, which, it has been suggested, will depend on where one is placed on the power structure (Miles, 1976).

In studies of policy making three perspectives on power are commonplace: the pluralist perspective, the elitist perspective and the concept of bounded pluralism (Smith, 1976). The pluralist perspective considers that power is evenly distributed across society and that no group has total power over others. Equality and individualism are protected by the political rights conferred on citizens-voting, free speech, access to government, lobbying, pressure group activity and a politically free mass media. A plurality of elites exist in society and no one elite dominates all the time. The state in this perspective is viewed as a neutral set of institutions, adjudicating between conflicting social and economic interests without bias towards any particular interests. This is the point on which public choice theorists disagree with pluralists, as they perceive the state to be an interest group with power over the policy process which is used in pursuit of the self-interest of the public officials and civil servants who hold it (Buse et al., 2009). Another criticism levelled at pluralists is that they ignore the power that economic domination confers outside state activity and which may influence state actions,

particularly in international and transnational policy environments (Walt and Gilson, 1994).

The elitist view of power in the policy process has its roots in structural determinist Marxist theory, which sees policy choice and change as being dominated by particular social classes. From this perspective the observer considers that the primary function of the state is to ensure the interests of the dominant classes are privileged when policy choices are being made. The elitist view of the exclusivity of the dominant social classes refutes the pluralist view of open access to the political elite. Elitist theorists also point out that all interest groups are not equally powerful in the policy making arena. For example, in some political systems commercial groups may have more leverage than community based action groups (Walt, 1994). Critiques of elitist theory revolve around a perceived overstatement of the capacity of elites to wield power (Grindle and Thomas, 1989). It is also noted that non-elites do challenge elites, and there are frequently multiple groups competing for attention on different specific issues with which governments are involved.

Linked to this concept of the elite power of the dominant classes to control decision making is the capacity of the same classes to exercise power through non-decision making. Hill (2009) draws on Barchrach and Baratz's description of the power exercised in non-decision making, which occurs in 'the practice of limiting the scope of actual decision–making to 'safe' issues by manipulating the dominant community values, myths, and political institutions and procedures' (Bachrach and Baratz, 1962:632). Bachrach and Baratz use Schattschneider's term to describe the process of confining decision making to selected issues as the 'mobilisation of bias' (Schnattschneider, 1960). The bias in this case is that of the dominant community, mobilised to prevent the grievances of less dominant groups or communities, which may be contrary to the interests of the dominant classes, from becoming fully fledged issues which require decisions. This type of power wielding, through which vested interests are protected, creates covert grievances in society, around which public discourse may not develop.

A similar concept of the invisible operation of power is one of the three dimensions that Lukes identified in his consideration of power. Taking a different approach to the study of power, Lukes suggests that it should be studied on each of the different dimensions on which he believed that it operates (Lukes, 2005). The first of these dimensions is the observable power of overt conflicts between actors over key issues, a power which pluralists will recognise. Secondly is of power in covert conflicts, similar to those which Bachrach and Baratz identified in their non-decision making model (Bachrach and Baratz, 1962). Thirdly, Lukes adds the dimension of power which produces what he calls 'latent conflict'. This involves exercising power that shapes people's perception, cognitions and preferences so that 'they accept the existing order, because they see it as natural and unchangeable or because they value it as divinely ordained and beneficial' (Lukes, 1974:24). Hill's critique of Luke's formulation questions whether latent conflict can be empirically investigated by a researcher, who would need to identify what the 'true interests' of participants were i.e. to identify something that the objects of the study cannot (Hill, 2009).

Hall et al, as quoted in Walt 1994, suggested a middle path to understanding power and influence in the policy making process when they introduced the concept of bounded pluralism (Hall et al., 1975, in Walt 1994). The differentiation made here is between high level and lower level policies. Evans and Newham include 'the maintenance of core values-including national self-preservation-and the long-term objectives of the state' in their definition of high politics (Evans and Newham, 1992:127, in Walt, 1994). Low politics include policy making in relation to issues which Evans and Newham describe as 'not seen as involving fundamental or key questions, relating to a state's national interest, or those of important and significant groups within the states' (Evans and Newham, 1992:184, in Walt, 1994). Issues of high politics are largely economic questions and these, Hall suggests, are decided by elites within an elitist framework. Domestic, routine polices, such as those developed for education, health, transport and housing, are developed on pluralist lines, with some participation by different groups at different stages in the policy process (Hall, 1975, quoted in Walt, 1994). Walt cautions that

while such a differentiation is useful for conceptualising the types and levels of policy at which different influences may be effective, policies may change with circumstances. What was a low politics issue might become a high politics issue through the actions of one or more actor or interest group. Incremental changes in policy may at some stage add up to and present as a systemic policy change, elevated it to a high politics level and attracting the attention of a power elite (Walt, 1994).

Walt supports the concepts of bounded plurality even while accepting the argument that domestic policies are influenced by economic policies and could therefore be said to be in the hands of the ruling elite that manages the latter.

> However, this is such a strong negation of the ability of people to change policy that I would still support the notion of a bounded policy space in most liberal democracies and some other political systems in which there is room to manoeuvre, to challenge and change government policy (Walt, 1994:39)

Walt clearly believes, or wishes to believe, that policy actors can influence the decisions of government. This belief must be sustained by evidence drawn from examples of the overt exercise of power, i.e. policy making in which power is visible and conflicts are played out in open forums, amenable to analysis.

3.4.1 The concept of power in this research

Power is a concept which has particular relevance for public policy, given the immediate and far reaching effect such decision making has in society. Different understandings of power have been considered here, specifically multiple understandings of how power is dispersed, exercised and manipulated in policy making arenas, and how that affects policy actors and the wider communities from which they come. While it would be reductionist to try to provide a definitive understanding of power in the policy process, in this study power is understood to be:

- Overt (and manifested overtly in the institutions of the state and the policy actors involved in the policy process under discussion).
- Covert (but detectable in the material used as the primary data source for the research).
- Reflecting the concepts of bounded pluralism. In this process a 'low politics' issue existed on the DoHC policy agenda since the inception of the Department of Health, in which various policy actors influenced the extent of tobacco control in Ireland. Through the interest and intervention of high level policy makers the issue of tobacco control was transformed into a high politics issue in which the objectives of an elite of took precedence.

The work place smoking ban policy was developed within the bureaucratic institution of a government department. The theoretical concepts underpinning the changing understandings of such bureaucratic institutions are discussed in the next section.

3.5 Bureaucracy as an analytic model in policy making research

This section looks at how concepts of bureaucracy have been applied to the study of the policy making process. Concepts of the bureaucrat within such organisations are considered, as well as the different ways in which state bureaucracies are considered to contribute to the process. The main aim of the section is to provide background information on how bureaucracies have been viewed by theorists. This has, in turn, influenced how researchers have approached the empiric study of the role of bureaucracy in the policy making process.

3.5.1. Academic interest in bureaucracy

Parsons has previously noted that the theorists who had the most influence on the development of models for analysing the policy process were American, and consequently much of the theory, approaches and models used in political science and policy analysis were developed with an American

governance system in mind (Parsons, 1995). This holds true for the consideration of the non-political policy making sphere, which in the US federal system is referred to as the Administration. Herbert Simons' study of decision making (Simon, 1957a) sought to create the basis for a scientific theory of the administrative organization. Simon argues that problem solving in government departments occurs through the construction of simplified models, based on past experience and selective views of the situation. These 'decision premises' permit decision-making to occur by 'structuring and simplifying problems.' Thus Simon introduced his concept of administrative man, something of a weak-minded cousin of economic man, as a social creature who finds his satisfactions in organizational life itself (Dahl, 1957).

In Europe a model for modern bureaucracy was described in the 1930s by Max Weber, who listed the characteristics of an ideal type bureaucracy, which are considered next. A more recent reworking of the concept is also provided here, the elements of which present a more readily recognisable version of contemporary bureaucracy. The most familiar type is that which is manifest in the modern civil service, which is then discussed. The application of the principles of New Public Management (NPM) and their relevance to civil service bureaucracy are also discussed.

3.5.2 Theoretical Models of Bureaucracy

Merton commented in 1952 that it would be premature to refer to 'the theory of bureaucracy' as at that time there was 'no single, well-defined conceptual scheme adequate for understanding this form of organisation' (Merton, 1952:17). More recent commentators suggest that this remains the case (Olsen, 2006). Nevertheless, bureaucracy is recognised as one of the oldest institutions of governance and administration in history (Farazmand, 2010) and has been described as one of sociology's 'primordial concepts' (Button, et al., 2012:236). In Marxist literature, the state in western capitalist society is perceived as a relentless machine that subjugates citizens through its various governmental apparatuses, including the faceless, calculating, bureaucracy. Max Weber is credited with making bureaucracy an analytical concept, by decoupling it from the polemical context in which it emerged

(Albrow, 1974). For Weber, (Weber, 1930) the following principles characterize bureaucratic organisations:

1. The continuity of official business
2. Stipulated rules govern its conduct
3. A hierarchy of responsibility and authority
4. Officials do not own the resources needed to conduct the organisation's business
5. Offices are not tied to the official (i.e. the functions of the Office can be carried out by any selected official and an official can hold any Office).
6. Official business proceeds on the basis of written documents

Bureaucratic organisations are viewed as embodying certain rational characteristics, of, for example, calculability, efficiency, predictability, and technical proficiency (Button, 2012). Weber describes the bureaucratic machine as follows:

> The fully developed bureaucratic apparatus compares with other organisations exactly as does the machine with the non-mechanical modes of production. Precision, speed, unambiguity, knowledge of files, continuity, discretion, unity, strict subordination, reduction of friction and of material and personal costs – these are raised to the optimum point in the strictly bureaucratic administration (Weber,1930,in Button, 2012)

Later in the same text, Weber highlights another characteristic of the bureaucracy:

> Bureaucracy develops the more perfectly the more it is 'dehumanised,' the more completely it succeeds in eliminating from official business love, hatred, and all the purely personal, irrational, and emotional elements which escape calculation (Weber,1930, in Button, 2012)

Weber provided an ideal-type framework within which bureaucracy could be understood in terms of a set of structural and organisational features (Parsons, 1995). A person, the bureaucrat, operating within such a structure is perceived to be a calculating, rational operative, proceeding according to rules of conduct, operating through written documents, working within a hierarchy of responsibility and authority and providing for official continuity of business (Button et al., 2012). The concept of the public administrator, as envisioned by Weber, is of a neutral and predictable individual, operating with unquestioned obedience and loyalty to the elected political authorities, in order to serve the public good (de Gaaf, 2011).

For Page and Jenkins, Weber's classic theory of bureaucracy creates a core paradox which, they believe, their research into the policy work of civil servants, exposes (Page and Jenkins, 2005). The paradox relates to the fundamental nature of bureaucracy, which in Weber's model is hierarchical- and the activity of policy making, which they assert, is not. Page and Jenkins argue that policy making requires the mobilisation of specialization and expertise, and so is inherently non-hierarchical. As both hierarchy and technical expertise are core requirements in Weber's classic theory of bureaucracy, Page and Jenkins believe that a tension exists between these elements. The tension is created when the expertise of civil servants working in specific policy areas outstrips that of the hierarchical superior to whom they report. For Page and Jenkins the existence of this tension generates questions which can only be answered by conducting research within the bureaucracy itself. While they acknowledge that politicians are the apex of the executive structure, they note that

> Ministers can at best take a close interest only in a small proportion of the decisions taken in their name. They are highly dependent upon officials working within the policy bureaucracy who work hard to fashion policies in ways they think their minister will like. The question is where the

> discretion and choice are exercised within this system. (Page and Jenkins, 2005: 184)

3.5.3 Alternative concepts of bureaucracy

Interest in administrative systems has led to the broadening of the concept of bureaucracy, defined by Farazmand as referring to

> ..any large organization or institution organized with structure, process, and normative values, rules, and regulations as well as a mix of merit and patronage and record systems (Farazmand, 2010:246)

In his theoretical analysis of bureaucracy, Farazmand identifies Dwight Waldo and Eisnestadt (Waldo, 1948, Waldo, 1992, Eisenstadt, 1963) as key exponents of an alternative to Weber's ideal view of bureaucracy, both contending that:

> Expertise and specialized knowledge are obtained through performance, training, and longevity; both are applied in large scale organizational systems that perform either strictly political functions (e.g. organization of foreign affairs), or provide services (e.g. social services, child protection, law enforcement) to citizens both directly or indirectly through proxies such as contractors or outsourced agents (Farazmand, 2010:247)

From this perspective the bureaucracy can be seen as a powerful system of governance and public administration which impacts on the policy making environment in which it operates.

Bureaucracy has also been viewed as an organizational apparatus for getting things done, to be assessed on the basis of its effectiveness and efficiency in

achieving predetermined purposes (Olsen, 2006). This instrumental view of bureaucracy takes a political economy perspective on the role of bureaucracy and views it purely as the machinery of government, carrying out the will of powerful elites, or as a 'powerful instrument of system maintenance', a function which all bureaucracies perform, without exception (Farazmand, 2010:249). From this perspective

> Bureaucrats are supposed to obey, and be the guardians of, constitutional principles, the law, and professional standards. They are imagined to use their professional expertise and experience to illuminate all aspects of public policies and "speak truth to power' (Olsen, 2006:3)

Olsen makes a distinction between bureaucracy as the instrument of government and bureaucracy as institution with a 'raison d'etre and organizational and normative principles of its own' (Olsen, 2006:3). Farazmand marries the concept of bureaucratic longevity with the idea of bureaucracy as the machinery of government, creating 'a system or complex of organizations and institutions—executive, judicial, and legislative—that makes the operations of government and governance possible' (Farazmand, 2010:247). A third concept of bureaucracy is posited when bureaucracy is treated as an expression of 'cultural values and a form of governing with intrinsic value' (Olsen, 2006:3). This aspect of the nature and form of bureaucracy is at the centre of discussions about the relationship of administration and political activity within government, which will now be considered.

3.5.4 Bureaucracy and politics

The administration, the bureaucracy, the civil service, the permanent government, these are all ways of labelling a government institution which is recognised as essential for policy making and policy implementation. Woodrow Wilson first delineated the roles of politics and administration in the American democratic system, conceptualising bureaucracy as a defender of

the 'public interest' (Pestritto, 2005), established not to only improve government efficiency but to act as the 'ethical watchdog' and 'moral guardian' of governmental decision making (Thayer 1997). The neutrality of the bureaucracy has been an important concept in the American political system, since Woodrow Wilson laid down his vision of an administration operating in 'neutral competency' (Wilson, 1887). In Wilson's theory of public administration a clear distinction existed between politics and administration, which paralleled the demarcation between public and private spheres (Parsons, 1995). Parsons expands on this idea when he says

> Public administration evolved as a means by which 'public interest' could be secured through a neutral class of civil servants whose task it was to carry out the will of those elected by the people (Parsons, 1995:6)

This distinction, between executive power and public administration, has been identified and described as a central feature of governance in all societies, and the relationship between the bureaucratic elites and the political elites as having produced various manifestations in performance, character and outcomes (Farazmand, 1997).

Peters identifies 5 models of the political /administration relationship and positions them on an assumed continuum that starts and ends with models depicting an 'unadulterated Anglo-Saxon perspective' (Peters, 1997). At one end he positions a Weberian /Wilsonian model showing a complete separation of politics and administration, a model in which civil servants take directions willingly from their political masters. At the other end is a model referred to as the Administrative State, in which the political and the administrative are also separate but in which the bureaucracy is the dominant force. In between these is an Adversarial Model, which incorporates the same separation but no clear means of resolving the struggle for control.

There are two additional models which Peter's considers to be more applicable than the other three to Continental systems of governance. These are the

Village Life model, in which both administration and executive are considered to be components of a single group serving the state and the public, sharing relatively common goals and rewards. The final model on the continuum is a variation on the village life model called the Functional Village Life model. This model assumes the same relationships between executive and administration as the Village Life model, but also assumes that this relationship is played out within specific functional areas. So, rather than having a single, all–purpose elite at the top of government, government consists of a number of different elite groups defined by their policy areas, and by their professional training. The rise of managerialism as a concept underpinning public sector reform came to prominence in the final quarter of the 20th century and proceeded from a Functional Village Life model of the bureaucratic administration.

3.5.4 New Public Management

Over the period of the 1980's and 1990's, New Public Management (NPM) became a focus for Western governments interested in reform of the public sector, particularly in Australia, New Zealand, the UK and the USA. The application of NPM values to the government programmes launched in the period, emphasised cost efficiency, markets, competition, contracts devolution and decentralisation in the public sector (Self, 2000). In the public sector the managerialism at the heart of NPM emphasised hands-on professional management, and the explicit standardisation and measurement of performance. The ideas of new institutional economics became prominent, focussing on the introduction of incentive structures for public service provision, stressing disaggregated bureaucracies exposed to greater competition through contracting out and quasi-markets, and consumer choice in public services (Rhodes, 1996).

R.A.W Rhodes equates NPM with his concept of governance because both are concerned with mechanisms for 'steering' policy decisions (Rhodes 1996). Among NPM theorists, 'steering' referred to government's function of creating the norm for the provision of a public service and correcting any deviations from this norm in the service provided. The steering was done by government

and its structures and the implementation, or 'rowing', was undertaken by those bodies assigned to do it (Osborne and Gaebler, 1993). The new entrepreneurial government which applied these principals required less government and more governance, a concept that Rhodes wrote about extensively, defining it in the statement 'Governance' means there is no one centre but multiple centres; there is no sovereign authority because networks have considerable autonomy' (Rhodes, 1997:109).

For Olsen, bureaucratic reforms that prescribed privatization, deregulation, market competition, and commercialization turned public administration into a 'supermarket' for the delivery of a wide variety of public services, now disciplined by market competition (Olsen,1988).

3.5.5 New Public Management in Ireland

The roll out of the Strategic Management Initiative (1996) marked the formal application of NPM principles in the Irish state. Litton (2012) points to a unique aspect of the introduction of NPM in Ireland -the fact that the initiative for its introduction came from the administrative elite itself. Litton assigns this enthusiasm for change to the attendance by senior civil servants at an MSc Course in strategic management. The latter was designed for and delivered to a group of Assistant Secretaries in the Irish Civil Service, at Trinity College Dublin in the early 1990's, as a contribution to public service reform. As part of a review of reform in sates with relatively more advanced modernisation than Ireland, the participants visited Australia and New Zealand, later publishing their findings in a report (Byrne, 1995). Litton considers that the experience gained through this educational initiative, combined with the necessary political backing, led to the initiation of NPM reforms in Ireland by senior civil servants. By the time that the economic difficulties of the 1980's had been supplanted by the economic successes of the late 1990's, the ideas that informed NPM had become the established orthodoxy, and provided the frame within which the civil service was examined and judged. It also provided the bureaucratic context for policy making in the early 2000s, the period relevant to the policy making process under scrutiny in this research. A closer look will be taken at theories of

bureaucratic policy makers, and at some of the ways that one central feature of all bureaucracies, the document, has been used in studies of the policy process.

3.5.6 Researching the bureaucracy

Advocates of a bureaucratic political model of policy making claim that interactions within bureaucracies explain policy-making as much as the intentions of politicians (John 2000). Lee and Raadshelders credit Hegel as the first scholar to consider the role and position of civil servants in relation to the political executive.

> To Hegel a civil servant is more than a mere mechanical executor of political will and brings moral consciousness to an otherwise technical administrative activity' and, for Hegel, executive power depends upon civil servants, given their impartiality and their "knowledge and proof of ability" (Lee and Raadschelders, 2008:420)

Weber's sociological perspective on political administrative relations led him to believe that civil servants should "remain outside the realm of the [political] struggle of power", responsible for 'sincerely executing orders of their political leaders'. At the same time Weber (1968) acknowledged the emerging power of civil service bureaucracy when observing that "[i]n a modern state the actual ruler is necessarily and unavoidably the bureaucracy. . . . It is [civil servants] who decide on all our everyday needs and problems" (In Lee and Raadschelders, 2008:421).

The contention of this thesis is that an existing data source can provide insight and understanding about the policy making process which is not available from other sources. The data source used is an intrinsic part of the bureaucracy of the civil service, and reflects the work undertaken by civil servants in relation to a specific policy making process. Chapter 4 explains how this data source was identified, accessed and analysed, but the remainder of this chapter considers bureaucratic records as a source of data

for policy research, and the particular treatments and precautions its use requires.

3.6 Records, documents and files as research data

Much of the existing knowledge about the policy process has emerged from qualitative or mixed methods research, employing methods such as surveys or semi structured interviews with high level decision makers, often supplemented by or triangulated with documentary analysis. Researchers who have given a more prominent role to documentary analysis have, no doubt, found Guba and Lincoln's distinction between 'records' and 'documents' useful. Records they define as any text prepared to attest to a formal transaction (such as a marriage or birth certificate, a bank statement or a driver's licence) (Lincoln and Guba, 1985). These tend to be the type of administrative documents created and collected in the course of service provision, and are drawn on frequently in health systems research. Examples include birth certificates, death certificates, immunisation records etc. or patient records (Anderson, 2000, Millar and Alvarado, 2005, While, 1987). Documents, which they define as texts prepared for personal, rather than official reasons. Examples include memos, diaries, letters and field notes. These distinctions have been used by researchers examining both types of documents (Hodder, 1995; Appleton and Cowley, 1997).

This distinction, however, excludes the main type of texts used in policy studies privileging documentary analysis, namely published policy documents. These have been analysed for a variety of purposes and using both quantitative and qualitative methods. They have, for example, been used as indicators of a government commitment to specific principles, such as health equality (Freeman, 2006); or to study the policy treatment of specific issues, such as euthanasia requests (Lemiengre et al., 2008); or child protection (Kelly, 2002); as reflections of government intentions and of the policy environment in which comparable policy were made (Abbott et al., 2004); as a means of assessing the extent to which research evidence is used in policy making (Freeman and Maybin, 2011; Innvaer, 2009); or as a

means to make comparative studies of how national policy goals are reflective of international overarching policy goals (Martin-Bautista et al., 2010).

The data source used in this research is another type of 'document', a hybrid of both types defined by Lincoln and Guba, and directly connected to the official published policy document more typically utilised in policy research. They are the internal documents created and collected during the development of government policies. They are 'official records' because they are registered formally and preserved officially, and they are also documents produced internally by civil servants working on a defined task. In that sense they are personal, contain memos and email correspondence, reflecting the structure and the work of the organisation in which they are collected and stored.

Atkinsons and Coffey (2011) provide some direct advice on the use of documents in research when they state 'We should examine their place in organisational settings, the cultural values attached to them, their distinctive types and forms' (Atkinson and Coffey, 2011:79). Freeman and Maybin describe the creation of the file as

> ...the aggregation of disparate notes and documents into a single, physically bounded object, that identifies and denotes a topic or domain as a recognised and legitimate object of government attention and activity (Freeman and Maybin, 2011:161)

Such files are the basic structure of record keeping in government departments. Organisational research provides several possible approaches to analysing this type of data source, which will now be considered.

3.5.8 Documents in organisational research

Official 'records' are typically comprised of documents created within structured organisations. Organisational research draws heavily on these types of document to study the activities and processes of organisations, and

the behaviour of the individuals within them. For Forster, company documents are a useful tool because they 'define understandings of particular problems, prescribe appropriate behaviours and different ways of getting things done in organisations' and can 'highlight different understandings and interpretations of life amongst different sub-groups within companies ' (Forster, 1995:149).

Both quantitative and qualitative methods of analysis have been employed by organisational researchers to examine and analyse organisational processes and structures. Examples involving the use of documentation include such quantitative techniques as attributional coding, (Silvester, 1998) which requires the researcher to extract, code and analyse patterns of public attributions, within qualitative data from semi structured interview transcripts, or discursive company documents. Tracer studies, in which an organisational process (decision making or communication, for example) is 'traced' through the organisation using a predetermined 'tag' such as a particular piece of company documentation, or the records of particular types of meetings. All incidences of the occurrence of the selected 'tag' are identified and the results are analysed to provide in-depth information about the unit of analysis selected-the section, the process or the interaction between individuals, in relation to the organisational element of interest (Combey, 1980; Espeland, 2011). Templates in thematic analysis have also been developed as a technique to thematically organise and analyse textual data in organisational research across a range of epistemological positions (King, 2004). Case study content analysis, which privileges and codes selected items of interest identified in published 'case' material has also been used with organisational records (Jauch et al., 1980).

To these methods, this research adds the analysis of documents assembled during the public policy making process–a systematic approach to analysis which adds to understanding of the policy making process, with particular reference to the activity of policy actors. This is not, of course, to suggest that documentary analysis of the policy making process has not taken place before-there are many examples of studies of policy and policy making in

which official government documentation is a key component, if not a primary source of data (While, 1987; Abbott et al, 2004; Miller and Alvarado, 2005; Freeman and Maybin, 2011). However, in each of the studies referenced here, and in the majority of studies based on documentary review and analysis, the official documents referred to are published policy documents, which represent the end result of a policy process, in the form of a finalised document or the product of the implementation of the policy making process. They in fact tell us little about the policy making process. If there is no finalised document (if a policy is enshrined in legislation or a set of unpublished guidelines, for instance) the full range of inputs, may not be evident, nor the factors influencing the decision making process apparent. These elements may be contained within the files created during the development of the policy, and can be explicated through an analysis of their content.

3.6 Summary of Chapter 3

This chapter looks at the development of academic interest in the policy making process and at some of the key definitions and conceptualisations that have accompanied the evolution of the research field. Four theoretical approaches to the study of the policy making process have been discussed, and the concept of the policy maker which each posits has been outlined. For rationalists, the policy maker weighs his options and chooses the one which will be most beneficial for him. Variations on the concept have been developed to better reflect the reality of the policy making process and concepts of policy makers now include maximisers, statisficers, and muddlers. Institutionalism, old and new, focusses attention on the institution which influences the policy maker, positing that decisions are made on the basis of institutional beliefs, norms, culture and other social constructs, which must be examined when studying the policy making process. Network analysis conceives of a collective of policy makers, interacting to reach agreement on the final outcome. Theories of bureaucracy have seen the bureaucratic policy maker emerging from the machine of bureaucracy as a servant of the State and the people.

Power is a concept acknowledged as important to understanding policy making and how it is conceived influences and underpins the approach taken. Those holding a pluralist concept of power may question the implied power dynamics of Institutionalism for instance, and an elitist view of power may find Network Theory inadequate to explain any social process. Another theoretical approach to the study of how public policy is made is the bureaucratic approach, which puts the bureaucratic element of the governance system at the heart of the process and investigates how, and by how much, it influences the decision making and the implementation of policy.

Bureaucratic theory is interested in the role that the bureaucracy plays in decision making and how the characteristics assigned to bureaucracies influence the policy making process. Such theories have evolved over time as the bureaucracy has remained prominent in most governance systems, and is still the principal means of shaping and implementing government policies. The bureaucratic approach includes the key focus of each of the other theories discussed. It is interested in the basis for decisions, how institutional influences affect outcomes and, in more recent formats of bureaucracies, how it interacts with other policy participants. Studies of the bureaucratic elements of policy making include the influence of the political, social and institutional worlds in which bureaucrats operate. The civil service is the bureaucracy in the public sector, and the focus for this research. Theories and models of classic and contemporary bureaucracy are outlined in this chapter, to illustrate the characteristics of classic bureaucracy theory, and the changing conceptions of how it should operate, promoted through theories of New Public Management. This provides a theoretical background and contextualises the contemporary civil service environment in which the policy making process analysed in this research took place. A key element of all bureaucratic structures is its documentary practices, and this element provides the main data source for this research. The next chapter elaborates on the nature of this data, and details the methodology employed to use it as a mechanism to investigate a policy making process.

Chapter 4 Methodology

4.0 Introduction

Some of the theoretical approaches and methods applied to the academic study of the policy making process have been discussed in Chapter 3. In this research another approach is taken, which privileges the internal perspective on policy making provided by an official record of a policy making process.

As stated in the introduction, the process of policy making is difficult to observe but it is recorded, in a way that has been largely overlooked in policy process research. Government records are often seen as the preserve of the archivist, or the political or social historian. It is the contention of this research that such records are a potentially valuable and unique source of data for those interested in the public policy making process. In this research the primary data source is the set of files, spanning a five year period from 2000-2004, compiled by civil service policy makers as the Irish work place smoking ban policy was developed. The use of documentary data as a primary source is supported by Atkinson and Coffey, who state that documentary materials can and should be regarded as primary data in their own right because

> They often enshrine a distinctively documentary version of social reality. They have their own conventions that inform their production and circulation. They are associated with distinct social occasions and organised activities.....it is vital to give documentary data due weight and appropriate analytic attention (Atkinson and Coffey, 2011:80)

As noted previously, it is recognised that the type of documents contained in civil service files are a common source of information for policy process researchers. Since the enactment of Freedom of Information legislation in Ireland, (2003a) access to such documentation has become easier. Researchers interested in the policy making process who have sufficient

knowledge to make the specific requests necessary, and the funding to pay for retrieval of the records, frequently avail of this data source. It is rare however, for such documents to be treated as a primary source of data about a policy making process, and for a study to be based primarily on such documents.

This chapter outlines the questions posed in the research, the philosophical underpinning of the research, the ethical considerations in the study, and the position of the researcher. It provides a more detailed description of the data source chosen for this study, contextualising it in terms of its origins, original purpose and significance within the organisation that produced it. Some characteristics of the data are discussed, as these were influential in the selection of analytical methods. Details of how the data were accessed, sampled and managed are provided. In a variation on the more usual methodological approach, elite interviews are used in this research to supplement information gathered from analysis of the documents. The rationale and approach to these interviews is also explicated.

4.1 The research questions

The main research questions addressed by this research are:

- What can the records assembled by civil servants during a policy making process tell us about that process?
- How can the records assembled by civil servants during a policy making process be analysed when they are treated as a single data source?
- Can the analysis of civil service records inform researchers about the policy making process in general?

The aims of the research are to:

1. Describe a unique data source and convert it into a text base resource for research purposes
2. Identify key themes in the data that are relevant to the research question

3. Position the key themes in the policy making process, linking them to each other
4. Provide an account of the major themes identified using the analysed data to explain, illustrate and track the policy making process
5. Present the policy process within a policy analysis framework
6. Draw conclusions about the utility of this data source for illuminating the policy making process

4.1.1 Research methods

The records assembled by civil servants during a policy making process represent an unstructured data source. Boulton and Hammersley describe such a source as 'data that are not already coded in terms of the researcher's analytical categories ('but may well be structured by the rules of conversation, the demands of the situation and the prompting of the researcher') (Boulton and Hammersley, 2006:258). Unstructured data, they observe, consist mainly, although not exclusively, of written texts of various sorts. Both quantitative and qualitative approaches can be used when documents are the instrument of enquiry. Quantitative methods are applicable for research which poses hypotheses and seeks to test them empirically, using operational definitions and employing statistical analysis techniques (Sliverman, 2006). Such methods work by measurement and the analysis of the relationship between the resulting numbers (Sapsford and Jupp, 2006). Administrative documentation has been a ready source of data for policy implementation and evaluation studies, drawing on quantitative methods to assess causal inference and measurement of effect. Such research designs are predicated on the highly structured nature of the data collected, which can be analysed to provide answers to precise research questions within a value free framework.

In this research an existing data source (created by civil servants as an official record of their work) is being used as a research resource in a new way, for its usefulness as a source of knowledge and for its potential to explain a policy making process. This is an essentially interpretative project and when new interpretations are required more inductive methodologies are appropriate.

Therefore a constructionist paradigm was selected as the philosophy underpinning this research and a descriptive qualitative method was used to manage and analyse the data.

4.1.2 Stages of the research

The research was conducted over the following phases:

1) Files were identified, accessed and assessed
2) An archive of the selected files in the data source was created
3) A thematic analysis of the archive material was carried out. Findings were organised using Lewin's three stage process of change model (Lewin, 1947) and supplemented with information gathered from interviews with key policy makers
4) The findings were analysed using Walt and Gilson's Policy Analysis Triangle (Walt and Gilson, 1994; Walt et al., 2008)
5) The findings informed the construction of a framework for understanding the challenges for civil servants in the policy making process

Before describing the individual stages of the research, the philosophical underpinnings will be discussed, then the ethical considerations that arise, followed by the position of the researcher in this research. These discussions help to clarify the approach and the context in which the research was undertaken.

4.2 Philosophical underpinning of the research

My epistemological position is derived from a constructionist paradigm that assumes a subjectivist understanding of the world. For Gubrium and Holstein, such constructivist 'impluses' provoke questions about *how* social realities are produced, assembled and maintained (Gubrium and Holstein, 2008). 'Rather than trying to get inside social reality, the constructionist impulse is to step back from that reality and describe how it is socially brought into being' (2008: 375).

Approached from this epistemological stance, the constructionist agenda has a number of features which Silverman has identified, based on Gubrium and Holstein's emphasis on answering the *what* and *how* questions of research studies. These features include: a focus on the activities through which everyday actors produce their social worlds; a focus on interaction and discourse as productive of social reality; a concern with the ordinary everyday procedures used to make experiences sensible, understandable , accountable and orderly; an appreciation of 'what's going on ', with an emphasis on how these 'what's' are sustained; an approach to social facts and social worlds as achievements in their own right (and not as representations of some other social reality);a focus on the practical activities in which persons are continually engaged to construct , manage and sustain the sense that their social worlds exist as factual and objectively 'out there', apart from their own actions (Silverman, 2013:107).

Silverman considers one of the most important insights of constructivism to be the emphasis it places on the rhetorical and constructive aspects of knowledge, stemming from an understanding that facts are socially constructed in particular contexts (Silverman, 2013). Knowledge in the research context is created from the actions taken to obtain it (Holstein and Gubrium, 1995), an idea more readily understood in terms of the interaction between researcher and interview participant, when interviewing is viewed as the social production of knowledge (Kvale and Brinkman, 2009). An action process is gone through, in which the interviewer and the interviewee, through their relationship, produce knowledge. The same epistemological perspective understands documents, the main source of data used in this research, as 'social facts', as Atkinson and Coffey describe them, 'in that they are produced, shared and used in socially organised ways' (Atkinson and Coffey, 2011:79). Analysis of these 'social facts' will be the principal means of producing or adding to knowledge of the policy making process, through this research.

4.2.1 Ethical considerations

Ethical approval for this research was granted by the Health Policy and Management and Centre for Global Health Research Ethics of Trinity College Dublin. Approval was sought and granted at senior management level in the Department of Health and Children (DoHC), to access departmental files and approach staff members for interviews.

The insider researcher, and especially the insider researcher conducting research within her own organisation, faces a number of ethical as well as methodological challenges. These are typically addressed in relation to data gathering, where 'the researcher's task is to 'appropriate' the words and meanings of 'other people' with a view to turning them into written texts (thesis, reports, papers, articles)' (Symon and Cassell, 2012:58).

While the main data source used in this research was documentary and not created by researcher interaction with research participants, it was still necessary to consider the ethical issues surrounding the use of work-based records which were not compiled for research purposes. Marshall and Rossman suggest that the ethical issues that arise when relying on documents centre on how publicly available these materials are (Marshall and Rossman, 2011). While Freedom of Information legislation has made this type of documentation more freely available, it is unusual for a complete set of such documents to be available for scrutiny. Technically the official records 'belong' to the Department and the permission received was sufficient to allow access to the material. So, while permission had been obtained from senior management level to use this material, the individuals who compiled it and who are clearly identifiable in it, had not directly granted permission for its use.

Ethical consideration was therefore given to how the privacy of the creators of this record could be maintained. In order to preserve the confidentiality of civil servants whose work on the policy is recorded in the file material, it was decided that individuals would be identified by grade and initials only, unless they already had a public profile. In addition, no identifying

information would be given about interview participants, and names were removed from all quoted material, unless they were already in the public domain. It is acknowledged, however, that for those familiar with the structure of the DoHC at the time, it is possible to identify individuals who were involved with the policy making process that produced the Irish work place smoking ban. As this policy is generally considered to be an example of successful policy making and implementation, this may not be an issue for the participants. However, if this data source were to become more widely used, the ethical dimensions of using work based documentation for research purposes would need to be further explored.

4.2.2 Researcher positionality

Researcher positionality in a study often refers to biographical elements of the researcher's experience which can be 'a source, an inspiration and an initial way of framing a research question' (Marshall and Rossman, 2011:61). This statement has resonance in this research as my biography includes participation on a PhD Programme of Health Services Research while working as a civil servant in the DoHC. The discursive content of the structured part of this programme included many representations of and discussions about health policy making, much of which did not equate with my experience of policy makers developing national policy. Through my work in the Department of Health and Children I was in a position to observe policy making and had experience of how the process was recorded. Exposure through the PhD programme to a variety of approaches to and methods of data collection, data analysis and problem framing led me to develop a more purposeful and systematic approach to both areas of interest-what the record of a policy making process can tell us about a specific process and how researchers could use the record to learn more about the actual policy making process. This led me to develop the research questions and aims of this research.

4.2.3 Insider status

Finally, my own insider status in relation to the policy making organisation, in which the data source was created, must be discussed. Reflection on one's

position in the research is an important part of any research project, even when the researcher does not hold an overtly 'insider' position. As Guba and Lincoln describe it

> Reflexivity is a process of reflecting critically on the self as researcher that leads to a conscious experiencing of the self as both inquirer and respondent.....as the one coming to know the self within the processes of research itself (Guba and Linclon, 2008:278)

When such a position is held, a starting point for reflexivity is an acknowledgment of the researcher position at the onset of the research project. The specific advantages and disadvantages to my position in this research are considered in the next section but here these are more generally assessed, with particular reference to the challenges of using a documentary data source.

When I began this research I had already worked in the DoHC for eight years, starting in 2002, at clerical officer and executive officer grade. Therefore I was working in the department during the period in which the policy in question was developed and launched, although I did not work in any of the policy units responsible for it. But in taking on the research I matched Merton's conception of an inside researcher as an individual who possesses a priori, intimate knowledge of the community and its members (Merton, 1972, in Hellawell, 2006). This is one of the frequently noted advantages to a researcher holding an insider position. Other advantages will depend on the purpose of and methods employed in the research but are likely to include enhanced access to the site of the research and to participants, and possession of an understanding of the culture where participants operate (Labaree, 2002), a consequent lack of culture shock or disorientation when entering the field, and enhanced rapport and ability to gauge the honesty and accuracy of respondents (Hockey, 1993), the potential to ask more meaningful questions and read non-verbal cues, and to project a more truthful, authentic understanding of the culture under study (Merrimam et al., 2001).

The disadvantages of holding this type of position are mainly related to the risk of researcher bias in the research process. If present such bias could influence the management of interactions with participants, who may be known to the researcher or have shared the experience being researched with them. Ensuring analytic objectivity may also be difficult (Birks and Mills, 2011; Blythe et al., 2013). Insiders have been accused of being inherently biased and it has been noted that

> . . . the outsider's advantage lies in curiosity with the unfamiliar, the ability to ask taboo questions, and being seen as non-aligned with sub-groups (Walt et al., 2008)

Because the primary data source in this research is comprised of documents, the challenges for an insider researcher undertaking observational research, such as how to enter and position oneself in the field, disclosing researcher status, and handling relationships with participants who might also be colleagues (Labaree, 2002), are largely avoided. Other issues may arise which are relevant to any type of insider researcher, however, such as that of assumed or presumed understanding (when, for example the participant and the researcher assume the researcher understands the point because of their status as an insider, and clarification is not sought on topics not properly explained) (Blythe et al., 2013; Couture et al., 2012). When the data source is comprised of the internal documents produced within an organisation, assumed understanding is less likely to arise as the researcher must interpret each document without input from a participant. Therefore there will be no presumed shared knowledge between the insider researcher and the organisational research participant.

The concern that can arise with this data is instead about possibility of assumed understanding of the texts by a 'culturally competent' reader, which the inside researcher can be supposed to be. This is a label that Atkinson and Coffey use to describe the reader of texts that they believed were recipient designed, texts produced by social actors who 'develop a working knowledge

of the register(s) of their own professions or organisation role' (Atkinson and Coffey, 2011:84). 'Registers' in this context refers to the linguistic dimensions of the texts-the 'specialised use of language associated with particular domains of everyday life' (Atkinson and Coffey, 2011:84). The data source utilised for this research contains the traits of this type of 'register', which includes both the type of documents included on the file (memos, parliamentary questions, formal letters) and the formal language used in them. For Atkinson and Coffey, the culturally competent reader of such texts 'knows' how to use documentary sources to create the organisational reality that the documents purport to describe. Such a reader will, according to these authors 'know how such organisations are managed, and organised, and something about their general cultural features' (Atkinson and Coffey, 2011:85). They will read into the text what might reasonably be assumed to be the case. Atkinson and Coffey relate this type of reading to Mannheim's 'documentary method', in which the text is used 'to furnish indicators or traces of what the reader interprets as the 'underlying social reality' (Atkinson and Coffey, 2011:85).

Atkinson and Coffey developed the concept of the culturally competent reader in the course of their own research, which was not specifically concerned with the position of the insider researcher. Consequently they are more concerned with highlighting the concept as a possible analytical focus than providing suggestions for combating the bias it could introduce into the research. Entering the field as both a serving civil servant and a policy researcher seemed to make my 'assumed understanding' a distinct possibility, which required to be addressed. As I could not become culturally incompetent, I endeavoured to become culturally aware. As I worked through the documents on file I made short memos noting any internal language or assumptions in understanding that I was aware of. This included noting 'taken for granted language' and insider references, (including acronyms, or references to past DoHC events or internal administrative systems) as well as comments on assumed meanings and questioning how and why I felt that I understood a piece of text. These memos served two purposes; firstly they ensured that I read the file material consciously at all times; and secondly they provided an

additional source of information about the data which I drew on in the analysis.

4.2.3 Advantages and disadvantages

As discussed in relation to my positionality in this research, my work experience in the Department of Health and Children led me to consider the potential of the official files to be a source of information about the process they recorded. Although I have not worked in a Unit with responsibility for tobacco control policy, my experience of working in policy units within the DoHC has given me an understanding of how this body of documents is accumulated, what it is likely to contain, and how it can be accessed. The practical advantages of this position include:

- Prompting me to consider the collection of records as a source of information about the process
- Providing me with access to the database of all files created in the Department, allowing me to identify all the relevant files available
- Allowing me to identify the appropriate senior manager in the Department to approach for official permission to access the files identified and to interview staff members for the research
- Having the support of senior staff members in the Department to conduct the research
- Facilitating access to the files within the Department on an on-going basis over the three year period of the research
- Providing access to staff members who could facilitate contact with potential interviewees identified in the analysis of the files who no longer worked in the Department

The implementation in Ireland of Freedom of Information legislation has established a legal right for each person to access information held by public bodies and government departments (2003a). This allows for more access to public documents by researchers and other interested parties than had previously been available. Full access to a collection of material remains

rare, however, as requests can be turned down for a variety of reasons[5], and can be expensive, as charges are made per item requested. In this research full access to files was granted at no charge to the researcher. Office space in the DoHC was provided for the storage of the files as they were retrieved. In 2011 I joined another government department, and am no longer a member of staff in the DoHC. However the storage and access facilities granted to me were not withdrawn.

As a researcher the advantages of my insider position included

- Understanding much of the language and acronyms for civil service practices and mechanisms that are used in the documents on the files.
- The potential ethical and methodological difficulties for the insider researcher arising from such issues as entering and positioning oneself in the field and establishing appropriate relationships with participants are largely, if not completely avoided, when the primary data source is made up of documents.
- Having knowledge of the culture of the organisation where the research is being carried out is in keeping with understanding of the tacit knowledge held by insider researchers, based on familiarity with the group being researched, which both informs and enables greater understanding of the social world of the research

This type of tacit knowledge has also, however, been presented as a disadvantage in that it may promote or at least fail to mitigate against researcher bias in the data collection and /or data analysis. The comments by Mills on this issue provide a useful approach for addressing such potential bias

> I believe that you can't meaningfully prevent the imposition of your history on your work-you can however be honest and

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[5] The provisions and exemptions in the Freedom of Information Acts commonly used by DoHC are provided in Appendix 4A

> transparent with yourself, and, if necessary, those who may benefit from your research (Birks et al., 20011:177)

For the purposes of conducting analysis on these documents I recognised the need to approach the material reflexively, and the need to identify and use appropriate frameworks to guide the analysis and present the findings. Birks et al (2008) tried to ensure honesty and transparency in the research through the use of analytical memos. These memos acted both as an integral component of the grounded theory approach they adopted, and a device Birks used to acknowledge her own assumptions about the area of research which she had previously been involved. Particularly useful was the advice that memoing could start from the earliest stages of the research and was not reserved for analysis only:

> From the time a study is conceptualized, memos can help to clarify thinking on a research topic, provide a mechanism for the articulation of assumptions and subjective perspectives about the area of research, and facilitate the development of the study design (Birks et al., 2008:69)

I adopted the approach suggested and at the start of the research began a practice of writing dated memos, of varying length and varying levels of detail, on such topics as: arguments for and against taking a specific analytic approach (see Appendix 4D); characteristics of the data source (see Appendix 4 E) and the perspectives available in the data (see Appendix 4 F). These memos served as a mechanism for developing ideas, concepts and the final approach adopted. An additional support in this regard was a research diary in which final decisions and discussions with other researchers, fellow PhD candidates, and civil servants were noted, as well as any new ideas generated.

4.3 The data

Consideration of how to analyse a large, extant set of documents in a meaningful way, in order to produce new knowledge about a policy making process, involved looking at a variety of potentially useful approaches and methods. As methods of data collection were not under discussion, the first question to be answered was how such a data set could be analysed to answer the research questions and meet the aims of the research. Discussion of the nature of the data source contributes to the overall research but is also particularly relevant to the second research question

- How can the records assembled by civil servants during a policy making process be analysed when they are treated as a single data source?

and the first aim of the research:

1. Describe a unique data source and turn it into a text base resource for research purposes

For Finnegan, a fundamental question, applicable to all written sources used as data should be 'how documentary sources came into being, by whom, under what circumstances and constraints, with what motives and assumptions and how selected' (Finnegan, 2006:146). These questions were considered in this research in relation to the context in which the documentation used as data was produced. First, some of the basic characteristics of the data source are considered, as this had an influence on the methods chosen to interrogate it.

4.3.1 Primary or secondary data

Documents used in mixed methods and most qualitative research are typically referred to, and thought of as, secondary data. Approaching the data set targeted for this research required an examination of the concepts of primary and secondary data, and some ambiguity was found around what constitutes either type of data. Boslaugh provides criteria for defining data as primary or secondary, based on whether the person analysing the data has collected it –which makes it primary data, or whether it is analysed by

someone else, making it a secondary source (Boslaugh, 2007). Birks and Mills consider any data collected in the past for purposes not originally related to the current study, to be secondary (Birks and Mills, 2011). Yet, other authors claim a primacy for documentation that is basic and original material, with the label 'secondary' reserved for sources that copy, interpret or judge such data, i.e., those removed from the events studied (Finnegan, 2006). This is also one of the advantages Silverman points to in using textual data, in addition to the benefits of its richness, its relevance and effect, and its availability. Silverman notes that such text is 'naturally occurring', in that such text's document what participants are actually doing in the world, without being dependent on the questions posed by researchers (Silverman, 2006).

Atkinson and Coffey highlight issues which are particular to the researcher using documentation as a primary data source (Atkinson and Coffey, 2011). Their focus is on understanding how organisations work, which they approach by studying how documents are constructed by those working in the organisation. They include documents produced for external self-representation, i.e. documents that will be made publically available, as well as those produced for internal purposes, which they term institutional-level documents. In addition, they refer to other textual records that embody individual actions, interaction and encounters in the organisation and which may contribute to official statistics, performance indicators, league tables or other constructs. Atkinson and Coffey have an ethnographic interests in the study of documents, and take an analytical approach derived from a semiotic perspective. From this viewpoint, documents are the constructs of both author and reader, and are means by which organisational reality is created, through the use of textual conventions. Prominent among these are 'the distinctive feature of bureaucratic language', the decontextualized language and stylised formats of official records, a distinctive use of language associated with and constitutive of specialised social contexts. These authors see researchers working with organisational documents as 'academic auditors', 'undertaking investigative procedures predicated on the assumption that there are, and should be, regular, identifiable relationships

between documentary records.' (Atkinson and Coffey, 2011:86-87). This they refer to as the intertextuality of documents, which can be uncovered by the analyst examining such documents. The concept of intertextuality is useful for a study of a set of documents, especially

> In literate, bureaucratised settings....one may identify a semi-autonomous domain of text and documents that refer primarily to one another. A dense network of cross-referencing, and shared textual formats, can create a powerful version of social reality.' (Atkinson and Coffey, 2011:90)

As Finnegan notes, a difference in purpose may not reduce the value of the evidence, but it is important to know the purpose for which the data were collected, in order to be able to interpret them properly, and to assess their value as evidence (Finnegan, 2006:150). This research treats documents as a primary source, while acknowledging their secondary nature in terms of their creation, purpose and accumulation. The research assumes the intertexuality of the documents being used, to assess how such a body of data can be used to further understanding of a process. Treating the collection as a primary data source requires an understanding of the context in which it was made, and an awareness of any assumed understanding of its contents, as well as of its characteristics and features as data. It is also a representation of a particular process of interest, which has implications for the choice of analytical approach taken. Before the latter is discussed, some background information is provided about the origins of the data source.

4.3.2 Characteristics of the data

When this study commenced, the focus was on analysing an existing set of data related to a process, and not on gathering a variety of perspectives, opinions and experiences of that process. The data source is a large collection of extant documents, purporting to be a record of the work carried out by civil servants while developing a specific policy. In keeping with the constructionist philosophical approach to this research, 'filing' is considered to be a deliberate act of construction, in this case of a permanent official

record of a policy making process. Each document on file was consciously chosen by the civil servants who created the record-there is, after all, no naturally occurring filing. Conducting key word searches of the file database produced file titles which, as a first step, indicated the variety and breath of issues that were involved, and the complexity of the process that produced the final policy. Table 4.2 indicates the different policy units involved in creating the files used in the study.

Researching possible approaches to the analyse of this data involved investigating different methodologies that addressed the use of extant documents in qualitative research. Glaser and Strauss argued at an early stage in their development of grounded theory that documents be treated as informants or interviewees (Glaser and Strauss, 1967), although Prior subsequently found this a limited vision of the role of documentation. Prior's conceptualisation of documents as agents or actants, stresses the inter-relational nature of these artifacts, which can be mapped through network analysis. In this approach documents are given equal status with 'talk'- i.e. data from interviews with informants, or other methods of data gathering (Prior, 2008). They are treated as actants, or hybrids between material things and human objects, which can and should be treated as part of a social 'network' which produces something of interest to the researcher. Actor Network Theory has been developed to include such actants as important elements, mapping not only the content and function of documents but also mapping the relational properties of things as documents, rather than only mapping their attributes.

Noting that all qualitative research entails analysing texts, Charmaz (Chamaz, 2006) distinguishes between elicited texts, which involve research participants in producing written data in response to a researcher request, and extant texts, which the researcher has had no part in shaping. The set of government files used in this study clearly fits into the second category, as they are extant texts, created for a purpose or purposes other than research. Such texts have both the potential to provide useful information not available elsewhere, and limitations in that they may perhaps be

incorrect, misleading, or created in a specific way for a specific purpose, which has nothing to do with the research goals. They should not then, be viewed or presented as objective mirrors of reality.

Charmaz therefore agrees with Prior (Prior, 2011) that texts, whether used as primary or supplementary sources of data, do not stand as objective facts, even when they represent what their authors assumed were objective facts (Chamaz, 2006). Texts which are accounts (records) tell something of the intent of the authors who produced them and they have intended, and sometimes unintended, audiences. By treating extant texts analytically as another source of data, Charmaz believes that ideas may be sparked and evidence for confirming instinctual 'hunches' might emerge. The important requirement is that texts be situated in their context, and Charmaz (2006) provides a number of suggestions about how this can be done. These include providing description of the times, actors and issues involved; using multiple methods, and using several types of documents.

Grounded theory was considered as one analytic approach to the data in this study. However, correct application of the method stipulates particular requirements relating to data collection and analysis. One is the constant comparison method, in which data from one perspective is compared with that provided from other perspectives identified in the data. One of the characteristics of the data source used in this research is that it presents a single perspective. Its language, focus, concerns and purpose all imply that it is not multi-perspectival, and therefore it provides limited potential for the application of the constant comparison method.

The second methodological requirement arises in the application of another key component of grounded theory, theoretical sampling. This sampling method involves the researcher following leads in the data, returning to the data for material related to emergent themes. The data source being used in this research is 'static' in the sense implied by Birks and Mills (2011) when they state:

> Theoretical sampling in Grounded Theory is an active process; therefore the use of data from static sources is of limited value in isolation and the researcher has minimal, if any, opportunity to follow leads that arise in the collection of data (Birks and Mills, 2011:79)

This is not to imply that theoretical sampling of the type prescribed by grounded theory methodology is impossible with the type of data in use here. Indeed a certain amount of such sampling took place as key themes were developed during the analytic phase of the research.

While not ultimately used as a method in this study, grounded theory literature provided theoretical and methodological insights which informed the approach taken to achieving the aims of the research. Among these was an emphasis on understanding the context in which the data to be analysed was created. The context in which the data source for this research was created is outlined below, and is followed by a discussion about the sample selected.

4.3.3 The file management system in DoHC

The principal data source for this research are the papers generated by the work undertaken in the policy units of the DoHC, as new policy on tobacco control was developed and implemented during the period 2000-2004. In a government department this type of documentation is collected in individual hardcopy folders or files, to which an individual registration number is assigned. Since the enactment of Freedom of Information legislation (Government of Ireland 1997, 2003a) the DoHC has developed a file registration system to assign unique registration numbers to files opened in the department. Protocols on filing and file management have been developed and formalised within the DoHC. The latter is governed by the aspiration of the International Organization for Standardization which states:

> An organisation should "establish, document, maintain and promulgate policies, procedures and practices for records

> management to ensure that its business need for evidence, accountability and information about its activities is met." - (ISO, 2001)[6]

In the DoHC Records Management Protocol, (2008), which was launched as an internal document in 2008, and in which the above statement appears, a record is defined as:

> An item created as part of the business of an organisation or in order to conduct the business of an organisation – for example, letters, minutes etc. It is an item retained as evidence of a business transaction (2008:2)

A file is defined as 'a collection of records on a similar or related topic' The label 'document' refers to:

> Recorded information or object, which can be treated as a unit. A document may be in any medium, electronic or hard copy. It may be one page long, may include a number of pages or may be a bound volume. A document differs from a record in that it may contain a number of records (for instance, a letter that lists names and details of different individuals) (RMP Appendix 2, pg 55)

Such records and documents, and the files that contain them, are the principal data source for this research. When using documentary sources, most commentators stress the necessity of understanding and accounting for how these sources came into being, given that they never 'arise automatically through some natural process' (Finnegan, 2006:144)

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[6] ISO (International Organization for Standardization) is a network of the national standards institutes of 162 countries, one member per country, with a Central Secretariat in Geneva, Switzerland, that coordinates a system of standard development. The ISO defines a standard as ' a document that provides requirements, specifications, guidelines or characteristics that can be used consistently to ensure that materials, products, processes and services are fit for their purpose.' http://www.iso.org/iso/home/standards.htm [accessed 19.06.2011]

4.3.4 The place of files in DoHC

Files matter in a government department. Some observers have credited Freedom of Information legislation with fostering an interest in the need for good records management practices in Ireland (Smyth, 2003) but the centrality of record keeping to government bureaucracies is well established. Connaughton notes that traditional methods of communication and coordination have been retained in government departments alongside technology and the promotion of e-government, commenting that:

> The work of officials is carried out through instruments such as the 'file' which contains all the details of discussions, facts and interests gathered on the particular issues being examined. The file represents a traditional medium of 'getting things down in writing' in civil service work. The encyclopaedic characteristics of this system represent a case and paper trail for issues which may be unpopular politically to implement, protect the system against error, and fulfil bureaucratic continuity for 'permanent government' (Connaughton, 2012:73)

Filing records and documents and managing the files created by their collection is part of the work of civil servants in DoHC, as in other government departments. File management and record keeping in DoHC was highlighted in 2005 when an enquiry into illegal charging of nursing home fees uncovered missing files and recommended that the DoHC:

> Put in place an effective and easily accessible logging system for recording the establishment and movement of all files (electronic and paper) and the periodic and timely review of "files in process" until they are brought to appropriate conclusion (Travers, 2005:93)

A specialised Unit has been established to manage the registration, movement and tracking of every file opened, governed by a department protocol developed and launched in 2008, for that purpose (RM protocol 2008). In this document the rationale for creating and maintaining files is defined, responsibilities of staff members in relation to files are outlined, and there is an awareness and acknowledgment of the evidentiary and historical value of the department files. The legal requirements imposed on the department in relation to making information accessible is largely met through the filing system, and practices and exemptions have developed around the process of releasing or refusing to release file documents (See Appendix 4A).

The evidentiary value of managing records kept in the DoHC is described in the department protocol document (DoHC, 2008:5) as follows:

- They provide evidence that a transaction has occurred;
- They provide evidence of an individual officer's role in the transaction;
- The evidence is preserved;

The same document underlines the historical value of the records managed within the department, stating that:

- Records have a historical value with regard to the role of an organisation;
- Records created in the course of business of the State (for example records of a Government Department) have a historical value with regard to the State that can be social, cultural and/or legal;
- Records preserve the role of individual officers in the history of an organisation or, in the case of State records, in the history of the State

The fundamentals of file keeping (2008:9) and record keeping (2008: 10) are also covered by the records management protocol. Issues relating to file keeping include the use of meaningful and descriptive file titles; the application of unique registration numbers and section references; appropriate methods of attaching records; recommendations about the size

of files and the creation of additional volumes; the treatment of temporary or updatable reference material. Record keeping refers to such issues as the requirement to file all documents relating to Department business; not removing or editing documents that have been filed, unless they are clearly draft versions; transferring records in official files only; and including all significant emails on files. Managed records are also viewed as essential for the Departments compliance with statutory obligations imposed by the Freedom of Information legislation (Government of Ireland, 1997, 2003a).

Each file created or 'opened' in a Department Unit is numbered, named and registered in that Unit on a centralised database, (called the Central Records and File Tracking System, and referred to as CRAFTS). Two of the databases in the file management system store details of active files and inactive files, respectively. The active files database tracks files in use in the Department. Inactive files have been 'closed' or designated as inactive because no further documents will be placed on them. This implies that the work in relation to the topic of the file is complete. Inactive files may be stored in the Unit that created them if they are needed for reference, or in off-site storage, from where they can be retrieved if needed. Both databases were searched and files from both locations were accessed for this research.

While the filing of records and documents is typically a clerical task, the protocol states that 'Everybody, regardless of grade, has a responsibility in records management..... it is evidence of your business transactions and role that you are recording' (DoHC, 2008:36)

As mentioned above this protocol was developed and launched in the department after the files used in this study were opened. It is used here to indicate the place files have in the DoHC, regarding their purpose, content, management and the responsibilities and uses attached to creating and using them. All available files that have been opened in the Department since its establishment have been logged onto the CRAFTS system and are identifiable through the search facilities of that system.

4.4 Tobacco control files

Files created during the development of tobacco control policy were identified, using the search facilities of the CRAFTS database. A limitation on the date field was set (date =< 31/12/2004) and the key words 'Smoking', 'Ban', 'Tobacco' and 'Workplace' 'Legislation' and 'Smoke' were used, singly and in combination, to search both the active and inactive databases. 503 results were returned from this search, which were downloaded into an excel spreadsheet. The database also identifies which Unit the file was opened in, and where it is currently stored. These files were distributed over several different units within the Department, as shown in Table 4.2.

4.4.1 Selecting the sample

One of the frequently noted difficulties with documentary data, mentioned in most text books dealing with the topic, is that of data overload, resulting in a researcher wading through, 'swimming' or even 'drowning' in data (Silverman, 2006; Miles, 1994; Robson, 2002). The potential for such an occurrence in this research is evidenced by the results of an initial keyword search of the databases on which the potentially relevant files were registered.

Each file contains multiple documents, including but not confined to, government memos, minutes from meetings, reports, emails, handwritten instructions and queries, formal letters, submissions etc. The purpose of this research was to discover what could be learned about a particular policy making process using a specific source of information, and all the available files had the potential to contribute. At the same time the volume of documents was such that including each one for review and analysis presented serious challenges in relation to the time required to access and review each document on each file. Clearly sampling was indicated, if wading, swimming or drowning was to be avoided.

Excluding files randomly, or only including the files immediately or conveniently available risked the potential exclusion of documents which could provide insight to the process being investigated.

Table 4.2 Files identified and files excluded, by Policy Unit

Unit Name	Number of Files Identified	No of files opened before 2000	No of Litigation files	Files included
Tobacco Control Unit	47	0	13	47
Environmental Health Unit	329	112	36	199
Health Promotion Unit	95	82	0	13
International Unit	27	5	0	22
Finance Unit	1	0	0	1
Personnel Management	2	0	0	2
Hospital Planning Unit	1	0	0	1
Primary Care Taskforce	1	0	0	1
Total Number of Files Identified	503	199	49	255

Therefore it was decided that, while the number of files included would be reduced based on a logical premise outlined below, all the documents contained in the files included would be treated as potential information sources. The contents of these documents would then be extracted and

thematically analysed in order to identify key themes relevant to this policy making process.

The number of files included in the analysis was limited in two ways. First the date on which the file was opened was considered. Files opened during the five year period from 2000-2004 were identified as appropriate for inclusion. This time frame spanned the period from the announcement of the prioritisation of tobacco control policy by a new Minister for Health and Children, to the introduction of the first ever workplace smoking ban in 2004. All files with an 'opened' or registration date before 01/01/2000 were excluded. The second limitation was the decision to exclude the files created in respect of the legal cases taken against the Minister for Health and Children and the DoHC, and subsequent cases taken at EU level. These files contained legal arguments rather than policy decisions, and would require expert legal knowledge to interpret correctly. In addition, 14 of the files identified could not be located and therefore could not be included. A total of 241 files were identified, located and collected for analysis.

Table 4.3 shows the number of files included in the final sample, for each of the five years in focus. Because files are the property of the Department of Health and Children and could not be removed from the Department, it was necessary to carry out the task of translating the content of the files into an archive within the Department. An archive of file content used in this research was created through a series of steps which involved the systematic extraction of the details of each file and a summarisation of the content of files relevant to the Work Place Smoking Ban policy. The method used to do this is laid out below.

Table 4.3 Files selected for analysis by year registered/opened

Files selected for analysis	
Year File Opened	**Number of Files**
2000	27
2001	33
2002	47
2003	52
2004	82
Total no. of files	**241**

4.4.2 Preparing the data for analysis

Once assembled, the data source consisted of 241 files in 28 file storage boxes. The files were different sizes, containing different numbers of documents ranging from one file containing no documents (i.e. a file cover with a file name and number but no documents attached) to a file containing 86 individual documents. Technical advances in software now make the analysis of a data set of this size a manageable prospect, but there remains a need to process the hard copy documents into a format in which they could be stored electronically. Scanning the documents was considered, but the amount of documents involved would make this a costly and time consuming method of processing the material. The selected alternative was to create an electronic resource based on the contents of the document on file. The first stage of this process was to use the functionality of the CRAFTS database, to create a spread sheet of the results of keyword searches. This had the advantage that the details of file, such as file title, number, section title etc. were already recorded on the spread sheet. It also allowed for the removal of excluded files, i.e. those registered prior to 2000, those containing documents relating to legal cases, and those files which could no longer be located.

4.4.3 Extracting information from the sample

For each of the 241 files, a synopsis of the content of each document was made which included the details laid out in Appendix 4B. Using this table as a guide, information was extracted from each document in a systematic way, and as far as possible the same basic information was noted for each file and for each document (i.e. document type, date provided, named individuals etc). The details recorded are given in Table 4.4 and full details of the type of information recorded, with examples from the dataset, are given at Appendix 4B. This approach was subsequently found to be similar to one taken by the administrators of the internal documents of several major tobacco companies, who are legally required to make the documents, used in discovery in court cases taken against them, available to the public.[7] As examples of the systematic approach to creating a resource based on internal organisational documents are rare, and as a means of checking for overlooked fields, an exercise was carried out which mapped the fields identified for this research onto the fields developed for the Legacy documents website. The exercise showed considerable overlap in the type of information recorded, and the results are reproduced, for information, at Appendix 4C.

A single word document containing all the information extracted from DoHC files was prepared for each file, and 241 documents were imported using the software programme NVivo (Version 9.2), for analysis. This analysis is the subject of the next section.

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[7] In 1998 six million documents from seven US cigarette manufacturers were made available online following a court ruling in a legal action taken against the companies by several US states. These, and additional documents accessed throught discovery in subsequent legal actions against tobacco companies, are made available on dedicated websites and , for UK tobacco companies, in hard copy in a repository established for the purpose. Methods of using the collections for research purposes have been published in report format and online , (MacKenzie, Collin et al., 2004; Hirshhorn, 2004) (Legacy tobacco Documents Library [Online] providing details of how the collection od documents is organised, The mapping exercise documented in Appendix 4C us based on the document coding fields provided on the Philip Morris USA Public Document Site. Available : http://www.pmdocs.com/help.aspx [Accessed 08.02.2014]

Table 4.4 Details recorded for each document on file

Details recorded
Section/Policy Unit of the DoHC in which file containing document was registered.
File Type : Policy File, Implementation File, Information File
Location of file: In DoHC or Off site, in storage
Date on which the file review took place in dd/mm/yyyy format
Date on which the file was opened/registered, if recorded
File Name
Identifying number: CRAFTS generated registration number
Other Number: local section reference number
Description of the contents of the documents on file. Each document numbered sequentially
Document Format : Memo, email, letter, handwritten note etc
Document Title, if applicable: Memorandum for Observation; Draft Bill; Ministerial Briefing Document
Document Details: who the document is from (author, signee, drafter) and who the intended recipient is, if known.
Date document created: in dd/mm/yyyy format
Individuals /organisations identified in documents-external to DoHC
Author/Authors Organisation
Hand written notes: contents recorded verbatim

4.5 Data analysis

Data analysis was conducted in three stages.

1) Creating 'messy' and 'organised' maps of the data

2) Coding data into main thematic areas

3) Organising themes and underlying categories using Lewin's three stage model of change.

These stages are outlined in the following sections.

4.5.1 'Breaking in' to the data-a cartographical approach

As can be seen from Appendix 4D and 4E, consideration was given to taking a grounded theory approach to the analysis of this data. The methods of grounded theory offered a systematic approach to analysis which did not depend on predetermined concepts or categories. This condition was appropriate to the exploratory nature of this research i.e. to answering the research questions and addressing specifically:

- What can the records assembled by civil servants during a policy making process tell us about that process? and
- How can the records assembled by civil servants during a policy making process be analysed when they are treated as a single data source?

The characteristics of the data were ultimately found to be unsuitable for the type of iterative, constant comparative method required in a grounded theory study. However, an associated method, developed from grounded theory, Situational Analysis, provided a useful way to enter the data, without the restriction of assigning pre-determined categories to the analysis.

Situational Analysis was developed by Clarke, and later Clarke and Friese, as a means of separating grounded theory from its remaining positivistic ties, and also to exploit its strengths as a tool for challenging situated knowledge, in the spirit of post-modern empiricism. The methods of Situational Analysis are based on, and extend the work of Strauss, creating a 'new approach to analysis within the grounded theory framework' (Clarke, 2005, Clarke and Friese, 2007). The approach is cartographic, and involves creating a series of maps of the key elements in the social situation being studied. Clarke describes these maps as 'elucidating the key elements, materialities, discourses, structures, and conditions that characterize the situation of inquiry' (Clarke, 2005: xxii)

Some of the caveats Clarke and Friese place on the cartographic approach to analysis in research employing a grounded theory methodology add to its suitability for use, or partial use, in this research:

1) The purpose of the maps is not to produce 'final analytic products'. The major use of the maps is in 'opening up' the data and interrogating it in fresh ways. This makes the cartographic approach a useful first step in assessing the data source available for this research.

2) According to the authors, the approach works best with coded or partially coded data-the point here is that the researcher should be reasonably familiar with the data before attempting this mapping exercise. Creating electronic text versions of the paper files ensured this level of familiarity with this data.

3) The mapping approach involves the researcher in using her own knowledge and ideas as part of the data. Clarke notes that there are no 'tabula rasa' researchers, and sees the ideas and preconceptions of the researcher as 'intellectual wallpaper', background tacit assumptions 'sometimes operating, as it were, behind our backs in the research process'. Clarke suggests that, by including such assumptions, information and knowledge in maps, they are 'on the table', and can be addressed in terms of utility, partiality, theoretical sampling and other criteria (Clarke, 2005: 85). As discussed in section 4.2.3, the insider position has implications for research using organisational data. The cartographic approach in Situational Analyses is useful at the start of the analytic process as it overtly recognises and offers a means of dealing with assumed knowledge and cultural competence in the researcher as a reader and interpreter of organisational texts.

Another advantage of undertaking this mapping exercise is that situational mapping and analysis can be used to get the researcher moving into and then around in the data (Clarke, 2005). The goal is to descriptively lay out all the

important human and nonhuman elements in the situation of concern of the research.

The Maps used are:

Situational maps -that lay out the major human, nonhuman, discursive and other elements in the research situation of inquiry and provoke analysis of relations among them;

Social worlds/arena maps that lay out the collective actors, key nonhuman elements, and the arena(s) of commitment and discourse within which they are engaged in on-going negotiations-meso-level interpretations of the situation

Positional maps that lay out the major positions in the data vis a vis particular axes of difference, concern and controversy around issues in the situation of inquiry. These positions are discerned from the perspectives gathered in the data, and connections between the different positions are mapped.

As this data is not multi-perspective and the focus of the research is not on gathering or explaining different perspectives, the third map, the Positional map, has not been used. The first two maps have been used as tools to first 'open up' the data and to identify the elements in the research situation, and then to organise these elements into a structured 'map' of the policy making world.

4.5.2 Making maps

The first map is called a situational or a 'messy' map, and it lays out the major human, nonhuman, discursive and other elements in the research situation of inquiry. Clarke (2005) suggests that when making a messy map the following questions should be kept in mind, as the data is reviewed.

- Who and what are in this situation?
- Who and what matters in this situation?
- What elements 'make a difference in this situation?
- Who and what are in the broader situation?

Reviewing the data for the third time, with these questions in mind, each new element identified was highlighted and copied onto a 'messy' map (a list), the contents of which were used to create a Word Cloud. This word cloud is a graphic representation of the messy map, taking all the words, acronyms, titles, actions, and influences identified and presenting them in one graphic. An example of the messy map created from the content of files opened in the year 2000 is shown as a word cloud[8] in Figure 4-1.

The second map is the social worlds/arena maps, which lays out the data in the messy map in a more structured way. For Clark and Friese, (2007) the collective actors, key nonhuman elements, and the arena(s) of commitment and discourse within which they engage in on-going negotiations, were the important elements to be identified and grouped together. Framed by Clarkes own work and earlier work by Strauss, and Strauss and Corbin on the conditional/consequential matrice, a number of key characteristics of the research situation were identified (Clarke 2005, Strauss, 1993, Strauss and Corbin, 1995). These including the spatial, temporal, technological work, sentimental, moral, and the aesthetic characteristics evident in the data. The ordered/working version of the situational map uses the contents of the messy map as data, sorting it into a number of categories which can be added to when necessary. The initial categories listed by Clarke are shown in Table 4.5.

Clarke intended that this map or matrix would be used in a flexible way, that not all of the categories will be relevant or used-and that additional categories could be added or even reversed at a later stage in the process. This is in keeping with the concept of the maps as a preliminary or exploratory method of entering the data. For instance, Clarke identified 'individuals and significant people (unorganised)' as a category, but in this analysis most, if not all, of the individuals were 'organised'. They were members of staff, representatives

[8] The word cloud is used here as a means of presenting the messy map visually, rather than as a means of displaying the frequency with which words and terms in the text occur.

of various professional and voluntary bodies, public figures, political figures, leaders of national organisations etc. Therefore it was appropriate to remove the word 'organised' from the description for this category. For the purposes of this research the categories were adapted to include elements relevant to this policy making environment, which emerged from this preliminary analysis. Clarke's original categories are reproduced in Appendix 4G with the composite organised map.

Figure 4-1 Elements in data for the year 2000



An ordered/working map was created for each set of files opened in the years 2000-2004. Appendix 4G shows a composite of these organised maps, providing examples of the type of data in each of the categories for the years 2000-2004. It should be noted that, on the individual maps, each category did not contain data. Particularly sparse was data appropriate for the categories 'Temporal Issues', 'Implicated /Silent Actors', and 'Spatial Elements'. In addition the categories, 'Individual Actors' and 'Collective Actors', contained the most data. This applied particularly to the years 2000 and 2001, as new tobacco control policy was being introduced and discussed, and multiple stakeholders/actors were making initial contact with the Department. The purpose of providing a composite map is to show how the mapping exercises provided 'a way in' to the data, and to indicate the variety of elements the data contains.

This first stage of analysis was focussed on examining all the data, and identifying as many of the elements in the situation as possible. The result of these mapping exercises was greater familiarity with the data, a comprehensive preliminary list of issues, actions, actors, organisations etc.. This assisted with ensuring that items were not 'missed' or dropped without reason (for example, issues which turned out to be unimportant, or actors who only appeared in the file material once). The second step was to undertake a thematic analysis of the material, which was carried out using NVivo software (V 9-2). The results of this analysis were framed and are presented using Lewin's three stage model of change. The analysis, and the use of this framework, are the subjects of the next section.

Table 4.5 Abstract Situational Map: Ordered/Working Version

Ordered Categories[9]	Examples
Individual Human Elements/Actors	-e.g. key individuals and significant people in the situation
Collective Human Elements /Actors-	e.g. particular groups /specific organizations
Discursive Constructions of individual and/or collective human actors-as found in the situation (as above	Ideas, concepts, discourses, symbols, sites of debate, and cultural 'stuff'
Political/Economic Elements	e g the state; particular industry/ies; local /regional /global orders; political parties; NGOs; politicized issues
Temporal Elements	e.g. historical, seasonal, crisis. and /or trajectory aspects
Major issues/debates (usually contested)-	As found in the situation
Other kinds of elements	as found in the situation
Nonhuman Elements Actors/Actants	eg technologies, material infrastructures, specialized information, and /or knowledge, material 'things'
Implicated/Silent Actors/Actants	As found in the situation
Discursive Construction of Nonhumans Actants	As found in the situation
Sociocultural /Symbolic Elements	e.g. religion, race, sexuality , gender, ethnicity, nationality logos, icons, other visual and /or aural symbols
Spatial Elements	e.g. spaces in the situation ; geographical aspects; local, regional , national, global issues
Related discourses (Historical, narrative and /or visual)	e.g. normative expectations of actors, actants, and /or other specified elements; moral/ethical elements; mass media and other popular cultural discourses; situation-specific discourses.

[9] adapted from Clarke & Friese, 2007

4.6 Thematic Analysis and Lewin's model of change

Thematic analysis was undertaken to identify the themes in the data, in order to address the research questions:

- What can the records assembled by civil servants during a policy making process tell us about that process?
- How can the records assembled by civil servants during a policy making process be analysed when they are treated as a single data source?

And to inform the answer to the third research question

- Can the analysis of civil service records inform researchers about the policy making process in general?

This method of analysis also addresses three of the aims of the research, which were to:

2. Identify key themes in the data that are relevant to the research question

3. Position the key themes in the policy making process, linking them to each other

4. Provide an account of the major themes identified using examples from the data

4.6.1 Key themes in the data

As no assumptions were made about the contents of the data, or what that contents could tell about the policy making process, an inductive approach was taken to identifying themes in the data. The findings from this analysis are then presented using a structured framework (see Figure 4-2).

At the start of the analysis, all of the data which had been imported into a NVIVO database was reread and, as themes emerged, selected text was coded to an appropriately named thematic categories. These categories were expanded to include relevant text as it was identified. The amount of text coded was guided by Tesch's description of a textual segment as, '... a piece

of text that when cut from its source, retains full contextual meaning' (Tesch, 1990:116). Using NVIVO software allows such textual segments to remain attached to their source, which can be located at any stage if clarification or re-contextualisation is needed.

Once a broad theme was identified, a new code (or node, in Nvivo terminology), was created and named to reflect the theme being explored. For each new theme that emerged from the data, a new node was created and named. Under each theme heading, additional text, which was thematically connected to the main theme, and which helped to describe a particular aspect or variation of it, was coded to a sub category. When the entire data set had been searched for relevant themes, and text relevant to each theme had been coded to the relevant sub theme, the nodes that had been created, and their contents, were reviewed. A full list of the initial themes are provided in Appendix 4H.

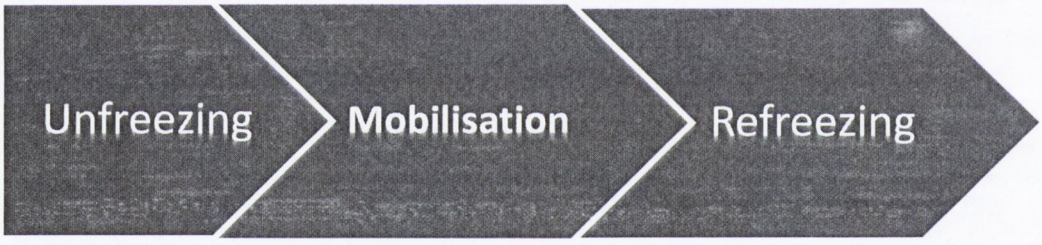
During this review of themes, the concept of change emerged as an important thread across the data. Some data indicated a change in attitude among decision makers about the importance of tobacco control as a policy area, others reflected the reaction of outside stakeholders to the proposed changes, and some contained evidence of the changing importance of key issues around tobacco control. Lewin's three stage model of change provided a suitable framework for organising the thematic material and reflecting the process of change that was noted in the file review. Lewin's model and application are now discussed.

4.6.1 Lewin's three stage model of change

Lewin's three stages were developed to model the psychological changes that occurred in human behaviour when undergoing a change process (Lewin, 1951, Burnes, 2004b). The three stage model was, for a time, one of the main ways in which organisational change was understood. Though now rejected as an overly simplistic and linear model for understanding organisational change, Lewins three stages retain utility as an organising structure for data which reflects a process of change.

The three conceptual stages of change which were identified by Lewin are used in this research as an organising structure for the themes and categories identified through the thematic analysis. The 'Unfreezing' stage encompasses all the actions and decisions that changed the approach to thinking about the tobacco control policy area. 'Mobilisation' reflects the progression of the policy, through various activities and mechanisms. 'Refreezing' marks the consolidation of the policy, and the successful implementation of the workplace smoking ban. The model is used in this research to broadly reflect the announcement, development and implementation of tobacco control policy in Ireland in the years 2000-2004. Figure 4 2 shows a common representation of the three stage model (Higgs and Rowland, 2005; Ford and Greer 2008; Burnes, 2004a).

Figure 4-2 Lewin's Three Stages of Change



Adapted by Higgs and Rowlands (Higgs and Rowland, 2005) from Lewin (Lewin,1951)

The themes and categories identified in the thematic analysis were sorted into one of the three stages in Lewin's model of change, a process which led to a reduction in the number of categories as nodes with similar relevant content were amalgamated under the broad thematic headings. Sorting the themes in this way revealed a general consistency between dates on documents and the stages of the policy making process. For example, categories containing text segments from correspondence dated 2000 were frequently assigned to the Unfreezing stage. This was because the material related to the initial stage of the policy development. Examples include documents containing the announcement of the change to come, or requests for confirmation that the change would apply in particular situations, or

clarification of the appropriate procedure to be followed to accommodate its introduction. Using the three stage model had the added advantage that, if a text segment from a document dated 2000 did not apply to the initiation of the process, (and therefore did not belong in the Unfreezing stage), it could be assigned to another stage which better reflected its meaning and impact. An example of this flexibility is provided in the treatment of a segment of text relating to the need to comply with EU Directives by the end 2003. This text was extracted from a notification sent in 2000. In this analysis the ratification of the Directive are treated as a consolidating measure, rather than an initiation measure. Therefore the segment was assigned to the Refreezing stage, despite having a date in 2000. Some examples of the process of assigning themes to stages are provided in Table 4.6.

Step 3: The reorganisation of the broad thematic categories derived at step 1 allowed the themes to be reconsidered as part of an ongoing process. The text was now, as well as being indicative of some interesting aspect of the official record, also indicative of a stage in a larger policy making process. The analysis was conducted using NVIVO software and therefore it was easy to return at any time to the full document from which the text segment was taken. This meant that, as themes specific to the assigned stage were being developed, further information could be easily accessed. In this way new leads in the data could be followed, or the relevance of the text segment to that phase could be challenged, by returning to the text account of the document. Through this iterative process four major themes, each underpinned by two sub categories, were identified for the unfreezing, mobilisation and refreezing stages. A content of these themes and categories is the subject of the three following chapters.

Table 4.6 Application of the three stage model of change

Data segment	Underpinning Category	Stage and Main Theme category
Example 1: I agree that the Dept. has to take the lead role on the policy front.....I spoke to CMO (Chief Medical Officer) and he feels that if the DG is launching the session we would be expected to be represented at a high level	International Context	Unfreezing: Framing the Policy Direction
Example 2: This ban will mean a massive cultural change for people right around this country, and eleven months before its full introduction will give people the time needed to adjust and change	Leading on change	Mobilisation: Progressing the policy
Example 3: The Minister claims that he first heard about it from me at a meeting in Leinster House on 21st November and is angry that he was not told earlier. As we know it was brought to his attention much earlier than that but it there any record of this ?	Procedural Issues	Refreezing: Consolidating the legal basis

4.7 Interviews as a supplementary source of evidence

Key informant interviews were carried out in this research as a means of fact checking and of filling the gaps that analysis of the documents revealed. The need to conduct interviews with key informants arose as the thematic analysis of the documentation progressed. As themes emerged and text segments were coded to these themes, gaps in the data became apparent, in the form

of unexplained decisions, actions or statements. When returning to the data for further information did not provided the necessary information to explain these matters, other sources of information were identified and sourced. These included other contemporaneous records, including those kept of Parliamentary Questions and the answers supplied to them, and records of Dáil debates for the relevant periods. When these documentary sources were exhausted or were not available for consultation, and where queries remained, interviews with those involved with the specific issue were considered. When the analysis was complete a number of key issues and potential informants had been identified and logged. Given the focus in the files on recording work carried out and the final decisions made, the people identified were in effect an 'elite' of this policy making process.

There is no such thing as a relationship free interview (King, 1994) but the methodological approach to gathering data by means of interviews will determine how much or how little that relationship influences the data collection. King describes a type of interview which lies between the qualitative research interview (characterised as interviewee led or co-led, where the relationship is acknowledged and valued for its contribution to the interview) and the structured interview (where the researcher tries to minimise the impact of interpersonal processes on the course of the interview, through the use of detailed schedules, closed questions and numerical rating scales and /or tick boxes, for example). A third type, which King terms 'structured open-response interviews', has a degree of imposed structure and a balance of open and closed questions that considered appropriate for this research. An interview schedule is employed which is structured, with questions in a set order. Many more of the questions are open ended however, and there is flexibility in the order in which questions are asked. King (1994) provides a guide to when this type of interview may be appropriate, noting the following situations:

1) Where a quick, descriptive account of a topic is required, without formal hypothesis-testing

2) Where factual information is to be collected, but there is uncertainty about what and how much information participants will be able to provide
3) Where the nature and range of participants' likely opinion about the research topic are not well known in advance, and cannot easily be quantified

This type of interview is appropriate to this research as formal hypothesis testing was not an objective of the research. The interviews were conducted to check facts against the information gathered from the file material. A third purpose of conducting these interviews was to gather any relevant additional information from participants who had contributed to the policy making process.

4.7.1 Structured Open-Response Interviews

Recruitment of interviewees

A letter of invitation was sent to the key policy makers identified through the analysis of the file documentation. At the end of each interview the interviewee was asked for the names of people involved whom they believed could provide additional information on this policy making process. As the focus of this research was on the internal policy making environment only people identified in the file material, or who were directly involved with the civil service policy makers, were contacted for interview.

A total of six interviews were conducted with senior policy makers whose involvement with the development of the work place policy ban was recorded in the file material analysed in this research. One additional policy maker was approached but declined to take part. Five of the six people interviewed in this research were no longer serving in the positions they had previously held, and three were no longer employed in the civil service. All who participated gave written permission for the interview to be recorded, and transcripts of the interviews were professionally produced. The transcripts of the interview were returned to each participant for comment. Only one participant edited the transcript and this resulted in additional information being supplied. All participants were asked if additional information could be sought at a later

date and all agreed to this. Subsequently further information was sought on specific issues with four of the participants. These requests and the responses to them were made by email.

The interview data was not analysed to uncover themes or hidden meanings, but to supplement the documentary analysis in this research. Information from a close reading of the interview transcripts has been inserted into the report of the analysis at appropriate intervals, clearly delineated in text boxes. The purpose is to ensure that the information provided by the interviews are synthesised at the relevant points with the documentary analysis. The interview data adds depth to the findings because it supplements, extends understanding and explains the information available in the files.

The way in which the interviewees were identified and recruited i.e on the basis of their identification through the documentary analysis, meant that they formed an 'elite' of this policy making process, whose input to and involvement with the decision making process is reflected in the official record. This is in keeping with the idiographic nature of this research, where the goal is not to present findings from a representative sample but to identify and present the unique set of actions and circumstances that are reflected in the data.

4.7.2 Ethical considerations: Elite Interviews

The ethical consideration of how the privacy of the creators of the records used in this research is outlined in section 4.2.1. A similar level of consideration was given to the ethical issues arising in relation to the interviews conducted following the analysis of the documentary material.
A number of actions were taken to ensure that interview participants were fully informed and gave full consent for the use of the information they supplied.

- A participant information leaflet and an informed consent form accompanied the letter of invitation which was sent to each participant requesting an interview

- Prior to commencing each interview time was set aside for any questions the participant might have, and the consent form, which included consent to record the interview, was signed before the interview began.
- Transcripts of the interviews were professionally produced and returned to participants for comment.
- No identifying information about interview participants is included, and names were removed from all quoted material, unless they were already in the public domain.

4.8 Further Analysis

The final research question and the remaining aims of the research are addressed by the application of a policy analysis framework to the findings from the thematic analysis and the elite interview methodology.

The research question was:

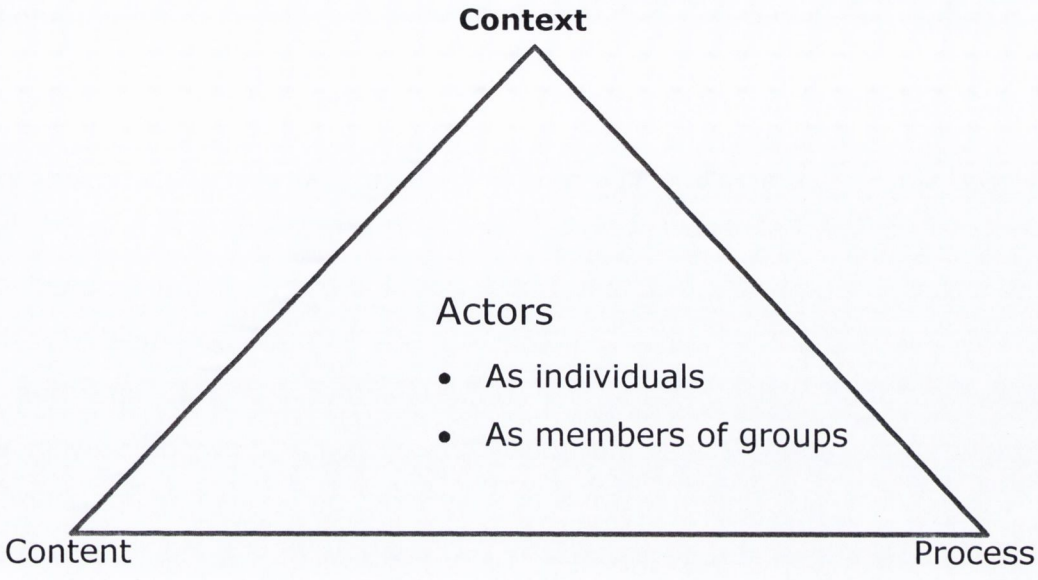
- Can the analysis of civil service records inform researchers about the policy making process in general?

The aims were to:

4. Present the policy process within a policy analysis framework
5. Draw conclusions about the utility of the data source for illuminating the policy making process, based on this research

How this question and these aims were addressed is discussed in the final section of this chapter. Walt and Gilson's Policy Analysis Triangle was selected to present this analysis of a policy making process and has been adapted to accommodate the analysis within its four elements –Context, Actors, Content and Process (Figure 4-3).

Figure 4-3 The Policy Analysis Triangle



Source: Walt and Gilson,1994

4.7.1 Reframing the data-The Policy Analysis Triangle

Walt and Gilson (1994) developed the Policy Analysis Triangle to analyse the elements affecting the development and implementation of health policy in the developing world. They acknowledge that the policy analysis triangle they present is a highly simplified model of the extremely complex set of interrelationships that exist in a policy making process, but argue that a focus on policy content alone has led to the neglect of other important dimensions, specifically process, actors and context. They wanted to highlight the importance of examining these elements, which they considered to be central to an understanding of the policy making process. These are the elements which 'can make the difference between effective and ineffective policy choice and implementation'

In this research the major themes and underlying categories which emerged inductively from the thematic analysis of file material are re-framed using Walt and Gilson's Policy Analysis Triangle (PAT). This approach and the findings of the policy analysis are outlined in Chapter 8.

4.9 Summary of Chapter 4

This chapter has discussed how the main research questions and aims of this research directed the research design. The philosophical underpinnings and ethical considerations of the research have been discussed. The significance of the positionality of the researcher has been considered with reference to 'insider' status within the research. The data source has been described, including its origins, its production, and its characteristics as a resource for qualitative research. Details have been provided of how the data used in this research was identified, accessed, sampled and turned into a usable research resource. The approach taken to support analysis of the data has been outlined. The rationale and methods of interviewing and the way in which interview data is presented in this research, have also been given. The analysis of the data source and use of frameworks as organising devices and analytical tools have been discussed.

4.10 Chapters 5, 6 and 7

The next three chapters present the thematic analysis of the file material, organised across Lewin's three stages of change-Unfreezing, Mobilisation and Refreezing. The purpose of the chapters is to focus on the content of the data source, meeting one of the aims of the research, which is to provide an account of the major themes identified using examples from the data. This analysis also provided the basis for identifying the concepts underlying the work of civil servants during a policy making process, discussed in Chapter 9.

Chapter 5 Unfreezing

5.0 Introduction

The development of national tobacco control policy in the years between 2000 and 2004 generated extensive file documentation within the responsible policy units of the DoHC. This data source was analysed to assess how it could be used to provide insight into the policy making process. The findings are presented using the framework of Lewin's model of change, which conceptualises the change process as occurring over three stages: Unfreezing, Mobilization and Refreezing (Lewin,1947). These three conceptual stages are used in this research as an organising structure for the themes and categories identified through the thematic analysis. The themes relevant to the later stages, Mobilisation and Refreezing, are presented in subsequent chapters. The four main themes presented in this chapter relate to the first stage of change, which corresponds to Lewin's 'Unfreezing' stage.

Lewin contends that in order to effect change 'equilibrium needs to be destabilized (unfrozen) before old behaviour can be discarded (unlearnt) and new behaviour successfully adopted' (Burnes, 2004b:985). In the context of Irish tobacco control policy, the stage of unfreezing is relevant to actions, decisions and contexts in which the previous approach to tobacco control was destabilised, and a new approach to its introduction and implementation was adopted. Four major themes, underpinned by key categories, were identified from the data and assigned to the unfreezing stage. The themes and categories presented in Table 5.1 will be discussed and supported with data from the analysis of the documentation.

5.1 Documentation from the Department of Health and Children

The data source for the unfreezing stage are the documents generated by the Department of Health and Children as the new policy on tobacco control was initiated, reflecting changing attitudes by government to tobacco control. Many of the documents generated in the 2000-2001 period contained

material which was relevant to the unfreezing stage of the policy process. As these documents are a collection of working papers they contain references to internal work practices and systems which require some explanation for an external reader. These explanations are provided where necessary but otherwise the text refers to the communications, practices and issues which are recorded in the file material. Illustrative examples are chosen from the reviewed material that are indicative of the concerns, approaches, decision making and processes involved in developing and implementing this significant national health policy. Each document used is referenced in a footnote containing details of the file it came from, ensuring the full traceability of all sources used. The explanations provided are supplemented with quotes taken from a small number of key informant interviews. The purpose of the interviews was to clarify or reinforce the interpretation of the documentation on file.

5.2 Unfreezing

Table 5.1 shows the major themes and underpinning categories identified as relevant to the unfreezing stage of the policy making process.

Table 5.1 Unfreezing stage: themes and categories

Stage in the process	Major themes	Underpinning categories
Unfreezing	1.1.Framing the policy direction	1.1a International context
		1.1b Strategic use of research
	1.2 Following procedures	1.2a Using policy mechanisms
		1.2b Legislation as a policy mechanism
	1.3 Discussing and justifying proposals	1.3a Government intentions
		1.3b Power and persuasion
	1.4 Managing the interest groups	1.4a Handling opposition
		1.4b Existing supports

5.3 Framing the policy direction

Two framing contexts emerged in this analysis. One was the international context in which Irish tobacco control was developed and the second was the research evidence on which the proposed measures were based and with which they were defended. This section looks at examples from the data that demonstrates how these frames influenced and were used by policy makers in the DoHC.

5.3.1 International context

Irish tobacco control policy evolved in a period of growing international interest in tobacco control as a public health issue. As a member of the European Union (EU), Ireland had obligations to contribute to, and implement, legislation and regulations agreed at EU level on the issue of tobacco control. A brief outline of the mechanism for representation in the EU is provided to assist with understanding the participation process at national level.

The Permanent Representative in the EU

At a daily, operational level, Ireland is represented on policy issues by civil servants attached to the Office of the Permanent Representation of Ireland to the EU. Civil servants from nearly every Irish government department are seconded to serve in this Office, which is based in Brussels, making it Ireland's biggest diplomatic mission abroad. In DoHC this officer is generally referred the 'Perm Rep', who serves as a link between the Department and the EU, representing , negotiating and lobbying on behalf of Ireland in relation to relevant EU issues, and reporting back to the DoHC on any developments. Support, advice and instructions are provided by the DoHC, and officials travel from Ireland to attend meetings as required. During the negotiation of tobacco control policy at EU level, Ireland was represented by a DoHC civil servant based in Brussels who liaised with the Department in relation to the EU Directives and the policy issues being discussed.

EU Directives

EU Directives are binding legislative instruments which require member states to achieve specific outcomes within a specific deadline, but do not prescribe how that result should be achieved. In relation to international tobacco control, an EU Directive on the Manufacture, Presentation and Sale of Tobacco Products (Council Directive (EC), 2001/37) set parameters on a variety of issues, including: additives, addictive substances, health warnings and misleading claims; reductions in the maximum level of tar, carbon monoxide and nicotine in cigarettes; legislation on labelling on cigarette packaging and permissible tar levels in tobacco products. Member States were required to comply with this Directive by September 2002, which meant that these issues had to be considered when national policy was being developed and /or enshrined in Irish legislation.

In some cases, forthcoming EU Directives on tobacco control were viewed by government as restricting Ireland's capacity to address tobacco control issues locally. For example, in the case of the Directive on Advertising and Sponsorship (Council Directive (EP), 2003/33), it was argued by the Irish Permanent Representative, on the instructions from DoHC, that the Directive failed to deal adequately with the issue of indirect advertising. Indirect advertising was understood in DoHC as referring to the use of established tobacco brands on non-tobacco products (such as ash trays, golf umbrellas, drinking glasses etc). It was intended that this practice would be specifically addressed in the new Tobacco Bill being introduced in Ireland, but the failure of the EU to introduce similar constraints would limit Ireland's regulatory capacity and legislative effectiveness in this regard. The official report of an EU Health Working Group meeting noted that:

> 2. Ireland raised the failure of Article 2 to deal specifically with indirect advertising -a major disappointment. Ireland would like some clarity on the definition of sponsorship and indirect advertising; Ireland requested a safeguard clause as the purpose of indirect advertising is to promote tobacco products and

> circumvent tobacco legislation. This Directive should not be used as an obstacle for Member States going further [10]

The Irish Permanent Representative subsequently supported a motion made by the Northern Ireland delegation at this meeting, to procure additional time to discuss this article.

The World Health Organisation

In addition to the obligations of EU membership, the work of the World Health Organization (WHO) was influential in changing Irish policy towards tobacco control. In 2000 the WHO commenced negotiation of the first ever international health treaty, the Framework Convention on Tobacco Control (FCTC). The negotiation of this Treaty evolved as a response to the globalisation of the tobacco industry, which is described in the Convention document as being

> ..facilitated through a variety of complex factors with cross-border effects, including trade liberalization and direct foreign investment. Other factors such as global marketing, transnational tobacco advertising, promotion and sponsorship, and the international movement of contraband and counterfeit cigarettes have also contributed to the explosive increase in tobacco use (WHO,2003)

In the pre-negotiation stages of the FCTC, mechanisms to assist in the development of multi-sectoral approaches were recommended to members states, as a means of encouraging a global perspective in the development of national policy [11]. In addition, member states were invited by the Director General of the WHO to nominate a representative to participate in the International Negotiating Body (INB) assembled to negotiate the Framework. The nomination of the appropriate representative was carefully considered

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[10] Fax from Permanent Representation of Ireland to the EU to DoHC dated 25.07 .2001- Report of the Health Working Group meeting 2-3 July 2001/ *EC Proposal for a Directive on the advertising of Tobacco Products and related sponsorship Vol 1/ ENV/POL/0/34037*

[11] Letter to Assistant Secretary DoHC dated 9.2.2000 from Dr Derek Yach, Project Manager Tobacco Free Initiative WHO with attached briefing note 'encouraging the convergence of sectoral issues required for tobacco control'/ *WHO Tobacco Free Initiative / ENV/IMP/0/17902*

within the DoHC, particularly in regard to the appropriate level of representation required.

> I agree that the Dept. has to take the lead role on the policy front.....I spoke to CMO and he feels that if the DG is launching the session we would be expected to be represented at a high level [12]

Box 5.1A International influences

> The WHO...It's not that it drove the development of our policy or policies at all to any significant extent... It dove-tailed nicely with what we were about here at the time. ...When we were sort of selling what we were about in terms of the policy it was helpful to be able to say that it was consistent with what was happening internationally [KI 1]
>
> In terms of influencing how we did our business, EU didn't. Because they weren't in the space about the smoke free because that was really down to member states and what member states decided to do and then some member states had, they allowed smoking rooms, or ventilation or all those other little things or if you were a bar under a certain space and you didn't serve food then the laws didn't apply to you [KI 4]

Both the EU and the WHO were represented at an international conference entitled Legislating for a Tobacco Free Society, organised by the Office for Tobacco Control (OTC), and held in Dublin in November 2001. Dr Derek Yach, the Executive Director of the Non-Communicable Diseases and Mental Health in the WHO, addressed the conference and the keynote address was delivered by David Byrne, the European Commissioner with responsibility for Health and Consumer Protection. The Conference was opened by Minister Michéal Martin, with a speech that covered a variety of tobacco related issues

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[12] Hand written note dated 19.09.2000 from Deputy Secretary to Principal Officer DoHC re letter to the Secretary General, DOHC, from Director General of the WHO, requesting names of representatives from Ireland to participate in the International Negotiating Body for the Framework Convention for Tobacco Control/ *WHO Legal Framework (Tobacco Control)/File not registered*

including: the scope and nature of the global tobacco epidemic; nicotine addiction; the behaviour of the tobacco industry; Ireland's response, including the new Bill and the establishment of the Office of Tobacco Control; the need for strong legislation; progress at EU and WHO level; the new Tobacco Control Association and the Research Institute. The Minister summed up his speech with the following statement:

> Bottom line, Ladies and Gentlemen, is that we are at a watershed. As a society (if you'll allow me to play with a popular phrase) we've realised it's time to 'wake up and smell the cigarettes'. Smell them. See them for what they are. And get real about destroying their hold on our people [13]

5.3.2 Strategic use of research

The second framing mechanism for policy makers developing tobacco control policy was the growing body of international evidence on the adverse impact of tobacco on the health of the population. In Ireland the report by the Tobacco Free Policy Review Group, entitled 'Towards a Tobacco Free Society' (TATFS) (DoHC, 2000) formed the basis for the policy decisions and directions in the early stage of policy development. The report was based on scientific evidence about the effects of tobacco on human health, and this evidence base was used strategically throughout the policy making process. The report and its recommendations were adopted as the policy basis for Government action on tobacco control soon after its publication. Significant weaknesses were identified in relation to the following: data collection regarding tobacco usage ; the level of public awareness regarding the perceived dangers of tobacco smoking; the provision of support for smokers wishing to quit; strengthening legislative protection in relation to enforcement of regulations; the advertising and sponsorship of tobacco products; the retail of tobacco products with reference to children and asserting the rights of the non-smoker in relation to environmental tobacco smoke.

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[13] Speech delivered by Micheal Martin, Minister for Health and Children, at the Legislating for a tobacco Free Society conference , November 2001*/International conference 'Legislating for a Tobacco Free Society'-Dublin Castle-1st November 2001/ENV/INF/0/35093*

Within the DoHC, questions were raised about the capacity of the Environmental Health Unit (EHU) to implement these recommendations, given that they were already 'under increasing pressure to develop the National Environmental Health Action Plan and to cope with an ever-widening range of complex issues in Environmental Health' [14]

This concern is indicative of a change in momentum within the Department regarding tobacco control policy. Previously the issues involved in tobacco control were part of the work of both the Health Promotion (HPU) and the EHU. It was now becoming clear that tobacco control as a policy issue would require more resources than had previously been assigned to it within the department, even if, as recommended in TATFS, a dedicated external office was established to coordinate the implementation of the programme, under the remit of the DoHC (2000:55).

Over the course of the development of tobacco control policy, research was used strategically to support the arguments both of those sponsoring change and of those opposed to the proposed new control measures. Much of the specific research evidence underpinning the policy recommendations in TATFS (2000) was used to strengthen the position of the Minister in the early stage of the policy development. Other types of research evidence were cited by various lobby groups, for example the publican representative groups, to challenge the introduction of measures which affected their members.

5.3.3 The Publicans

The Vintners Federation of Ireland (VFI) was formed in 1973 to represent the interests of publicans operating outside the greater Dublin area. When requesting a meeting with the Minister for Health, the representatives of this organisation cited findings from research into air quality which they had commissioned, the results of which convinced them that they should

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[14] Note dated 14.10.1999 from Assistant Secretary DoHC to Secretary General on issue of Department's capacity, given the resources at disposal, to undertake an exercise , and to provide the drive and commitment to a momentum for action and to sustain it. */Towards a Tobacco Free Society Aide Memoire/ GOVERNMENT DECISION 1999 - 2000/ENV/POL/0/36452*

become pro-active in assisting our members to improve air quality in pubs to the benefit of the members, staff and customers [15]

The main contention of the VFI was that air quality in pubs could be improved through ventilation systems and that an outright ban on smoking in pubs was both unnecessary and counterproductive. The VFI had conducted its own research and were piloting projects designed to assess the practical efficiency of certain types of air cleaning equipment. The organisation had also launched an initiative entitled 'Pub Atmosphere Improves Results' (PAIR) under which research was undertaken, ventilation equipment was tested in pubs, and members received information relevant to the issues involved. The organisation subsequently provided a copy of a report of findings from research conducted by consultants on the organisation's behalf, entitled Why Smoking should not be banned from Irish Pubs (2001)[16]. The stated purpose of this report was not to dispute the evidence regarding the negative effects of smoking and passive smoking, but to outline how a smoking ban would not have the desired health benefits proposed and could well be counterproductive.

A second publican representative group, the Licensed Vintners Association (LVA), which represents publicans operating within the Dublin area, also disputed the evidence used to support the tobacco control policy and offered alternative research findings to support its own position. The LVA stressed other disadvantages of the proposed actions:

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[15]Letter from CEO Vintners Federation of Ireland (VFI) to Minister for Health and Children dated 21.08.2001 requesting meeting with Minister/ *Vintners Federation of Ireland (VFI) Meetings etc 2000 & 2001, 2002/ ENV/IMP/0/31323*

[16] Document prepared by CEA Economic Consultants, Galway , Oct 2001, for Vintners ' Federation of Ireland 'Why Smoking should not be banned from Irish Pubs'/ *Vintners Federation of Ireland (VFI) Meetings etc 2000 & 2001, 2002/ ENV/IMP/0/31323*

> ....if smoking is prohibited when food is being served then large numbers of Dublin publicans will abandon provision of a food service [17]

The LVA also disputed research findings on the deaths of pub workers from smoking-related diseases. This research calculated that 150 Irish bar workers die annually due to exposure from environmental tobacco smoke (ETS) in their workplace (Mulcahy and Repace, 2002). These findings were presented at a DoHC/OTC seminar on the hazards of ETS. The LVA stated in their response to the presentation of these figures that

> The figures on age of death of the 71 pensioner mortalities (based on Licensed Vintner Association pension scheme for bar employees) since 1995 show the average age at death of a Dublin barman is 73.4 years, which is in line with average life expectancy for an Irish male. None of these deaths was attributed to lung cancer ....It appears to us in the Licensed Vintner Association that frequently exaggerated arguments can be introduced into the debate on smoking in licensed premises. All of the above is verifiable. Hopefully it may help to inject some balance into the debate [18]

The VFI and the LVA joined forces to argue against the introduction of a complete smoking ban in pubs, and met with the Minister for Health and Children to present their arguments [19]. The briefing provided to the Minister in advance of meetings with lobby group representatives was structured around the research findings relevant to ETS. Specific recommendations were

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[17] Letter from Chief Executive of the Licensed Vintners Association (LVA) to Minister for Health and Children dated 12.11 2002 re Smoking in Licensed Premises/ *Licensed Vintners Association 2001 Meetings and General Correspondence/ ENV/IMP/0/31326*

[18] Letter from Chief Executive of the Licensed Vintners Association to Minister for Health and Children dated 18.02.2002 re Smoking in Licensed Premises / *Licensed Vintners Association 2001 Meetings and General Correspondence/ ENV/IMP/0/31326*

[19] Draft report of Ministerial meeting with the Vintners Federation of Ireland and Licensed Vintners Association regarding the new ETS Regulations on smoking in the workplace, 20th March 2003 / Licensed Vintners Association 2001 Meetings and General Correspondence

made to the Minister about how to handle these issues should they arise at the meeting. The Minister should, it was suggested, present his position and his policy intentions as being based on the public health aspects of ETS, namely that

> Ireland has a high rate of lung cancer, heart disease and respiratory ailments associated with tobacco consumption and tobacco smoke. ... must take action to prevent and reduce the levels of disease associated with tobacco [20]

The Minister also referenced international research which showed that smoking bans in bars did not have adverse economic effects [21] (Chang et al., 2004) and Irish research which indicated that a large percentage of people would go into pubs to eat and drink more if smoking was banned [22].

Research evidence was also used by the Minister and the Department to stimulate support for their measures among neutral groups. The departmental approach to employer and trade union groups provides an example here. Early in the policy process meetings with the Irish Business and Employers' Confederation (IBEC) were arranged to discuss the omission of tobacco products from the Consumer Price Index (CPI)[23]. At these meetings the Minister outlined his concerns about the health status of Irish people within the EU, as they had a lower than average life expectancy, with rates of heart disease and cancer that were unacceptably high. At the meeting the Minister noted that

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[20] Briefing material for Minister for Health and Children for meeting with Vintners Federation of Ireland 18.10. 2000/ *Vintners Federation of Ireland (VFI) Meetings etc 2000 & 2001, 2002/ ENV/IMP/0/31323*

[21] Copy of document entitled 'The New York City Smoke -Free Air Act ; Second Hand Smoke as a Worker Health and Safety Issue , New Your City Department of Health and Mental Hygiene of New York City / *New York City: Department of Health and Mental Hygiene: Workplace Smoking Ban 2003 / ENV/IMP/0/46569*

[22] Report of Irish attitudes to tobacco pricing: a Research Report October *2001/ OTC*/MRBI Smoking Report 2001/ ENV/INF/0/35375

[23] The CPI is the mechanism used in Ireland, and in most European countries, to calculate consumer inflation based on household expenditure. Tobacco products are included in these calculations on the basis that they constitute a significant household purchase, and this is supported by the EU as a method of monitoring tobacco consumption. Price increases in items on the CPI had the capacity to increase inflation, and are therefore generally controlled.

> Tobacco consumption is a major factor in cancer and heart disease. Improving the health status of the nation cannot be done solely by action by one government department, an intersectoral approach is required [24]

The Minister's purpose at this meeting was to seek agreement to produce a CPI that excluded tobacco products, in order that price increases could be used as an effective measure against tobacco consumption, without producing a negative effect on inflation measures. Using a sub-index of the CPI which did not include tobacco products, would allow an increase to be levied on the price of cigarettes. Discussion with the major trade unions and employer organisations was necessary because wage negotiations are based on the CPI in Ireland, and removing a significant item of expenditure (such as tobacco products) would have consequences for the calculations made. The Minister also raised the matter with the Irish Congress of Trade Unions (ICTU) and elicited the help of prominent health lobby groups to make the case with these and other neutral groups for this action[25] .

5.3.4 Summary: Framing the policy direction

A growing momentum in relation to tobacco control was reflected in national and international policy developments in the 2000/2001 period. Two key framing mechanisms emerged as important at this stage. These were: 1) Ireland's position within international communities that were also addressing the issue of tobacco control and 2) the increasing volume of recognised scientific research on the adverse effects of tobacco consumption and environmental tobacco smoke.

Ireland's membership of the EU implied compliance with the Directives and Protocols being introduced around the related issues of cross border

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[24] Note of meeting held on 25.09.2001 with the Irish Business and Employer's Confederation (IBEC) re proposal to remove tobacco products from the Consumer Price Index (CPI) / *IBEC - Public Health (Tobacco) Act, 2002 Correspondence/Meetings/ ENV/IMP/0/40260*

[25]Report of meeting with the Irish Heart Foundation re removal of tobacco products from the CPI , 24 .07.2002/ *Cardiovascular Strategy-ETS/ ENV/NAT/0/17602*

commercial transactions and sponsorship; advertising; excise duty and taxes; and tobacco pricing. In addition the World Health Organisation was gathering momentum for the agreement of the first ever Framework Convention on Health, which was focussed exclusively on tobacco control. As a full member of the WHO, Ireland was being encouraged to prepare at a national level to contribute to the international initiative and to nominate a representative to sit on the International Negotiation Body.

The strategic use of research also played a part at this stage in the policy making process, providing policy makers with evidence with which to counter the arguments of those opposed to the planned changes in tobacco control. The principal source of evidence of the need for change was the report Towards a Tobacco Free Society: Report of the Tobacco Free Policy Review Group (DoHC, 2000). Drawing on national and international data, the report laid out a detailed plan to bring about a 'tobacco free society', and was adopted officially as Government policy shortly after its publication in 2000. Research was also used by those groups who opposed plans for tobacco control, either by calling for more research into a particular area or by questioning the research findings which supported the plans for tighter control.

At this stage in the policy development communications were open and the Minister and departmental staff met frequently with interest groups who hoped to influence the policy direction being considered. The framing of tobacco control as a public health based issue allowed the Minister and those preparing briefing material on the issue to draw on the content of the report 'Towards a Tobacco Free Society' (DoHC, 2000) and international evidence to refute arguments put forward by opponents of the proposed changes.

Within the Department of Health and Children change is introduced through a set of prescribed procedures and processes, which form a significant element in the introduction of the new policy. This element is explored under the next thematic heading, following procedures.

5.4 Following procedures

The introduction of legislation is a time and procedure bound practice with which civil servants are required to be familiar and which they are required to follow. There are also strict specific procedures for bringing policy initiatives to Government meetings for approval. Thus, these procedures applied when the Minister for Health and Children brought the report 'Towards a Tobacco Free Society' (DoHC, 2000) to Government and they applied to the introduction of the legislation necessary to implement its recommendations. Even with adherence to procedure and resulting agreement secured, the recommendations in the report were being introduced into an already crowded health policy field, where health promotion, environmental protection, and targeted health related initiatives were already being implemented. The identification and use of existing mechanisms to maximise effectiveness in implementation and minimise duplication of effort emerged as important underlying category at this stage of the process.

5.4.1 Early mistakes

An early example of the need for a government department to be aware of and follow established procedures can be seen in a communication from the Department of Finance to the newly appointed Secretary General of the DoHC. Referring to two items of business, one of which was the report Towards a Tobacco Free Society, brought by the Minister for Health and Children to Government, the letter stated that these were not circulated in advance to the Department of Finance. It was noted that

> ..the recommendations are wide ranging and costed at £20 million for a full year. It is unacceptable that items of this magnitude are put to Government without any opportunity of this Department to examine them or brief our Minister. I regret having to raise matters of this kind with you...., but it is well to

be clear from the start that the established procedures will be followed [26]

This type of letter would be a source of embarrassment for the new Secretary General and reflected poorly on the senior department staff who should have been aware of the applicable procedures. As the implementation of the policy recommendations laid out in the report commenced, further difficulties in relation to procedures were to arise for the Department.

5.4.2 Using policy mechanisms

A cross cutting approach to the implementation of the policy goals of the Cardiovascular Strategy, the National Cancer Strategy and the emergent tobacco control policy was adopted to addressing the dangers of environmental tobacco smoke (ETS). One of the mechanisms that had the potential to progress the mutual aims of these policies was legislation that strengthened controls in relation to ETS. The Public Health (Tobacco) Bill 2001, (Government of Ireland, 2001b) which was being progressed as part of tobacco control policy, contained the required enabling provisions to greatly increase the Ministers power to enforce regulations. When fully enacted, the legislation would increase the Minister's capacity to regulate ETS.

A second mutually beneficial action identified was the removal of tobacco from the Consumer Price Index (CPI). This action would allow for price increases for tobacco products, which had been proven to be a significant factor in deterring young people from smoking. The Minister requested that the Irish Heart Foundation (IHF) meet with the representatives of the Irish Municipal Public and Civil Trade Union (IMPACT) and Irish National Teachers Organisation (INTO) on the issue of adjusting the CPI. He also requested that an economic expert be asked to attend the meeting to provide support for

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[26]Letter from Second Secretary Department of Finance to newly appointed Secretary General of the Department of Health and Children dated 15/03/2000/ *Office Of Tobacco Control-Board of Management and Board Meetings 2000-2/ ENV/IMP/0/27951*

the price increase argument. The revenue generated from the increased prices could be used to fund the implementation of the Cardiovascular Strategy by resourcing the health education aspects of the Strategy.

5.4.3 Legislation as a policy mechanism

New legislation was the chosen policy mechanism for the introduction of change in relation to tobacco control. Several sections of the proposed legislation were strongly contested. The procedures for bringing legislation forward typically involves providing the opportunity for other Departments to supply observations on the planned legislation. This procedure was initiated by the Department of Health and Children when copies of the Draft Memorandum for Government and Heads of a Bill entitled 'Public Health or Tobacco Bill 2000' were circulated to the relevant Government Departments for observation [27]. (The label 'Heads' here refer to the sections of the proposed Bill containing the outline and scope of the intentions of the legislating Department on which the final legislation will be based-see Chapter 2). The observations received were based on concerns about the need for and cost of establishing new structures and on the quality of the draft legislation submitted.

The necessity of establishing a Tobacco Control and Research Institute, as provided for in the Bill, parallel to the Office of Tobacco Control and the already existing Cancer Research and Health Research Boards, was questioned in the most substantial observations received, which were from the Department of Finance[28]. In addition, the financial arrangements for the

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[27]Draft Memorandum for Government and General Scheme and Heads of a Bill entitled 'Public Health or Tobacco Bill 2000' circulated for observations to: Comptroller & Auditor General ; Office of the Attorney General; Departments of: Arts Heritage Gaeltacht and the Islands; Foreign Affairs; Enterprise Trade and Employment ;Social Community and Family Affairs ; Justice, Equality and Law Reform; Finance; and the Department of the Taoiseach/ *New Tobacco & Health Bill-Memo to Government July-Sept 2000 Vol 1/ ENV/IMP/0/28440*

[28] Observations on Draft Memorandum for Government and General Scheme and Heads of a Bill entitled 'Public Health or Tobacco Bill 2000' from the Department of Finance/ *New Tobacco & Health Bill-Memo to Government July-Sept 2000 Vol 1/ ENV/IMP/0/28440*

new bodies were of concern, as were the additional funding which Health Boards would require to implement their new enforcement duties. In these observations there is a suggestion that there may be a case for assigning some or all of these functions to the Revenue Commissioners rather than establishing a new procedure for the purpose. Additionally, concern was expressed about the lack of clarity surrounding the intended scope and feasibility of the measures to protect against passive smoking in places of entertainment, which could include outdoor venues such as football pitches. The observations question how the regulations will distinguish between places of entertainment attended by persons less than 18 years and places of entertainment attended by those over 18. There was also concerns that the addition of another layer of bureaucracy for small retailers, who would be subject to a new licensing inspection and enforcement procedures, which was likely to evoke a strong negative reaction. It was noted that

> The current thrust of policy is to reduce the administrative /regulatory burden for small business and the current proposals run directly counter to this objection [29]

The second set of observations received was from the Office of the Attorney General. These observations related to the content of the Draft Heads of Bill, which contained the outline and scope of the intentions of the legislating Department on which the final legislation would be based. In the case of the Public Health (Tobacco) Bill 2001, (2001b) these Heads were drafted by a barrister retained for the purpose by the recently established Office of Tobacco Control. The observations received from the Office of the Attorney General concentrated on the quality of the drafting of the Heads of Bill as circulated, which were considered to be inadequate to inform the further drafting necessary to introduce the Bill. A number of problems in the Heads of Bill circulated by DoHC were listed in the observations, which concluded that

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[29] Observations on Draft Memorandum for Government and General Scheme and Heads of a Bill entitled 'Public Health or Tobacco Bill 2000' from the Department of Finance/ New Tobacco & Health Bill-Memo to Government July-Sept 2000 Vol 1/ ENV/IMP/0/28440

> The Heads are silent as to a number of important matters and in other areas the policy has not been fully thought out.....The Heads are full of ambiguities and do not comply with Cabinet Procedure Instructions [30]

These observations stimulated a round of communications and meetings between the Office of the Parliamentary Draughtsman and the Environmental Protection Unit, DoHC. A subsequent meeting was arranged between the Attorney General (AG), who has responsibility for the Office of the Parliamentary Draughtsman, and the Minister, to discuss the problems with the draft Heads, at which it was suggested that the Department should have a 'fundamental rethink' of its approach, in particular because of the huge volume of legislation pending. The AG felt that practically all of the policy items outlined in the draft memorandum could be adequately met by existing legislation. The resolution of these issues followed consultation with the Department's Legal Advisor and an amended Summary Memorandum for Government was submitted and approved in February 2001 [31].

The employment of an external barrister was addressed in interviews with the key policy makers involved at that time (see Box 5.1.B). Two positions on this issue are evident. One considers that going outside the established process was necessary and appropriate, even if it was frowned on. The other view considered the same action to be an unnecessary waste of time, which was damaging to relations between the DoHC and the AG's Office, on which government departments relied for the production of draft Bills. This occurrence and the reaction to it highlights a significant concern for civil servants reliant on the close cooperation of other Departments for specialised assistance during a policy making process. If such assistance is not

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[30] Observations on Draft Memorandum for Government and General Scheme and Heads of a Bill entitled 'Public Health or Tobacco Bill 2000' from the Office of the Parliamentary Draftsman / *New Tobacco & Health Bill-Memo to Government July-Sept 2000 Vol/ ENV/IMP/0/28440*

[31] Revised Memo and Summary document giving background (Towards a Tobacco Free Society Report) and government approval to prepare legislation to give effect to that policy/ *New Tobacco & Health Bill Memo for Government Vol II/ ENV/IMP/0/28440/*

forthcoming in a timely manner, a department's policy making agenda can be seriously delayed.

Box 5.1B Using external expertise

And I remember first we were so much in a hurry that myself and Tom agreed that we'd hire external, now the Secretary General approved of this, that we hired an external barrister to actually draft the bill and having done that the learned person in the draftsman's office pooh-poohed it and said ah tut-tut, this is a shocking piece of legislation because we... ...my own view is that we had dared go outside the... Time honoured, yeah, so we got a rap across the knuckles and said this is not the way to do it and, em, so I kicked up a fuss then ....and they agreed they would draft it (KI 5)

But the Attorney General's hated this.... they had two concerns. First was, and the one that they went front and central with, this will not actually save any time. We spent as much time tidying up. But the other issue was if there's a delay in preparing legislation, we can use this as a stick to beat the Department of Finance with to get more staff. So we were basically presenting them with a solution to a problem which was as big a problem as the alternative and we were snatching the additional staff and that poisoned relations (KI 2)

It set us back maybe six/nine months ...He did it with the support of Michael Martin at the time but we had to explain to Micheál Martin, and we shouldn't have had to explain to him, that he would have been familiar with the requirements because he'd been a Minister before and had brought significant legislation through the houses, ...but yeah it did cause problems but Micheál Martin, he learnt to include the Department in the loop (KI 1)

5.4.4 Summary: Following Procedures

Introducing new policy recommendations into an already crowded field has some advantages. If concurrent policy initiatives share similar goals and supports, mechanisms found to progress one set of policy goals may also further the other, related set. In the case of tobacco control policy there were

existing policies with similar goals, particularly in relation to the control and reduction of the effects of ETS. The legislation introduced to further tobacco control served also to strengthen the Minister's power to enforce environmental tobacco smoke regulations, which furthered the policy goals of the Cardiovascular Strategy (DoHC, 1999) and the National Strategy on Cancer Services (DoHC, 1996).

Choosing to introduce new policy by the mechanism of legislation involves signalling the intention to do so to Government and securing approval to proceed. Before this happens, however, the planned legislation must be circulated to all other government departments for observations. During this process the observations supplied by two departments proved to be influential on the process-those of the Department of Finance, which must approve all planned expenditure, and of the Office of the Attorney General, which encompasses the Office of the Parliamentary Draftsman, where the final version of the legislation will be drafted. Both of these Departments had reservations about the approach taken in the draft Bill as circulated. At this early stage of the process the Minister was required to intervene directly to address the issues arising and ensure that the momentum for significant change in the policy area of tobacco control was not lost.

Concurrent with the introduction of legislation was on-going discussion and justification of the policy proposals. This occurred at both individual stakeholder level and in the broader context of the Parliamentary system, and represented a significant element in the policy process at this stage. The following sections discusses this theme, under which the relevant categories are grouped.

5.5 Discussing and justifying proposals

The early stages of policy development involved an intense period of discussion, explanation and presentation of the proposed changes in order to overcome opposition or doubts concerning new tobacco control policy

proposals. Exchanges took place at all levels and involved senior civil servants and the Minister.

5.5.1 Government intentions

Signalling government intentions in specific areas stimulated reactions from different groups who would potentially be affected by the changes. For example, the issue of selling cigarettes from vending machines had been a focus for recommendations in the report Towards a Tobacco Free Society (2000). The intention was that all such sales would be under the direct supervision of a staff member on the premises where the machine was installed, in order to prevent under 18s from buying cigarettes. The subsequent initiative to remove or restrict access to cigarette vending machines in places where someone under 18 years of age could be admitted was a key concern for businesses who supplied these machines.

Incidences where sitting TD's applied to the Minister requesting that he meet with representatives of the relevant interest group, in this case the Irish Cigarette Machine Operators Association (ICMOA), were initially dealt with by offering the lobby group a meeting with senior Departmental officials[32]. Representatives from the ICMOA attended the meeting and presented their own document, a Mandatory Code for ICMOA Members[33] . The concerns of their members centered on the uncertainty about the contents of the proposed new legislation, and the potential damage that could be done to their business by radical change in the current provisions.

When the Minister met with the organisation representatives in person, he focussed on his concerns about the level of smoking among children, the high

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[32] Letter from Brian Lenihan TD to Micheal Martin Minister for Health and Children dated 05.04.2000 making representations on behalf of Liam Temple Lucan Co Dublin seeking a meeting with you or relevant officials to discuss a proposed code of practice and possible legislation regulating the sale of cigarettes and tobacco products in vending machines/*Irish Cigarette Machine Operators Association (ICMOA) Tobacco Vending Machines 2000/ ENV/INF/0/29396*

[33] Copy of the Irish Cigarette Machine Operators Association Mandatory Code for ICMOA Members/*Irish Cigarette Machine Operators Association (ICMOA) Tobacco Vending Machines 2000/ ENV/INF/0/29396*

prevalence of addiction to nicotine in childhood, and the need to change the ways in which cigarettes are sold from vending machines, because of the high numbers of smokers who become addicted in childhood. The ICMOA representatives left the meeting promising to come up with measures to ensure tighter restrictions on machines and prevent children accessing them.

5.5.2 Power and persuasion

As well as discussions with stakeholder groups a government campaign to inform and persuade the public of the benefit of change was also undertaken. Media coverage of the proposed changes was extensive, with individuals and groups from both sides of the debate using all forms of media to disseminate their message. The OTC had a specific remit in this area and launched a number of media campaigns to highlight the dangers of workplace passive smoking. The Minister also made appearances on radio to discuss the Tobacco Health Bill in 2001, by which time there was open discussion about banning smoking in pubs. The extent of the ban had not yet been determined as shown for example, in the response by the Minister to a question about the extent of the smoking ban planned for pubs and restaurants:

> No...In terms of pubs and that, I mean, basically what we will be looking at, is some restrictions in relation to smoking in public houses. We haven't made definite decisions as to whether it's an entire ban immediately or whether it's a phase situation [34]

5.5.3 Discussion in the parliamentary system

Discussion also took place within the Oireachtas, or Parliamentary, where the Minister was required to explain, justify, and answer questions in relation to the progress and development of the policy. The primary method available to members of Parliament regarding the questioning of a government minister is through the Parliamentary Questions, or PQ, system. Questions posed by

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[34] Transcript of extract from radio interview RTE 1 30/05/2000 5 minutes 47 Seconds Subject Tobacco Advertising/ *Good Morning Ireland Transcript (30/5/00)/ ENV/INF/0/29641*

sitting members of the Parliament are answered directly by the relevant Minister and the answers are recorded in a permanent record. In relation to tobacco control legislation and policy, a large number of questions were raised and answered using material supplied by the civil servants working in the relevant policy units. In the early stages, questions centred around the actions that the Minister planned to take in relation to: advertising and sponsorship[35]; conducting a national smoking survey[36]; allocating expenditure for 2001 for anti-smoking campaigns and programmes [37]; and the consideration given to the proposal by cigarette machine operators to introduce a token system to control the sale of cigarettes[38]. As the policy process developed, more questions were tabled, including questions on the action to be taken to investigate breeches of the smoking regulations in different situations[39]; and the Minister's plans to prohibit the sale of cigarettes by under 18s in retails outlets[40].

Contributions were also provided for Parliamentary debates, which are held at prescribed periods throughout the legislative process. During the second stage debate on the Public Health (Tobacco) Bill, 2001 (Government of Ireland, 2001b), the Minister for Health and Children presented the evidence-based arguments for the introduction of the legislation, including the need to provide greater protection for people against inhalation of toxic environmental tobacco smoke [41]. Respondents to the Minister for Health and Children's opening speech criticised the lack of acknowledgement of the work which had been undertaken previously on the issue, most notably the work

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[35] PQ 14417/00 /New Tobacco & Health Bill-Memo to Government July-Sept 2000 Vol 1/ ENV/IMP/0/28440

[36] PQ No 58/00 / Health Promotion Unit- Campaigns, Launches 2000/ ENV/IMP/0/29214

[37] PQ No 134/00 / Health Promotion Unit- Campaigns, Launches 2000 / ENV/IMP/0/29214

[38] PQ No 22461/01 / Irish Cigarette Machine Operators Association (ICMOA), Tobacco Vending Machines, 2000/ ENV/INF/0/29396

[39] PQ No 5068/02/ PQ's 2002 Jan-July 2002 OCT-Dec 2002 Vol 3/ ENV/IMP/00/35442

[40] PQ No 4859/02 / PQ's 2002 Jan-July 2002 OCT-Dec 2002 Vol 3 ENV/IMP/00/35442

[41] Dáil Éireann Debate Vol. 546 No. 4 Public Health (Tobacco) Bill, 2001: Second Stage. /Public Health & Tobacco Bill 2001/ ENV/POL/0/31187

of the Oireachtas Committee on Health and Children, which had produced a National Strategy report on the issue of tobacco control and smoking (Oireachtas Joint Committee on Health and Children, 1999).

A further criticism was that the Minister was not going far enough with the legislation and did not intend to disrupt publicans by enforcing a smoking ban in public houses. One respondent in the debate focussed on a ban in pubs specifically, stating that:

> In the longer term smoking is one of the biggest contributors to the poor health of this nation. For this reason alone I am appalled that section 46 names the places where smoking tobacco is restricted or prohibited, but only lists places where the ban currently exists, such as schools, colleges and theatres. It does not mention public houses. This, despite the recommendation of such a ban in two separate All-Party Oireachtas Committee reports, is the indecisive Minister at his typical worst. He has promised both health campaigners and the pub lobby that he is on their side. He cannot have it both ways. I want the Minister to tell the House if he can amend this Bill to take powers to phase in a ban on smoking in public houses. I want to see it spelled out in the Bill, not in the Minister's head [42]

Despite such calls to do so, the Minister did not at this stage announce an intention to introduce an outright ban on smoking in public houses, stating only that it could be done under the legislation as presented.

5.5.4 Summary: Discussing and justifying proposals

In a national policy making context, the public discussion of the measures in the draft legislation served a number of purposes. In the early stage of the process, issues are raised by those most likely to be impacted by the

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[42] Contribution of Mr G Mitchell ,TD to Dáil Éireann Debate Vol. 546 No. 4 Public Health (Tobacco) Bill, 2001: Second Stage/ *Tobacco Vending Machines/Public Health & Tobacco Bill 2001/ ENV/POL/0/31187*

suggested change or by their agents or representatives. In the context of Ireland's tobacco control policy, those with commercial interests in the sale or consumption of cigarettes made representations to the Minister for Health and Children. The Department responses to the concerns of these groups indicated to them the strength of the commitment to introducing significant change in the area of tobacco control. In most cases the issues raised in meetings with the Minister or, more frequently, with senior Department officials, were not addressed in the way the lobbyists had hoped for, and their representations did not affect the content of the legislation brought forward.

The decision making process in a national policy making environment centres around the houses of Parliament, or Dáil, particularly when legislation is the mechanism chosen to make policy change. Legislation, and the mechanism used to produce it highlights power elements in the process, with Ministerial power, interdepartmental power relations and the power of other public representatives and of the Dáil all playing a part. Tobacco control had been on the Dáil agenda for a long period of time before the Minister for Health and Children made it his priority. Public representatives who had been involved with earlier attempts to introduce comprehensive tobacco control measures took a particular interest in the new Minister's efforts. The Parliamentary Questions tabled in the period following the announcement of the draft legislation demonstrates this interest, as does the record of the Dáil debates about the proposed new legislation.

5.6 Managing the interest groups

Lobbying both for and against more stringent tobacco control measures was spread across a range of groups. Three types of groups actively engaged in the early stages of this policy process. These were: the commercial lobby groups, representing businesses in the manufacturing, hospitality and retail sector for which the proposed changes in regulation represented a threat to commercial interests; the advocacy groups formed around key health and health promotion issues; and the social partner groups. The latter took a neutral stance on the issue of smoking, but were responsible for negotiations

with the Government in areas impacted by tobacco control measures, such as price increases on tobacco products. In addition there was a large and growing group of individuals who communicated their concerns directly to the Minister. These were members of the public, and their public representatives, who contacted the Minister in relation to tobacco control and the enforcement of anti-smoking and no smoking laws, in the period following the announcement of his plans in relation to legislation and tobacco control.

5.6.1 Handling Opposition

The Tobacco Manufacturing Group

In the international context of tobacco control one of the dominant opponents to change and regulation was the tobacco industry. By 2000 a series of court cases in the US, which the tobacco industry had lost, resulted in the obligatory release by seven major tobacco companies of six million company documents (WHO, 2000). Through analysis of these documents the tactics of the tobacco companies were being exposed and disseminated to governments developing tobacco control policies. Governments were urged to be aware of and take precautions against the potential influence these companies could have on their decisions, and written guidance on how to do so was issued by the WHO (Zeltner et al., 2000).

In Ireland, there were four tobacco manufacturing companies-Player Wills (Ireland) Ltd; Gallagher (Dublin) Ltd., PJ Carroll's Ltd., Philip Morris Holland BV and one distribution company, Tobacco Distributors Limited. Under the 1978 tobacco control legislation, advertising and sponsorship by the tobacco companies was monitored by the government. In addition, budgets for spending in this area were negotiated and subject to approval by the Minister for Health and Children (Government of Ireland, 1978). The tobacco companies were represented in these negotiations by the Irish Tobacco Manufacturers Advisory Committee (ITMAC).

Previous correspondence between the ITMAC and the DoHC related to requests for information issued by the DoHC, and the submission by ITMAC

of the requested details. When the new legislation was announced, the companies and their representative group requested a meeting with the Minister to discuss the issues relevant to their business. This request was turned down by the Minister on the advice of the EHU,[43] on the basis that these companies had declined to appear, when requested, before the Oireachtas Subcommittee on Health and Smoking the previous year [44]. The defence offered by ITMAC for this refusal was the fact that its 60 page submission to the Joint Committee in 1998 had been ignored and that the evidence that was supplied had been misrepresented in that Committee's final report. The non-cooperation of ITMAC with the Oireachtas Subcommittee allowed the Minister to refuse all requests for a meeting made by the CEO of ITMAC, and this reason was also used to deflect requests made on their behalf by high level public representatives [45].

The Hospitality Groups

A second prominent group opposed to stronger tobacco regulation came from the hospitality sector, represented mainly at this stage of the process by the two Vintners Associations, the Vintners Federation of Ireland (VFI) and the Licensed Vintners Association (LVA). The central issue for these groups was the proposed ban on smoking in public houses, which was not explicitly stated in the proposals, but was a possibility under the new legislation. The advice provided to the Minister about managing this lobby was based on knowledge of international tobacco industry tactics, particularly regarding the increasingly contentious issue of environmental tobacco smoke. The Minister was informed, in advance of a planned meeting with the Vintners Federation of Ireland, that the type of clean air scheme being proposed by the Vintners

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[43] Note to Runai Aire from EHU dated 25.6.2001 re requests from Tobacco Industry for meeting / *Correspondence With The Tobacco Industry, 1999-2002/ ENV/INF/0/30956*

[44] Letter from Managing Director, Gallagher (Dublin) Ltd to the Clerk to the Sub Committee on Health and Smoking, Leinster House, dated 01/06/2001/ *Correspondence With The Tobacco Industry, 1999-2002/ ENV/INF/0/30956*

[45] Letter from Dermot Ahern TD Minister for Social Community and Family Affairs to Michael Martin Min for Health and Children dated 18.7.2001 requesting that the Minister or his officials meet with the Dundalk based tobacco company PJ Carroll & Co or their representative organisation ITPAC (sic) / *Correspondence With The Tobacco Industry, 1999-2002/ ENV/INF/0/30956*

organisations in Ireland was known to be supported by the tobacco industry here.

At a global level the same type of scheme was being sponsored by Philip Morris Ltd, a major tobacco company which operated worldwide. The principle tactic of this company involved promoting the concept of clean air, while avoiding any admission of damage to health from passive smoking, and stressing the argument that smoking is okay if good ventilation practice is followed. The Minister was advised to stress the important public health dimension involved, that customers are entitled to expect smoke free areas in pubs in common with those provided in other public facilities, and that the regulation of licensed premises can be provided for if necessary under the new Bill, but that this is not finalised [46].

The Retail Groups

Three retail groups made contact with the Minister and/ or the DoHC at this time. These included the Irish Retail News Association (IRNA) and the National Federation of Retail Newsagents (NFRN). Both organisations objected to the liability placed on retailers by the new legislation to identify people who were under 18 years of age, to whom. If the legislation was passed in its current form, it would be an offence to sell cigarettes. Both organisations called for the development specific identity cards, claiming that it was

> ..extremely unfair to place the onus of policing the regulations on retailers and publicans who may unwittingly breach regulations and endure heavy penalties due to a lack of commitment on the part of the Government [47]

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[46]Briefing material for Mr Micheal Martin TD Minister for Health and Children for meeting with Vintners Federation of Ireland 18.10.2000/*Vintners Federation of Ireland (VFI) Meetings etc 2000 & 2001, 2002/ ENV/IMP/0/31323*

[47] Letter from Regional Manger NFRN to Minister for Health and Children dated 21.09. 2000 welcoming the introduction of the National Age Card and regretting that it is not compulsory for everyone under 18 years to carry it/*National Federation of Retail Newsagents (NFRN)/ ENV/INF/0/34003*

The other retail group to make contact at this early stage was the Irish Cigarette Machine Operators Association (ICMOA). For the members of this representative organisation there was concern that the proposed changes to the position and display of cigarette vending machines had the potential to damage the business of cigarette vending machine providers. The new legislation restricted the use of self-service cigarette vending machines as a method of preventing those under 18 years of age from purchasing cigarettes. The approach ICMOA took to addressing the effect this would have on their members was to develop an alternative cigarette vending system, for which they sought the Minister's approval. Using this system would place the responsibility for operating the machines with the staff in the premises in which the machine was located. When a total ban on self-service was announced as part of the Governments initiative on smoking on World No Smoking Day (28.10.2001) the organisation urgently sought a meeting with the Minister and his officials. At this meeting, which the Minister did not attend, it was pointed out by DoHC officials that the forthcoming WHO Framework Convention on Tobacco Control would provide for a ban on all vending machines anyway and if this ratified it would be binding on all members states. The outcome of this meeting was a recommendation made to the Minister that

> we should adhere to the position as outlined which is very restrictive but not an actual ban. Some licensed premises may not agree to relocation of machines and may terminate retailing of tobacco products on their premises [48]

5.6.2 Existing Supports

The Health Advocacy Groups

The health advocacy groups active on the issue of tobacco control included the Irish Heart Foundation (IHF), the Irish Cancer Society (ICS), ASH Ireland,

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[48] Note for Minister (Struck through) of meeting with ICMOA held on 07.03.2001/ *Irish Cigarette Machine Operators Association (ICMOA), Tobacco Vending Machines, 2000/ ENV/INF/0/29396*

and the newly established Office of Tobacco Control (OTC). Subsequently, an umbrella group called the Smoking Target Action Group (STAG) was formed, consisting of the Health Boards and all these groups. The issues raised by these groups, individually and collectively, offer a snapshot of the national concerns for tobacco control advocates at this stage of the policy development.

A pre-budget submission made in 2000 by ASH Ireland, (which incorporated the IHF and the ICS) recommended a ban on smoking in the workplace, arguing that 'a clean and safe working environment is essential for health and well-being' [49]. A State funded media campaign to promote this idea among the public was also recommended.

Separately these groups remained critical of some of the measures taken to curb smoking. The ICS, for instance, was publically critical of the Minister for Finance's failure to increase the price of a pack of cigarettes by 79p, stating that the 10p the Minister had imposed in the 2001 budget was inadequate and sent out a bad signal about the Governments policy on tobacco control [50].

The Trade Unions

Although initially in the 'neutral' group of stakeholders, the trade union leadership was contacted, at the request of the Minister, by the health advocacy groups, and informed about the health benefits for workers of a smoke free work environment. The role of the trade unions, particularly those unions representing bar workers, was raised by a number of key informants

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[49] Pre-Budget Submission to Minister for Finance from ASH Ireland, Irish Heart Foundation and Irish Cancer Society, September 2000/ *ASH Ireland Pre-Budget Submission/November 2000/ ENV/INF/0/30952*

[50] Press cutting dated 06.12.01 'Increase not enough , says Cancer Society'(Examiner) 10p on a pack of 20 not enough-Minister Charlie McCreevy is not interested in the health of the nation -sending a very bad signal . We wanted a 79p increase for this budget/ *ITMAC Meetings 2001 And Correspondence/ ENV/POL/0/33999*

as being important, especially the support provided by the bar workers unions.

Box 5.1C The role of the Trade Unions

> The fact that the pub sector, particularly in Dublin, is still fairly heavily unionised was important. Down the country it's not so unionised.... in Dublin pubs in particular being a barman is a steady and respected occupation. It's not something you do for a couple of years between acting assignments. And the fact that the unions were solidly behind it and were part of the NGO alliance was very significant [KI 2]
>
> ....the regional organiser for the Mandate Trade Union, which is basically the barman's trade union, and from day one he was a hundred percent and he had a lot to lose because you had the hospitality lobby saying this is going to result in pubs closing down because they won't be viable because people won't go into them if they can't smoke and he represented people who worked in pubs, yet he bought into the health and safety argument from the beginning and he was hugely important. We put him out in the media lots of times and he was able to debunk a lot of this nonsense [KI4]

5.6.3 Other groups and individuals

The Representation (Reps) system

Lobbying was also conducted through letters, emails and telephone calls to the Minister or his office regarding the proposed tobacco policy and related issues. In a government department this type of communication is processed by the Minister's office through the Representations system. All requests/enquiries/ suggestions addressed to the Minister are logged by the staff in the Minister's office and then relayed to the relevant policy unit or departmental section. A draft reply for the Minister's signature or that of the Minister's Private Secretary, is prepared by the relevant unit and both the question and the final reply are recorded in a dedicated database and are also

printed out and filed on a dedicated 'Reps' file. A new file for reps will be opened each year, depending on the volume of communications received.

Following the announcement of the new tobacco legislation, representations were recorded from members of the public, and from a number of public representatives. These representations concerned such issues as, for example: support for, and opposition to, the prohibition on the sale of packs of 10 cigarettes ;support for the Minister's position; complaints about the lack of enforcement in specific venues/facilities; opposition to smoking in the workplace and support for the proposed measures; support for and opposition to allowing smoking in pubs; reactions to Minister's media appearances (positive and negative); the merits of ventilation systems to clear smoke from the air; legislative exemptions for UK based print media; complaints about smoking in named venues [51]. The replies issued by or on behalf of the Minister were largely based on the findings and recommendations in TATFS (DoHC, 2000) and as the policy developed and the number of representations increased, a standard reply based on this policy document was drafted for use by all units.

5.6.4 Summary: Managing the interest groups

Before the decision to legislate for tobacco control in Ireland was initiated, opposition lobby groups implemented a diverse range of strategies as part of their campaigns against increased regulation. Structured, evidence based arguments, economic analysis; formal submissions and personal representations were among the prominent approaches used. In each case the Minister is seen as the key focus. The role of the civil servants in this phase of the policy development was extensive. They briefed the Minister on the issues relevant to each group meeting, directly met the groups in instances where the Minister was unavailable or advised not to attend,

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[51] Letters of representation to Micheal Martin, Minister for Health and Children/*Representations-Tobacco Issues-2000-2001-2002/ ENV/IMP/0/47103*

summarized the outcome of such meetings and provided updates, background information or further details as required.

The retail and manufacturing groups used this period as an opportunity to try to influence the final composition of the new legislation before it was finalised. The period was used by the Minister and the civil servants as a means of signalling a new approach to the issues involved in controlling tobacco usage.

A number of health advocacy groups had been working for, and demanding, stronger public health measures in relation to cigarettes and smoking in advance of the introduction of new legislation. The issues and concerns of these groups provide a snapshot of the national concerns about tobacco control and the suggestions put forward as solutions. Some of the high profile groups who engaged with the Minister, such as ASH Ireland and the ICS and later the Trade Unions, helped to raise awareness of the need to implement policies to reduce the number of people who smoke, as well as the number of places in which smoking was permissible. The input of these groups can be seen in public health campaigns, budgetary submissions on increasing the price of cigarettes and the involvement of these groups in building consensus for removing cigarettes from the consumer price index. During 2000, interactions with other stakeholder groups in tobacco control became more prominent. In 2001, the introduction of the Public Health (Tobacco) Bill 2001(Government of Ireland, 2001b) acted as a catalyst for increased activity among the group lobbying for tobacco control measures.

5.7 Conclusion to the Unfreezing stage

Initiating the tobacco control policy can be seen as an unfreezing or unlearning stage. The previous approach to tobacco control had been one of voluntary agreements, with the first Voluntary Code on Advertising introduced in 1964. Regulation in this policy area continued to be voluntary, although tighter regulation was introduced gradually over the intervening

years. The year 2000 marked the beginning of new approach to the regulation of the production, sale and use of tobacco products.

Framing this stage of the process was the international tobacco control initiatives of the WHO and the EU, to which Ireland was a party. These provided both a supportive context for initiatives introduced at the national level and a time frame for reporting progress. The second framing mechanism was the evidence base provided by the DoHC report 'Towards a Tobacco Free Society' (DoHC, 2000). This evidence base in the report was used, in the early stage of the process, to overcome internal opposition and to refute the evidence based claims made by individuals and groups with an interest in maintaining the status quo.

The substantial policy changes relating to tobacco control were introduced into a policy field where health promotion and environmental protection policies were already attempting to change perceptions and practice. The cross-over between these types of policy was facilitated by the mechanisms chosen to enhance tobacco control. The policy mechanism chosen for strengthening tobacco control in Ireland was legislation. The provisions of the proposed Bill empowered the Minister to regulate ETS to a greater extent, which, when enacted, would further the goals of both the Cardiovascular Strategy (DoHC, 1999) and the Cancer Control Strategy (DoHC, 1996). This gave the legislation an added momentum as it addressed the health promotion and environmental protection objectives of both these Strategies, as well as the proposed new tobacco control measures.

Choosing legislation as the policy mechanism for change involved seeking the input of other government departments with a related policy interest in tobacco control. In the case of the introduction of the Public Health (Tobacco) Bill 2001 (Government of Ireland, 2001b), this process identified significant issues in relation to the required procedures, and the provisions of the Bill. Dealing with these issues delayed the development of the tobacco control

regulation and increased the tensions between the parties responsible for its introduction.

Discussion and justification of proposals for increased tobacco control, during the early stages of the policy process, was guided by two key considerations. The first was the concerns and interests of the groups impacted by the proposed changes, which were based mainly around commercial interests. These emerged quickly, following the announcement of the government's decision that a particular set of recommendations were now government policy in relation to tobacco control. The second was the requirements of the Houses of the Oireachtas, in relation to passing legislation, responding to the ensuing Parliamentary questions and participating in Dáil debates on the issues arising. Responses to Parliamentary Question and contributions to Dáil debate relied heavily on the evidence base provided in the report Towards a Tobacco Free Society (DoHC, 2000).

Active lobby groups during the unfreezing stage had varying responses to the proposed changes to tobacco control policy. The health advocacy groups were the most active pro control groups, consistently calling on government to impose higher cigarette prices and enforce tighter controls in relation to tobacco sales to young people. They were also the first to request a total ban on smoking in all public places. These groups typically had a developed research agenda and provided an evidence base for their arguments. They maintained close connections with the Department and the Minister, who called on their support for persuading other groups to support the efforts being made to regulate the advertising, sale and consumption of tobacco.

The commercial interests formed another lobby, which was against much of the new regulation, as it appeared to pose a threat to their industry. These groups were kept at a distance from the Department and from the Minister, especially while the details of the new regulation were being worked out. The third perspective was that of the organisations unaligned to either the protesters or the supporters of increased tobacco control. Among these were the trade union and employers groups. These group were, at this stage in the

process, targeted by the Minister in an effort to gain further support for higher levels of tobacco control.

The unfreezing stage of this process included the announcement of and justification for changes in tobacco control policy in Ireland, the discussion of and making decisions about those changes, the initiation of the procedures and processes needed to make them, and the management of reactions to them. The context in which this process was initiated coincided with an international effort at tobacco control and regulation, and an increased awareness of the dangers and damage caused by tobacco use.

The next chapter outlines the mobilisation stage, in which all the forces working towards and against change are active. Borrowing again from Lewin's three stage model, this is the stage at which change occurs.

Chapter 6 Mobilisation

6.0 Introduction

This chapter presents the major themes and underpinning categories in the second stage of the policy making process. Utilising the concepts in Lewin's model of change framework, this is the mobilisation stage. Interpreters of Lewin's stages model have referred to this second stage as the 'changing' stage, (Schein, 1999) or the 'moving' stage (Burnes, 2004b). It is at this point in the process that the change happens, following the disruption of normal behaviour during the unfreezing stage and prior to the consolidation that will occur in the refreezing stage which follows. Table 2 presents the major themes identified in the tobacco control policy making process and the key categories which underpin them. These will be discussed in terms of their contribution to the second stage of the policy making process. Each document and file referred to is referenced in a footnote.

Table 6.1 Mobilisation Stage: themes and categories

Stage in the process	Major Themes	Underpinning Categories
Mobilisation	2.1 Selling the message	1.1a Focusing on specific groups and events
		1.1b Building momentum
	2.2 Managing Change	2.2a Enforcing new regulations
		2.2b Restructuring Relationships
	2.3 Aligning domestic and international goals	2.3a Debating the issues in Europe
		2.3b Influence of the tobacco industry
	2.4 Progressing the policy	2.4a Supporting and Undermining the initiative
		2.4b Leading on change

6.1 Selling the message

The first major theme to emerge from the data assigned to the mobilisation stage is 'Selling the Message'. This theme emerged in relation to organised events and campaigns that focussed on promoting the tobacco free message, and on reinforcing the Government's stated approach to the issue of tobacco control. Having successfully brought the policy proposals to Government and introduced a Bill which was being progressed through the Dáil and Senate, the focus of the policy makers shifted away from the internal processes to the wider population. Selling the message was an important undertaking for establishing the Government's intent and for persuading smokers and non-smokers of the necessity and value of the new measures. The two categories which underpin this theme are 'Focussing on specific groups and events' and 'Building Momentum'.

6.1.1 Initial reactions to new Regulations

Following the introduction of new legislation in 2001 (Government of Ireland, 2001a), significant changes to the way in which tobacco products could be advertised and sold were introduced. Subsequently the necessary monitoring systems required to police and enforce the measures were established. These regulatory changes affected tobacco manufactures, retail outlets, the advertising industry, and sections of the hospitality sector. Negotiations between the policy makers and the representatives of these sectors were on-going before, during and after the introduction of the legislation. When the legislation was passed the issues arising around compliance with the resultant new regulation emerged quickly. The representatives of the affected sectors brought forward the arguments of their members for exceptions to the required compliance-particularly in relation to the regulations intended to protect children and young people. The way in which the new message about tobacco control was 'sold' at this stage of the process relates to the response made to these arguments and the extent to which concessions were made.

6.2 Anti-Smoking Campaigns

In terms of the general population TATFS articulated the view that the existing tobacco control measures were compromised by a 'social ambivalence' to tobacco consumption and that

> A change of public attitude towards tobacco use is an essential precursor to change in social behaviour (DoHC, 2000: 43)

Previous efforts of the DoHC to influence public attitudes to smoking were evident in the public media campaigns which it had commissioned since the late 1980s. Taking over the public education function that had previously belonged to the disbanded Health Education Bureau, the anti-smoking campaigns of the Health Promotion Unit reflected changes in thinking, over time, about smoking, health education and addiction. The message had, over time, become more focussed, with campaigns targeting specific groups with information about the effects of tobacco use on them. Additional measures were put in place to support people trying to stop smoking, and the message about the unacceptability of smoking, was underlined in a variety of targeted campaigns. In addition, momentum was built up through participation in research and also in high profile events that received considerable media attention.

6.3 Focusing on specific groups and events

A number of groups were targeted specifically in terms of changing attitudes to smoking and protecting vulnerable groups of people. The specific groups include addicted smokers, children and young people, and women. Events, such as World No Smoking Day, conferences and sponsored tournaments were used as opportunities to further disseminate information about the consequences of tobacco use, and the supports available for reducing that use.

Box 6.1A The Health Promotion Unit DoHC

> It was decided to wrap up the Health Education Bureau and to bring the function into the Department. Now it was done in an unusual way because there was quite an outcry at the time about what was perceived to be a very valuable agency that was doing very good work and was beginning to develop a kind of a presence around some of these issues being lost in the bureaucracy of the Department. So it was agreed at the time that the HPU could operate kind of semi autonomously within the Department particularly in the sense that it had its own budget [KI 3]

Addicted Smokers- Anti-smoking media campaigns directed at smokers in the general population had been a key part of tobacco control policy since the late 1980's [52]. The campaign 'Smoking is Dangerous and Disgusting -Stop it Now' ran from 1989 until 1992, and was followed in 1995 with the 'Say what you like, smoking kills' campaign which ran for 2 years. 'Break the habit for good' was launched in 1998 as a joint promotion by the DoHC, the Irish Cancer Society and the regional Health Boards. This campaign took a different approach to persuading smokers to quit by emphasising the positive effect which stopping can have, and by offering support in the form of a free advice kit, and a helpline, operated by the Irish Cancer Society. This campaign was targeted at the whole population and again, designed to encourage smokers to stop and non-smokers not to start. The campaign 'Every Cigarette is Doing you Damage' was launched in October 2003. This media campaign was originally developed in Australia and was by then in use in over 50 countries. It consists of television and press advertisement's that give graphic details about the effect smoking has on a smoker's body.

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[52] List of health promotion and public information campaigns run by the Health Promotion Unit Department of Health and Children, including the costs associated with each one, from 1988 until 2004. The Health Promotion Unit was established in the Department of Health in 1988 , after the Health Education Bureau was disbanded / Health Promotion Unit Anti-Smoking Campaigns 1988-2004/ TCU/INF/0/54020

Other measures put in place to support those attempting to quit included, in 2001, making Nicotine Replacement Therapies (NRT) available to all medical card holders. The pharmaceutical companies showed a particular interest in the liberalisation of regulation around the availability of NRT products, contacting the Minister to urge that

> The opportunity afforded by the Bill is also utilised to effectively address barriers to the wider availability of NRT products[53]

Making NRT more widely available required removing NRT products from the Poisons Register, thereby removing the requirement on those who sold these products to keep a register of who it was supplied to. While the removal of a product from the Poisons Register was not under the control of DoHC, it was anticipated that this would be an issue for discussion as the Bill passed through the Dáil, and the issue was referred to the Poisons Council for advice [54]. The reply from the Council agreed that the register-keeping requirement should be removed from the Regulations, but also expressed

> ....considerable concerns at any possibility that the legal classification of these products could be changed in a manner which would bring about their wider availability through outlets other than pharmacies[55]

The Chief Pharmacist in the DoHC indicated that the pharmaceutical company making representations about NRT was the major player in the marketing of NRT products, and stood to gain financially from any liberalisation of the regulations relating to how these products were sold to the public. There was also concern among medical professionals that these products would

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[53] Letter dated 11.12.2001 from the General Manager Pharmacia Consumer Healthcare to Micheal Martin Minister for Health and Children re Public Health (Tobacco) Bill 2001 and removal of Nicotine Replacement Products from Poisons Register/Nicotine Replacement Therapies /ENV/INF/0/37231

[54] Hand written note dated 15.02.2002 from Environmental Health Unit to Medicine Unit on letter from Pharmacia Consumer Health Care dated 11.12.2001 –'Pl see. This has little to do with the Tobacco Bill and more to do with medicines legislation and poison regulation. However it probably will emerge as an issue at Committee stage of the Bill. Pl consult the Principal Officer in Environmental Health Unit about referring this formally to Irish Medicine Board for urgent response and revert to asap / Nicotine Replacement Therapies/ ENV/INF/0/37231

[55] Email dated 16.01.2002 from Chief Pharmacist DoHC to Medicines Unit DoHC, re Nicotine Replacement Therapy and Poisons Regulation, relaying response from Poisons Council to request for opinion on removal of NRT from the Poisons Register/ Nicotine Replacement Therapies/ ENV/INF/0/37231

eventually replace current tobacco dependence. The opinion of the Chief Pharmacist on the matter was that the proposal of the company should not be supported[56]. At the suggestion of the Chief Pharmacist the matter was also referred to the Irish Medicines Board, (IMB) who provided the advice that

> The IMB favours retaining the current pharmacy-only control of sale because the general principal is that unless there is a good reason to the contrary medicines should be sold in pharmacies; transfer to nonmedical outlets will aid the impression that NRT is a smoke free alternative to smoking, and not a medicine. .....Difficult to see the need for general sales-theoretically 24 hour availability of NRT might prevent some relapses, but it would be useful to see some tangible evidence that this is the case[57]

Despite the opinions expressed by the Chief Pharmacist, the Irish Medicine Board and the Poisons Council, the Minister requested that the appropriate section in the Department initiate the measures necessary to amend the Poisons Regulations to allow for the sale of NRT products in retail outlets and sought to introduce a new section dealing with NRT into the bill. This issue was explored in the key informant interviews, and both sides of the debate are represented in the quotes in Box 6.1.B.

At a meeting with the Pharmaceutical companies in 2003, the Minister stated that while the Tobacco Act dealt with tobacco products and was not relevant to the sale of NRT, he suggested that the companies should reapply to the IMB to have NRT removed from the Poisons Register, and that they should copy the information detailed on their application to him. He would write to the IMB and ask them to take a broader public health policy perspective on the matter. The Minister also suggested that following the announcement of

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[56] Email dated 16.01.2002 from Chief Pharmacist, DoHC to Medicines Unit DoHC re Nicotine Replacement Therapy and Poisons Regulation, referring to letter of 11.12.2001 from Pharmacia Ireland Ltd seeking removal of Nicotine Replacement Therapy from the requirement under the Poisons Regulations Act 1982 as amended, thereby purchasers are obliged to sign the poisons register before each sale of such products/ *Nicotine Replacement Therapies/ ENV/INF/0/37231*

[57] Letter dated 4.6.2002 from the Medical Director, Irish Medicines Board, to Principal Officer, Medicines Unit, Department of Health and Children / **Nicotine Replacement Therapies/ ENV/INF/0/37231**

the work place ban there may be an opportunity for the Department and the NRT companies to launch a concrete media and advertising campaign on smoking and cessation, a suggestion which the company Pfizer affirmed the company would be interested in. The Minister undertook to meet with the CEO of the IMB and to send a letter to the IMB supporting the sale of NRT through retail outlets as beneficial to the wider public health[58] . There is however, no record of any further contact between the IMB and the Department or the Minister on file in relation to this issue.

Box 6.1B Nicotine Replacement Therapy Products

> ...involves the inherent risk but it also involves people's behaviour and ...I always found the IMB a sensible and serious organisation. They knew what the desired outcome was and they were unable to give it to us and they didn't make any bones about it. This is our advice. Now if Michéal Martin had insisted I'm not sure it would have been wise. I went, I remember talking him through it and he wasn't happy [KI 2]
>
> ...when you get that kind of advice you're slow to, any Minister would be slow to unilaterally disregard it. ....could have but because it's the professional Chief Pharmacist saying this will endanger life, you know..... but ....I was frustrated about it and quite angry about it. [KI 5]

6.3.1 Children and young people

Health promotion campaigns targeted at smokers had been run by the Health Promotion Unit in DoHC since the late 1980's [59]. Children and young people are singled out in TATFS as being in need of protection due to their increased vulnerability to addiction to tobacco products (DoHC, 2000:44). The provisions of the Health (Miscellaneous Provisions) Act 2001(Government of

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[58] Note of meeting with Pfizer/Pharmacia Consumer Health Care in Leinster House 28.05.2003/ Nicotine Replacement Therapies/ ENV/INF/0/37231

[59] The Health Promotion Unit Anti-Smoking Campaigns 1999-Present */Health Promotion Unit Anti-Smoking Campaigns 1988-2004 / TCU/INF/0/54020*

Ireland, 2001a), included a section which raised the age at which it was legal to sell cigarettes to a customer from 16 to 18. This section was specifically intended to protect young people and to place the burden of the implementation of the new measure on the retailer. The principal objections to the section came from the Associations representing retailers in the licensed trade and retail sector. The main problem was the difficulty their members would have in accurately assessing the age of young people without the introduction of an official, compulsory age identification card. There were also objections to the increased penalties members would suffer if they failed make a correct assessment of a young person's age [60]. Earlier suggestions by the retail sector included making it an offence for people under 18 to purchase as well as be sold tobacco products. This suggestion was rejected by the Department on the basis that retailers should take responsibility for the products they sell, and young people should not be criminalised for buying them [61]. The media interest in the enforcement of these new regulations was noted in the Department, with some press reports suggesting that up to 25% of all premises sold cigarettes to children, with very few asking for proof of age [62].

6.3.2 Women

The OTC commissioned research on the attitudes of Irish women to smoking, which was published in September 2003 (MRBI, 2003). In the press release that accompanied the launch of the Report, the Chairperson of the OTC Board of Management stressed the need for a concentrated and focussed effort by

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[60] Submission to Minister for Health and Children from the Regional Manager, National Federation of Retail Newsagents, dated 17.10. 2001,outlining his members concerns about the lack of guidance on age identification from the Department, and a proposal that a proof of age card/id card should be compulsory/ *National Federation of Retail Newsagents (NFRN)/ ENV/INF/0/34003*

[61] Note prepared for Minister for Health and Children by Environmental Health Unit staff in advance of a meeting with the Irish Retail Newsagents Association (IRNA) in the Department of Health and Children on 12th July 2000 at 7.30pm/ *Irish Retail Newsagents Association/ ENV/IMP/0/33023*

[62] Press reports about the findings of a survey of 100 retailers in Co Cavan and Monaghan which found that 25% of all premises sold cigarettes to children, with just one asking for proof of age/ *Tobacco Products Underage Sales Enforcement Prosecutions, etc /ENV/POL/0/35937*

all those interested in women's health, to develop effective smoking cessation programmes specifically for women.

> When it comes to actually trying to give up, the research shows that women are more likely to try to quit than men but are less successful. For women the key drivers in trying to quit include personal health concerns, price increases, the birth of a child, pregnancy or the death of a family member from a smoking related illness [63]

In reported comments in the same Press Release the Director of the National Cancer Registry highlighted a finding from the research that women seemed prepared to reduce their smoking to improve the health of their children, but that they may also resume heavy smoking later in life.

> This would accord with the finding of the National Cancer Registry that lung cancer is increasing most rapidly in older women, and also suggests that more effort needs to be devoted to controlling smoking in middle aged women [62]

In the DoHC Press Release issued on the same day, the Minister for Health and Children welcomed the publication of the Report commissioned by the OTC, and took the opportunity to reinforce the message about the upcoming smoking ban

> No one can be in any doubt that working to protect employees and the public by creating a smoke free environment in the workplace is a positive goal and that it will result in many benefits for us all and particularly for future generations [64]

In 2000, a new component was added to an existing anti-smoking media campaign aimed at the general population. The new component was

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[63] Office for Tobacco Control Press Release 02.09.2003 New Report Shows Women have Particular Difficulties in Quitting Smoking : Based on current trends, lung cancer to become predominantly female disease by 2020/*OTC Report 'Irish Women and Tobacco' September 2003/ENV/IMP/0/46578*

[64] Department of Health and Children Press Release: Micheál Martin welcomes the publication of the Report on Irish Women and Tobacco , 2 September 2003/ *OTC Report 'Irish Women and Tobacco' September 2003/ENV/IMP/0/46578*

specifically targeted at teenage girls. This campaign, which was called NICO, was launched by the Minister on 10th October 2000 and ran for several years. The approach taken in the new campaign was to speak to young people in terms they would understand, and to highlight the unappealing aspects of smoking

> The simple message of this campaign is that smokers are less attractive and it uses a range of anti-cosmetics presented by a character called 'NICO' [65]

The NICO campaign was revived in 2004 in a new advertisement based on the MTV programme CRIBS.

> Young people are image-conscious and are concerned with what is happening to them right now. Therefore highlighting the immediate and horrific impact of smoking on skin, hair and teeth, for example, is a much stronger and more meaningful way of highlighting the dangers of smoking [66]

6.4 Building Momentum

As the policy development progressed, momentum began to build around tobacco control, and the signs of a change in approach were becoming more noticeable.

6.4.1 Events

DoHC/OTC sponsorship of the Irish Masters Snooker Championship resulted from a commitment given by the Minister to help source alternative funding, following the withdrawal of funding from the Benson and Hedges Tobacco Company, due to the new regulations banning all tobacco advertising and

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[65] Speech by the Minister for Health and Children Mr Micheál Martin TD, on the occasion of the launch of the Department of Health and Children's Anti-Smoking Campaign Aimed at Young Girls on Tuesday 10th October at 2.30pm, in the Irish Film Centre/*Health Promotion Unit (HPU) Campaigns, Launches 2000/ENV/IMP/00/29214*

[66] Department of Health and Children Press Release 27th May 2004 Smoking Fiend 'NICO' Returns for new anti-Smoking Campaign for Teens/*NICO anti-smoking campaign, 2004 Health Promotion Unit /ENVINF/0/544322*

sponsorship [67]. The Department press release, which contained the offer to help find alternative sponsorship for the event, noted that

> We were one of the first countries to introduce restrictions on tobacco advertisements and sponsorship by the industry, measures that were later adapted for the whole of the EU and which are now the gold standard internationally [68]

Following discussions with the Department of Finance, a press briefing and photo call were held to announce the decision that the DoHC would sponsor the event. The rationale for this decision was that replacing tobacco company funding with Government funding, would be seen as a major public relations victory. This would raise the profile of the HPU and/or the OTC and promote the anti-smoking message[69]. The material prepared for the press briefing noted the Ministers preference for the funding to be channelled through the OTC[70].

The decision was not universally welcomed, however and the issue was raised in the Dáil.

> Ms Owen: will the Taoiseach offer any explanation or justification for the Department of Health and Children spending £600,000 to sponsor the Irish Masters Snooker Tournament at this time when people are waiting for hip and cataract operations. ....It represents a PR spin-doctoring opportunity for the great master of spin, the

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[67] Press Release from Gallaher Dublin Ltd dated 26/09/2000, stating new law forced Benson and Hedges to withdraw from Irish Master Snooker Sponsorship -forced by new Government regulations introduced by Minister for Health banning all tobacco ads and sponsorship/ *Sponsorship of Irish Masters Snooker Tournament / ENV/IMP/0/36462*

[68] DoHC Press Release of 26/09/2000 / *Sponsorship of Irish Masters Snooker Tournament / ENV/IMP/0/36462*

[69] Memo dated 18.01. 2001 faxed to Department of Finance from Assistant Secretary Department of Health and Children, laying out position and proposing co- sponsorship by either or both of the Departments or Government agencies... It would precede the enactment of the new tobacco legislation and would be a first significant high profile implementation of the Ministers/ Gov Smoke Free Society Policy. For consideration / *Sponsorship of Irish Masters Snooker Tournament / ENV/IMP/0/36462*

[70] Hand Written note to Secretary General dated 17.10.01, noting Minister's preference for the funding to be channelled through the OTC-available within the allocation for anti- tobacco initiatives this year. Alternate sponsors may emerge so DoHC commitment may not be for 3 years / *Sponsorship of Irish Masters Snooker Tournament / ENV/IMP/0/36462*

> Minister of Health and Children Deputy Martin. There is no justification for it [71]

Reaction to the proposal was captured in the media coverage of the announcement. The Chairperson of ASH Ireland, Dr Fenton Howell, welcomed the announcement

> Everybody says we need to be more imaginative and to fight them on their own ground, and issues like this need to be looked at. Being innovative is a positive thing [72]

Other media reports indicated opposition to the idea on the basis of cost and the appropriateness of the DoHC providing sponsorship to a sporting event

> Labour TD Liz's MacManus slamming of the Ministers decision to sponsor the IMST over 3 years, saying the £600,000 should have come from the Sports Department, not the DoH. 'Our Health System is in crisis but the Minister is not spending the budget wisely-there are over 30,000 people awaiting hospital treatment' she said [73]

The roll out of the sponsorship added to the tensions in the relationship between the OTC and the Department. These were highlighted in a review document submitted by the event organisers to the DoHC. This report listed the difficulties experienced by the event organiser with the OTC. These included the OTC refusing to make payments, failing to make contact with event organiser, making demands outside the agreement, poor communication between OTC and DoHC and interference with the marketing communications. The letter concludes:

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71 Transcript of Dail debate 31.1.2001. Ms Nora Owen, TD Fine Gael Party/ *Sponsorship of Irish Masters Snooker Tournament / ENV/IMP/0/36462*

72 Journal article titled 'Ash supports Dept snooker sponsorship' by Donal Bergin, Irish Medical News February 5, 2001/ *Sponsorship of Irish Masters Snooker Tournament / ENV/IMP/0/36462*

73 Minister slammed for sport handout by Damian Lawlor The Star , 31.02.200/ *Sponsorship of Irish Masters Snooker Tournament / ENV/IMP/0/36462*

...working with the OTC proved to be very difficult for the duration of the sponsorship... We suggest that the Department seriously reconsiders what role if any the OTC should play in the sponsorship [74]

This issue was explored with key informants as no further explanation is recorded on file, and the funding arrangement was not maintained with the OTC. The events became clearer when key informants explained the view held by the CEO of the OTC of the snooker tournament as being 'the orphaned child of the tobacco industry' (KI I). Because the snooker tournament had previously been funded by the Benson and Hedges Tobacco Company, the CEO of the OTC considered it to be a contaminated event, with which he did not wish to involve the OTC.

World No Tobacco Day

Where possible key policy developments were launched on dates that had significance in terms of tobacco control. For example, the WHO World No Tobacco Day, typically held at the end of May year, was used by the Minister in 2001 to launch a new institute to study smoking[75]. May 31st 2002 was used to announce the signing of the Public Health (Tobacco) Act 2002 (Government of Ireland, 2002), which established the OTC on a statutory basis[76].

Seminars and conferences.

Presenting current research findings and the dissemination of information about the negative effects of tobacco consumption was an important part of the role of the OTC, and one which facilitated the spread of the message

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[74] Letter to Principal Officer, Health Promotion Unit, Department of Health and Children from QMP Darcy (date illegible) re Post Sponsorship Review-Irish Masters Snooker-joint Sponsors/ *Sponsorship of Irish Masters Snooker Tournament / ENV/IMP/0/36462*

[75] Press release dated 31.05.2001 'Minister launches new institute to study smoking'/ *Research Institute for a Tobacco Free Society / ENV/INF/0/46495*

[76] Briefing note for Minister Micheal Martin -'To mark World No Tobacco Day on 31 May 2002' /*WHO - WORLD NO TOBACCO DAY, 2002 / ENV/INF/0/37232*

about Ireland's position on tobacco regulation. The OTC discharged this part of its function through a series of seminars and conferences aimed at policy makers, practitioners and academics interested in the field of tobacco control. On 1st November 2001, the OTC organised an international conference which was held in Dublin Castle called 'Legislating for a Tobacco Free Society'. The key note address was delivered by David Byrne, EU Commissioner. Dr Derek Yach Executive Director, Non-communicable Diseases and Mental Health at the WHO, also addressed the conference. The speech drafted for the Minister included material on the scope and nature of global tobacco epidemic, nicotine addiction, behaviour of the tobacco industry, and Ireland's response[77].

The Conference was attended by an international audience but also included several members of staff of the EHU. The notes taken at the conference by an unidentified member of staff included comments (in brackets) on : the removal of Tobacco from the Consumer Price Index (not realistic); the usefulness of banning sponsorship by tobacco companies (EU in dispute); Threat of Tobacco lobby; the German 'ingredient'; as well as notes on workshops attended. Most of the issues noted were already part of the Irish policy making process, although thinking would change on some of them over the coming months, particularly in relation to how realistic it was to consider an overall ban on smoking[78].

In 2002 the OTC organised a seminar titled the 'Economics of Tobacco Control and Irish Fiscal Policy'. The event included presentations by Irish experts (from the Central Statistics Office, the Economic and Social Research Institute, the Revenue Commissioners and MRBI) and an international

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[77] Note dated 31.10.2001 from Environmental Protection Unit to Assistant Secretaries, DoHC, with draft speech attached/ *International conference 'Legislating for a Tobacco Free Society'-Dublin Castle-1st November 2001/ ENV/INF/0/35093*

[78] Conference notepad dated 01.11.2001 with Hand Written notes, unsigned, noting and commenting on issues discussed / *International conference 'Legislating for a Tobacco Free Society'-Dublin Castle-1st November 2001/ ENV/INF/0/35093*

contribution from the European Anti-Fraud Office. The key note address was delivered by Professor Frank Chaloupka, Director of the Health Policy Centre and Professor in the Department of Economics at the University of Illinois. Professor Chaloupka was described as a leading international economist in the area of tobacco control, and co-author of the World Bank's policy report: Curbing the Epidemic; Governments and the Economics of Tobacco Control (The World Bank, 1999). The purpose of this seminar was to look at effective economic interventions (price increases, taxes, etc.) on tobacco consumption with particular emphasis on the effects of smoking on children and people in lower income groups. This seminar was also attended by Department staff, and again the hand written notes indicate the issues that were noted by these policy makers at that time. The issues noted were including demand side policies (higher taxes, information, warnings, access to NRT) the most price responsive groups (the young and the poor) finding the right level of tax, (a yardstick of two thirds to four fifths of the retail price); Smuggling and the Industry; The link between alcohol and tobacco campaigns; the underdevelopment of research in Ireland; peer groups and social norms in this country, and other issues[79].

A third event organised by the OTC was a seminar on Smokers Attitudes, Behaviour and Cessation in March 2003[80]. The key note address was given by Dr Gregory N Connolly Director of The Tobacco Control Programme, Massachusetts. The focus of this seminar was the needs of smokers in relation to smoking cessation. Notes taken by a member of the TCU staff attending the conference include reference to; the rise in the number 'smoke free' households between 1993 (41%) and 2001 (73%); indications from recent polls of the percentage of smokers who want to give up smoking; economic models that reflect smokers desire to stop; smoke free hospitals; smoking

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[79] Hand Written notes taken at the seminar, Economics of Tobacco Control & Irish Fiscal Policy, unsigned/ *Office of Tobacco Control Seminar: the Economics of Tobacco Control & Irish Fiscal Policy -19 Sept 2002/ ENV/INF/0/40277*

[80] DoHC Press Release Address by Micheal Martin TD, Minister for Health and Children, at the opening of Smokers -Attitudes, Behaviour and Cessation, 4th March 2003 /OTC Seminar:Smokers Attitudes,Behaviour & Cessation /ENV/POL/00/40279

and pregnancy; the Smokers Quitline and other advertising campaigns; over the counter of nicotine replacement therapies, and other issues[81].

6.5 Summary of 'Selling the message'

Following the introduction of Tobacco Control Bill, and the announcement of stronger tobacco control measures, the policy focus shifted away from statements of intent and towards targeted campaigns to raise public awareness. While some sections of the population were targeted directly, including addicted smokers, children and young people and women, there was also a concerted effort to persuade the general public of the danger of the effects of tobacco use. Various options to reduce tobacco use were considered and implemented, including tax increases, legal measures to prevent the sale of tobacco products to children, and the provision of supports to assist those who wished to quit. One measure, the liberalisation of the retail of nicotine replacement therapies, generated divergent opinions on the most appropriate approach to take, and juxtaposed the power of the Minister with the specialist advice of the civil service.

Momentum was built for increased tobacco regulation through a series of high profile activities. The sponsorship by the DoHC, through the OTC, of Irish Masters Snooker Championship generated divergent opinions, ranging from being considered a major step toward a tobacco free society, to being seen as an untimely waste of resources. The administration of this policy decision was problematic, and revealed an underlying tension between the Environmental Policy Unit, responsible for the decision and for the required funding, and the OTC, which had responsibility for implementing it. Other events built momentum within the research and scientific communities through conferences, seminars, and commissioned research, which were organised by the OTC and with which the Minister was fully engaged.

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[81] Hand Written notes taken at the seminar, Smokers -Attitudes, Behaviour and Cessation -unsigned/ *OTC Seminar:Smokers Attitudes,Behaviour & Cessation /ENV/POL/00/40279*

As the message about the dangers of tobacco use was being delivered, and the momentum was building for a definitive action on tobacco control, changes were being managed by the policy makers creating the policy direction and implementation.

6.6 Managing Change

6.6.0 Introduction

Many of the issues which the DoHC dealt with in this phase of policy development were around the enforcement of the new Regulations, particularly in relation to the retail and commercial sectors. The new Regulations presented challenges to tobacco product manufacturing and retail sector and more generally to retailers and businesses operating in environments where tighter or new Regulations would be applied. These issues were presented to the Minister and the Department and were addressed in a variety of ways. There were also issues that called for a restructuring of existing relationships between the government and the vested interests effected by the changes.

6.6.1 Enforcing new regulations

The passage of the Public Health (Tobacco) Bill (Government of Ireland, 2001b) through the stages of enactment focused attention on the changes that the final legislation would imposed. Submissions continued to be made to the Minister by lobby groups for whom the enactment of the Bill would have commercial consequences. Two different approaches to mitigating the effects of the forthcoming regulations are reflected in these submissions. One approach was the effort to adapt business practice to comply with the legislation in advance of its full introduction, as taken by the. The other was to request the insertion of a specific section in the Bill which allowed the Minister to provide for specific circumstances Examples of these approaches are provided by the interactions between the DoHC and the Irish Cigarette Machine Operators Association (ICMOA), and with the specialist tobacco products shop, JJ Fox.

6.6.2 Opposition from business organisations

The Irish Cigarette Machine Operators Association (ICMOA) submitted a proposal outlining a token-operated vending machine system they had developed for their members, which they believed would overcome the restrictions placed on access to vending machines in the new Bill[82]. Over the following year they met a number of times with the Minister and/or Department officials to discuss the requirements, enactment timeframe and implications of the new legislation for their members. Following the announcement that a workplace smoking ban would be introduced in January 2004, this organisation wrote directly to the Taoiseach, outlining their opposition to the proposed ban[83]. In this letter they raised a number of key points which they felt were ignored during the public debate on the issue. These included: the negative and damaging effects such a ban would undoubtedly have on the tourist trade, resulting in a 30%-40% loss in the hospitality industry; the questionable findings in the James Repace research (Mulcahy and Repace, 2002); the fact that the research quoted by the OTC which showed little or no loss of trade in restaurants where bans were introduced, was because people could smoke in bars; the position of registered home workers in Ireland; the fact that cigarette vendors would be put out of business; the way in which the Irish weather mitigates against outside smoking; the listing of alcohol as a Class A carcinogen that is not banned, and the claims made by the ventilation industry that they can remove 99% of airborne contaminants. The letter, ending with the enquiry 'will political correctness prevail over common sense?', was accompanied by the ICMOA analysis of the OTC/HSA report on smoking in the workplace, which disputed the research reports used in the report. Also attached was a report to the members of the ICMOA on the projected negative financial

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[82] Letter dated 20.10.2000 from the Public Relations Company Paul Allen & Associates on behalf of the ICMOA to Secretary General re Launch of a vending system to prevent the sale of cigarettes to minors / *Irish Cigarette Machine Operators Association (ICMOA), Tobacco Vending Machines, 2000/ ENV/INF/0/46499*

[83] Letter dated 17.7 2003from CEO,ICMOA to an Taoiseach / *Irish Cigarette Machine Operators Association (ICMOA), Tobacco Vending Machines, 2003 Vol 2/ ENV/INF/0/46499*

impact of the proposed change in legislation. A standard letter of reply issued to the CEO of ICMOA, reiterated the adverse impact of tobacco consumption on human health; the repeated confirmation of tobacco as a cause of cardiovascular disease, common cancers, chronic obstructive pulmonary disease, asthmatic attacks, low birth weight babies and sudden infant death syndrome. The letter ends with the advice that

> The ban will mean a cultural change for people right around the country and a lead-in period has been allowed to give people the time to adjust to the change. The ban on workplace smoking is one of a number of measures being taken in the area of Tobacco control. I trust this clarifies the matter for you [84]

No further correspondence is recorded on this file in relation to the concerns of the members of ICMOA. Following 29th March 2004, all cigarette machines in public houses were required to be operated behind the bar by bar staff.

6.6.3 Seeking a derogation

The first submission requesting a derogation to be placed in the Public Health (Tobacco) Bill, 2001(Government of Ireland, 2001b) was from specialist retail outlets selling tobacco products. This case is interesting in that it concerns an organisation which is effectively in opposition to the tobacco control measures being proposed. However, this organisation presents its arguments differently than the tobacco industry or the vintners' organisation, or the main stream retailers, which it most closely resembles. Instead the request is presented a specialist/exemption frame, mingled with references to the historic, cultural values that did not work for the Licensed Vintners Association. The latter attempted to present their case based on an image of old Victorian pubs which could not be easily ventilated or altered etc. The details in the submission to

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[84] Letter dated 13.08.2003 to CEO, ICMOA from Minister for Health and Children's Private Secretary / *Irish Cigarette Machine Operators Association (ICMOA), Tobacco Vending Machines, 2003 Vol 2/ ENV/INF/0/46499*

DoHC from JJ Fox Ltd [85] stressed the traditional character of the company, before it listed the supporting arguments for a derogation, as follows:
JJ Fox is one of the oldest retailers in Grafton Street, with a tradition of selling fine cigars for over 100 years.

JJ Fox is part of traditional Dublin-established in the late 1800's and has had 5 generations of the family involved.

The shop is bound up in the tradition of the city and in particular with those of Trinity College Dublin. The following arguments are then made
-Cigar smokers are mature individuals making an informed choice;
-Market share is tiny;
-Cigars are not chain smoked and not intended to be inhaled.
-Cigars had never been mass produced or consumed on a large scale.
-High price of cigars is an important determining factor in keeping consumption irregular and adult.
-Customers make their purchasing decision in much the same way as a consumer purchasing a fine wine, based on country of origin and subtitles of flavour, blend etc./need to be able to see what they are buying,
-Customers have already decided to buy then they come into the shop so hiding the product makes no difference.

A meeting was held to discuss this request on 20.11.2001, at which Departmental officials outlined the position

> ..that from a public health view there is no distinction made between different types of tobacco products, all consumption of tobacco products carries a significant health risk [86]

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[85] Submission dated 20.11.2001 to Department of Health and Children regarding the Tobacco and Public Health Bill 2001, from one of oldest retailers in Grafton Street/ *Public Health (Tobacco) Bill 2001 (September 2001) Vol 7/ ENV/IMP/0/28440*

[86] Report dated 20.11.2001 of meeting with JJ Fox Limited re Public Health (Tobacco) Bill 2001 in Department of Health and Children/ *Public Health (Tobacco) Bill 2001 J.J. Fox Ltd (Cigar & Pipe Tobacco Retailer) correspondence /Meetings/ ENV/INF/0/35375*

Following a number of meetings and further submissions, and an onsite visit by DoHC staff, an amendment to the Bill was introduced by the Minister. The new section provided that the Minister may make Regulations regarding the size and nature of the premises concerned, the type of tobacco product sold, the information to be supplied by the applicant, payment of fees to defray expenses and the period for which the exemption may be in force. Under this Section, (44) it was possible to exempt specialist tobacco shops from the provisions of Sections 33, 38 and 43 of the Act, which prohibit advertising of tobacco products and certain marketing practices, and provide that tobacco products for sale are kept in closed container not visible or accessible to the public.

6.6.4 Re-structuring Relationships

Interactions between policymakers and the tobacco industry during the development of tobacco control policy in Ireland continued following the introduction of the new Tobacco Control Bill. There were two levels of exchange, those with the Irish tobacco industry, and those involving the international tobacco industry.

Following the introduction of the Bill, and during its passage through the Houses of the Oireachtas, efforts were made by the domestic tobacco companies to re-establish contact with the Minister, in order to clarify the requirements under new legislation.

> May I reiterate our wish to meet you and your officials to discuss public health concerns including issues relevant to current Public Health (Tobacco) Bill [87]

Further correspondence sought a meeting directly as

> ...much of the uninformed public comment about the tobacco industry in Ireland has relied to a large extent on incorrect cross

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[87] Letter dated 03.10.2001 from Managing Director of John Player & Sons to Michael Martin, Minister for Health and Children re the Sub Committee on Health and Smoking/ *Correspondence With The Tobacco Industry, 1999-2002/ ENV/INF/0/30956*

> referencing of events in the US and matters relevant to American tobacco companies. It is impossible to deal with all the issues in this letter-dialogue is necessary. Meet with me and other industry representatives to discuss appropriate regulations which addresses your concerns, while allowing the industry and the retail trade to continue to sell tobacco products to the informed adult consumers in Ireland who choose to smoke 88

The response to this request effectively lifted the embargo on meetings with the tobacco industry in September 2001. The Tobacco Control Unit received a copy of a letter from the Minister's office stating that the Minister could not meet with the CEO of the Tobacco Company (who had requested a meeting), but that his senior officials would [89]. When contact was made with ITMAC to discuss a meeting, the offer was declined on the grounds that the Bill was already progressing through the House, with the proviso that a meeting would be requested later. Further support was given to the efforts of the industry to re-establish relations with the Department when the Irish Business and Employer's Confederation (IBEC) wrote to the Minister expressing concern over lack of consultation with the tobacco industry about the Tobacco Bill, and the severity of the penalties and investigative procedures outlined in the Bill in the context of business regulation. This correspondence noted that

> The spirit of the Public Private Partnership[90] and the overall thrust of Partnership agreements means that consultation is at the heart of the relationship between business and Government. Setting a worrying precedent for other sectors if the government decided for political reasons not to consult with industry[91]

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88 Letter dated 29.11.2001 from the Managing Director of John Player & Sons to Micheal Martin, Minister for Health and Children (letter incorrectly copied, first page not legible)/ *Correspondence With The Tobacco Industry, 1999-2002/ ENV/INF/0/30956*

89 Hand written note dated 27.11.01 from Assistant Secretary to Secretary General, accompanying a letter to CEO ITMAC for signature/ Correspondence With The Tobacco Industry, 1999-2002/ ENV/INF/0/30956

90 The term 'Public Private Partnership' refers to the system of wage bargaining and social partnership between government, trade unions, employers and social actors, which was established in Ireland in the late 1980's

91 Letter dated 25.01.2002 from the Director of Sectors, Irish Business and Employers Confederation (IBEC) to Micheal Martin, Minister for Health and Children/ IBEC - Public Health (Tobacco) Act, 2002 Correspondence/Meetings / ENV/IMP/0/40260

A second point of continuous, and contentious, contact between the Department and the domestic tobacco industry were the changes required to give effect to the proposed EU Tobacco Products Directive on the sale of tobacco products and related sponsorship , due to be decided by 28th November 2001. The Irish Tobacco Manufacturers Advisory Committee (ITMAC) had previously raised a number of points in relation to the changes, and now sought confirmation from the Department of its plans to push ahead with a requirement for an increased warning on cigarette packs. The planned requirements were over and above those contained in the proposed EU Directive, and ITMAC were seeking an explanation of the legal basis for the proposed changes. Also noted were the commercial disadvantage of having a reduced space for branding on the Irish cigarette pack, compared to that on the imported products. For ITMAC members this new requirement would dictate that only imported products, with Directive size warnings on them, would be put on sale in Ireland, thus rendering the whole exercise pointless. Confirmations were also sought about the appearance of Irish Government Health Warning and a 'Get help to stop smoking' message on Irish packaging. The delay in bringing forward domestic regulations to give effect to the new Directive, and in clarifying the changes to tobacco product labelling it required, resulted, it was now ITMAC's belief, in making it impossible to meet the compliance date of September 30th 2002 for all tobacco brands[92]. The reply to this letter noted that

> The delay was occasioned by the fact that we are awaiting legal advice on some of the points raise previously by ITMAC. In relation to the industry not being in a position to meet the compliance date of September 30th 2002, I must register the Departments surprise

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[92] Letter dated 26.11. 2001 to Secretary General, Department of Health and Children from Managing Director Gallagher's, stating that the as made clear at the meeting in September and confirmed in letter of October 2nd the deadline could be met if clarification and agreement was reached on all points by end October 2001// *Correspondence With The Tobacco Industry, 1999-2000/ ENV/INF/0/30956*

> with this contention as it would not be consistent with other information available to us [93]

A hand written note requesting the Secretary Generals signature on this letter explained that

> I've inserted last paragraph on the basis of what I was told at our meeting with Philip Morris, then it was indicated that they would only need a few months' notice in order to comply. It may be different for the domestic firms but I don't think we should allow their contention go unchallenged at this stage[94]

6.6.5 Summary of Managing Change

As the specific changes which were proposed in the impending legislation became items for discussion by policy makers and those affected by the changes, it became necessary to manage the changes and the impacts that were anticipated when it happened. During this phase of the policy process the policy makers were engaged in responding to new submissions made by those directly affected; preparing material for the Minister with which he could defend his position on specific items in the Bill; seeking legal advice on particular sections included in the Bill and the impact they would have when enacted; monitoring compliance with existing legislation; responding to requests for information, meetings, information, and advice.

The introduction of the Public Health (Tobacco) Bill 2001 (2001b) and its progression through the Houses of the Oireachtas to full enactment, necessitated consideration of how the subsequent regulations might be enforced. Commercial interests most likely to be affected by the new Regulations were concerned with how the impacts might be mitigated. Two different approaches to such mitigation can be seen in the attempts of two stakeholders. The ICMOA attempted to pre-empt the restrictions and change

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[93] Letter dated 28.11.2001 to CEO ITMAC from Secretary General Department of Health and Children/ *Correspondence With The Tobacco Industry, 1999-2002/ ENV/INF/0/30956*

[94] Handwritten note from Principal Officer to Secretary General requesting his signature attached to letter dated 28.11.2001 to the CEO of ITMAC/ *Correspondence With The Tobacco Industry, 1999-2002/ ENV/INF/0/30956*

their practices in advance, based on the information available to them from the policy makers. A new method of operation for cigarette machines was developed to specifically address the issues of access to tobacco products by minors. With the announcement of further restrictions on self-service tobacco purchases, ICMOA attempted, unsuccessfully, to raise their issues at a level higher than the Minister's. In contrast, in the second example discussed a specialist tobacco retailer canvassed to insert an exemption for their type of retail outlet into the legislation. This was achieved by presenting a case based on the historic character of the business involved, and the exclusivity of the merchandise being sold.

Relationships between policy makers and the stakeholders affected by the proposed ban also required management in this stage of the process. There was an established relationship between the policy makers in the DoHC and the tobacco manufacturers. On the domestic level, this relationship was already defined by the requirements imposed by Ireland's membership of the European Union, and by the existing legislation which restricted the content and marketing of tobacco products, and the amount and type of sponsorship by tobacco companies that was permitted. Non-cooperation with an Oireachtas Committee by the industry had led the Minister to break off consultation with the industry, and no requests for meetings were granted. When this embargo was lifted the tobacco companies highlighted their difficulty in complying with the requirements of new EU Directive on packaging and sale of products in Europe (Council Directive (EC), 2001/37). They stressed that the requirements of the Irish Government were over and beyond those required under the relevant EU Directive. These differences were to cause further problems for Irish policy makers, at home and in Europe.

6.7 Aligning domestic and international goals

Introduction

During this period Ireland continued to participate in the development of European and world tobacco control policy. Some of the issues discussed at this level impinged directly on the Irish measures being taken, with the Irish stance frequently exceeding the requirements of international policy. At Ministerial level Ireland was gaining a reputation for being a leading anti-tobacco advocate, and speeches prepared during this period reflect the advances being made in domestic tobacco control policy. During debates on the general issue of tobacco control, Irish representatives were instructed to take a strong line and to negotiate for the autonomy of individual nations to make their own laws in relation to the manufacture, sale and distribution of tobacco products. It was also in the wider tobacco policy control sphere that Irish policy makers were exposed to the global tobacco industry, which consistently sought to influence the direction and scope of tobacco control policy at international and domestic level.

6.7.1 Debating the issues outside Ireland

Ireland's support for strengthening international tobacco control mechanisms was underlined in speeches prepared by civil servants and delivered by the Irish Minister for Health and Children in the period 2000-2004. The development of the Framework Convention on Tobacco Control (FCTC) was a central focus for the member states of the WHO at this time. Ireland supported this process through its participation in the negotiating body which was assembled to develop the Framework, and through the public ministerial support for its ambitions. A speech by the Minister for Health and Children at the World Health Organisation Health Council meeting held in November 2001, described the strengths and potential of the FCTC and the limitations it could impose on Ireland's efforts in this area.

> Ireland has consistently supported the development of this Treaty. The global nature of trade and marketing practices diminishes the efficacy of our national measures: an international agreement would

> ameliorate these negative effects in Ireland. .....It is also important that the FCTC does not prevent or undermine the more strict national measures; to this end we wish to ensure the primacy of public health considerations (as expressed in the FCTC) in the interpretation of all international instruments, particularly trade instruments under WTO agreements [95]

As the development of the FCTC was progressed, the issues that divided the negotiating parties came to the surface at meetings of the International Negotiating Body (INB). This negotiating body was made up of representatives from each of the WHO member states. The EU was also represented, typically by a delegation from the country holding the Presidency of the EU. The Irish Permanent Representative to the EU for Health frequently served in the role for Ireland, with Departmental staff and the Minister participating when appropriate or necessary. Preparation for these meetings involved national representatives agreeing a shared position in advance. Similarly the EU representative would present a position agreed by the members of the EU. In such international fora the county holding the Presidency will speak on behalf of member states, setting out the agreed position.

An impasse had arisen, however, in regard to adoption of a common EU position before the opening of the FCTC INB meeting in Geneva in February 2003, which was convened to address the ending of tobacco advertising. All EU Member states, with the exception of Germany, were amenable to a common EU position which would provide for the gradual elimination of tobacco advertising within a definite period. Germany argued that it was unable to support inclusion of the phrase 'a definite period' in the proposed wording as this would cause problems for them regarding their Constitution. In Ireland, all advertisement of tobacco products, with the exception of some limited in-store advertising, had been banned since 2000, and the Public

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[95] Speaking note for Minister for Health and Children's appearance at WHO Health Council 15.11.01/ *WHO Framework Convention of Tobacco Control Vol 2/ ENV/POL/0/11954*

Health Tobacco Act 2002 (Government of Ireland, 2002) provided for the ending of all tobacco product advertising. Irish policy makers believed that the failure of the EU to present an agreed position on tobacco advertising in Geneva would be considered a victory for the tobacco industry. This was of particular concern to Ireland as a case against the Irish Government was ongoing in relation to their stance on tobacco product advertising. One option put forward by the Department was that:

> If agreement cannot be reached, which now seems likely, then we will have to consider, along with other member states, Ireland putting forward our view independently in Geneva. This has happened before with the Commission and Presidency being notified in advance of our intentions[96]

This idea was adopted and at the fifth INB meeting (INB 5) the Irish Delegation made a statement on Article 13 of the draft Framework Convention for Tobacco Control. This Article related to the advertisement and promotion of tobacco products, and the Irish delegation stated, on behalf of Ireland and 24 other countries

> These countries believe that the question of the prohibition of advertising, sponsorship and promotion of tobacco products is one of the most important elements of the draft Framework convention. That is why the delegation of these 24 countries,-in accordance with national Constitutions and constitutional principles -support a total ban on all forms of advertising, promotion and sponsorship or tobacco products and brands, that would be written in the body of the Convention itself[97]

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[96] Email dated 07/10/2002 from Department of Health and Children to Irelands Permanent Representative in Europe attaching draft brief and speaking note for Ministers attendance at the Meeting of the Council of the European Union (Employment , Social Policy , Health and Consumer Affairs) Tuesday 8th October 2002: Item 10 on the Agenda: Preparation for the Fifth meeting of the Intergovernmental Negotiating Body (INB) for the World Health Organisation (WHO) Framework Convention of Tobacco Control/ *WHO FCTC INB6 Geneva February 2003 Vol 1/ ENV/IMP/0/44224*

[97] Note of the fifth meeting of the Intergovernmental Negotiating Body INB (INB5) with the text of the Irish intervention on Article 13 attached/ *WHO FCTC INB6 Geneva February 2003 Vol 1/ ENV/IMP/0/45224*

An account of this intervention was sent by Ireland's Permanent Representative in the EU to the Secretary General in the DoHC and to the Minister. It was noted that, despite the intervention being well received, the stance taken by Germany, the US and Japan meant that

> .....it is extremely unlikely that we will be successful in the end but the records will show that we led a determined effort to being (sic) about change [98]

The Minister was reported to be delighted with the intervention and anxious to follow up on the momentum it created by attending INB6, if appropriate, and attending the World Health Assembly-either for formal adoption of the FCTC or to "work the room' if it is left hanging at the conclusion' [99].

A second example of Ireland's engagement with the international elements of tobacco control also relates to the advertisement of tobacco products, but the arguments presented related specifically to Irish legislation. It also provides an example of one area where the tobacco industry sought to retain the status quo in the face of proposed changes in regulations.

The company World Wide Brands Inc, (WBI), a subsidiary of the American tobacco conglomerate RJR Nabisco Inc., promoted and advertised a brand of clothing in Ireland which was marketed as Camel Active clothing and footwear. The company argued that brand diversification was a legitimate business model to facilitate quick entry of a new product into a market through the use of a well-known brand name. In WBI's assessment the Public Health (Tobacco) Bill 2001 (Government of Ireland, 2001b) has taken

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[98] Handwritten note dated 18.10.2002 from the Secretary General DoHC to the Assistant Secretary DoHC, written on the communication dated 17.10.02 from the Permanent Representative to the EU, to the Secretary General and the Minister for Health and Children re the intervention./ *WHO FCTC INB6 Geneva February 2003 Vol 1 /ENV/IMP/0/45224*

[99] Email dated 18.10.2003 from Principal Officer DoHC to Irish Permanent Representative / *WHO FCTC INB6 Geneva February 2003 Vol 1/ ENV/IMP/0/45224*

the premise that tobacco brand diversification products are themselves an advertisement for tobacco products

> ... and that therefore their sale should be banned. This reflects the confusion that has arisen about brand diversification as a business concept [100]

WBI suggested that this Section of the Bill be deleted and that it be made clear that the legislation applies to those advertising tobacco products only. Section 33(2) of the Bill made it an offence for anyone to sell by retail or otherwise supply to a member of the public a product (other than a tobacco product) that bears—
(*a*) the name of the manufacturer of a tobacco product, or the name of any brand of tobacco product, or
(*b*) any trade description, designation, trademark, emblem, marketing image or logo by reference to which a tobacco product is marketed or sold (Government of Ireland , 2001b).

Legal advice was sought by the DoHC which concluded that the effect of the Bill was not that proposed by WBI and that the Minister would be in a position to defend the inclusion of the relevant article.

WBI's own legal opinion, referred to

> the apparent arbitrary and unfair discrimination against the producers of products with a label or trademark sharing their origins with that of a tobacco product [101]

The company concluded that

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[100] Letter dated 02.10.2001 from Regional Business Manager Benelux/Scandinavia/UKJ/Ireland/Iberia Worldwide Brands Inc to Minister for Health and Children/ *World Wide Brands Inc-Brand Diversification; Public Health (Tobacco) Bill 2001, meetings , Correspondence etc Vol 1/ ENV/POL/0/48977*

[101] Letter dated 6.02.2002 to Minister for Health and Children from the Vice President and General Manager Worldwide Brands Inc./ *World Wide Brands Inc-Brand Diversification; Public Health (Tobacco) Bill 2001, meetings , Correspondence etc Vol / ENV/POL/0/48977*

> We wish to formally serve notice that if the Bill is passed without appropriate amendments aimed at ameliorating this unfair situation, we will undertake a legal challenge that, we believe, will lead to the Bill being declared unconstitutional and contrary to the European Treaty. WBI asks a final time for Section 33 to be altered so as to address the injustice it poses [101]

The efforts of the tobacco industry in this regard were unsuccessful as an amendment to Section 33 was accepted at the Committee Stage of the Bill's enactment, which was introduced by the Minister and designed to strengthen the controls on tobacco products advertising and broaden the associated offence.

Following the enactment of the Bill, World Wide Brands Inc. instigated a case against the Minister for Health and Children through their solicitors, on the basis that Section 33(2) was

> ...invalid, having regards to the Constitution of Ireland, as an unjustified attack on our clients property rights in the Camel Active brand. ....that the section constitutes and unlawful interference with the free circulation of goods in the Common Market [102]

Although all the advice prior to the case, including that of the legal counsel of the Chief State Solicitors Office, suggested that there was a good case to be made that the Camel Active Brand was intended to support the marketing of Camel cigarettes, the result of the case was unexpected. In the Worldwide Brands proceedings the following order was made:

> a) the action to be struck out b) a declaration that section 33 of the 2002 Act is unenforceable and inapplicable in circumstances where the Bill subsequently enacted as the 2002 Act was not communicated to the Commission of the European Community as required by Article 8 of Directive 98/34 of the European Parliament

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[102] Letter dated 18.10.2002 from William Fry Solicitors for Worldwide Brands Inc. to Minister for Health and Children and cc'd to Chief State Solicitors office, enclosing a certified true copy of the Pleanary Summons in the (above) matter with a Statement of Claim/ *Public Health (Tobacco) ACT, 2002 :Worldwide Brands Inc (Camel Active) William Fry Solicitors Vol II/ ENV/POL/0/36964*

and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations [103]

The issue of brand stretching or indirect advertising is illustrative of the type of issue which emerged when the speed and extent of Ireland's domestic policies on tobacco control exceeded the pace at which international tobacco control policy was moving. Communications between the Irish representatives at international level and the DoHC, particularly when key decisions and interventions were being made, emerges as an essential element. It also emerged in a key informant interview that it was an area on which Ireland was willing to compromise.

Box 6.1C Brand stretching

> There were issues on which we could compromise. We could drop, but we weren't necessarily saying we'll never have a ban on brand stretching but we were saying it's not central to what we absolutely have to do..... [KI 2]

The results of this court case were not confined to removing the prohibition on brand stretching, however, and the unforeseen consequences of the action was to have a significant on the final stage of the policy implementation. This will be discussed in Chapter 7, Refreezing.

6.7.2 The Irish State and the tobacco industry

By the early 2000's the tobacco industry was a recognised barrier to international and domestic tobacco control. The availability of tobacco industry documents had led to reports on the tactics and intentions of the industry being made publicly available (Zeltner et al., 2000, Perry, 1999)

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[103] Letter dated 12.2.2003 from Chief State Solicitors Office , to the Secretary General, DoHC for attention of the Tobacco Control Unit/ *Public Health (Tobacco) ACT, 2002 :Worldwide Brands Inc (Camel Active) William Fry Solicitors Vol II/ ENV/POL/0/36964*

Within Ireland, as has already been noted, contact between the Government and the tobacco industry was mainly conducted by DoHC officials and the representative group for the Irish tobacco manufacturers, ITMAC. The evolution of the relationship between the State and the industry, can be traced in correspondence between ITMAC and the Department. A 1989 memorandum addressed to Dr Rory O'Hanlon, then Minister for Health, which was also sent to Dr Sean McCarthy, Minister for State at Department of Industry and Commerce, Mr Albert Reynolds, Minister for Finance, and Mr Bertie Ahearn, Minister for Labour, noted that in the view of the industry

> The intended outcome by health authorities is the destruction of a legitimate industry within a generation, the criminalisation of smoking except in private and in a few selected public places, the ostracisation of the smoker, and the achievement of these objectives by stealth [104]

In 1989 ITMAC presented an image of its members as employers whom the Government would, or should be interested in supporting. Following a meeting with the Minister and Department officials on the 10th May 1989, ITMAC submitted a proposal outlining formal consultation procedures between the industry and the Department. The proposal stipulated three items which were intended to meet the objective of co-ordinating and synchronising Irish and European Community legislation on tobacco and health, given the present status of both. These were:

> 1) formalised consultation procedures to be established between the Department of Health and ITMAC which will ensure timely and detailed examination of impending and existing Irish and European Community legislation
>
> 2) Until the establishment of agreed consultation procedures there should be no further change to Government health policy in relation to tobacco

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[104] Memorandum dated 10.05.1989 from Irish Tobacco Manufacturers' Advisory Committee to Dr Tory O'Hanlon TD Minister of Health / *ITMAC Meetings 2001 And Correspondence/ ENV/POL/0/33999*

> 3) In the meantime, the Department will maintain existing policy both in Ireland and the European Community [105]

In the Department's response to this proposal, no objections were raised to formalising the consultation procedures with ITMAC, or to hearing its views on proposed tobacco control measures, as appropriate [106]. A promise to forward a copy of the relevant Regulations, when complete, was included. In the meantime a Department of Labour briefing note prepared for the Minister for Labour for a meeting with ITMAC, noted that

> According to the Department of Health Ireland is not the pace setter in environmental controls, draft regulations are merely in line with the relevant draft EC recs and with controls already in place in some other Member States [107]

Over the following decade international developments in tobacco control, and the media coverage of such events as the findings in the Philip Morris trial[108] heightened awareness of the tactics and motivations of the industry.

By the year 2000 awareness of these tactics was widespread, and the CEO of the newly established OTC was noted for his consideration of this type of influence. When seeking sanction for staff to work in the OTC he stipulated that salaries should be:

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[105] ITMAC Proposal dated 10.5. 1989 that the Department of Health and ITMAC agree on the following policy objectives and consultation procedures/ *ITMAC Meetings 2001 And Correspondence/ ENV/POL/0/33999*

[106] Letter dated 29.05.1989 from Principal Officer , Public Health Division DoHC to Dr B Koorn Chairman ITMAC dated 29 May 1989/ *ITMAC Meetings 2001 And Correspondence/ ENV/POL/0/33999*

[107] Note for Minister's meeting with ITMAC on Tuesday 11.04.1989 (Prepared by the Department of Labour, not signed)/ ITMAC Meetings 2001 And Correspondence/ ENV/POL/0/33999

[108] This refers to a US court case settled in 1998 between 46 State Attorneys General and the tobacco manufacturers Philip Morris USA, R.J. Reynolds, Brown & Williamson and Lorillard. The tobacco manufacturers agreed to pay these states an estimated $200 billion over a 25 year period to settle health claims. In exchange they were indemnified against further liability. As part of the settlement the tobacco companies made their internal documents available on the Internet for information and research purposes.

> cast at a level to ensure a high calibre of applicant who will not subsequently be attracted to the tobacco industry[109]

A further example of his awareness of the tobacco industry strategies was an insistence that, when selecting office accommodation, that tobacco industry tenants be excluded from leasing space in the same building as the OTC[110].

There were different opinions about how necessary these type of precautions against the tobacco industry were. A general awareness of the resources and tactics of the industry are traceable in the documentation, but are much more evident in the statements of the key informants interviewed. Some of these are provided in Box 6.1.D.

In the late 1990's, correspondence between the Department and the industry related almost exclusively to the requirements of Section 5 of the Tobacco (Health Promotion and Protection) Act, 1988 (Government of Ireland, 1988) which allowed the Minister to request details regarding the constituents of tobacco products manufactured and distributed in Ireland. In the late 1990's the Joint Oireachtas Committee on Health & Children sub-committee on health and smoking was reconvened and began to examine the tobacco industry closely.

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[109] Letter dated 27.3.2000 from Principal Officer, Department of Health and Children to Principal Officer, Personnel and Remuneration Division, Department of Finance, re staffing proposals for Office for Tobacco Control, */OFFICE of TOBACCO CONTROL -STAFFING 2000/ ENV/IMP/0/29212*

[110] Correspondence from CEO, Office of Tobacco Control (OTC) and Department of Health and Children (DoHC) re leasing office accommodation/ *Office of Tobacco Control-premises , 2001-2/ ENV/POL/00/30958*

Box 6.1D Awareness of Tobacco Industry Tactic

They're (the Tobacco Industry) saying well we're only interested in talking to yo about smuggling and the illicit market and the criminality associated with that... But that in fact is the way in which they're able to get in and have a discussio and then, you know, make the other cases and they're very clever people an this is what they do [KI 3]

...actually refused to shake hands with them (Representatives of the Tobacc Industry) ... He reckoned he'd be contaminated and he almost, like he was alway talking about fire-walling his office. [KI 1]

Someone else from one of the NGO's came over and they said "Oh you need t move away and you need to stop talking there", because this guy that wa standing listening to everything we were saying and he was from the tobacc industry [KI 4]

...there wasn't a thing he didn't know about tobacco. The pitfalls of taking then on. The strategies they would deploy once you start taking them on and th forces had to line up on your side before you really went into battle [KI 5]

Like anyone who has his boardroom swept by a security firm has a different take on life [KI 2]

6.7.3 Summary: Aligning domestic and international goals

The Irish Government encountered a number of challenges when attempting to align domestic tobacco policy with that being rolled out internationally, particularly in the EU. The need to reconcile existing regulation resulted from less restrictive the international controls than the ones planned for the domestic sphere. The civil servants representing Ireland in international negotiations sometimes made direct interventions to promote strong tobacco control measures, frequently taking a leadership role.

The tobacco industry, both within Ireland and globally, was mobilising its resources to resist the development of control policies and regulation measures. The tobacco industry was small in Ireland and, while it was

considered uncooperative, it does not appear to have been a major obstacle to either the development or the implementation of domestic policy. The relationship between the industry and the government, and particularly the Department of Health, had changed significantly over a twenty year period, reflecting the changes in attitude to tobacco control. Internationally, a growing awareness of the tactics and motivations of the well-resourced and resourceful tobacco industry was spreading. These traits became more evident as the policy progressed, and the form of the final policy began to consolidate.

6.8 Progressing the policy

Introduction

The years 2001-2003 mark a period in the development of the tobacco control policy during which activity was focussed on making progress at a number of different levels and in different spheres. On the national level the regulation and monitoring required by the new legislation were addressed by providing resources at health board level, and through the functions of the OTC. During this period the tensions between the Department and the OTC heightened, and there were frequent exchanges about roles, accountability and procedures between the staff of both organisations. At the international level, developments in the Irish policy sphere were broadly in line with the global responses to tobacco regulation spearheaded by the WHO and the EU. Compliance with EU and FCTC commitments framed Ireland's contribution to international tobacco control measures, which had some influence on the domestic measures being considered. An independent stance on some issues was also taken.

One of the potential barriers to more stringent tobacco control at domestic and international level was the international tobacco industry. The approach of this industry was to actively resist tighter regulation wherever it was muted, while attempting to influence individual member states of the WHO and EU to support their position, during engagements on tobacco control. This section describes the underpinning categories that emerged under the

theme progressing the policy, providing examples from the data to support each category used.

6.8.1 Supporting and Undermining the initiative

One of the primary mechanisms for driving the tobacco control policy in Ireland was the OTC, which was established on an interim basis in April 2000. There are indications that the relationship between officials of the OTC, and the DoHC officials responsible for tobacco control policy, was sometimes strained, and that on occasion different agenda were being followed by both organisations. For instance, at a time when the regulations and mechanisms to enforce the provisions of the new legislation were under active consideration, early correspondence from the OTC stressed that

> This office considers the establishment and appointment of regional co-ordinators in each of the Health Boards as a key priority in the implementation of the strategy [111]

The OTC were specifically requesting the Regional Coordinators be appointed in each Health Board area. Taking a pro-active approach to progressing these appointments, the OTC announced that a project team would be established to define and agree the job description and function of the regional posts with special responsibility for tobacco control.

The Environmental Health Unit of the Department were invited to appoint a representative to this project team but it was also noted that

> In the absence of a representative from the Environmental Health Unit we intend to set up the project team. We will keep you abreast of our deliberations and would welcome your opinion and assistance on any aspect of the project [109]

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[111] Letter dated 07.12.2000 from Chief Inspector OTC to the Principal Officer, Environmental Health Unit, Department of Health and Children, re the implementation of Towards a Tobacco Free Society Strategy / Office of Tobacco Control and Business Plan 2001 and Funding for 2002/ ENV/POL/00/30959

When questioned about the relationship between the Tobacco Control Unit and the OTC, some interviewees attempted to describe the difference in perception the two offices had of the role or the OTC. All respondents acknowledged the contribution of the OTC to the development and implementation of the work place smoking ban. Some of the difficulties between the offices were considered to be the result of personality clashes, or from the position the OTC adopted, which was seen as oppositional to the Department and even, on occasion, to the Minister. Other interviewees clearly acknowledged the achievements of the OTC but felt that the establishment of a separate office was unnecessary for these purposes. Text Box 6.1.E contains some examples of the opinions expressed.

The CEO of the OTC was the policy actor, after the Minister, most associated with the Irish workplace smoking ban, and his commitment and knowledge of the area is remarked on by all the key informants in this study. In the file material, which reflects the day to day interactions between the OTC and the DoHC, contentious issues arose on a regular basis. The relationship between the two Offices was at times strained, and some examples of these issues arise throughout the analysis. At the end of 2003 the CEO retired on health grounds and later he died, shortly before the full workplace smoking ban was introduced.

Box 6.1E The DoHC and the OTC

The establishment of a stand-alone entity or agency was crucial because they were not fettered by, I'm not saying the Department would fetter them but, you know, they were able to develop a comprehensive approach to this, and what happened then subsequently was ….the office was commissioned. [KI 5]

… ….it wasn't just that there was a personality difficulty between himself and myself, it seemed that they found it very difficult to accept that even though they were 'an independent office', they came under our agis and that they were still subject to political, eh, control or whatever. The Minister was still accountable for it. [KI 1]

But they were setting themselves up. They were essentially setting themselves up in opposition to the Minister [KI 2]

…..well this was a new organisation that was imbued with an awful lot of energy and enthusiasm and, eh, that were kind of told look you're the new Tzars and you can do everything and in actual fact what we should have been saying to them was look you can't do everything [KI 3]

I'm not so sure we would have been able to devote the resources to it in the Department that they had. … I think he had a staff of about ten or twelve, pretty quickly now. We would never have been able to devote resources to it. [KI 1]

So, yeah they were able to witness statements and all that. They were able to manage all that. Pay all the witnesses, and they were involved in the litigation so, that was a big thing and they were able to do administrative work and do other researching and all that kind of stuff, but like if we were all in the one organisation you'd wonder would it have mattered? ([KI4]

We were looking over our shoulder to see where that particular organisation was when they should have been a force there on our side. There was a lot of solo runs done by the OTC but I don't think any of that would be a justification for effectively dismantling it which is what's beginning to happen now and I still think there's a place for a body like the OTC in a circumscribed way (KI 6)

6.8.2 Internal Obstacles

There were also pressures internal to the Civil Service which threatened progress on tobacco control in this period. The pressure came from the Department of Finance in a general call for reduction in expenditure. In the

case of the DoHC an overall reduction in the Existing Level of Services (ELS) for 2003 of €50m was sought [112]. A strong justification of expenditure on both the OTC and the Health Board appointments was needed and both were emphasised in the EHU contribution to a DoHC response to the Department of Finance memo [110]. The reductions were sought as part of an exercise seeking an Exchequer-wide reduction of €900m.

The ELS is an exercise performed by the Department of Finance which estimates the cost of maintaining services at current year levels, working from a base figure generated during the previous years in a No Policy Change (NPC) exercise. The NPC figure used in this ELS exercise was one with which the DoHC did not agree at the time it was generated in 2002, or as it was applied to the estimated expenditure for 2003. All DoHC units were asked to supply material relating to the implications for service delivery or on their major projects and the request stressed that:

> The Minister, at a meeting last week with the Secretary General and myself, emphasised the importance of presenting, in the clearest manner possible, the implications for services arising from the figures proposed[113]

The Environmental Health Unit had made a bid for funding for tobacco control in 2003 of €770,000, to maintain Health Board services and programmes at current year levels. The funding would provide for Environmental Health Officers (EHOs) in each health board area. These EHOs would have responsibility for enforcement and improving compliance with a wide range of tobacco control legislation, including the sale of tobacco products to underage persons.

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[112] Memo dated 30.07.2002 circulated by the Assistance Secretary Finance Unit , Department of Health and Children, titled ELS /No Policy Change Estimate 2003/ *Existing Level of Service (ELS): Estimate 2003 (NPC) – Tobacco Control/Environmental Health/ ENV/IMP/0/37655*

[113] Memo date 30.07.2002 for ASEC Finance Unit of 30 July 2002 to MAC members and Principal Officers/ Existing level of service (ELS) Estimate 2003 (NPC)-Tobacco Control/*Environmental Health Issues/ ENV/IMP/0/37655*

The amount of ELS funding proposed was €127,000.The contribution of the Environmental Health Unit stated that:

> The proposed level of ELS funding for 2003 will have major negative consequences in the area of tobacco control and in particular, the maintaining of the OTC as an effective statutory body carrying out its functions as provided for under section 10 of the Public Health (Tobacco) Act 2002 ...in effect the proposed ELS funding will bring to a halt the implementation of this Act.... There is a high level of expectation from the public for improved enforcement of tobacco control legislation. Given the current legal challenges of the global tobacco industry to tobacco control legislation both nationally and at EU level, it is imperative that enforcement of and compliance with the law in this area is steadfastly maintained and significantly strengthened. Inadequate funding will be interpreted as a victory for the tobacco industry to the detriment of Government public health initiative[114]

The final outcome of the ELS process for 2003 was shown in a table circulated to the TCU showing how reductions were made to the bottom line figure for the particular Division, apportioned on a pro rata basis to the various headings in each area. A reduction of €101,000 was allocated under the heading tobacco control, but this was later rescinded[115]

6.8.3 Supports –ASH Ireland

One of the organisations which persistently warned against the influence of the tobacco industry in the domestic arena was the anti-tobacco group ASH. Established in 1992, ASH Ireland is a joint initiative of the Irish Heart Foundation and the Irish Cancer Society, established with the intention of providing a proactive strategy in the fight against tobacco use in Ireland. Commenting on the draft Public Health (Tobacco) Bill in 2001, ASH Ireland drew attention to a weakness in the Bill as proposed. In relation to Section

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[114] EHU Response dated 02.08.2002 to Finance Unit Memo of 30.0702002 / *Existing Level of Service (ELS): Estimate 2003 (NPC) –Tobacco Control/Environmental Health/ ENV/IMP/0/37655*

115 Handwritten note date 09.09.2002, unsigned-'Discussed with Finance Unit-the reduction of €101,000 in our held back monies has been cancelled'/ *Existing Level of Service (ELS): Estimate 2003 (NPC) –Tobacco Control/Environmental Health/ ENV/IMP/0/37655*

33 ASH recommended that the issues of indirect advertising on radio or in the print media and the Internet should be specifically addressed. The submission also called for the inclusion of a prohibition on patronage that would counteract the tobacco industry practice of providing monies for events or causes on a 'no favours asked for' basis.

> One must bear in mind that tobacco companies properly constituted can only dispose of their monies in furtherance of their own objectives as expressed in their memorandums of incorporation. In the case of tobacco companies their objective is to sell tobacco products and to secure profits for their shareholders. Patronage without strings attached is in fact not possible. It is about building goodwill and compromising social influences and decision makers ...sufficiently limit the recipient's ability to be openly critical of tobacco industries. Hence the patronage by the tobacco industry should be prohibited in the Bill[116]

ASH Ireland continued to monitor and report breeches of the Act in relation to sponsorship and advertising as the process developed. High profile incidences such as the continued patronage of the tobacco industry of the Grand Prix motor racing competition[117] , as well as the casual promotion of cigars on popular radio programmes incurred formal complaints to RTE, which were copied to the Minister for his information[118].

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116 Five page document (undated) outlining the key areas identified by ASH Ireland that require consideration in the Public Health (Tobacco) Bill 2001: Section 33-Definition of Advertising/ *ASH Ireland:2001 Meetings/ ENV/INF/0/37223*

117 Copy of letter date dated 20.12. 2002 sent to The Secretary, RTE Authority from Dr Fenton Howell, Chairman - ASH Ireland, and cc'd to Minister Micheal Martin, Minister for Health and Children, Mr Bob Collins, RTE, Mr Cathal Goan, Director General RTE. The letter is a formal complaint to the RTE Authority concerning an item on Network 2 News on 18.12.2002 about the Jordan Grand Prix Formula 1 Team. The piece broadcast contained the brand name of a tobacco product on the driver's helmet and on the racing car. The issue of showing tobacco advertising in the coverage of such events has been raised by ASH Ireland on many occasions. Mr Goan expressly banned the use of such logos and instructed that this order be enforced with absolute vigilance. has (reference to an internal RTE memo dated 2.7.01) 'Looking from the outside, this would appear to be a direct challenge to Mr Goan's authority on such matters/ *ASH Ireland 2003 Correspondence , etc / ENV/INF/0/45199*

118 Letter from Administrator ASH Ireland dated 14.01. 2003 to Bob Collins DG RTE and cc'd to Minister for Health and Children, Minister for Communications Marine and Natural Resources and Ms Eithne Hand Head of Radio RTE; relating to a number of calls received by ASH Ireland regarding the promotion of tobacco products by Mr Gerry Ryan while presenting his morning show. Transcript of Thursday 9th January comments regarding the Tanaiste bring back some cigars from Cuba-may seem innocent enough, however we are aware of other comments made on air in relation to the promotion of a Cigar club in Dublin . ...Mr Ryan also occasionally appears in print media promoting cigars'/ ASH Ireland 2003 Correspondence , etc / ENV/INF/0/45199

6.9. Leading on Change

By the end of 2002 tobacco control policy in Ireland was a well-established policy objective for the DoHC, and particularly for the serving Minister for Health and Children. The final impetus to announce a total work place smoking ban was provided by the report on the Health Effects of Environmental Tobacco Smoke in the Workplace, which was produced jointly by the OTC and the Health and Safety Authority (Allwright et al., 2002). When this report was originally submitted by the authors to the Department, attention was drawn by them to the fact that partial bans in buildings or ventilation are of little value[119]. This was the approach in discussions with representatives from the hospitality industry, and in particular the Vintners groups. Up until this point discussions had centred on creating smoke free areas and mechanisms for cleaning the air in smoking environments. When questioned about the ultimate decision to ban smoking in the work place, policy makers acknowledged that a complete ban on smoking in the work place had not been a definite goal during policy development but had existed as a possibility throughout. Credit is given by the key informants interviewed to the role of the Minister's advisor in 'unlocking' the final policy. The framing of the policy as a worker's rights issue provided the logic for imposing a national ban on smoking in the workplace.

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[119] Email dated 08.11.2002 to PO Tobacco Control Unit, Department of Health and Children from Dan Murphy, Health and Safety Authority and co-author of the report Health Effects of Environmental Tobacco Smoke (ETS) in the Workplace 2002/ *Report on Health Effects of ETS in the Workplace, Nov 2002-Health & Safety Authority & Office of Tobacco Control/ ENV/POL/0/40278*

Box 6.1F Decision to implement a work place smoking ban

It was there as an option but not as something that is going to happen, no, I mean, immediately. It was a step by step [KI 5]

I wasn't at the meeting where he said it or it may have been when they were travelling together but Micheál Martin said Christy Mannion (Minister's advisor) asked me once 'why is the health of a barman less important than the health of an office worker ?' and that essentially is the question that unlocks it [KI 2]

....but the smoking ban was interesting in that it never purported to be anything other than, a worker protection initiative and that was fundamentally important because it kept it safe from attack and from criticism in other areas [KI 3]

I suppose firstly it was about protecting health and protecting workers health. We didn't want it to be about stopping people smoking....because that wasn't the policy objective [KI 4]

There were two broad models. One was banning smoking in public places. The other was in work places. Now the overlap is pretty complete. There are certain public places that aren't workplaces but they are few and far between and even those that you wouldn't think of as a workplace, there's always someone who has to come in and clean or lock up or be security. So it wasn't actually in terms of the coverage of places, it wasn't, I doubt if you listed all the workplaces or sample workplaces, that there would be any significant different between the two models (KI 1)

6.9.1 The announcement

The launch of the report on environmental tobacco smoke in the work place was conducted by the Minister at the invitation of the OTC. The first formal statement of the Minister's intention to ban smoking in all workplaces was included in the speech prepared for the launch of the report. The Minister described his intentions as follows

> I told you at the outset that I'm now, today, taking radical new measures against Environmental Tobacco Smoke. I'm banning smoking in the workplace. Including restaurants, taxis and pubs.

.....This ban will mean a massive cultural change for people right around this country, and eleven months before its full introduction will give people the time needed to adjust and change [120]

Box 6.1G The announcement

> You can either fudge it and, do partial banning or if its, you know, what do we do? I was kind of making the point well if it's a carcinogen; it's the same question as asbestos. Would you ban asbestos if you know that...? And that's the fundamentalist way I looked at it in my own mind [KI 5]

6.9.3 Summary: Progressing the policy

During the period 2001-2003 tobacco control policy was developed at national and international level. Disputes over the extent and the intent of tobacco control policy arose at both levels, slowed and sometimes threatening to derail the process. Internal tensions at national level between the key implementing bodies, the TCU and the OTC, increased as misunderstandings and different interpretations of roles and procedures increased. In addition there were internal pressures on policy makers which indicate that, while tobacco control was an important part of the work of the DoHC, it was vulnerable to cutbacks in terms of the resources made available for its implementation. At the international level, challenges to the implementation of the legislation arose, coming directly from vested interests of the Tobacco Industry and those it sponsored, and from the requirements to comply with EU law.

This period also saw the full commencement of the Public Health (Tobacco) Act, 2002 (Government of Ireland, 2002), under which the Minister was empowered to begin bringing forward Regulations to implement the different

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[120] Speech by Micheal Martin TD at the launch on 30.01.2003 of the report Health Effects of Environmental Tobacco Smoke (ETS) in the Workplace 2002/ *Report on Health Effects of ETS in the Workplace, Nov 2002-Health & Safety Authority & Office of Tobacco Control/ ENV/POL/0/40278*

sections of the legislation. The implementation of these Regulations presented difficulties for some of the commercial interests involved with the sale of tobacco products, as well as with the manufacturing companies. Efforts to influence the Minister in relation to these issues were unsuccessful, as were attempts to raise the issues at a higher level. The consistency in response to this and to other representations seeking concessions from the Regulations indicates the strong position that tobacco control had, at this stage, across government.

The full extent of that implementation was announced when the scientific report on the effects of Environmental Tobacco Smoke (Allwright et al., 2002) was presented to the Minister. The decision which progressed the policy into its final format was formulated in the context of this growing awareness of the dangers of tobacco consumption and its side effects. The announcement that a full ban on smoking in the workplace would be enforced in January 2004, ended the ambiguity that had existed around where, when, and how extensively the Irish workplace smoking be would be applied.

6.10 Conclusion to the Mobilisation Stage

Following the introduction of the Public Health (Tobacco) Act 2002, (Government of Ireland, 2002) the focus of civil servants charged with developing tobacco control policy in Ireland changed. Having successfully progressed the Bill through the Parliamentary and political systems and into law, they now began to focus on how the provisions of the legislation would be implemented. Important elements in the successful implementation were perceived to be cultural, addressed by public education campaigns on the dangers of tobacco use, support for those attempting to give up smoking and protection for those particularly vulnerable to the effects of tobacco use. At the same time retailers, the hospitality sector, and tobacco manufacturers adopted a number of strategies to mitigate the effects of the new regulations on their sectors. These strategies included seeking derogations from the provisions of the legislation, offering technical solutions to existing practice

and pointing out the disparity between Irish requirements and those of the European Union.

These changes occurred in the context of the development of global tobacco control, and Irish policy makers made significant contributions at international fora. The influence of the global tobacco industry was stronger in countries where tobacco manufacturing was a major industry. The lack of such an industry in Ireland allowed Irish delegations attending international negotiating events to be more outspoken about the type and extent of control needed. Ireland's role as a leader in tobacco control was further enhanced when the Minister announced his decision to impose a total ban on work place smoking. The twelve month lead in time placed new requirements on policy makers in terms of preparing the population for this major cultural change, dealing with opposition to it, and any unanticipated difficulties it provoked, as well as taking on a new role as recognised leaders in the field of tobacco control. The themes and categories which contain these elements will be described in Chapter 7, which describes the 'Refreezing' stage of this policy process.

Chapter 7 Refreezing

7.0 Introduction

For Lewin, an essential part of consolidating change occurred in the refreezing stage, the final stage of the process in which activities were designed to stabilize the group, ensuring that new behaviours are relatively safe from regression (Burnes, 2004b). In this thematic analysis of official documentation of a policy making process, the refreezing stage encompassed the activity which consolidated and finalised the changes which supported a new approach to tobacco control.

Table 7.1 Refreezing stage: themes and categories

Stage in the process	**Major Themes**	**Underpinning Categories**
Refreezing stage	3.1. Consolidating the legal basis	3.1a Allowing derogations and concessions
		3.1b Finalising the legislation
	3.2. Supporting the change	3.2a Providing education and advice
		3.2b Establishing groups and Institutions
	3.3 International Initiatives	3.3a Ratifying the Convention
		3.3b Hosting the Conference
	3.4 Taking the final step	3.4a Late Opposition
		3.4b Compliance and reaction

The major themes which arose from the analysis of the documentation assigned to this stage are presented in Table 7.1, with the categories which

underpinned each one. This chapter describes the themes and categories identified as illustrative of the refreezing stage in this policy process, presenting examples from the data. Each document and file referred to is referenced in a footnote.

7.1 Consolidating the legal basis for the policy

The legislation on which the work place smoking ban is based had a difficult and circuitous route to enactment, from its original format as the Public Health (Tobacco) Bill 2001 (Government of Ireland, 2001b) through to the publication of Public Health (Tobacco) Act 2002, (Government of Ireland, 2002) and its eventual consolidation as the Public Health (Tobacco) (Amendment) Act 2004 (Government of Ireland, 2004a). Amendments to the 2002 Act were necessitated by a number of different conditions, including applications for derogations from the legislation in certain workplaces; legal challenges to the Act and the requirements imposed on Ireland through its membership of the EU. In addressing these issues the legal structure underpinning the workplace smoking ban policy was strengthened, and finalised in the Public Health (Tobacco) (Amendment) Act, 2004 (Government of Ireland, 2004b).

The primary legislation through which changes in the use of tobacco products was brought about was the Public Health (Tobacco) Act 2002 (Government of Ireland, 2002). Typically, once primary legislation has passed through the Houses of the Oireachtas, it is enacted through secondary legislation in the form of a Statutory Instrument (SI). There are five main types of Statutory Instruments: Orders, Regulations, Rules, Bye-laws and Schemes. Statutory Instruments are laws which allow persons or bodies, to whom legislative power has been delegated in primary legislation, to legislate in relation to detailed day-to-day matters arising from the operation of the legislation. The usual practice is for specified Government Ministers or designation Government agencies or bodies authorised in the primary legislation to make and commence appropriate Statutory Instruments to enact the provisions of the legislation, and to revoke existing Acts or Regulations as necessary.

The provisions of the Public Health (Tobacco) Act 2002 (Government of Ireland, 2002) were enacted by Regulation, commenced by Statutory Instrument signed by the Minister for Health and Children under the authority provided his Section (2) of the Act:

> (2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions and for the repeal of different enactments effected by subsection (1) of section 8 and the revocation of different (or different provisions of) regulations effected by subsection (3) of that section

A Statutory Instrument signed on 16.10.2003 brought the Tobacco Smoking (Prohibition) Regulations 2003 (2003c) into force. Section 2 of these Regulations prohibit or restrict the smoking of tobacco products in places or premises in places (listed in Table 7.2). The Commencement Order for these Regulations stipulated that they would come into effect on 26th January 2004 and a press release was issued announcing this date[121].

When the Regulations were published, the practical issues of implementing a ban were raised in relation to a number of specific workplaces. The Health and Safety Authority (HSA) had previously engaged in a series of public consultations and meetings with, and had received submissions from, the prison service and Psychiatric Nurses Association on the issue of tobacco use in these workplaces.

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[121] Department of Health and Children Press Release dated 30/10/2003 'Martin announces total ban on smoking in the workplace ' / *Report on Health Effects of ETS in the Workplace, Nov 2002-Health & Safety Authority & Office of Tobacco Control/ ENV/POL/0/40278*

Table 7.2 Places in which smoking is prohibited or restricted

Places or premises in which smoking is prohibited as specified in the Schedule to the Tobacco Smoking (Prohibition) Regulations 2003:
A place of work
An aircraft, train, ship or other vessel, a public service vehicle or other vehicle used for the carriage of members of the public for reward, in so far as it is a place of work.
A place or premises to which paragraph (b), (c), (d) or (e) of section 47 (1) of the Public Health (Tobacco) Act 2002 (No. 6 of 2002) applies, in so far as it is a place of work
A licensed premise, in so far as it is a place of work
A registered club, in so far as it is a place of work

The HSA expressed concern when the Press Release, announcing the January 2004 date for the introduction of the ban, was issued, believing that further dialogue on the implications was required for these service providers [122]. Further scrutiny on the practical impact of the ban in different work environments was necessary, particularly in respect of prisons, mental health facilities, nursing homes and the hospitality sector. The HSA called for a re-examination of the options for the implementation of the ban in these sectors. The issues which arose about each requested derogation or exemption to the provisions of Public Health (Tobacco) Act 2002, (Government of Ireland, 2002) as detailed in the Tobacco Smoking (Prohibition) Regulations 2003, (2003c) were discussed by the staff of the Tobacco Control Unit and the Office of the Attorney General. The Regulations were amended to reflect these discussions and to accommodate the exemptions granted. Exemptions were provided for:

a) prisons, b) outdoor places c) psychiatric Hospitals d) hospices e) nursing homes, f) sleeping accommodation in hotels, guest houses, B & B's, and

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[122] Letter dated 23/07/2003 from the Director General, Health and Safety Authority, to the Assistant Secretary , Department of Health and Children-referring to DoHC press release issued on 22.07.2003 which refers to the proposed ban on smoking in the workplace/ *Office of Tobacco Control and Business Plan 2001 and Funding for 2002/ ENV/POL/0/30959*

accommodation provided for educational or charitable purposes, and g) the Central Mental Hospital [123].

7.2 Derogations from the law

7.2.1 Prisons

Shortly after the Tobacco Smoking (Prohibition) Regulations 2003 (2003c) were signed into law (16.10.2003), a senior official from the Department of Justice, Equality and Law Reform (DJELR), who had responsibility for prisons, professed himself 'taken aback' to see that the Regulations had been signed, and requested information from the Tobacco Control Unit in order to brief his Minister on the matter[124]. Following a meeting between the Ministers for Justice, Equality and Law Reform, and Health and Children, the same DJELR official contacted the Tobacco Control Unit again, stating that he

> ..understood that following the Ministers' meeting yesterday the Regulations will be amended to, among other things, exempt prisons from their scope. ...would be grateful to be given sight of the amending regulations in draft form, in order to comment on the prison exemption or more generally on how the regulations will affect other aspects of the criminal justice system[125]

DJELR had previously supplied observations to the Department of the Environment Trade and Enterprise (DETE) on this issue, when the draft Regulations under the Safety, Health and Welfare at Work Act 1989 were circulated. These observations were now forwarded to the DoHC to inform

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[123] Email dated 13/11/2003 circulated by Assistant Principal Office to TCU and HPU staff DoHC, attaching the Government Press Releases dated 11.11.2003 titled Statement by the Taoiseach to Dail Eireann-Smoking Ban/ *Draft Tobacco Smoking (Prohibition) (Amendment) (No.2) Regulations 2003 (Dwellings-bedrooms, hospices etc) / ENV/POL/0/49789*

[124] Note of Telephone call dated 22/10/2003 Subject: Department of Justice re the already signed Environmental Tobacco Smoke Regulations/*Tobacco Smoking (Prohibition) (Revocation) Regulations 2003/ ENV/IMP/0/45843*

[125] Letter dated 23/10/ 2003 from PO Prisons Section DJELR to PO, Tobacco Control Unit, DoHC/ Tobacco Smoking (Prohibition) (Revocation) Regulations 2003/ *Tobacco Smoking (Prohibition) (Revocation) Regulations 2003/ ENV/IMP/0/45843*

deliberations on the requested exemption for prisons and places of detention under that legislation. The grounds made for exempting these workplaces was based on Section 28 of the Safety Health and Welfare at Work Act, 1989, (1989) which stated that

> The Minister may, by regulations made under this section, exempt from all or any of the provisions of the relevant statutory provisions any specified class of activity or any specified class of person or place of work on such conditions as may be prescribed, where he is satisfied that the application of such provisions is unnecessary or impracticable (Government of Ireland, 1989: S 28)

It was also observed that Section 57 of the 1989 Act provided specifically for prisons and places of detention when it stated

> This Act shall apply to prisons and places of detention unless its application is incompatible with safe custody, good order and security (1989: S 57)

The DJELR provided the wording which would allow the exclusion sought in the amended Tobacco Smoking (Prohibition) Regulations 2003, (Government of Ireland, 2003b) on the expectation that Section 57 of the Safety, Health and Welfare at Work Act 1989 would be availed of, i.e. that a derogation would be granted on the basis that the application of a smoking ban would be incompatible with safe custody, good order and security in:

> any place of custody administered by the Minister for Justice, Equality and Law Reform; or any part of a Garda Siochana station where persons are detained[126]

This provision was acceptable to the DJELR. The remaining issue for that Department was the potential for an 'indefensible situation' to arise if smoking was banned in prisons between 24th January 2004, when the existing regulations come into force, and 4th February 2004, the earliest date on which the amending regulations can be signed into force[127]. Attempts to anticipate this situation had not been successful and the concerns raised by DJELR were noted in the Tobacco Control Unit in their response.

> The Director General of the Office of the Attorney General suggesting changing the date but the Minister was not receptive. This issue is under review and I will feed your concerns into the process[128]

The 'indefensible situation' did not arise as the Minister was ultimately unable to introduce the workplace smoking ban on 24th January 2004 as first planned and announced. The reasons for the delay are discussed later in this chapter.

7.2.2 Mental health and other facilities

For some institutions the significance of banning smoking in the workplace was not confined to those who worked there. In the case of nursing homes, psychiatric hospitals and other mental health facilities, the ban applied to the place where people lived. The particular requirements of residents in these facilities formed the bases for incorporating derogations into the Regulations, although the principles of the Act remained intact. Support for a smoke free

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126 Letter dated 31/10/2003 to PO TCU from Assistant Secretary DJELR/*Tobacco Smoking (Prohibition) (Revocation) Regulations 2003/ENV/IMP/0/45843*

127 Email dated 06/11/2003 from Assistant Secretary, DJELR to PO TCU/ *Tobacco Smoking (Prohibition) (Revocation) Regulations 2003/ENV/IMP/0/45843*

128 Email dated 06/11/2003 from PO TCU to Assistant Secretary, DJELR / *Tobacco Smoking (Prohibition) (Revocation) Regulations 2003/ENV/IMP/0/45843*

focus in such facilities was also encouraged, even when exemptions were granted. . For example, one submission pointed out that those with mental health issues had lower motivation to stop smoking than the general population, and that reduced opportunity to smoke was a primary and important motivating measure[129]. The submission called for the ban to be accompanied by appropriate support from, and to, staff in psychiatric facilities.

The goal of a smoke-free environment in all mental health facilities was also reflected in the written instruction to the Directors of Clinical Practice and Directors of Nursing in mental health facilities to change the way in which tobacco was used when dealing with patients with mental health issues[130] . The Inspector of Mental Hospitals requested that the Directors, and their Management Teams, review local smoking and health policy with a view to promoting the health of patients and staff, and providing a safe and unpolluted environment of all. Non-smoking should, it was posited, be the norm in all hospitals, hostels and clinics and the practice of distributing tobacco products to patients should be reviewed. Patients should have easy access to their own money, and wherever possible be free to decide what they spend money on, including cigarettes, if they wished. Payment with tobacco products in lieu of cash or for work done, or to encourage rehabilitation, should not be allowed. In addition, patients who smoked should be provided with the necessary support and encouragement to reduce or cease smoking completely.

The Mental Health Commission also recommended that smoking cessation programmes be offered and promoted to all residents in units/hostels and

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[129] Email dated 07/10/2003 from Dr Justin Brophy to the Minister for Health and Children re smoking and mental health, / *Draft Tobacco Smoking (Prohibition) (Amendment) (No.2) Regulations 2003 (Dwellings-bedrooms, hospices etc)/ ENV/POL/0/49789*

[130] Memo to all Clinical Directors and Directors of Nursing (Mental Health) Smoking and Health from the Inspector of Mental Hospitals / Draft Tobacco Smoking (Prohibition) (Amendment) (No.2) Regulations 2003 (Dwellings-bedrooms, hospices etc) / ENV/POL/0/49789

called for specific arrangement to be made when introducing the regulations in psychiatric in-patient units and hostels[131]. The Commission also addressed how the ban should be introduced and suggested some specific features which should be taken into account. These included announcing the introduction of the ban well in advance, and providing specific information on the implications of the regulations. The Commission warned that signage would not be appropriate for hostels, and that as hostels/community residences fell within the definition of a workplace, they were also the homes of the residents. It was therefore recommended that residents should be consulted on how the regulations will be implemented in the hostel/community residence.

7.2.3 Hospitality sector

The hospitality sector also sought exemptions from the smoking ban, most notably and successfully through the Irish Hotel Federation (IHF). This organisation argued that hotel bedrooms are generally equivalent to private dwellings, and were granted an exemption on this basis, subject to review in the event that the health of persons affected by ETS was compromised. This decision was the result of discussion between the DoHC and the Attorney General's Office, which involved exchanges about such specifications as the use of the term 'en suite bedroom' instead of 'bedroom'[132]. The Attorney General advised against such a specification in the Regulations, in case this was used by unscrupulous hoteliers to ensure that a greater part of their premises would be exempted. They could do this by altering the premises in such a way that, for instance, a function room area adjoins a bedroom, making it technically 'en suite'. When communicating the decision to exempt

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[131] Letter dated 08/08/2003 from the CEO Mental Health Commission to Assistant Principal Office in the Tobacco Control Unit , DoHC, Re the prohibition of smoking in places of work from 01/01/04/ *Office of Tobacco Control and Business Plan 2001 and Funding for 2002/ENV/POL/00/30954*

[132] Correspondence between the Department of Health and Children and the Attorney General's office from dates in November 2003 regarding legal opinion on exemptions to the proposed regulations under the Public Health Tobacco Act 200/ *Draft Tobacco Smoking (Prohibition) (Amendment) (No.2) Regulations 2003 (Dwellings-bedrooms, hospices etc) / ENV/POL/0/49789*

hotel bedrooms from the ban, several points were made about how this exemption should be applied:

1) It should be made clear to staff that the exemption does not apply to them.

2) Accommodation should be designated smoking or non-smoking (as ETS leave dangerous residues which build up over time) and these designations should be strictly adhered to.

3) Rooms where guests have been smoking should be fully ventilated before staff members are required to enter them in the normal course of their duties.

4) All persons in positions of authority should be aware of the duty of care to employees and for ensuring a safe and healthy workplace. The hotel exemption is not intended to provide a defence in the event of legal or other action to vindicate their rights to live or work in a safe and healthy environment.

This stance was reiterated in a reply to a PQ on the position regarding hotel rooms and the applicability of the smoking ban to them. The written reply provided noted that

> The smoke free work place measures apply with limited exceptions to all enclosed places of work. There measures do not apply to hotel bedrooms as these are considered to be equivalent to private dwellings. A decision to allow the smoking of tobacco products in exempted areas is a matter for the management concerned. However the fact that a premise is exempted does not confer a right to smoke in that location and neither does it affect the duty of care an employer has in respect of his or her employees[133]

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[133] PQ 12204/04 from Paul Kehoe TD, who asked the Minister for Health and Children when the position with regard to hotel rooms will be reviewed in view of the fact that the smoking ban has been introduced; if the ban will be changed to include hotel rooms; and if he will make a statement on the matter/*Smoke-Free Workplaces Guidance letters to Irish Hotels Federation- March 2004/ ENV/INF/0/49609*

These points were reiterated in the guidance letters which issued to all exempted premises, outlining the specific reasons for the exemption and listing a number of points to be considered by those with responsibility for an exempted workplace

The following guidance was given in each letter[134].

- An exemption should not be regarded as a right to smoke;
- Employers, managers and persons in charge have a duty of care to all persons in these facilities in regard to minimising exposure to ETS;
- Nothing in the legislation will oblige an employer or manager of exempted premises to permit smoking or to provide a smoking area.
- Any smoking in exempted places or premises should be located so that smoke from these areas cannot enter the enclosed workplace;
- The exemption does not guarantee a right to smoke and members of staff who may wish to smoke should do so in an external setting;
- Where accommodation is shared, non-smokers should not be placed in the same accommodation as smokers;
- Accommodation should be designated either smoking or non-smoking and adhered to strictly;

7.2.4 Finalising the legislation-a tobacco industry challenge

As concessions and derogations were being discussed, and new Regulations were being drafted to accommodate them, a legal challenge to the enactment of the Public Health (Tobacco) Act 2002 (Government of Ireland, 2002) was underway. The tobacco industry, through the tobacco companies operating in Ireland, initiated proceedings in which the Minister for Health and Children, the Attorney General and the Office of Tobacco Control were named as defendants. The tobacco companies argued that the correct procedures had not been followed by the Government in relation to the notification of draft Tobacco Smoking (Prohibition) Regulation, commenced by the Minister in 2003, under the EU Technical Standards Directives (Council Directive (EC),

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[134] Guidance letters signed by the Secretary General, Department of Health and Children, to managers of exempted premises / *Smoke-Free Workplaces ETS Regulations. Guidance Letters of Exempted Workplaces 2004/ ENV/INF/0/49608*

1998). These Directives are relevant to legal rules or regulations which affect products in relation to: levels of quality; performance, safety or dimensions; the name under which a product is sold; terminology, symbols, testing and test methods; packaging, marketing or labelling; and conformity assessment procedures. Member states of the EU introducing legal rules to regulate these characteristics are required to notify the EU Commission when the new rules are in draft form. The draft rules are then evaluated at EU level in respect of the items listed.

In addition, the notification procedure had not been followed in relation to the Public Health (Tobacco) Bill, 2001(Government of Ireland, 2001b). 14 of the 53 Sections in the Public Health (Tobacco) Act, 2002 (Government of Ireland, 2002), were relevant to the Transparency Directive (these did not include the sections establishing the OTC or the sections empowering the Minister to regulate for smoking in the workplace). These issues came to light when the Judge in the case instructed that the correspondence between the Department of Health and Children and the European Commission, in relation to the Transparency Directives relevant to the Act, be supplied to the plaintiffs as it affected their case[135]. No such correspondence could be provided as the necessary notifications had not been made.

The challenge to the Act appeared to come as a surprise to the Minister, who expressed his dissatisfaction to officials

> The Minister claims that he first heard about it from me at a meeting in Leinster House on 21st November and is angry that he was not told earlier. As we know it was brought to his

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[135] Papers dated 05/12/2002 relating to the case (PJ Carroll & Co, JP&S Ltd; Van Nelle (Ireland 0 Reemstsma Cigarettenfabriken GMGH; Davidoff & CIE SA, Zino Davidoff SA, Gallagher (Dublin) Limited, Airton Cigar Sales Limited & Societe Nationale D'Exploitation Industrielle Des Tabacs et Allumettes (Seita)(Plaintiffs) V The Minister for Health and Children, Ireland & the Attorney General and the Office of Tobacco Control (Defendants), Thursday 5th December 2002. / *Directive 98/34/EC NSAI-Disclosure of records Notification 2002/211/IRL/ File not registered*

attention much earlier than that but it there any record of this?[136]

An explanation was offered for this failure to comply with EU law in replies to the PQs posed on the issue[137]. As the Act was a public health measure it was considered that it was not notifiable to the Commission as a Technical Regulation. The draft Commencement Orders, required for different sections of the Act, including those relevant to the Directives, would, in their draft form, be notified, thereby meeting the requirements of the Transparency Directives. Discussions with EU Commission officials and legal advice from the Office of the Attorney General confirmed that commencing the sections without prior notification would produce uncertainty about the enforceability of the sections in question.

In order to address the issue of notification and to ensure the enforceability of the legislation and the Regulations arising from it, several steps were taken. The affected sections of the Public Health (Tobacco) Act, 2002 (Government of Ireland, 2002) were repealed and reintroduced in a new Bill, the Public Health (Tobacco) (Amendment) Bill, 2003 (Government of Ireland, 2003b).

The Amendments drafted for the original Regulations were incorporated into new legislation i.e. exemptions for mental health facilities, hotel bedrooms, nursing homes and facilities that are the responsibility of the DEJLR. Under EU law, a three month period must be allowed for other member states to lodge any objections they might have to the Regulations or their provisions following the introduction of exemptions. The date on which the workplace

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[136] Email from Assistant Secretary to Principal Officer, TCU, dated 18/12/2002/ *Directive 98/34/EC NSAI-Disclosure of records Notification 2002/211/IRL/ File not registered*

[137] PQ Ref 4080/03 Jim O'Keefe TD, For Written Answer 12/02/2003/*PQ'S 2003 - TOBACCO CONTROL Vol 1/ENV/IMP/0/44868*

smoking ban would become law was consequentially extended beyond the original announced date of 1st January 2004.

A Government Press Release issued about the Taoiseach's announcement in the Dáil of this change in the timeline for the introduction of the ban:

> The smoking ban became law on the 16th Oct 2003 when the Minister for Health and Children signed an Order which provided that the ban would commence with effect from the 26th day of January 2004. It is law and will be effective as and from its commencement date. Subsequently it was decided that there should be exemptions to the ban in addition to the dwelling-prisons, outdoor places, psychiatric hospitals, hospices, nursing homes, sleeping accommodation in hotels, guest houses, B& B's and accommodation provided for educational or charitable purposes, the Central Mental Hospital; some exemptions have ,according to EU law, been notified to the European Commission-the first on 3rd November 2003 (prisons and outdoor places) and the second will be made tomorrow. Under European law there is a three month period under which other Member States can raise objections to the exemptions. In this regard it is of significance that no objections were made to the ban as previously notified. Because of the hiatus between the commencement date chosen by the Minister for Health and Children i.e. 26th January 2004, and the expiry of the 3 month minimum period for all of the exemptions, an adjustment is required. This is an adjustment to the date of commencement of the ban. The new date that will be chosen by the Minister for Health and Children will reflect the expiry of the period stipulated by European law. In these circumstances the ban,

together with the exemptions, is expected to be in operation by the end of February 2004[138]

Box 7.1A The delay in implementation

> I know that didn't go down particularly well at political level but I think when we all looked back at it afterwards, we spent the time, the delay,... wisely in the sense that it gave us more time to bring most of the stakeholders on board [KI 1]
>
> It was actually a fantastic day which I think was better than a cold January start. I actually believe that in retrospect [KI 5]

The new set of regulations was drafted by the Office of the Parliamentary Counsel to the Government, incorporating the amendments and derogations agreed. These were then forwarded to the DoHC for final sign off and enactment[139].

These Regulations were not published or enacted however, and are filed in a draft format. As no reason could be discerned to explain this –or why a final version of the new Regulations was not on file, this issue was probed in key informant interviews. The explanation was that the Regulations as drafted contained a flaw-instead of banning all indoor smoking the wording of the Regulations would ban all external smoking. This error was discovered shortly before the regulations were due to be finalised. Combined with the difficulties

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[138] Email dated 13/11/2003 circulated by Assistant Principal Office to TCU and HPU staff DoHC attaching the Government Press Release dated 11.11.2003 re Statement by the Taoiseach to Dail Eireann-Smoking Ban/ *Draft Tobacco Smoking (Prohibition) (Amendment) (No.2) Regulations 2003 (Dwellings-bedrooms, hospices etc)/ ENV/POL/0/49789*

[139] Letter dated 12/11/ 2003 from the Office of the Parliamentary Counsel to the Government to Secretary General DoHC re Tobacco Smoking (Prohibition) (Amendment) (No 2) Regulations 2003, forwarding herewith draft of the Regulations referred to above which has been prepared in the Office of the Parliamentary Counsel to the Government./ *Draft Tobacco Smoking (Prohibition) (Amendment) (No.2) Regulations 2003 (Dwellings-bedrooms, hospices etc)/ ENV/POL/0/49789*

raised about Irish compliance with EU Directives, another option was taken in the end. A new Bill was drafted to accommodate all the amendments to the original Regulations, and allow for the concessions and derogations agreed. The Draft Bill was notified under the transparency procedure, and subsequently enacted in the Public Health (Tobacco) (Amendment) Act, 2004 (Government of Ireland, 2004).

Box 7.1B Avoiding Disaster

.. it's a joke I tell everyone about it and poor .....came in, there was fourteen around the table, there was a crisis meeting and he said "Minister we've made a terrible mistake, we've banned outdoor smoking, not indoor smoking." [KI 5]

Apparently the regulation was drafted wrongly or something like that and there was silence around the table, you know, but as it turned out... [KI 1]

We did a Bill in the end to copper fasten any potential legal challenge against us [KI 5]

7.2.5 Summary: Consolidating the legal basis

The finalisation of the legislation underpinning the work place smoking ban proved to be more difficult than anticipated when the Public Health (Tobacco) Bill, 2001 (Government of Ireland, 2001b) was enacted as the Public Health (Tobacco) Act, 2002 (Government of Ireland, 2002). During the hearing of a court case taken by the tobacco industry against the Irish State, a failure to notify the technical provisions of the Bill to the EU Commission was revealed. While the provisions relating to the establishment of the OTC and the power conferred on the Minister to ban smoking in the workplace were not affected, this omission was considered to have rendered the Act unsafe in terms of its enforcement. Coupled with this were the objections to and requests for exemptions from the provision of the Regulations derived from the Act, specifically in relation to psychiatric facilities, nursing homes, places' of detention and hotel bedrooms.

The new Regulations which were drawn up to address these issues were not enacted when it was discovered that they contained a significant flaw. Instead, a new Bill, the Public Health (Tobacco) (Amendment) Bill, 2003, (2003b) was introduced in late 2003. This Bill incorporated all the agreed amendments to the original Regulations. When in draft form this Bill was notified to the EU Commission, allowing for a required three month period from the date of notification during which other member states could raise issues of concern or objections to the proposed legislation. The original date of January 26th 2004 announced for the implementation of the workplace smoking ban could not now be met. A new date, 29th March 2004, was announced. The policy makers interviewed referred to the deferred date as a factor which contributed to the success of the ban. This was partly because it allowed more time to prepare for the change, and not least because it ensured better weather for the initiation of the new practice of compulsory outdoor smoking

7.3 Supporting the Change

Introduction

This theme incorporates elements which emerged as important in the final build up to the introduction of a work place smoking ban. As the implementation date approached, resources were dedicated to preparing employers, workers and the public for the imminent change. Some barriers to progress arose in this particular initiative, which were resolved, although not without difficulty. A pro-active approach was taken to combat opposition to the upcoming ban, through the establishment of dedicated groups resourced to deal with media questions and non-compliance. Steps were taken to ensure that those responsible for enforcement on the ground were adequately empowered and prepared in advance of the implementation of the ban.

Other means, such as the education and advice campaigns provided to employers, workers and the general public, were also prominent in the

preparations for the introduction of the ban. Tensions in the working relationship between the DoHC and the OTC were evident in this period, and can also be traced in the discussions around the establishment of a dedicated Tobacco Research Centre. This had been an on-going project since the publication of the TATFS (DoHC, 2000), in which such an institution was specifically mentioned. As a symbol of the Government's commitment to ensuring that evidence about the costs and consequences of tobacco use was available on an on-going basis, it had significance in the smoking ban implementation programme. Nevertheless the consideration given to how it would be established indicated strong misgivings on the part of the key stakeholders involved in progressing the project.

7.3.1 Providing education and advice

Education about the damage done through the consumption of tobacco, and the provision of support to those wishing to stop smoking, were considered important contributions to bringing about cultural change in relation to smoking. As discussed in Chapter 6, the Health Promotion Unit of the DoHC had been active in health promotion and anti-tobacco education since the early nineties. This work was specifically recognised in TATFS (DoHC, 2000). The lack of defined programmes aimed at raising public consciousness about the dangers of tobacco use was also noted. Recommendations for dealing with the negative effects of tobacco industry marketing on smokers, and particularly on young people, are made in the report. Better communication and education, which would raise public awareness and empower the community, became the 'Tier 1' action of the seven tier action plan in the report. Table 7.3 reproduces the seven tiers of action outlined in the report (2000:45).

Table 7.3 Action plan: Towards a Tobacco Free Society

Tier	Action
1	**Better Communication and Education** which would raise public awareness and empower the community
2	**More help for Smokers to Quit** by providing them with specific support
3	**Tougher Regulation of the Tobacco Industry** to eliminate inducements to children to experiment with tobacco and to ensure smokers are fully informed by the tobacco industry of the risks they are undertaking
4	**Further protection** against the harmful effects of passive smoking
5	**Better Compliance with the law** by informing and educating key people in positions of responsibility in order that our laws are accepted by the wider community, and by a pro-active approach to law enforcement
6	**Extending ownership** of the Tobacco Free Society initiative: it requires total community commitment and engagement to create a tobacco free society
7	**International Cooperation** which addresses the fact that tobacco products are marketed globally

Table from Towards a Tobacco Free Society (DoHC, 2000:45)

Among the actions listed in the Report to reach the objective 'Better communication and Education' were: a public relations programme to engage key community and society leaders in the campaign against smoking; improved public knowledge of tobacco control laws, through conferences that focussed on environmental health matters; and the establishment of a tobacco information and resource centre to gather, hold and disseminate information about tobacco and its effects. An enhanced, resourced Health Education Programme to augment that already provided was also considered an important support in this regard.

The Health Effects of Environmental Tobacco Smoke (ETS)

The Report On The Health Effects Of Environmental Tobacco Smoke (ETS) In The Workplace (Allwright, 2002), was launched in 2003. At the same time the Minister for Health and Children announced the initial date on which all workplaces would become smoke free. An emphasis was placed on the provision of educational material, expanded to include focussed campaigns, designed to prepare employers and workers for the implementation of the ban. Material was prepared and distributed to employers and workers through a variety of sources. A planned mailshot to 15,000 outlets in the licensed trade was one example. This activity came under discussion in the DoHC when it was noted that the OTC were refusing to use the agreed logos on the mailshot material, and were instead using the OTC logo and slogan[140]. This incident was raised unprompted by key informants as an example of the type of difficulty encountered by DoHC staff working with the OTC. The mailshot was eventually carried out by the Department, a fact which was noted in the media at the time:

> I now hear that the OTC was supposed to distribute hundreds of 'no smoking' signs to public and work places one week before the smoking ban on March 29. ....seven days before the ban results of the OTC effort were nowhere to be seen. Michael Kelly, the Secretary General in the Department of Health had to step in to organise the distribution. Then sack loads of signs had to be ferried to the sorting office in Dublin as the DoHC postal franking machine ran out of credit [141]

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[140] Note dated 4/3/04 from PO TCU to ASec DoHC re follow on from meeting re distribution of abridged information on the ETS ban to the licensed trade, (15000 outlets. -listing material to be sent and suggesting work plan, venue, and staff for the mail shot) HW note attached by ASec ' mentioned at MAC'./ *Smoke-free workplaces: mailshot to the licensed trade March 2004 / TCU/POL/0/50375*

[141] Sunday Mirror article 23/05/04 –unattributed/*Change is in the Air: Future Directions in Tobacco Control in the European Union' Conference, Limerick 17-18 June 2004/ File not registered*

Box 7.1C Policy Makers impressions of the OTC

I know there was one issue that certain documentation had to issue to everybody that was going to be impacted on by the legislation and the OTC were charged with doing that and it had to be done by a particular Saturday and they just didn't do it or they said they couldn't do it and then it was taken back from them. That didn't go down very well... [KI 4]

Like to give an example..., we had a strapline on all the publicity material, 'Smoke Free At Work' and it was a logo with a butterfly and they had their separate logo, 'Smoke Free Works' as a separate strapline and a different logo and we had to get Michéal Martin to sit them down and say we must all have the same advertising message [KI 2]

And now sometimes the office facilitated us. Sometimes it was difficult to get them to play ball in the sense that, if we asked them to do something they may or may not it [KI 1]

Because when we went to the launch in Kilmainham and we were being kept out of the room where the launch was so, anyway I broke and I went into the room and I could see this brand. So I had to say to ....who was a board member and the senior official there on the day there was another brand, because we were told there was to be one brand [KI 4]

7.4 Establishing groups and institutions

7.4.1 Tobacco information and resource centre

The establishment of a tobacco information and resource centre was presented in the report TATFS as a project already underway.

> The Minister has already agreed to the establishment of a national Tobacco Information and Resource Centre. Specific funds have been allocated in 1999 to facilitate the development of this project in association with ASH Ireland. (DoHC, 2000: 46)

The Minister referred to in this quote is Minister Brian Cowan, who preceded Michael Martin as Minister for Health and Children. The new Minister

appeared to fully support the establishment of a dedicated Research Centre, referred to subsequently as the Tobacco and Health Research Centre.

The manner in which agreement was reached on the model for, and function of the Centre, provides an example of the difficulties in communication which came to characterise the relationship between the then newly established OTC and the DoHC. A Steering Group had been convened by Minister Cowan to investigate and report on the utility of establishing a Research Centre of this type. This report had been received in the DoHC, and a letter from the new Minister to the Chairperson of the Steering Group had been drafted, but was not issued [142]. There was general agreement that such a Research Centre should be established, as noted in an internal note on the issue

> The Minister met with ASH Ireland on 31 May 2000 in regard to the report submitted by a Steering Group chaired by Professor David Kennedy, set up by ASH in March 1999 at the request of the Minister to examine a proposal for the establishment of a Research Centre in relation to tobacco and health. The report submitted has been examined and is in line with the type of centre envisaged. The Report 'Towards a Tobacco Free Society' also recommends the setting up a centre of this type. The Minister indicated to ASH that he was satisfied overall with the proposal from the steering group and that he will issue a letter confirming this and that they can proceed with setting up the centre subject to agreement being entered into with the new OTC [143]

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[142] Draft letter dated June 2000 from Minister for Health and Children to Prof David Kennedy C/o ASH Ireland re Proposal to Establish a Tobacco & Health Research Centre, approving the establishment of a centre of this kind/Establishment of the Tobacco & Health Research Centre: Correspondence/*Meetings with ASH Ireland /ENV/INF/0/30957*

[143] Note dated 12/06/2000 from Assistant Principal Officer TCU to Principal Officer TCU and Assistant Secretary DoHC Re Tobacco & Health Research Centre/ *Establishment of the Tobacco & Health Research Centre Correspondence/Meetings with ASH Ireland/ ENV/INF/0/30957*

This memo was annotated by the recipients, one of whom noted that

> I think there are too many unresolved issues here for the Department to hand over to the OTC [144]

These issues were outlined in a more extensive memo to the Secretary General of the DoHC. Clarity was needed, this memo suggests, on a number of related matters, including the scale of the Research Centre proposed, the amount of funding estimated and what the relationship would be between the OTC and the Research Centre , were it established. More fundamentally, major reservations about the desirability of setting up an autonomous body of this nature were expressed. Three possible options were suggested as a model for its establishment. These were: to have the centre as an offshoot of the OTC; to fund a Research Centre in a third-level institution (e.g. a Chair of Health Promotion in University College Galway (UCG)); or to link it in with the Health Research Board (HRB). Funding was not a major barrier in this project as over €600,000 was being handed back in unspent 'tobacco money' for the year. This was considered more than enough to fund both the OTC and establish the Research Centre in one of the above formats, in the coming year [145]

No further development occurred until the Chairman of ASH Ireland wrote to the Minister referring to his correspondence of the previous July (2000)

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[144] Handwritten note dated 13/06/2000 from Deputy Secretary to Principal Officer TCU on note to the Principal Officer TCU and Deputy Secretary DoHC dated 12/06/2000 from Assistant Principal Officer TCU, Re Tobacco & Health Research Centre/ Establishment of the Tobacco & Health Research Centre Correspondence/*Meetings with ASH Ireland/ ENV/INF/0/30957*

[145] Memo dated 22/11/2000 to Secretary General from ASec DoHC re Tobacco and Health Research Centre/*Meetings with ASH Ireland/ ENV/INF/0/30957*

> Regretfully ASH Ireland has heard nothing positive about the establishment of the Institute since. This has created a great sense of unease among ASH Ireland Board members....., who in general have been very supportive publicly of the stance that you have taken on the issues of tobacco control. I am anxious that we are seen to be in harmony on this issue; hence I would welcome some indication as to what the problem area might be so that we can work on a solution as quickly as possible[146]

A letter to the Chairman of Ash was drafted on the basis of the previous memo, and included a reference to the establishment of the OTC on a statutory basis in the new Tobacco Bill being prepared noting stating

> Now we are clearer on our thinking regarding that Office, I believe the time is right to progress the establishment of the Tobacco and Health Research Centre. There are a number of issues concerning the respective functions of and relationships between the Office and the Centre that will need clarification. I would like to discuss with you the options in terms of positioning the new Centre, for example in a University or other setting [147]

The issue was to remain contentious, however. The OTC made arrangements for the Research Centre to be established as a private limited company (without share capital) and with the OTC as an anchor client for the first few

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[146] Copy of letter dated 1/10/2000 from the Chairman of ASH Ireland re Tobacco Resource and Research Institute to Minister Martin/ Establishment of the Tobacco & Health Research Centre Correspondence/*Meetings with ASH Ireland/ ENV/INF/0/30957*

[147] Letter to Prof David Kennedy dated 13/12/2001 C/o ASH Ireland from Micheal Martin re Proposal to Establish a Tobacco & Health Research Centre/ *Establishment of the Tobacco & Health Research Centre Correspondence/Meetings with ASH Ireland/ ENV/INF/0/30957*

years. This suggestion was raised at a Board meeting of the OTC attended by the Principal Officer of the Tobacco Control Unit, who was a member of the OTC Board of Management. At that meeting the DoHC objections and concerns about this model for the establishment of the proposed Research Centre were outlined. These mainly concerned the Centre's financial accountability, and the security of any State-purchased assets that it might accumulate

> The Board decided at this meeting that the OTC's lawyers should be asked to examine this issue further and to devise an appropriate legal instrument and to outline the options available. I indicated that as a stakeholder in the initiative, the Department would need to clear the final model proposed with our Legal advisor. The Minutes of that meeting confirm these facts and are available [148]

Staff of the TCU were therefore surprised to receive an invitation to attend an event on the 31st May 2001, at which the Minister would witness the signing of the contract between the new Research Centre and the OTC. The TCU advised the Minister's Office that the Minister should not witness the signing of a contract which had not yet been approved. It was subsequently agreed that the Minister would attend the function and announce that the incorporating agreement would be signed within a few weeks. The Research Institute for a Tobacco Free Society was launched by the Minister on Word No Smoking Day, 31st May 2001, as planned, but contracts were not signed. A note was consequently prepared by the Deputy Secretary for the Secretary General and the Minister, when this matter was raised, among other issues relevant to the Public Health Division, by the Minister. Commenting on the situation which occurred in relation to the launch in this note the following is stated:

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[148] Note dated 12/6/01 from PO TCU to Deputy Secretary DoHC Re: Tobacco Research Institute/ Establishment of the Tobacco & Health Research Centre Correspondence/*Meetings with ASH Ireland/ ENV/INF/0/30957*

> I want to stress that the Department was not aware of the proposed function or the Minister's agreement to attend until ....the invitation from the OTC late on the preceding evening. I very much regret the problems which arose in relation to these matters but I think it is clear .....that the blame does not lie with .....the Public Health Divisions of the Department. What is clear, however, is that the difficulties which arose in relation to the Tobacco Research Institute .....could have been avoided if there was better communication between the Minister's Office and the Department [149]

The eventual model selected for this Research Institute was a limited company formed on the basis of a partnership between the OTC and ASH Ireland /Irish Heart Foundation/Irish Cancer Society. The first Director-General of the centre, now named the Research Institute for a Tobacco Free Society, was appointed in late 2003 [150]

An indication of how long it took to establish this dedicated research institute is reflected in a PQ received in the Department, which asked the Minister for Health and Children about

> the budget allocated to the Research Institute for a Tobacco Free Society - which he launched in 2000 - in 2001, 2002 and 2003; and if he will make a statement on the matter [151]

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[149] Note dated 21/06/2001 from Deputy Secretary, titled, Issues raised by Minister to: 1) Secretary General-to see and 2) Minister for Health and Children/ *Establishment of the Tobacco & Health Research Centre Correspondence/Meetings with ASH Ireland/ ENV/INF/0/30957*

[150] Press cuttings Irish Times dated 10/12/03: Head of Tobacco Research Body-Prof Luke Clancy, a leading anti-tobacco campaigner, has been appointed the first Director-General of the Research Institute for a Tobacco Free Society/ Research Institute for a Tobacco Free Society/ ENV/INF/0/46495

[151] PQ (Ref 6595/03) from Liz McManus for written answer on 05/03/2003/ *Research Institute for a Tobacco Free Society/ ENV/INF/0/46495*

The answer provided to this Parliamentary question stressed that the costs for research were included in the annual allocation for the OTC which is a trustee of the Research Institute, and that no individual allocation has yet been made to the Institute [152]

7.4.2 Contribution of other groups

The National Implementation Group (NIG)

A focussed public relations campaign was run in the final months before the ban became law. The National Implementation Group (NIG) was established to guide this final stage of the policy process. The terms of reference for this group were:

- to ensure a consistent and uniform approach in the introduction of the new measure, and its subsequent implementation and enforcement;
- to coordinate guidance on implementation and agree the text of the guidelines for groups in the various sectors including the hospitality sector; to develop and co-ordinate guidance for Environmental Health Officers and Health and Safety Inspectors;
- to consider the demarcation of responsibilities for enforcement of the regulation between the agencies; to advise generally and provide assistance on the implementation /enforcement of the regulations [153]

This group was established by the Tobacco Control Unit in October 2003, six months prior to the introduction of the ban, with a view to preparing for the its smooth introduction. Membership was broad, encompassing the DoHC, the OTC, the Health Boards, the Health and Safety Authority, and the Environmental Health Officers Association. The NIG co-ordinated the

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[152] Reply to PQ (Ref 6595/03) from Liz McManus TD for written answer on 05/03/2003/ *Research Institute for a Tobacco Free Society/ ENV/INF/0/46495*

[153] Terms of reference for the group/*National Implementation Group-Meetings October 2003 Vol I/ TCU/IMP/0/53168*

provision of guidance for employers and the general public; for the licensed trade, for the Environmental Health Officers as well as for groups in the various sectors, including the hospitality sector, regarding the new public health measures.

Protocol Steering Group

A second group which played a part in preparing for and overseeing the implementation of the work place smoking ban was the Protocol Steering Group, which was comprised of DoHC, the OTC and Health Board Staff. The Chief Environmental Health Officer from the DoHC represented both the Department and the Tobacco Control Unit on this group. Environmental Health Officers (EHOs) from each of the Health Boards represented the Health Boards.

Protocols [154] were produced to guide EHOs in relation to:

- all tobacco related complaints received by the EHS (Environmental health services) ;
- inspections carried out under the tobacco control legislation;
- test purchases carried out to enforce the tobacco control legislation
- the obstruction of an authorised officer in the performance of his /her duty under tobacco control legislation;
- prosecutions taken by Health Boards under tobacco control legislation

Court preparation including providing evidence in court in relation to all prosecutions for contraventions of tobacco control legislation

7.4.3 Summary: Supporting the Change

Final preparations for the introduction of the work place smoking involved the establishment of a dedicated National Implementation Steering Group to ensure the consistent and uniform implementation of the legislation, across all the groups and bodies contribution to the initiative. An existing group, the

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[154] Protocols produced by the Protocol Project Team/ *Tobacco Control-OTC Protocol Project Team / TCU/POL/0/59073*

Protocol Steering Group which had been promoting uniformity and consistency in the enforcement of the technical aspects of the ban, were also active at in the final stages of the preparation. Contributing to cultural change were the structured initiatives –the education campaigns for workers and employers, mailshots to affected businesses and the establishment of a dedicated Research Centre to research and monitor tobacco related issues. Deliberations about the establishment of this Research Centre reveal the increasing tensions in the relationship between the Department and the OTC, which began to impinge on the work of both. The challenges in preparing for the ban and overseeing its successful implementation were to further test this relationship.

Box 7.1D Role of the EHOs and implementation protocols

And then they also operate ...what are called protocols, so that there's standardisation around the country. So again we had make sure that the protocols reflected what the legislation required in terms of an inspection protocol and inspection records so that there was consistency but also as well that we could then record the numbers of inspections, what was inspected and what the compliance rates were [KI 4]

So I was on the protocol group .....I was on that other group as well so it was really just to make sure that people were getting the same information and it was the same message and they had as much information as we could actually impart at any one time [KI 4]

It was looking at it and making sure that the enforcement powers were there,...and that the offences were clear so that if a situation arose then the EHO's were empowered with things like powers of entry, powers to interview, take documents and all that kind of stuff so that they could take their evidence in for the prosecutions [KI 4]

7.5 International Initiatives

Introduction

As Ireland moved closer to becoming the first country in the world to introduce a work place smoking ban, work continued on Ireland's contribution to international initiatives. One of these was the Framework Convention on Tobacco Control (FCTC), to which Ireland had contributed since the first International Negotiation Body (INB1) meeting was convened in 2000. By late 2003 the Convention was almost finalised and WHO member states, including Ireland, were coming under pressure to sign and ratify the Convention in their own countries. When 40 EU member states had individually ratified the FCTC, the EU Commission could sign and ratify the Framework Convention on behalf of the EU. As Ireland had taken a leading role in developing tobacco control policy on the international stage, the opportunity to use the upcoming Irish Presidency of the EU Commission to consolidate Ireland's, and the EU's position, through the ratification of the FCTC, was under active consideration. Holding an international conference on tobacco control in Ireland during the Presidency seemed to maximise the opportunities for publicity for the Minister, if he could ratify the treaty on behalf of Ireland, and for the Irish Presidency, if the EU Commission could ratify the Convention at the Irish conference. While that opportunity was not exploited fully, the attempts to do so highlight the procedural difficulties and the heightened tensions between the key players in Irish tobacco control.

7.5.1 Ratifying the FCTC

The WHO Framework Conventional for Tobacco Control was being finalised prior to being signed and ratified by WHO member states and by the EU. Any further contribution by Ireland to the final negotiations for the FCTC was considered unnecessary, as explained by a senior DoHC official

> If we can stay aloof from this then that would be my preference. Its seems to me that the issues to be discussed are generic to international

> treaties and that TCU (notwithstanding our undoubted intelligence, skills and commitment) would not bring much to the party[155]

The EU Commission had noted both Ireland's failure to ratify the FCTC and to transpose the Tobacco Products Directive, as outlined earlier. Ireland's Permanent representative in the EU conveyed these concerns to the Department, warning that

> Infringement proceedings against us is imminent. Given Ireland's strong role on tobacco control at EU level, the Commission are seeking a speedy and decisive response from us on this.....the Commission again informally expressed its disappointment that Ireland has as yet been unable to sign the FCTC and diplomatically enquired as to when we might be in a position to do so[156]

A ceremonial signing by Ireland of the WHO FCTC took place on Monday 16th June 2003, in Geneva, Switzerland. The advice to the DoHC from the Office of the Attorney General was that Ireland should sign and ratify the Convention as a bi-lateral measure, as it is a mixed competency treaty (i.e. an agreement concluded by the EU and by its member states). This advice addressed concerns about the way in which the EU was being prevented from ratifying the FCTC by the actions of some member states, notably Germany [157]

The German administration contacted the Minister's Private Secretary requesting a telephone appointment to discuss the FCTC with the Minister[158]. While the Permanent Representative outlined the Minister's awareness of the issues that the German Minister wanted to discuss, there is no indication on

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[155] Email date from PO TCU to DoFA re the Geneva based meeting for FCTC/ *WHO FCTC Signing of FCTC /File not registered*

[156] Email dated 20.6.2003 from the Irish Permanent Representative in Brussels to Assistant Secretary DoHC/EU Presidency 2004/*Tobacco Control- Office of Tobacco Control Vol 1/ TCU/POL/0/50381*

[157] Letter dated 16/5/2003 to the Sec Gen (cc'd to Tobacco Control Unit staff) from Advisory Council, Office of the Attorney General. Re your minutes of 9 th and 12th May 2003 seeking advice in relation to the FCTC/ *WHO/FTCT World Health Assembly May 2003 Vol 2/ ENV/POL/0/40249*

[158] Email dated 12/05/2003 from Ines Meyer in Berlin to Minister's Private Secretary/ *WHO/FTCT World Health Assembly May 2003 Vol 2/ ENV/POL/0/40249*

file that this conversation took place[159]. There is some evidence, however, that officials were becoming concerned that Ireland would lose its status as a leader in tobacco control. An email from the Permanent Representative in EU noted in an update form the FCTC signing at Geneva that

> Norway has completed the steps necessary to make it the first country to ratify the FCTC [160]

The Department of Foreign Affairs also warned that

> We will need to take a lead-position in the signing /ratification process if the legacy of our recognised and strong public health stance on tobacco-related health issues is to be maintained at international level-urging that we confirm our preparedness to sign up in New York asap to the WHO Secretariat and to secure the necessary cabinet approval and agreement on the modalities of representation at the NY formalities to ensure this [161]

The Minister for Health and Children formally signed the FCTC in September 2004[162] but in order for the Convention to be ratified at national level, approval had to be secured from the Government and from the Dáil. The procedure for seeking a Government decision required the Minister for Foreign Affairs to submit a Memo for Government on behalf of the Minister for Health and Children relating to the FCTC. Once Government approval was secured, the Memo needed to be tabled for Dáil discussion and ratification.

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[159] Email dated12/05/2003 from Irish Permanent Representative outlining Ministers awareness of the issues that German want to discuss/ WHO/*FTCT World Health Assembly May 2003 Vol 2/ ENV/POL/0/40249*

[160] Email dated 16/06/2003 from Irish Permanent Representative to the EU/ *WHO/FTCT World Health Assembly May 2003 Vol 2/ ENV/POL/0/40249*

[161] Email dated 07/06/2003 from Senior Official ,Department of Foreign Affairs/ WHO/*FTCT World Health Assembly May 2003 Vol 2/ ENV/POL/0/40249*

[162] Press coverage of Minister Martin signing the Tobacco Control Convention in the UN building in New York (Irish Times 17/09/2003)/ *WHO FCTC Signing of FCTC /File not registered*

The joint EU/Irish Presidency /EU Commission conference to be held in June 2004 presented an opportunity to announce Ireland's ratification of the FCTC on the international stage, if it could be arranged.

7.5.2 Hosting an international conference on tobacco control

Ireland was due to take over the Presidency of the EU Commission from January 2004 for a period of six months. The idea of hosting a conference around tobacco control during the Irish Presidency was raised with the OTC in April 2003. The OTC was asked to consider organising an event to reflect the primary health theme during the Irish Presidency, which was to be cardiovascular disease, in the context of tobacco control and public health[163]. The OTC agreed to take on the organisation of the conference, estimating that it would require a budget of up to €200,000 to facilitate the professional organisation of an event of this nature[164].

The organisation of this conference generated new tensions between the OTC and the TCU, which were intensified by the involvement of the EU Commission (referred to in notes and emails on the subject as 'Cion', an abbreviation of the word Commission).

The EU Commission became involved with the organisation of the Conference, once it had been decided that this would be a joint Presidency/Commission Conference, and that a contribution would be made by the Commission to funding the event [165].

Initially contact was between the Permanent Representative in Brussels, who liaised between the DoHC and Cion's Presidency Working Group. Members of

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[163] Letter dated 02/04/2003 from AP TCU to CEO OTC asking him if the Office would consider organising an event (not more than one day) to reflect the primary health theme during the Irish Presidency-cardiovascular disease , in the context of tobacco control and public health/ EU Presidency 2004/*Tobacco Control- Office of Tobacco Control Vol 1/ TCU/POL/0/50381*

[164] Letter date 17/04/ 2003 to AP DoHC from CEO OTC/ EU Presidency 2004/*Tobacco Control- Office of Tobacco Control Vol 1/ TCU/POL/0/50381*

[165] Email from Permanent Representative to TCU subject 'Good News on funding for Tobacco Control conference - Confirming the commission will contribute towards funding Limerick conference'/ *EU Presidency 2004/Tobacco Control- Office of Tobacco Control Vol 1/ TCU/POL/0/50381*

this group were asked in early 2003 to 'firm up' on conferences and the high level meetings that would be held under the aegis of the Irish Presidency as soon as possible. Following repeated requests the OTC provided an update on the progress they had made with organising the conference, which was forwarded to Cion for discussion at a meeting held in late January. The update included information on a suggest title and focus for the conference, possible venues, invitees, presenters, and a draft programme for the event. The meeting to discuss the Conference was held in Luxembourg and attended by staff from TCU, the OTC, and from the Irish Permanent Representation in Brussels. Also present were representatives from the European Commission, who itemised a number of elements in the Conference programme with which they were unhappy. These included:

- The domination of the Programme by speakers from Ireland, which would mean that the conference would not be seen as an international event;
- The absence of any Southern European /Mediterranean input
- The imbalance between scientific sessions (too many) policy aspects (not enough) which would mean that the conference would not attract policy makers;
- The gender imbalance on the conference panel
- The draft details of the conference e.g.-its title, nicotine dependence, the emphasis on national tobacco policies, toxicity of smoke and ingredients, measurement methods, the proposed workshops and their content, and how workshops will be fed back into plenary;
- The choice of keynote speaker. OTC suggested WHO invitee Derek Yach, who Cion considered to be totally isolated within the WHO. Cion suggesting instead Catherine Le Gales-Camus, Deputy Director General who is responsible for tobacco.

The Commission representatives concluded that

> Provided that this is an Irish Presidency and European Commission joint venture, the Commission believes that it will find some financial support to invite people to the meeting. The decision on funding will have to be made by the 25

> College of Commissioners, but if Ireland is genuinely prepared to take on board the Commission's views expressed here today, and if it is a joint venture, then the Commission will invest resources[166]

A February meeting between the Minister and the Chairperson of the OTC Board discussed the need to take a unified approach to the implementation of the work place smoking ban. The Limerick Conference was also discussed, with the Minister instructing that it should be a joint Presidency/ Commission initiative, and that the Commission's observations should be taken on board[167]. A perceived deviation from this approach signalled a problem for the DoHC as:

> The Minister had indicated that he wishes this Conference to be a joint Presidency/ Commission event-to achieve this the programme has to be adjusted to meet the Commissions wishes but the OTC are not engaging in this process and .....thinks the Commission will withdraw. We need to consider Plan B, i.e. taking over the conference from the OTC (Discussed at MAC 4.3.04)[168]

As the date for the enactment of the work place smoking ban came nearer the pressure grew on the OTC to progress the organisation of the conference and to secure the support and funding of the Commission. At the same time, the OTC was responsible for distributing thousands of information leaflets about the ban to employers and workplaces in advance of the 29th March 2004. The fact that this task was ultimately taken over by the DoHC had been noted in the media, and concerns about the high profile conference planned

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166 Note dated 30 /01/ 2004 taken by Permanent Representative of the Conference meeting in Luxembourg, / *EU Presidency 2004/Tobacco Control- Office of Tobacco Control Vol 1/ TCU/POL/0/50381*

167 Note of meeting between Minister and Dr Michael Boland, CEO Board of Management OTC, on 10/02/2004. Meeting also attended by Assistant Secretary DoHC and Minister's Special Advisor/ *Office of Tobacco Control Board Minister and Chairman Meetings, 2004/ TCU/POL/0/54009*

168 Note dated 04/03/2004 from PO TU to Assistant Secretary DoHC re Presidency Tobacco Conference in Limerick June 2004 /*Smoke-free workplaces: mailshot to the licensed trade March 2004/ TCU/POL/0/50375*

for Limerick were similarly exposed in an article which appeared in a Sunday newspaper. The unaccredited author notes that word has reached him/her that

> ...relations between the independent Office of Tobacco Control and DoHC are at an all-time low, with the OTC so far behind in planning the Conference (so that Minister Martin could tell EU representatives how great we are for giving up smoking in the workplace) that senior officials were called in to the Minister's office to explain why. Visitors to the EU Presidency website could not even establish where in Limerick the conference was taking place or how to register[169]

Conference planning meetings were held throughout March 2004 and communications between the OTC and the Department suggest that working relations continued to deteriorate

> We need assurance from OTC that the organisation of the Conference will be prioritised and that it will cooperate with Department of Health and Children and the EU Cion on a positive basis. We need assurances that staff in OTC will be assigned to work on the logistics of the Conference and that cooperation in addressing on-going issues will be given in a timely fashion; We need to be assured that there is or will shortly be a plan in place by OTC with deadlines and details of each of the key steps in the planning process[170]

At a subsequent meeting the following was noted

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[169] Sunday Mirror article dated 25/04/ 2004 'Time to turn over a new leaf' /*Change is in the Air: Future Directions in Tobacco Control in the European Union' Conference, Limerick 17-18 June 2004 /File not registered*

[170] Note dated 12/03/2004 prepared by TCU staff of conference preparation meeting held 10.03.2004 /*EU Presidency Tobacco Control-Conference 2004 VOL II/TCU/POL/0/50393*

> The OTC gave Department of Health and Children assurances that it has (a) prioritised the conference and is confident that it has the capacity to do so (b) incorporated the Cion suggestions into the Draft Programme and (c) will work with Department of Health and Children and Cion to further develop and tailor its suggestions (d) will avail of the centrally agreed services and (e) will fully cooperate with Department of Health and Children in organising the conference [171]

The TCU appeared to be unconvinced however, noting that

> Notwithstanding the above a similar situation can not arise again where the OTC goes to ground for over two and a half weeks attributing the delay in responding to Department of Health and Children on Cion suggestions due to pressure of other work..... This despite the fact that the Chairman gave assurances that the Conference would be prioritised [172]

Working relations between the offices were strained and the TCU were preparing to take over the organisation of the Conference. Instructing the TCU representative who was attending a planning meeting in Brussels on behalf of the Unit (which the OTC were not available to attend because of pressure of work) the PO of the TCU directed that

> Given that we may end up retrieving the Conference from the OTC in view of our concerns at their ability to manage it, the meeting should be conducted (sic) in such a way as to convey to Cion that we (Tobacco Control Unit) are in charge. I will

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[171] Note of meeting held on 08/04/2004 in Department of Health and Children, Hawkins House re preparation of Conference on European Tobacco Control / *EU Presidency Tobacco Control-Conference 2004 VOL II/ TCU/POL/0/50393*

[172] Note dated 31/03/04 from PO TCU to TCU Representative at meeting in Brussels to discuss the Joint Presidency /Commission Tobacco Control Conference -Limerick June 2004/ *EU Presidency Tobacco Control-Conference 2004 VOL II/ TCU/POL/0/50393*

> be contactable ... if at any time you need to contact me for advice or instructions, you should adjourn the meeting and phone me[173]

At a meeting in early April it was proposed by the DoHC Chair that the individuals attending and representing the TCU, the OTC and the MWHB (Mid-Western Health Board) should constitute a new Organisation Committee for the Conference, and that

> It would be preferable if the Organisation Committee had complete control over the conference rather than have any lines of demarcations present between any of the various constituent parties[169]

This proposal was agreed and the new Committee oversaw the final two months of preparation for the conference. Although a Government decision to ratify the FCTC on behalf of Ireland was obtained, it was not possible to secure Dáil time to debate the Treaty and have it formally ratified in time for the June EU/Irish Presidency Conference. In his address to the conference the Minister for Health and Children announced that:

> I am very pleased to announce that the EU is today finalising the process of ratifying the FCTC. This is a very significant step as the Union formally commits to the implementation of this far reaching international agreement to respond effectively to the global threat posed by tobacco. I am also pleased to announce at that at last Tuesday's Government

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[173] Note dated 31/03/04 from PO TCU to TCU Representative at meeting in Brussels to discuss the Joint Presidency /Commission Tobacco Control Conference -Limerick June 2004/ *EU Presidency Tobacco Control-Conference 2004 VOL II/ TCU/POL/0/50393*

meeting Ireland's ratification of the Convention was formally agreed[174]

The formal signing, by the EU Commissioner David Byrne, of the Framework Convention on Tobacco Control on behalf of the EU formed part of the conference agenda, and was hailed as an historic event[175]

The conference was a high profile event for the Irish Government and drew further attention to Ireland's leading role in tobacco control. The organisation of the event had, however, strained the working relationship between TCU and the OTC, as noted in key informant interviews.

Box 7.1E The OTC Tobacco Control Conference

> The OTC actually became very problematic up to the extent we gave them a conference to run, to showcase their talents. The Limerick Conference...and in my innocence I gave it to them to run and I had to actually take it over, because they were, it was going to become by far the biggest conference. It was a minimum of four hundred. I had to go in to keep it down to two-hundred-and-fifty [KI 2]
>
> ...but even the conference, I mean they were organising the conference. It wasn't up to the standard that was required as a Presidency conference, and that was back in the day and had to be taken off them and something else put in place to try and manage it [KI 4]

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[174] Press cuttings of coverage of the ratification of the FCTC at the 'Change is in the Air' conference in Limerick 17/18 June 2004/ *FCTC Ratification/File not registered*

[175] Speech by David Byrne, European Commissioner for Heath and Consumer Protection/*Change is in the Air: Future Directions in Tobacco Control in the European Union' Conference, Limerick 17-18 June 2004/File not registered*

7.5.3. International Elements-Summary

Ireland had taken a leading role in the development of international tobacco control measures, as a member state of the World Health Organisation and of the European Union. In the 12 months leading to the introduction of an Irish work place smoking ban the WHO Framework Convention for Tobacco Control was also being finalised. As the final version of the Convention was being discussed, member states were asked to ratify the Convention at a national level. Within the EU some member states opposed to the measures in the FCTC made direct contact with the Irish Minister for Health and Children, reflecting Ireland's influence in the sector.

Ireland also became the focus of European attention when it took over the Presidency of the EU. This presented a number of opportunities to promote the tobacco control measures being taken. A joint EU/Presidency conference on the progress on tobacco control was planned and partially funded by the EU Commission. The involvement of the latter meant that specific arrangements relating to the scope, focus and structure of the event were required. The organisation of the conference was assigned at national level to the OTC, with a line of communication between that organisation and CION established, via the Department and the Permanent Representative. The tensions that already existed between the OTC and the DoHC were intensified when difficulty in reaching agreement about the issues involved in organising a large scale European conference arose. The added dimension of the expectations of the representatives of the EU Commission added further to the tension. A simultaneous dispute about the branding of the Irish workplace smoking ban and the failure of the OTC to deliver on a commitment to a national mailshot underscored the contentious nature of the working relationship between the two offices. Procedural constraints meant that Ireland did not in fact ratify the FCTC at the Conference, although the EU Commissioner for Health did sign the Convention on behalf of the EU, which was itself an historic event.

7.6 Taking the final step

Introduction

An initial period of 12 months, which was later extended to 15 months, had been allowed to prepare for the enactment of the legislation. Information, cessation support and legal advice had been provided during this lead in time. Some concessions had been made and exemptions to the ban had been allowed, but these were limited and open to review. All that remained to be done was for the Minister to sign a Commencement Order, specifying the date on which the relevant section (Section 16) of the recently enacted Public Health (Tobacco) (Amendment) Act 2004 (Government of Ireland, 2004) would become law, and smoking in the workplace would become illegal.

The 29th March 2004 was the date specified in the Commencement Order signed by the Minister for Health and Children on the 23rd March 2004, enacting 8 separate sections of the Public Health (Tobacco) (Amendment) Act 2004. Section 16 of the Act amended the Public Health (Tobacco) Act 2002 (Government of Ireland, 2002) to specify the places where the smoking ban would not apply, taking into account the exemptions agreed with various stakeholders.

7.6.1 Late Opposition

Despite the apparently smooth introduction of the ban, concern was articulated around the staffing levels of the Tobacco Control Unit in light of anticipated workload generated by a new opposition group. Particular concerns were expressed about

> TCU's ability to deal comprehensively with the ETS issue in light of recent developments-mainly the establishment of a well-resourced and vocal Irish Hospitality Industry Alliance and on-going news stories about a possible difference of

> opinion among Government Ministers on the Environment Tobacco Smoke Regulations[176]

The 'well-resourced and vocal' Irish Hospitality Industry Alliance had emerged at a late stage in the lead up to the ban, described as

> a 'wild card ' ...appeared from nowhere to oppose the ban and to threaten litigation [177]

The issues raised by the Irish Hospitality Alliance Group were centred on loss of business, 'hard luck' scenarios of individual publicans, the difficulty in enforcing the ban and the risk of prosecution publicans would face. The response to this group was based on the ETS report, and also emphasised the risks to employers of being sued by employees, the risk of industrial relations problems and the evidence available from the US on the impact on business of such a ban [178].

When probed on this late opposition, policy makers shared their opinions of the campaign, and their belief that it was funded and orchestrated by the tobacco industry.

A second new opposition group, Smokers Against Discrimination (SAD), emerged shortly after the introduction of the ban. The group formed in July

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[176] Note dated 14/08/2004 from PO TCU to ASec DoHC re staffing of TCU/*Tobacco Control Unit-Staffing; 2003/2004 /ENV/INF/0/49631*

[177] RTE News web page dated 14/07/2004 */Smoke-free workplaces: European Smokers against Discrimination, legal challenge/ TCU/POL/0/50365*

[178] Press cutting Irish Mirror 27/07/2004 -ESAD raised nearly 10 000 euro in 10 days to fight its case/ Smoke-free workplaces: European Smokers against Discrimination, legal challenge/TCU/POL/0/50365

2004 in an effort to raise money to take a legal case against the smoking ban, through the sale of cigarette lighters in pubs around the country[179].

Box 7.1F The Hospitality Industry Alliance Campaign

> In that context, for example, this thing called the Hospitality Alliance emerged which is people from the pub business or whatever else who were sort of jumping up and down, they were being funded by the tobacco industry.... The tobacco industry said look there's no point in us making these arguments because they won't have any credibility. You make the argument that pubs are going to go out of business [KI 3]

Consisting of 17 Waterford publicans, SAD in Ireland were backed by a larger group of lawyers and publicans called European Smokers Against Discrimination (ESAD), who were preparing to fight the planned introduction of similar bans in their own countries. The group offered the following opinion on the ban and the effect it was having, as well as a possible motivation behind its introduction was offered:

> the ban, here at home, is ruining the identity of the traditional Irish pub and...believes the introduction of the ban was a guise to cover-up bigger problems within the health department. Smokers against Discrimination or SAD, have also taken up the battle though smoking is not the main issue for them-they believe that freedom of choice should not be compromised in a democratic society.....This is a misuse and abuse of power by intolerant and arrogant Ministers who are not prepared to win their case by persuasion. Repressive,

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[179] RTE News web page dated 14/07/2004 */Smoke-free workplaces: European Smokers against Discrimination, legal challenge/ TCU/POL/0/50365*

> intrusive and draconian legislation is being backed up by jack boot tactics[180]

This group were initially successful in raising €15,000 with support from Germany, Holland and the UK. The Tanaiste and Minister for Trade and Enterprise, Mary Harney, was named in the court case they initiated against the State, in addition to the originally named Minister for Health and Children, Michéal Martin. The group also put forward two candidates for election in the European Elections of 2004. Standing the Dublin area these candidates came last and second last [178]. This may have exhausted the funds of the group, but no further activity is recorded.

The support base for both these groups was formed by publicans opposed to the ban. From the outset opposition was expected from this sector to the smoking ban, as tobacco control moved from a long established voluntary agreement to a legislative basis. As described in Chapters 5 and 6, publican opinion was represented by two main organisations, the Licensed Vintners Association (LVA), representing pubs in the Dublin area, and the Vintners Federation of Ireland (VFI) which had a remit to represent publicans nationally. As late as March 2004 the CEO of the VFI claimed that independent research had shown that the ban in New York caused a massive reduction in the pub business. Speaking of the likelihood of a similar impact from the Irish ban he suggested that

> ...if the Minister is so confident it won't why did he not allow for a waiver for any business that suffers a dramatic loss[181]

The LVA appeared to have accepted the change and issued a press release about their new marketing campaign to create stronger brand identity for

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[180] Press cutting Irish Mirror 27/07/2004 -ESAD raised nearly 10 000 euro in 10 days to fight its case/ *Smoke-free workplaces: European Smokers against Discrimination, legal challenge/TCU/POL/0/50365*

[181] Email circulated in March 2004 by and to TCU staff highlighting quotes from the Vintners Federation of Ireland website and reports/ *Smoke-Free Workplaces Impact on Drinks Industry/Licensed Premises/Alcohol Sales/VFS/LVA /ENV/INF/0/49603*

Irish pubs, using the slogan 'the atmosphere's got even better'. The rationale for the campaign was explained by their CEO

> In recent times publicans have had a number of contentious issues to deal with, issues striking to the core of our business. Rather than dwelling on negatives outside of our control, Dublin publicans have chosen to act in a positive and progressive way[182]

Box 7.1G The Vintner's campaign

I mean everyone knew that the pubs were a very significant lobby and had a very significant amount of influence on politicians. A very significant lobby group [KI 1]

The amount of work that was going on behind the scenes by the vintners in particular trying to destabilise the government's support for this was enormous. I don't think Micháel Martin knew he had the full support of Cabinet until a very important thing happened....the vintners had a meeting, eh, down in Newbridge I think it was, and there were reports of their views on this and they were basically threatening the government. They were basically, one of the their spokesmen had some really outrageous comment about, you know, they weren't going to pay their VAT and they would show the government who really ran this country [KI 3]

there was widespread belief, I think, that the politicians would never actually grasp that nettle. That they would never go as far as banning it in pubs [KI 1]

And when the publicans came out in Portlaoise that time, you know, they came up to say we run Ireland. They actually, some of them unfortunately used that phrase, which just caused resistance across the country. It was heaven for us because no, you don't run this country was the attitude of the public [KI 1]

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[182] Press release issued by Donal O'Keefe, LVA / *Smoke-Free Workplaces Impact on Drinks Industry/Licensed Premises/Alcohol Sales/VFS/LVA /ENV/INF/0/49603*

From the policy makers' point of view, March 29th 2004 was the culmination of four years of concentrated work. The files complied during these years provide an indication of the number and variety of influences, factors, elements , personalities , situations, that were dealt with in the lead in to this day. Data collected in key informant interviews captures the way in which some policy makers, who were closely involved with developing the policy, remember the day on which the work place smoking ban became law.

Box 7.1H March 29th 2004

I think it's fair to say that most, even at a political level...were expecting quite a lot of pubs, eh, to flout the law [KI 1]

I thought we would get a level of compliance but I thought there would be a socioeconomic thing. I thought you'd get compliance in certain areas and you wouldn't in others but I was remarkably surprised, but it was very heartening [KI 3]

The compliance rate was, eh, pretty spectacular honestly and I think the political system was, and the government they were delighted with it
[KI 1]

I remember Gerry Ryan's programme did research. They had a researcher in, she went into... pub in Dublin at six in the morning and said ah we'll check this now and she started lighting up or she opened a fag and your man said "No, no smoking." And when I heard that then I said we're in business now [KI 5]

There was substantial compliance from day one. Okay, there were a few pubs that decided to turn their nose at it but in fairness to the Environmental Health Officers stepped in and dealt with it but, so there weren't significant enforcement issues, you know, from day one [KI 1]

On day one! And we went driving around that day in a car, and we went ...to some of the hardest pubs that you could find...and there they were...standing outside on the street smoking [KI 3]

Compliance was high from the first day, with only a handful of smokers openly breeching the new law. This was credited to the preparatory work done, particularly in relation to the enforcement of the law, the publicity campaigns about the ban, and the preparedness of the Environmental Health Officers who were on the ground, spotting and responding to reported breeches. This was tested a short time into the ban when the owner of one Galway pub claimed that business was down by 67% since its introduction, and that he had no choice but to defy it[183]. The reaction to this and other breeches was to use the Environmental Health Officers, who had been trained and empowered to deal with this type of situation.

7.7.1 International reaction

International interest in the Irish work place smoking ban was high from the first day of enforcement, and appeared to be largely unexpected by the policy makers involved.

Once the initial media interest had died down and sufficient time had lapsed to demonstrate the success of the initiative, the DoHC and the Minister continued to receive international attention, albeit on a more differentiated basis. Several awards were made to the Minister in recognition of his contribution to tobacco control. These included an award at the European Respiratory Society Conference in Glasgow in September 2004; a Gold Medal from the European Society of Cardiology; and the WHO Special Director General's award for leadership and outstanding contribution in Global Tobacco Control 2004.

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[183] *Smoke free workplaces Ministerial Representations 2004/2005/ TCU/POL/0/60421*

Box 7.1I International media interest

> I was not prepared for the coverage of this at all. I mean the morning it happened, truly international coverage. We'd ....Italian, Japanese, C&N, the whole lot were over. I was nearly rolled over with journalists all over the world covering this phenomenon [KI 5]
>
> But what I remember from that morning was that, do you know, there was great media interest and we were doing all this media stuff in Bewley's and all that sort of stuff, but we did a thing from a pub in Baggot Street for the one o'clock news. I think it was Maguire's Pub it might have been called at the time, and I remember there was two or three, a couple of steps up to it and standing on the steps and he was doing the interviews and looking in front of me and there was about nine or ten television stations. There was about twenty or thirty radio stations and there was just a sea of flashing cameras and everything else and I thought 'Jesus Christ' [KI 4]

Requests for briefing material for bi-lateral discussions with the Minister and other members of Government about the preparation, introduction and enforcement of the ban were received for :a bilateral meeting with the Croatian Minister for Health[184] ; a meeting between the Tánaiste and Hong Kong First Secretary Tsang re Smoke -Free Workplaces in October[185]; a

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184 Briefing prepared for bilateral meeting with Minister Martin requested by Croatian Minister for Health, Prof Hebrang/*Workplaces Implementation-29 March 2004 Vol 1 Part 2/ENV/INF/0/49602*

185 Briefing for the Tánaiste for meeting with Hong Kong First Secretary Tsang /*Smoke-Free Workplaces Implementation -October, 2004 Vol 2 /TCU/IMP/0/50372*

meeting the Minister for Enterprise, Trade and Employment who had a meeting with a UK All Party Group on Smoking and Health in October[186].

Material on the impact in the South of changes to law in relation to sales of tobacco products to U 18s, for the Northern Ireland Health Promotion Office[187].

Dublin also became a destination for authorities planning a work place smoking ban in their own jurisdiction. Among those that came in the year following the introduction of the ban was: a high level delegation from the American Cancer Society in April[188]; the visit of the Scottish First Minister in August [189] ; the Smoking Advice Service Plymouth in September [190]; and a delegation from the Greater Manchester Council, also in September[191] . The level of interest and the variety of requests were a factor of the implementation which each key informant commented on.

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[186] Note on smoke- free workplaces measures prepared for Minister Joe Walsh who was attending 28th plenary session of the British -Irish Inter-Parliamentary Body taking place at Inchydoney Co Cork on 18-19 April 2004/ *Smoke-Free Workplaces Implementation -29 March 2004 Vol 1 Part 1 / ENV/INF/0/49602*

[187] Briefing material for the Northern Ireland Health Promotion Office /Smoke-Free Workplaces Implementqtion-October,2004 Vol 2/TCU/IMP/0/50372

[188] *Smoke Free Workplaces-American Cancer Society visit, Dublin April 2004/ TCU/IMP/0/50364*

[189] *Smoke -free Workplaces: Visit by Scottish Executive August 2004/ TCU/IMP/0/50362*

[190] *Smoke -free Workplaces: Visit by Scottish Executive August 2004/ TCU/IMP/0/50362*

[191] *Smoke-free Workplaces Visit by Greater Manchester Council -September 2004/ TCU/IMP/0/50367*

Box 7.1J Reaction to the Irish work place smoking ban

....then we had loads of tobacco tourists, after the event, looking for help and we would have gone to, I was in Liverpool... over to them speaking about what was involved and stuff like that [KI 4]

I remember in the twelve months or sixteen months after the thing was up and running and we had a succession of people from all over the world.....Coming here to say, how did you do it [KI 3]

The other thing too was that got us a lot of brownie points was the various delegations that we hosted. There was a rake of them. ...We had the UK Department of Health; the London based Department of Health. We had Scotland. We had Northern Ireland. We had Wales. We'd the Isle of Man. We'd one of the Channel Islands. We had France. I think the fact that we were willing to host that did make us a lot of friends and then I gave a couple of presentations on the margins of the conferences of the parties. So like we were up there [KI 2]

7.7.2 Taking the final step-Summary

The final stage of the implementation of the first workplace smoking ban was the commencement of Section 16 of the Public Health (Tobacco) (Amendment) Act 2004, which was set for 29th March 2004 by the Minister for Health and Children. Some late opposition to the ban emerged in the form of an alliance of interests in the hospitality sector, widely believed to be sponsored by the tobacco industry. This group initially seemed to present the threat of a challenge to the legislation, but this failed to materialise. A second group was equally ineffective, and neither group had the impact intended by the organisers. The lack of success of these late challengers was in keeping with the campaign run by the Vintners organisations, which was considered to be ineffectual and misjudged.

On the 29th March compliance with the new law was high, and it continued to be high in the months that followed. The level of compliance was a welcome surprise for the policy makers involved with the introduction of the ban, who had not been certain of success. The breeches that occurred were dealt with by the well prepared Environmental Health Officers, whose actions were underpinned by a strong legislation.

The success of the introduction of the ban made the Irish Minister for Health and Children, and the Tobacco Control Unit of the Department of Health and Children, a focus for others attempting to introduce similar legislation. A period of receiving delegations, explaining the mechanisms and approaches used, and the pit falls encountered, ensued, for both the Minister and for the civil servants involved. This appears to have been a positive experience for those involved, and is remembered as such by the participants.

7.8 Conclusion to the Refreezing stage

The final stage of the policy making process that produced the Irish work place smoking ban involved bringing together all the elements that were involved. The ban was derived from legislation and this final phase saw the consolidation of the legal basis on which it rested. Some derogations and concessions were allowed, with policy makers taking a pragmatic view of what could be achieved. The comprehensive nature of the ban remained intact however, and the most prominent lobby's, in the hospitality and the manufacturing sectors, failed to gain any concessions. The legislation was finalised, with some delays, and a revised implementation date was agreed and announced. Efforts then turned to preparing for this date, and supports were put in place to ensure that those most affected would be prepared.

Educational programmes for the general public, as well as cessation support for smokers, were provided. Specialist groups were set up to oversee the dissemination of information about new requirements under the law, and to manage the media during the run up to the 29th March, 2004. On the international front, efforts were made to coordinate the Irish ban with the

signing and ratification of the WHO Framework Convention on Tobacco Control. Although these were not entirely successful, the fact that Ireland held the EU Presidency in 2004 was used to promote tobacco control, culminating in the hosting of a European conference. The organisation of this event was assigned to the Office of Tobacco Control, a decision that led to further contention between the OTC and the DoHC.

As the implementation date approached, some late, unexpected opposition emerged in the form a group of publicans threatening to defy the ban and the government. This group was generally believed to be supported by the tobacco industry and was not successful in its intentions. Compliance on the day the ban came into force was high, and policy makers were surprised and gratified by the level of success. Also gratifying was the international interest in the ban, with large numbers of 'tobacco tourists' arriving in Dublin in the following months, seeking advice on how to replicate the Irish success in their own jurisdictions. 'Refreezing' was rapid and permanent, with only minor breeches occurring, which were effectively dealt with.

The stages of the policy making process, as discerned from analysis of the official record created by civil servants involved in the process, has been described in Chapters 5-7, using the framework of Lewin's three stages model. This has produced a detailed and nuanced account of a policy making process, incorporating the multiple elements of concern to civil servants in the process.

Chapter 8 takes the analysis a step further and analyses the data within a policy analysis framework. Walt and Gilson's Policy Analysis Triangle provides the framework, identifying and positioning the elements of the process which produced this successful policy (Walt and Gilson, 1994).

Chapter 8 The Policy Analysis Triangle

8.0 Introduction

This research has two main strands of interest. The first is to examine the work place smoking ban as a policy making process. The second is to assess the utility of the official records of a policy making process as a source of data research into the policy making process. The latter strand will be addressed in chapter nine. This chapter addresses the first strand, and brings together the key findings from the analysis of file material presented in chapters 5, 6 and 7, supplemented with data from the key informant interviews. Appendix 8A summarises the three stages of research described in previous chapters, and presents the major themes identified in stage three, with their underlying categories. In order to use the findings from the thematic analysis to analyse the policy making process, Walt and Gilson's Policy Analysis Triangle is used. The benefit of this tool is that it focuses attention on four separate but interconnected aspects of the policy making process -policy content, context, actors and process.

8.1 Leaving Lewin

The presentation of the themes and underlying categories using the conceptual categories in Lewin's three stage model of change provides a rich description of the file content. The next stage of the research takes the elements identified and places them in a policy analysis framework provided by Walt and Gilson Policy Analysis Triangle (Walt and Gilson, 1994).

In the following sections the concepts informing Walt and Gilson's Policy Analysis Triangle are discussed, and some examples of how it has been used previously are given. These are provided to illustrate both its strengths and its versatility. The main limitation of the model, its simplification of a complex process, is compensated for in this research by the application of the findings from a thematic analysis of empiric evidence of that complexity, using the structure provided by the policy analysis triangle.

8.2 Use of Walt and Gilson's Policy Analysis Triangle

Walt and Gilson developed the Policy Analysis Triangle (PAT) to analyse the elements affecting the development and implementation of health policy in the developing world. Their approach has been used and adapted by many analysts and researchers in a variety of settings however. One example is Trostles' study of the relationship between health research and health policy. An adapted model of the PAT was developed in this study to facilitate a comparison across four separate health policy making processes, using the four analytical elements of the triangle to assess and compare the contribution of research to each policy (Trostle et al.,1999).

Colon-Ramos et al built on Trostles' adapted model, to examine the translation of scientific evidence on dangerous substances into the regulation of their use (Colon-Ramos et al., 2007). In that study, the four central elements of the PAT were used as broad categories, within which the differing ways of promoting or impeding knowledge translation principles in a policy making process, could be viewed.

The PAT has also been used to study the failure to implement an evidence based, direct-access programme of service delivery. The policy analysis approach was used in the study to account for additional factors, beyond content, which affected policy development, adoption and implementation (Shoemaker, 2012).

The PAT has also been used as a teaching device to assist students of health policy in understanding how health is affected by the many decisions that are taken outside the health policy arena (Buse et al., 2009). This is primarily achieved by a focus on context, a concept informed by the work of Leichter, who identified four contextual types relevant to the policy process. These are situational factors, structural factors, cultural factors and international or exogenous factors.

Walt and Gilson's policy analysis triangle is clearly flexible and lends itself to adaptation. It is also compatible with other analytical frameworks that might

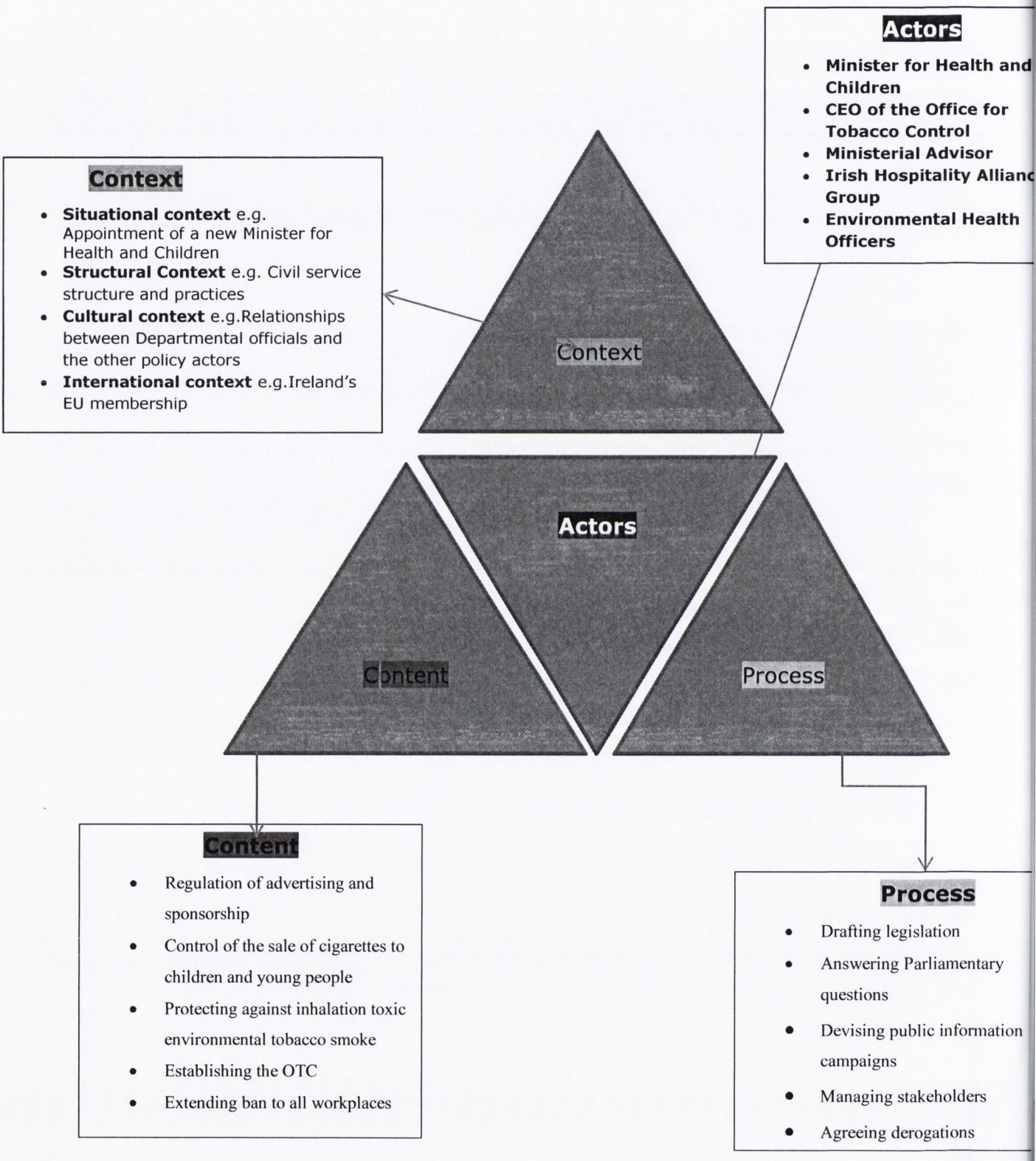
be used in a policy analysis. Gagnon et al used the policy analysis triangle as one of several frameworks in a case study of the UK's global health strategy, which examined the process of integrating health policy into foreign policies. Data gathered from documentary analyses and interviews were organised and described using an adapted version of the policy analysis triangle. A fifth element was added to the triangle in this study, which focused on potential and actual effects of the policy being analysed (Gagnon, M. L. and R. Labonté, 2013).

The Walt and Gilson policy analysis model has also been used in a study of the policy making process that led to the work place smoking ban in Ireland (Currie, L. M. and L. Clancy, 2011). The aim of this study was to describe the process through which Ireland changed its policies towards smoking in work-places, and to distil lessons for others implementing or extending smoke-free laws. Currie and Clancy used the PAT as an analytical framework to bring together and present data generated by several different methods of data collection. These included a media analysis, a documentary analysis, key informant interviews, stakeholder analysis, and an impact analysis based on the use of secondary data. Findings from each of these are presented as relevant to one of the elements of the policy triangle, with a particular emphasis placed on the contextual elements, drawing on Leichtner's contextual types.

8.2 Using the PAT in this research

In this study the PAT is used to present the thematic analysis of the file material through a policy analysis prism. The elements that emerged from the analysis are considered in terms of where they belong in the PAT. Figure 8.1 presents examples of this use the categories of the PAT.

Figure 8-1 Adapted Policy Analysis Triangle



8.3 Content

Content in the PAT refers to the 'substance of a particular policy which details its constituent parts' (Buse et al.,2009:4). In the case of this policy, content refers to legislation, the subtleties of what the legislation contained and what it was intended to do. Chapters 5-7 of this thesis provides a detailed account of the content of the policy making process, as recorded in the official record, which tracked its development and eventual enactment as a ban on smoking in the workplace.

Two factors emerge as having a significant impact on the final content of the legislation. One was the report on the harmful effects of Environmental Tobacco Smoke (Allwright, 2002). The second was the idea articulated by the Minister's advisor that the life of a bar worker should not be any less important than the life of any other kind of worker. While the first of these factors is recorded in the official files kept during the policy making process, the second only came to light through key informant interviews, during which it was mentioned by a number of the participants. This factor is discussed further in section 8.4.5.

8.4 Actors

This section discusses the range of actors in the policy making process, how they were viewed by the policy makers, and the impact they had on the process and its outcome. The role of the Office of Tobacco Control is then discussed, followed by findings about the main opposition groups and their influence in this process. The role of the Minister in the process and that of his advisors is also considered.

8.4.1. The policy actors from an internal perspective

Civil servants consider themselves to be the central actors in the policy making process. At the instruction of a new Minister for Health and Children, who took a personal interest in tobacco regulation, tobacco control moved swiftly up the Department's policy making agenda. Several experienced policy makers, with expertise in health promotion /public health and tobacco

control, were working in the Department at that time, and were assigned to work on the issue. This analysis has identified the many actors who were involved with the DoHC over the period of the policy making process in focus. Appendix 8C presents a synopsis of the actors involved in the policy making process, and an assessment of how influential they were considered to be, based on the records made by the civil servants who engaged with them.

The actors identified had different levels of engagement with the issues, the process and other actors, based on their own contexts and concerns and the level of power/influence that they had in this policy making environment. Each actor or group of actors was considered in relation to their stance or position, their main interests and how influential or not, the civil servants dealing with them felt them to be.

8.4.2 Position of policy actors from the internal perspective

Three broad stances or positions were identified among the actors in this policy making process. These positions were Supportive, Oppositional, and Neutral. The Actors taking a supportive position included the Minister, the Department Units involved in the policy making process, the OTC, the Health Advocacy Groups, the international communities engaged in tobacco control processes, other government agencies and individual public servants and public representatives.

Actors taking an oppositional stance included the hospitality, vintners, retail and tobacco manufacturing groups; the international tobacco industry, some elements within international communities who opposed tobacco control, some public representatives and a couple of organised opposition groups. Those actors taking a neutral or undecided position included some retailers seeking exemptions from the provisions of the legislation on specific grounds, trade unions concerned with protecting jobs, and other Government Departments concerned with their own policies and procedures.

8.4.3 Interests/Concerns of the Actors in the policymaking process

The main interests or concerns of the actors identified were also considered. Actors taking a supportive stance tended to be interested in achieving the policy goals of tobacco control for personal and political reasons, and/or to improve public health. This applied notably to the Minister, and the CEO of the OTC, for whom the regulation of smoking in public places appeared to be a very personal issue. The commitment of the CEO of the OTC to the introduction of tobacco control measures also comes across strongly from both the file material and the interview data. The health advocacy groups were the strongest advocates for improvements in public health. Interest's among those opposed to tobacco regulation was mainly on commercial grounds, with some opposition arising for political reasons and some on the grounds of individual freedom.

There were also a number of actors involved in the process who took a neutral stance on the development of the policy. They were not opposed to increased tobacco control and accepted the health benefits of the actions proposed. But some of these stakeholders had concerns, at least at the start of the process about how the proposed measures would impact on their immediate areas of interest. These included the effects on the remit of other government departments,(Department of Justice and Law Reform, Office of the Attorney General, Department of an Taoiseach) some commercial interests (e.g. specialist tobacco product shops, cigarette vending machines operators) or particular groups in society (unionised workers, people living in nursing homes or mental health facilities). Because of the reservations they held, these actors were not, initially, actively engaged in supporting the policy process, and have been designated as neutral in this analysis. These groups were neutral in the sense that they were not fully committed to the policy in the way the health advocacy groups and the DoHC were, but nor were they opposed to the measures proposed, as the hospitality sector and the tobacco industry were.

8.4.4 Influence of Actors in the process, from the internal perspective

Actors with significant influence in the process included the Minister, and the Departmental Units directly involved in the policy process. The international community, particularly the EU, was influential because of the high profile role played by Irish officials in fora concerned with tobacco control, and the requirements imposed by membership to comply with agreed existing regulations. Significant actors who had the power and position to influence the Minister were also identified, such as the Chief Pharmacist and Irish Medicine Board. In one case, influence was observed to develop over the period of the policy development. The Health and Safety Authority took a passive role at the start of the process but had a significant influence at a later stage, jointly commissioning the report which influenced the final direction of tobacco control policy.

Other significant groups were the supportive umbrella groups which contributed to the development and implementation of the work place smoking ban policy at local and national level. These actors were the health advocacy groups who had supported and called for increased tobacco regulation overt the lifetime of the DoHC. Consequently, these groups had a well-established relationship with the DoHC and quickly established links with the new Minister for Health and Children. The value of these groups was recognised and used by the Minister and the Department in anti–smoking media campaigns, and to influence important neutral groups, like the trade unions and the employer's organisations, to support the proposed measures.

Engagement with many of the actors opposed to the policy changes was also part of the work of the civil servants tasked with the policy development. Chief among these were those individuals and groups with concerns about the commercial effects of the policy proposals. These included the hospitality sector groups, the retail groups, and the tobacco manufacturers. In most contacts with these commercial groups the Minister was targeted as the person on whom influence must be brought to bear. In interviews with key informants this approach was dismissed by a senior policy maker who noted

that 'The people they needed to talk to was the Principal Officer on who's desk the file was on....'(KI I).

Engagement was also necessary with the public representatives who tabled Parliamentary Questions or who required input to replies to their constituent's letters of complaint about the proposed policy measures. This included engagement with opposition TD's who had previously prepared reports and put forward draft tobacco control legislation. This mainly occurred during the Parliamentary Debates in which the Minister was required to justify and defend his decisions.

8.4.5 The Role of the Ministerial Advisor

The approach taken to describing the position, concerns and effectiveness of actors in this policy process underlines a gap in the data source which came to light through the key informant interviews. The role of the Ministerial advisor is not reflected in the file material, even though it emerges as important and decisive during the policy making process, in the interview data. Senior policy makers involved in the process, acknowledged that it was an advisor who raised the question of why the health of a bar worker would be any less important than the health of any other worker. This question effectively reframed the debate on tobacco control, moving it away from arguments about the individual's right to smoke, or the financial and economic effects resulting from restrictions, by espousing the necessity to protect all workers from the damage caused by ETS.

The role of the ministerial, special or political advisor is recognised and has been explored before by authors interested in the internal workings and policy making processes of government departments. Connaughton places special advisers in a triumvirate of 'proximate policy-makers' where they, alongside ministers and senior civil servants, make a central contribution and have influence over public policy making (Connaughton, 2012). Among the contributions made by special advisers to the public policy-making process which Connaughton identifies are; raising new policy initiatives with the minister and assessing the political implications of policy decisions;

negotiating and monitoring progress of programmes for government; researching and assessing the political consequences of policy initiatives; brokering and attending meetings with interest groups on behalf of the minister; providing direct advice to the minister and clarifying the ministers wishes; and managing the minister's media communication (Connaughton, 2012:71). In other Parliamentary systems, also based on the Westminster model of government, the role of the special adviser in policy making has been described as including agenda-setting; linking ideas, interests and opportunities; mobilising; bargaining; and 'delivering' (Maley, 2011).

Both special advisors to the Minister for Health and Children during the period 2000-2004 are visible in the files relating to tobacco control, mainly as persons copied on emails or hard copy documents, or listed among attendees at meetings, which the Minister may or may not have attended. The contribution of the special advisor to this policy making process is not reflected in the analysis of the file documentation, however, as no further details of their engagement is recorded. This could be because the primary contact is between the Minister and the advisor, although contact with civil servants is also a daily occurrence for advisors (Connaughton, 2012). In the key informant interviews the special advisors were recalled as being 'very helpful' and 'sensible' during the development of the policy, and as described, one was credited with articulating the central idea behind the work place smoking ban.

When the lack of data about the role and contribution of the ministerial advisers was noted, key informants were contacted again for their opinions on why this omission occurred. One policy maker provided a synopsis of the reasons he believes that the contribution of the special advisors are not routinely recorded, which are shown in Box 8.1A.

The data source used in this study provides detailed information about the engagement and influence of the key actors in this policy making process. The analysis has also identified a gap in the data in relation to the contribution of ministerial advisers, who often make a central contribution to policy

making. Recording this contribution is not automatic, systematic or even considered desirable in some policy making situations.

Box 8.1A Why the role of the Special Advisors is not recorded

Because we don't have time (an obvious point, but don't underestimate it as a factor)
Because there is no need - the policy direction is so clear cut that there is no risk of the plot being lost
Because you have established a relationship of trust with the people you are dealing with and you are not defensive
Because you don't want to feed an FOI- this is not supposed to happen - but it does
Because your dealings with the advisor (or whoever) were initiated informally by them and you don't want to give the impression of suffering from OCD. In this regard, the house style of advisors is very much dealing with issues on the hoof (the casual chat in the corridor, the phone call etc.)
Because the Minister was so hands-on on tobacco control that he was aware of the issues himself

8.4.6 The Role of the Office of Tobacco Control

One set of actors in the policy making process who supported the policy objectives and at the same time were considered to have created barriers to the smooth progression of the policy, were the staff of the Office of Tobacco Control. While the OTC were among the Actors taking a supportive position in this process, the relationship between these two key implementing bodies, the Tobacco Control Unit of the Department of Health and Children and the Office of Tobacco Control, was considered difficult by the civil servants who were engaged with it. The CEO of the OTC, although considered important and recognised for his knowledge and commitment to tobacco control, was viewed by the civil servants dealing with the Office as having an inappropriate sense of full autonomy, which was not acceptable to them. In addition the CEO of the OTC was considered to be very sensitive to the threats and tactics

of the international tobacco industry, which was not a significant concern for the Department.

The creation of the OTC was a recommendation in the report guiding policy on tobacco control in Ireland (DoHC,2000). The OTC was envisioned in this report as being:

> A national executive office.....to co-ordinate the implementation of the programme. It will be staffed on a full time basis by staff from both the health boards and the Department of Health and Children. Secondments from other government agencies will also be considered (2000:55)

The OTC was subsequently set up on an administrative basis in late 2000, and on a statutory basis on 1st May 2002, with the enactment of section 2 of the Public Health (Tobacco) Act, 2002 (Government of Ireland, 2002).

This type of structure was a familiar one in the Department of Health and Children, which is reported as having 88 agencies or external public bodies under its remit in 2006 (Clancy and Murphy, 2006). These were mainly executive bodies, established to directly implement government policy and provide public services. 11 agencies, including the Office of Tobacco Control, are defined as Advisory Bodies, whose function was to provide advice to the Minister or a government department on matters on which neither has internal expertise (Clancy and Murphy, 2006). One interviewee likened the OTC structure to that established for the Food Safety Authority of Ireland (FSAI), with which he had previously been involved. Another referred to the model created for the Irish Medicines Board, on which both the FSAI and the OTC were based. When comparing how the model worked in these three cases this policy maker, who had experience of all three, described the operation of the model for the OTC as 'incredibly difficult'. Issues arose between the OTC and the DoHC relating to compliance with official procedures, expenditure, and the branding of the anti-smoking message. The close relationship between the Minister and the CEO of the OTC also caused

problems for the civil servants as decisions were taken without reference to them. This caused delays, misunderstandings and potentially embarrassing situations which the civil servants involved were, or felt they would be, held responsible.

A recent discussion of the process of Irish 'Agentification' or the process of agency creation, includes the observation that, for many agencies, the key communication link to the parent department is an individual civil servant (MacCartaigh 2011). The effect of a change in that person's position, which affects his or her availability (promotion, transfer or retirement for example), can severely disrupt the quality of the departmental-agency relationship. MacCarthaigh also notes a tendency for agency staff recruited from the civil service to be more attuned to the parent department's culture and structures, with a better understanding of the legal and administrative requirements within which the latter operates. In the case of the Office of Tobacco Control, neither of these observations were realised, although both may have been anticipated.

Prior to his appointment, the CEO of the OTC had been an Assistant Principal Officer in the Department of Health and Children and had previously worked on health promotion projects with several of the civil servants now involved with tobacco control. There may have been an expectation that previously established working relationships within the civil service would ensure that communication between the agency and DOHC operated smoothly. This was not to become the main communications link between the Department and the Office, however. The Minister had a close relationship with the CEO of the OTC and believed he was the person who could deliver this policy. The Minister was therefore supportive of any actions that the OTC proposed in order to progress the policy, and frequently acted without the knowledge or advice of the civil servants in his Department. From the perspective gleaned from the files, this relationship was not considered by the civil servants to be a support in the policy making process, and sometimes it was viewed as an additional source of work for those involved. On occasion the Minister agreed to a process which was outside the standard civil service procedures, causing

difficulties with other Departments and agencies. In addition the OTC sometimes failed to deliver on agreed arrangements, which the Department staff had to provide at short notice.

A second difficulty which the civil servants had with the OTC was the divergence in approach that frequently occurred between the two bodies. On several occasions the Department officials felt that agreements had been reached about how to proceed with a specific aspect of the policy development, but these agreements were not adhered to by the OTC in practice. Communication, as noted, occurred mainly between the Minister and the OTC rather than the Department and the OTC, which is a more usual path for communication with government agencies. This led to a number of instances when the OTC provided advice or suggestions to the Minister, which, when they became known, were viewed as inappropriate from a civil service perspective.

Another area of disagreement was around the influence of the international tobacco industry on tobacco regulation in Ireland. The CEO of the OTC was alert to any such influence and took active precautions against it. The civil servants in the Department had fewer concerns in relation to this influence, and considered such precautions to be unnecessary and at times counterproductive. The organisation and running of the Irish Masters Snooker tournament provides an illustration and also points to a concern about this data source. The transfer of the tournament sponsorship from a tobacco company to the Department necessitated the OTC working with the tournament organisers, which they appeared reluctant to do. Complaints about lack of cooperation and misunderstandings were reported to the DoHC by both parties, culminating in a written statement by the tournament organiser that if the Department sponsorship was to continue they could and would not work with the CEO of the OTC at future events. Again, this became clearer when key informants explained the view held by the CEO of the OTC of the snooker tournament –'the orphaned child of the tobacco industry' (KI I).

Without the supplementary information from the interviews, only the picture of inefficiency and non-cooperation which emerges from the filed material is available. Key informant interviews confirmed that the civil service policy makers involved in the policy making process had mixed feelings about the contribution of the OTC. All spoke highly of the knowledge the CEO had of 'all things tobacco' and public health in general, which inspired enthusiasm across the entire public health community, in which he had a high profile and a well-respected reputation. Those who commented on the difficulties between the Department and the OTC suggested that the issues were personality based, rather than arising from the structure of the department/agency relationship. When asked to assess the contribution of the OTC, these senior policy makers provided a range of opinions, some believing that the resources provided in the OTC were essential to the success of the policy, others commenting that the OTC were not 'team players', or that the contribution of the office did not make a huge difference to the policy development. For some senior policy makers, the OTC had been at best unnecessary, and at worst had actively caused problems for the Department during the development and implementation of the policy.

8.4.7. Opposition to tobacco regulation

The main opposition to the proposals came from groups concerned about the perceived economic affects resulting from increased regulation. For this policy making process, a large amount of policy maker's time was spent meeting with individuals and groups opposed to the proposed measures for these reasons. The commercial groups, comprised of retailers, tobacco manufacturers and distributors, publicans and the hospitality sector, opposed tighter regulation and tried repeatedly to influence the Minister in his decisions about the final format of the policy and its restrictive provisions. Prominent among the opposition groups were the representative organisations of the Vintners, who focussed on the alternatives to a complete ban on smoking indoors. The evidence produced by these groups to support their claims was combatted with the published scientific evidence about the damage to health caused by tobacco use.

8.4.8 The international tobacco lobby

The international tobacco industry, operating covertly through local organisations and openly through international fora, was also ineffectual in engaging the Minister, or diverting the direction tobacco control was taking in Ireland towards a less comprehensive target than the entire workforce. This lack of success, by a lobby known to be both manipulative and persuasive, was credited by policy makers to two things. One was the acute awareness of the CEO of the OTC of the tactics employed by 'Big Tobacco' – an awareness that was also presented as extreme in the domestic environment. The second was the Irish contacts and information sources in the EU and the WHO, where officials were playing an increasingly effective role.

The scientific evidence provided in two key reports, Towards a Tobacco Free Society (2000) and The Report on the Harmful Effects of Environmental Tobacco Smoke (Allwright et al.,2002), was used extensively by policy makers to combat the arguments of lobby groups with commercial concerns who opposed the restrictions in the legislation and the work place smoking ban. This, combined with the Minister's strong public stance and support from prominent public health advocacy groups, effectively neutralised the campaigns of these groups.

8.4.9 Neutral actors

It was also necessary to engage with those actors taking a neutral stance on the issue of tobacco control, particularly other government departments and offices whose assistance was required or who had specific requirements of any government policy. Some of the groups who were 'neutral' at the start of the process, such as the major Trade Unions, were acknowledged as being instrumental in having the workplace smoking ban accepted by workers in the final stages before implementation of the workplace ban. Engagement with these actors was through the health advocacy groups and the formal Partnership processes already in place.

Overall, Government departments and agencies forced exemptions from the legislation more successfully than outside/commercial interests. The ways in which they did this is based on the processes that surround bureaucratic policy making, which are considered below in section 8.3, Process.

8.5 Process

Process in the policy triangle refers to the way in which policies are initiated, developed or formulated, negotiated, communicated, implemented and evaluated (Walt and Gilson, 1994). It has been widely acknowledged that descriptions of process in the policy making environment are rarely accommodated by linear models, which present policy making as a process that moves from stage to stage in an orderly manner. This analysis provides further evidence of the 'extreme variety and the particularity of individual cases' (Turnbull, 2006:9), which emerges when the policy making process is studied empirically, and a highly contextualised view of the process is presented. Complexity is also applicable to the influences on the policy making process, particularly those related to bureaucratic process. The overt, as well as the covert exercise of power has been observed in this policy making process also, within the bureaucratic sphere and in the wider political dimension.

8.5.1 Civil Service Processes

The bureaucratic processes and procedures provides opportunities for inside stakeholders, however loosely engaged with a policy issue, to influence the final outcome. The processes and procedures referred to here are internal and inter-departmental, rather than the more public Government led processes enacted in the Houses of the Oireachtas.

When legislation is the mechanism chosen to introduce change in a policy area, other government departments will have an input into the policy content. Two Departments will always be involved in this process. The Department of Finance will scrutinise proposals with a view to confirming that they are necessary and identifying the financial implications of their

introduction. The Office of the Attorney General (AG's) will comment on the necessity to draft new legislation to meet the objectives of the policy as laid out, and will assess the suitability of the draft which the sponsoring department supplies, to achieve the purpose behind the policy. In the case of the introduction of tobacco control measures, both of these Departments objected to the introduction of new tobacco control legislation.

The Department of Finance questioned the need to establish new bodies and provide additional funding to existing ones, when, in the opinion of DoF senior officials, much of the policy proposals could be undertaken by existing research bodies and /or by the Revenue Commissioners. The AGs Office urged a rethink of the Departments proposals on the basis of the huge volume of legislation it had pending and the fact that all of the policy issues outlined in the draft memo could be adequately met by existing legislation. It required the intervention of the Minister at Cabinet level to secure agreement that the policy as outlined in TATFS, would be progressed and supported by both these departments.

In addition, Departments with a remit affected by the proposed policy changes also itemised their difficulties or potential difficulties with the proposals. The Department of Justice, Equality and Law Reform raised the issue of safety in relation to smoking in prisons and detention centres, achieving one of few concessions made in the legislation. The acceptance of the arguments made was rationalised in an interview with one policy maker involved with the negotiations as keeping the core of the policy intact. This policy maker stated 'I think if there had been an exclusion from public houses or that, I think at that stage it would have been very feeble' (KI 1) .

8.5.2 Mutually protective processes

While tobacco control was an important part of the work of the Department of Health and Children, it was targeted by the Department of Finance as an area where savings could be made. Strong advocacy by the Minister was needed at Government level to protect the resources in the Department that

were reserved for tobacco control. This provides an example of where the political process protects the bureaucratic process. On this occasion, the Minister protected the DoHC, and in particular the work being undertaken in the Tobacco Control Unit, against a public service wide reduction in expenditure initiated by the Department of Finance. The files do not provide details of why this was done, or indeed of how it was done. Interviewees could not recall the circumstances accurately with confidence, but it was concluded that because this was a policy area in which the Minister had a strong interest, he protected it and made sure that resources were not cut. While the bureaucratic response to proposed cuts can, and in this case did, make a case for the retention of funding, it was the direct intervention of the Minister that ensured that no cuts were made in this area.

It is also possible for the civil service procedures to act as protection for the Minister. This research provides a few examples of this. As discussed in chapter one, part of the function of the civil service working in a line Department is

> To support the Minister in the formulation, development and evaluation of health policy and in the discharge of all other Ministerial functions (DoHC, 1998)

One part of the latter function-supporting the Minister in the discharge of all other Ministerial functions- relates to the provision of support to the Minister in relation to process and procedures. A failure in this respect emerged shortly after the new Minister, and a new Secretary General, took office in 2000. When correct procedures for bringing a memo to Government were not followed by the Minister for Health and Children, a letter was sent to the DoHC by the Second Secretary of the Department of Finance, which placed responsibility for the failure with the Department and the Secretary General, warning that

> It is well to be clear from the start that the established procedures will be followed [26] (Footnote page 128)

Other examples of the Department protecting the Minister arose throughout the process and related to the close relationship between the Minister and the CEO of the OTC. This sometimes involved the Minister making decision without reference to the Department or to the appropriate protocols. While the reaction of civil servants to such incidents may have been influenced by the tension between the OTC and the DoHC, the data records several incidents where an action was potentially inappropriate, premature or embarrassing for the Minister (Box 7.1C).

8.5.3 Power in the process

The Minister has the power to direct officials towards a particular course of action with which they may not agree. But the process itself contains a power which is difficult to overcome, even for a government Minister. The Civil Service officials can provide observations and briefing to a Minister which contradicts his interpretation of an issue. When a difference of opinion about a policy decision arose the Minister had the power to direct the Civil Servants to enact a decision with which they did not agree. An example in this study can be seen in the description of how the Minister instructed officials that a Bill drafted outside the civil service should be brought to Government for approval. The bill, as predicted by senior DoHC officials, was rejected and had to be redrafted by the appropriate internal office (See Box 5.1B for key informant comments on this issue).

A second example occurred during the development of this policy when the wishes of the Minister to liberalise the retail of nicotine replacement therapy were frustrated by strong advice against the proposal which was channelled through a senior civil servant in an expert role.

> When you're presented with the professional advice and the Chief Medical Officer.....Well it is a dangerous precedent if you, without an evidence base, just wilfully disregard professional advice [KI 5]

These examples suggest that the control exerted by the bureaucratic elements of the policy making process, including the civil servants, the Departmental structure and the processes surrounding formal government

activity (creating and changing laws, introducing new measures etc.) , are at least as powerful as that conferred on the Minister by his office. The processes whereby Departments can work against each other to slow or derail policy initiatives, also act as an effective means of opposing policy decisions which conflict or do not comply with standard practices.

8.5.4 The final outcome

The final policy outcome was not envisioned at the beginning of the process but developed over the course of the period being considered here. When the government adopted the recommendations of the report Towards a Tobacco Free Society as official policy in 2000, the ambition to reduce smoking in the work place was less comprehensive than it subsequently became. Building on the success of voluntary codes already in operation in workplaces, the report recommended that

> Smoking should be prohibited in all enclosed work places, other than certain places of adult entertainment while allowing employers the right to make provision so that smokers may have reasonable access to an area, not used in the normal course of work, where they may smoke without affecting non-smokers (2000: 50).

The Health and Safety Authority were enjoined in the report to:

> ...review its existing arrangements regarding safety arrangements at work and to make proposals in 2000 for the inclusion of tobacco free measures to be integrated as a standard feature of statutory workplace safety plans (2000:51).

The Health and Safety Authority (HSA) had, in fact, a passive role in the development of the policy at the start of the process, mainly engaging with the DoHC in relation to the concerns of those affected by specific provisions in the proposals. The retail sector for instance, approached the HSA about the potential health and safety issues that might arise for its members if tobacco products were stored in under-counter containers. The effects on

workers of bending to retrieve packets of cigarettes were subsequently raised with the DoHC by the HSA.

8.6 Context

This section discusses the contextual elements of the policy making process, drawing on Leichtner's four contextual categories-situational, structural, cultural and international or exogenous factors (see Figure 8.1 above for examples of each factor from the data). The section begins with an external perspective on the contextual elements relevant to the development of Ireland's tobacco control policy, which is taken from Currie and Clancy's study of the policy making process (Clancy and Currie, 2011). A synopsis of their external perspective is followed by the main findings from this research, providing an internal policy maker perspective, which is discussed under each of the contextual category headings.

8.6.1 An external perspective on the contextual elements relevant to the development of tobacco control policy in Ireland

The political, economic and social context in which Ireland's work place smoking ban was developed and implemented has been recently explored using Walt and Gilson's PAT, providing a useful contrast to the internal perspective offered in this research (Clancy and Currie, 2011). Currie and Clancy considered the following contextual factors to have been significant in the success of the workplace smoking ban: the reported increase in the number of Irish workers exposed to ETS; the economic boom that protected against serious economic consequences in the tourist and hospitality industry, and ensured that the resources needed for monitoring the implementation of the ban were available; Ireland's culture of compliance, which had previously accepted the introduction of smog free fuel and the banning of free plastic bags in shops and supermarkets; and the example available to Irish people and Irish policy makers of the successful implementation of a partial smoking ban in the United States. The latter also provided a preview of the tactics the international tobacco industry was likely to deploy against the proposed Irish ban. In contrast to this analysis of the relevant contextual factors, this

research provides an internal perspective on important contextual factors at play as the policy was being developed.

8.6.2 Context from an internal perspective

This section provides an internal perspective on the situational, structural, cultural and international/extraneous elements relevant to the policy making process.

8.6.2.1 Situational Factors

Situational factors include transient, impermanent, or idiosyncratic conditions which can have an impact on policy. Two significant situational factors which impacted on the development and implementation of the Irish work place smoking ban were identified in this research. The first was the appointment of a new Minister for Health and Children who had a personal interest in improving tobacco regulation. As noted before, tobacco regulation had been on the Department's policy agenda for years, and Ireland's approach was broadly in line with that of other Western democracies at the end of the 1990's. The expertise and experience of tobacco regulation and public health initiatives existed in the Department through the absorption of the Health Education Bureau into the mainstream department some time before.

The second situational factor was the publication of the report Towards a Tobacco Free Society (2000), which provided the new Minister with a policy document containing detailed recommendations and costing's for achieving significant progress in tobacco regulation. This document provided a policy outline, which was adopted in its entirety as Government policy. Department resources were then made available to meet the policy objectives once a Government memo agreeing the policy direction had been issued, and the Minister publically announced his plans.

An additional situational factor was the relative weakness of the opposition to the introduction of tighter tobacco control measures. A number of situational factors influenced this. The improving economic situation in Ireland meant the availability of government resources to progress the policy

objective. This situation, as well as the relatively small size of the domestic tobacco industry, ensured that economic considerations were not paramount for policy makers. The availability of international research evidence that supported the proposals was used throughout the process by policy makers.

In addition to the impermanent, idiosyncratic factors which had an impact on the policy making process, other factors of a less transient nature were identified as influential in this analysis.

8.6.2.2 Structural Factors

Structural factors refer to the relatively unchanging elements of society. From an internal perspective, the most significant structural factors can be seen in the Civil Service structure within which policy is developed. This applies to both the internal Departmental structure and the broader civil service structure. The data source used in this research is itself a structural factor in the policy making process. The filing system is designed to reflect and record the work of all departmental units. There are rules about how the record is kept and what is included in the record. Each part of the policy making process is governed by similar rules. Records relating to the work of civil servants in bringing proposals to Government for approval, seeking the observations of other Departments, answering Parliamentary Questions, responding to representations from interested parties, producing legislation, adhering to legal requirements, are all accommodated within this structure. These rules and procedures are frequently invisible from outside the civil service structure, creating a 'black box' image of the policy making process. Use of this internal, detailed data source reveals these rules and procedures, and the role they play in policy development.

The involvement of the Department officials and the Minister with several policy initiatives at any one time is another structural factor in the policy making process. While other, external actors in the process may be focussed exclusively on the policy issues necessitating contact with the Department, Department officials could, and probably will, be involved in several. This is always true for the Minister, for a Secretary General and for most senior

Department officials. The Secretary General of the Department of Health and Children has written about this specific period in his own career, providing some insight into this structural factor (Kelly, 2007). In 2000 Michael Kelly was appointed as the Secretary General of the Department of Health and Children, an appointment which coincided with the appointment of the new Minister for Health and Children. The then newly appointed Secretary General itemised some of the pressures facing both of them in 2000, which included dealing with the findings from the Tribunal of Inquiry into the blood bank scandal; the aftermath of the nurses strike of 1997; the on-going crisis in hospitals, reflected in the Accident and Emergency pressures and acute public criticism of the length of waiting lists for elective procedures; long waiting lists for other services; ongoing friction about the pace at which the backlog in disability services was being addressed and constant pressure from the courts regarding the shortage of places for young people in residential care.

He has described the Department of Health and Children as having a 'Fractious environment .....with significant mistrust and divided loyalty at top management level' (Kelly, 2007:7). The identification and promotion of policy to promote a smoke free environment may have seemed, given the pressures on and tensions within the Department, a reasonably manageable initiative, particularly when the final outcome had not been envisaged at this stage in the process.

8.6.2.3 Cultural factors

In Walt and Gilson's original conception of the elements of the policy making triangle, cultural factors refers to the existence of formal hierarchies in society that can make questioning or challenging high officials or elder statesmen difficult. The most striking cultural factor revealed in this analysis can be seen when the relationships between Departmental officials and the other policy actors are examined. As noted in the discussion of actors in this policy process, Departmental officials place themselves at the centre of the policy making process. All the other actors, positions and influences are judged in relation to this central position, including those taken by the

minister and the lead agency established to drive implementation of the policy. This department-centric view extends to all the stakeholders in the policy process, within and outside the civil service. So support, opposition and neutrality are viewed in terms of how they can be managed by 'the Department'. This culture appears to exist in other departments also, which is indicated by the engagement of officials from other departments in this policy making process, purely on the grounds of the effects it might have on their policy remit. This is explored further in section 8.5.1, Civil Service Processes.

8.6.2.4 International or exogenous factors

International or exogenous factors are those which lead to greater inter-dependence between states, and influence sovereignty and international cooperation in health (Buse et al., 2009). It is clear that international factors played a significant role in the development of the Irish work place smoking ban policy. Curry and Clancy (Currie and Clancy, 2011) suggest, in this context, that the example of the US experience of implementing a partial smoking ban was a good example and preparation for Irish policy makers. The internal perspective provided by this research highlights the significance of additional significant international factors. These revolve around Ireland's membership of and contribution to tobacco regulation processes by the World Health Organisation and in the European Union. Irish policy makers gained experience, support and status through their contribution at these fora. While none of the policy makers interviewed felt that Irish policy was driven by international events, most acknowledged that it was at least helpful to have international policy developing simultaneously, in which they could play a part.

The international factor which impacted most on the policy process was Ireland's EU membership, and its implications for Ireland's compliance with existing and new laws brought in at EU level. Throughout the policy making process, Irelands EU membership acted as both a barrier and a stimulus to progressing the policy on tobacco control. Compliance with EU Directives, contribution to EU debates, challenging EU member states opposed to

stronger tobacco regulation, and providing advice on achieving smoke free work places, were issues which civil servants dealt with routinely during the course of the policy making process. Difficulties arose when Irish regulation measures exceeded those allowed by EU law, and on occasion these constrained Irish efforts. Meeting deadlines for the implementation of EU Directives, and addressing the challenges by the tobacco industry that were based on existing Directives, created additional pressure on policy makers.

8.7. Summary of findings relating to the policy making process.

The use of Walt and Gilson's Policy Analysis Triangle directs the focus of analysis beyond the content of the files and towards the context, process and actors involved in this policy making process. This addresses the first strand of interest in this research, which is to assess what the data can tell about the specific policy making process.

The policy content was developed over time, and the final format was not anticipated by the Minister or the civil servants who began the process. The majority of effective influences on the content, (i.e. influences that made a difference to its final format) were internal to the civil service, and utilised the processes that were open to them exclusively.

Actors are important in the policy making process because of their power, or their perceived power, to influence the process. This is true in this policy making process, for civil servants interacting with key stakeholders, internal and external, and for external stakeholders, who focussed almost exclusively on the Minister as the key actor they need to influence. Relationships between key actors were central to the process and constituted both a support and a barrier to progress. From the perspective in the data, the close relationship between Minister and the OTC sometimes acted as an impediment to progress at several stages in the process. The relationship between the civil servants in the DoHC and the staff of the OTC was contentious and did not improve throughout the development of the policy. Effective influence, in terms of

changing the final policy and its implementation, came from internal actors who used the bureaucratic processes open to them. External actors proved largely ineffective in terms of influencing the decision makers, with a very few exceptions.

The context in which this policy was developed contained supporting and constraining factors. Within the Department of Health and Children, a number of contextual factors supported the prioritisation of tobacco control as a policy imperative. A new Minister who promoted and actively supported the policy was a crucial contextual factor. The availability of resources, both financial and human, was a support to the process, which, with the intervention of the Minister, was maintained throughout. Early agreement across Government that the recommendations of the DoHC report 'Towards a tobacco free society' (2000) was important as it provided a strong rationale for the measures being taken. This was used by civil servants, the Minister, and politicians during the development of the policy.

Other contextual factors contributing to Irelands successful implementation of the first workplace smoking ban was the ineffectiveness of the domestic opposition to the policy. Policy makers were in a position of strength in the negotiations that did take place for a number of contextual reasons. These included the strength of the evidence available against tobacco products and later ETS; the small size of the domestic tobacco manufacturing industry in Ireland; and the strong legislation already in place and being enforced regarding the manufacturing, advertising and retail of tobacco products.

The international context for tobacco control acted as an incentive and a support for the development of Irish policy, and also as a constraint, by placing restrictions on what was possible in Irish law, due to prior commitments implied by European law. The lack of success of the international tobacco industry in influencing Irish policy makers to restrict or reduce the measures being considered was notable. The concessions won by

that industry resulted from expensive and time consuming legal battles, which were outside the scope of this research to consider.

Process in this analysis refers not only to the policy making process, which is tracked from initiation to implementation, but also to the internal processes completed by policy makers and the processes to which they contributed. EU processes for the international regulation of tobacco control emerge as a consistent example of the latter. Communication between the DoHC and Irish civil servants in the EU was maintained throughout the process, allowing policy makers to anticipate, react and prepare to meet EU requirements. Given the weak opposition that mobilised against the proposed policy changes, internal civil service processes proved to have the greatest influence on the final shape and content of the policy. This resulted from other government departments using the opportunity afforded them by such internal mechanisms to request changes that facilitated their interests. Adherence to process also emerged as a requirement in this policy making process, and deviations from the established bureaucratic procedures resulted in reactions that caused delays and threatened the progress of the policy.

This chapter has identified the key findings relating to the policy making process involved in the development and implementation of Ireland's work place smoking ban. Using the framework of Walt and Gilson's Policy Analysis Triangle (Walt and Gilson, 1994) the content, context, process and the actors involved have been discussed. Chapter nine presents the findings relating to the second strand of interest in this research, the answer to the question 'What can the files kept by civil servants during the development of a national policy tell us about the policy making process?'

Chapter 9 Using documents to examine the policy making process

9.0 Introduction

The second strand of interest in this research relates to the extent to which the data source used can inform researchers about the policy making process in general. This chapter assesses what can be reliably stated about the policy making process in general, based on the findings in this research. The limitations of the data source are first considered, in order to contextualise these findings. The findings are then reappraised in order to relate them directly to the work undertaken by civil servants during a policy making process. Viewed in this way the activities described become indications of what was done as part of a work process. A framework of challenges for civil servants in the policy making process is presented.

As the title suggests, this study is idiographic, it is research that 'focuses on specific elements, individuals, events, entities and situations, documents and works of culture or of art and concentrates on what is particular to these' (Wharton, 2014). The detailed analysis of these files revealed new information about the specific policy making process which produced the Irish work place smoking ban. It is also the contention of this thesis, however, that using the data source described here can provide insight into the policy making process generally. These insights come from recognising and revealing the particularly bureaucratic perspective provided by the data source.

9.1 Strengths and limitations in the data

Before presenting the findings applicable to the policy making process generally, the strengths and the limitations of the data as a source of research evidence are considered.

The four criteria for assessing the quality of documents as research evidence named by Scott-authenticity, meaning, credibility, and representativeness-

(Scott, 1990) are apposite in research which uses documentation as a primary source of data, (Jupp,2006; Bryman, 2012; Prior, 2008). Scott's criteria are concerned with whether documentation is original and genuine, accurate; representative of the totality of documents of its type, and clear in what it intends to say (Jupp, 2006). For Bryman, these criteria address the unquestionable origins of the evidence, its freedom from error and distortion, its typicality in relation to its kind, as well as the known extent of its untypicality, and the clarity and comprehensiveness of its meaning (Bryman,2012). Applying these criteria to the documentary data source used in this research highlights both the strengths and the limitations of government files as a source of evidence.

9.1.1 Authenticity

Establishing that the criterion of authenticity is met by the data used in this research involves assessing the origins, originality, genuineness and the verifiable nature of the documents. When these are considered, the documentation used as the primary source of data in this research meets the criteria of authenticity. The origins of the documents is clear and verifiable. As part of an official collection of files that originate in a government department, the documents were gathered during the course of Departmental work, and accessed inside DoHC, under official protocols. The files contain either original documents created or received in the DoHC, or documents that were produced to be placed on the file (minutes, notes, reports etc.) or are copies of documents used to transact Department business (correspondence, memos, observations, etc.). They are genuine in that they were created and/or filed by civil servants working in the DoHC, who in many instances signed documents or are referred to by name on the documents. The verifiability of the documents is enhanced by the registration system applied to the files in which they are stored. In this research each document referred to is referenced to the specific file it was taken from, using the files registration number or file name.

9.1.2 Meaning

Meaning as a criterion refers to the clarity and comprehensibility of the documents (Scott,1990; Bryman, 2012) . Many of the official documents have titles and references that make their meaning, and the intentions of their authors or originators, clear. The barriers to comprehensibility imposed by jargon or insider references have been addressed in this research, where possible, by providing explanations of synonyms and cited internal processes and procedures, thus clarifying the meaning of the documents.

Contextualisation of the documents, in terms of who gathered them and why, reveals an additional layer of meaning in the documents. As noted previously, documents create a particular version of reality and within a bureaucratic structure of the civil service, files, and the material on them, create a bureaucratic reality which has been excised in this research. In terms of context, the hierarchical nature of the organisation is embedded in the file material. Thus, for example, a government memo granting authority for a Departmental action is an important document to have on file, providing cross-government recognition of the issue and sanction to proceed as proposed. Agreement to proceed in a certain way with policy development or implementation will be evidenced in the file material by a document stating this, and signed or authored by a high level official. Agreement, and disagreement, with other Departments, and the resolution of the latter, is recorded. Throughout the file material the position of the author must be taken into account when assigning meaning to documents. Instructions from the Minister are rarely in the format of a written document but are recorded in the communications of senior officials. A request from the Minister may lead to further correspondence, recorded in the files, which takes a particular line or presents a decision or direction. The meaning of such a document can be better appreciated when the document is viewed as part of a collection pertaining to the same issue.

This research provides a unique analysis of the meaning of the documents on file. By treating the files as one source of data with many components, both the surface meaning, the clarity and comprehensibility of the documents, and

the contextualised meaning, the version of reality that the documents presents, is captured.

Scott's remaining criteria, credibility and representativeness, have been identified as the criteria which documentary sources of evidence frequently fail to meet (Bryman, 2012).

9.1.3 Credibility

The criterion of credibility in relation to documentary sources relates to their accuracy and freedom from error and distortion (Bryman,2012). When the credibility of documents used as a source of evidence is being established, the researcher needs to consider if the documents are correct and provide an honest account of the events described.

This research is attempting to use the available documents to examine a policy making process, an approach described by Miller and Alvarado as using documents as commentary, providing insight into

> ...individual and collective actions, intentions, meanings, organizational dynamics, and institutional structures, in short, to interpret the social reality indicated in the documents (Miller and Alvardo, 2005: 251)

Interpreting the social reality indicated in the documents raises questions of source bias, which can be difficult to assess in research which is based on documentation alone (Bryman,2012). Some research fields depend more than others on documents as primary sources of evidence and in these fields, source bias is a focus at an early stage of data gathering. In the field of history, source criticism techniques have been developed which require the analyst to consider the issues which stem from the social process of document exchange, which condition the selection process -what documents exist, which are accessible and why (Howell and Prevenier, 1997; Jordanova, 2011). The availability of documents is embedded in social processes, and based on the decisions of individuals and institutions endowed with the authority to deny or allow access. (The effects of Freedom of Information

Legislation on these processes, and those that influence them, is considered in section 9.1.4).

Platt notes another type of source bias, that occurring in the selection, retention and cataloguing policies of document holders. These can, he argues, lead to the loss and destruction of documents, resulting in either an inadequate quantity of data or a qualitatively unsatisfactory distribution of data (Platt, 2011). In the data source used in this research, the credibility of the documents is both enhanced, and threatened, by these policies, as applied by the civil servants making decisions about filing. The threat to credibility comes from a lack of completeness in the data, when significant gaps or omissions are present. This can arise for different reasons. Filing errors occur, such as placing documents on the wrong file, or not attaching the document correctly and subsequently losing material. This type of error, however is unlikely to explain the gaps occurring around contentious issues, or final decisions, or topics of importance. A more likely influence on filing decisions may be the fact that, as an official collection of documents, the documents used here are subject to FOI legislation, and could be released, singly or in batches, following a request made under the legislation. Civil servants are aware of the legislation when they are making decisions about the 'selection, retention and cataloguing' of documents in their daily work, and in this research 'feeding an FOI' has been specifically mentioned as a reason for not filing certain information. Put simply, a document which is not on file cannot be released.

A close analysis of the data set will reveal the gaps and missing data that may be the result of source bias, calling the comprehensiveness and the credibility of the data source into question. In this study, missing data was identified in relation to the contribution of Ministerial advisers, and also in relation to contentious issues which involved the Minister in disagreement or even conflict with some stakeholders. Source bias of the type described by Platt (2011), resulting from decisions about what should be retained and filed, played a part in these omissions, but is not the only explanation for these gaps. In some instances the gaps occur because the issue, and its resolution,

was no longer documented. This usually resulted from an escalation of the level at which the matter was dealt with, moving upward from the domain of the civil servants involved to the Ministerial level, where informal discussion produced a resolution.

Conversely, the credibility of the documents on file may also be enhanced by the awareness of civil servants of the potential for any document on file to be made available as a result of a Freedom of Information request. If any document on file is, potentially, open to outside scrutiny then the documents on file could be viewed as the ones that civil servants consider to be accurate, to reflect the transactions which took place, and preserve the hierarchical structure within which decisions are made. Viewed in that way, the documents on a government file have credibility in terms of their honest, if partial, reflection of the work of the civil servants who created and collected them, but lack credibility in terms of their selection for inclusion.

A second source of potential bias arises when the selection of documents for analysis is considered. Purposeful sampling was employed to select documents and files created within a specific time frame (2000-2004), and to exclude the files created to record the legal cases taken against the Minister for Health and Children and the DoHC, including the subsequent cases taken at EU level. These files contained legal arguments rather than policy decisions, and require expert legal knowledge to interpret correctly. All the files that remained (n=241) were included in the analysis and each document on each file was read. Several methods were used to avoid an early concentration on particular aspects of file material. These included the use of cartographic approaches to map the entire contents of the data set in a systematic way; the careful reading and inductive development of key themes in the data and of categories to underpin them; and the use of non-restrictive conceptual categories to present the final analysis.

Bias must also be considered when documents have been selected and accessed, and analysis has begun. As discussed in chapter 4, the intertextuality of documents, in the 'semi-autonomous domain of text and

documents that refer primarily to one another' (Atkinson and Coffey, 2011: 90), can create a powerful version of reality. As noted by Forster in relation to differing understandings of company documents:

> Even when the documents used are not produced deliberately to distort or obscure events or processes, their effect can be to do precisely this (Forster, 1995:156)

Forster was referring to the unintended misinterpretations of documents. For Forster organisational documents are an integral part of the other systems and structures that exist in the organisation which creates them, and their interpretation requires an overall understanding of all the documents relevant to the issue. If the reader of a document does not have a comprehensive view of an organisation when reading its documentation (as in Forster's 1995 study) different interpretations of the same document can be made, producing different understandings of the issues involved.

The data source used in this research creates a domain in which documents refer to each other and this analysis of its content creates a distinctive version of the reality of the policy making process, as outlined in chapters 5-7. The criterion of credibility, i.e. the accuracy and honesty of the data, on which such an account is based, may therefore be questioned on the grounds that these criterion are verified only by other documents on the file. This limitation has been addressed in this research by supplementing the documentary source with data from contemporaneous documentary sources and with key informant interviews. These have been used for fact checking, and to fill gaps in information, adding to both the authenticity of the documents and the credibility of their content.

Speaking of how documentary sources come into being, Finnegan states that selection and interpretation are relevant to this process in the same way as any researcher decisions are, and advises that

> ...a piece of research building on documentary sources needs to be judged (among other things) by how carefully the

> researcher considers and explains these aspects of the sources (Finnegan, 2006:147)

This research has sought to explain and contextualise the creation of the data source within the bureaucratic structure of which it is a fundamental component.

9.1.4 Representativeness

Representativeness presents the most complicated criterion for assessing these documents as legitimate and valuable sources of research evidence. The concept of the statistical representativeness of a sample of a population drawn up for research purposes is not applicable to qualitative documentary research. Yet Scott (1990), and those who follow him, include representativeness as a criterion for assessing documentation as a principle data source. The question of how representative the sourced and accessed documents are of all the relevant documents on the topic is answerable by considering the totality of all possibly relevant documents. Given the level of access achieved to the relevant documentation, (the official records created during the development of a national policy), it can be concluded that the documents accessed are representative of the official records (with the limits imposed on date and specialism outlined above). Other types of representation are more difficult to establish, however.

As noted in chapter 3, a key element of all bureaucratic structures is its documentary practices, and files and filing are a basic component of the work of civil servants. The files used in this research are a unique collection, and uniqueness is a characteristic which makes documents interesting to researchers (Bryman, 2012, while rendering them unrepresentative of anything else. The uniqueness of these documents arise from their relevance to one policy making process, involving specific policy units in one government department, and the civil servants who worked in them, during a defined period.

As with the issues raised in relation to the credibility of this documentation, the approach to analysis in this research uses documents as commentary, an approach which views the data as unique, rather than referential testaments. Miller and Alvardo (2005) note that selection is conducted in a purposeful but non-sampling manner, with the selection based on an assessment of each document's importance and relevance, rather than for its capability to stand in for a wider range of similar documents (Millar and Alvarado, 2005). In this research documents were selected for analysis based on the date the file in which they are contained was opened and /or registered. What gives these documents, and the analysis of them, a representative quality, which exists alongside their uniqueness, is captured in what Bryman describes as a documents' 'typicality in relation to its kind, as well as the known extent of its untypicality' (Bryman, 2012).

Typical and Untypical

When viewed in relation to its 'kind' within the Department in which it was created and assembled, i.e. other files, these files have a representativeness across the Units, and polices developed, in the DoHC. The scope of the Freedom of Information legislation, and access to routinely available information in the DoHC, was laid out in a manual prepared and published in accordance with the requirementsof Section 15 to the Freedom of Information Act, 1997. This document was made publically available in 1998, and it is reasonable to assume that both the public and the civil servants in the DoHC would have been aware of the need to comply with its guidance when making decisions about filing documents relevant to its work. Such compliance will enhance the typicality of the documents selected for filing.

One of the major themes emergent from the analysis of this data is the influence of civil service and government procedures in a policy making process. Some routine civil services processes and procedures are uniform across every government department and have specific requirements, in which civil servants are trained. These include, for example, the procedures for answering parliamentary questions, handling letters of representation to the Department and to the Minister, bringing issues to government for

approval and /or sign off, seeking permission for specific policy actions, etc. FOI legislation applies to all government departments and so will be a consideration for all civil servants who keep the records of the work of their Units within all departments. The data used in this research can, therefore, be considered to be typical of the type of data recorded in official files about these processes, and how they were carried out by civil servants.

The untypical nature of the data arises when the unique aspects of the policy making process are considered. The policy issue was not itself unique or even new to Irish policy makers, having been on the Department's policy agenda since 1964 (see Table 2.1). But, as the policy analysis has shown, in 2000, it moved rapidly up to the top of that agenda, reflecting a unique set of conditions that promoted and supported its rapid development. The chosen policy mechanism, in this case legislation, creates a unique set of requirements and considerations, as would the development of a National Strategy document, or the establishment of a specific government programme to address a policy issue. Therefore it is difficult to make a claim for representativeness in relation to policy mechanisms, as this data refer to one type only.

When the practice of filing is considered across the Civil Service, there are both typical and untypical factors to consider. Filing is, as has been stated, central to the bureaucratic mechanism of the Civil Service and will therefore be practiced in every government department. As noted above, some Civil Service practices are common across all department and so are likely to be recorded on official files. There may also be, however, specified rules about the content of files in individual departments. These should be established at the start of any research process using the official records as a data source, as they have been in this research. Written documents providing guidance to staff members on their responsibilities regarding official records are helpful for this purpose.

A further untypical feature of these data is that they relate to a highly successful policy implementation process. Civil servants and politicians are

similarly proud of the achievement and were mainly willing to speak about it and give access to the file material created during its development. Access to a complete (within the previously discussed limitations) set of data is untypical in policy research, where individual documents or documents relating to one particular, pre-determined feature of the data is more usual (such as correspondence relating to a named person or institution, or to a specific event or issue, etc.).

In summary, this data contain some elements that are typical and could be applied to any policy making process, such as the way internal procedures and processes are conducted, the use of specific policy mechanisms, and the approach of civil servants to the creation and population of the files reflecting the work of the department. Further research is needed to ascertain the extent one set of 'unique' government files reflects other sets of files, produced in other Departmental Units and/or in other Departments.

9.1.5 Conclusions

This section has used Scott's four criteria - authenticity, meaning, credibility and representativeness –as a guide to assessing the strengths and limitations of the data source in this research. The authenticity of the data is the most straightforward criterion which these data can fulfil, assisted by their official status and the formal registration process each file has gone through. Meaning in the documents tends to be also straightforward, although deeper meanings can be established only when the context in which the documents were created, or added to the record, is considered. Establishing the credibility and representativeness of the documents is more difficult, in keeping with most other types of documentation used as primary sources of research evidence. These are also the criteria which reveal the major strengths and limitations of this data source.

Source bias is a major consideration when the credibility of documentation is being established. Potential source bias in this research includes that of those making decisions about what goes on the files. The deliberate exclusion of documents from the official record, is indicated by the gaps in the data

relating to some issues. Human error may be a reason for such omissions, of course, as with any administrative process. The conditions imposed by FOI legislation might also suggested a consciousness among civil servants of the contents of papers placed on file, which could be released to outside parties. Supplementary interview data suggest that consideration of this legislation is a reason why some gaps occur in the data. This type of source bias is a limitation but it is also possible to see the same type of bias as enhancing and improving the accuracy and freedom from distortion and error of documents on file. Since all the documents that are placed on file may be accessed, the truth and accuracy of the documents that are filed may be enhanced. The credibility of the data is therefore both limited and enhanced by source bias. Researcher bias is also a threat to the credibility of the data, but is one which can be addressed in the approach and methods employed in the research.

Representativeness is the most complex criterion to apply to this data source. It is both unique and untypical as a record of policy making process, but contains typical, and therefore representative, elements, which could be applied to any policymaking process, in any government department. This data source is very representative of the official documents relating to the issue, as full access was given to the central file tracking database (CRAFTS) and the majority of files identified were accessed within the DoHC. The limitations of the data in relation to representativeness are difficult to judge, as only one set of data has been considered here. There are however, some common elements which occur in relation to internal civil service process and procedure, which are followed by all government departments. In addition the necessity to be aware of Freedom of Information legislation provisions, is, and was in the period selected (2000-2004) well established, possibly influencing the amount and type of documents which were filed.

9.2 Reanalysing the themes and categories

To assess the insight into the policy making process, it was necessary to reconsider the categories developed in stage one, and to identify concepts

that encompassed the activities described. The content of each category was considered with the question 'what are civil servants doing' in mind. An example of this process may be seen in Appendix 9A. Four concepts were derived from this additional analysis of the file material. These are: compliance, accountability, management, and power. These concepts are based on the empirical evidence of the work of civil servants, during a policy making process, developed and presented in order to answer the research question: What can the files kept by Civil Servants during the development of a national policy tell us about the policy making process?

TABLE 9.1 shows the concepts that each of the major themes and its underpinning categories were assigned to.

Figure 9.1 outlines the components of the four concepts Compliance, Accountability, Management and Power.

Table 9.1 Themes, Categories and Challenges

Theme	Underpinning Categories	Challenge
1.1 Framing the Policy Direction	1.1.a International context	Accountability
	1.1.b Strategic use of research	Management
1.2 Following Procedures	1.2.a Using Policy Mechanisms	Compliance
	1.2.b Legislation as a policy mechanism	Compliance
1.3 Discussing and justifying proposals	1.3.a Government Intentions	Accountability
	1.3.b Power and Persuasion	Power
1.4 Managing the interest groups	1.4.a Existing Supports	Management
	1.4.b Handling Opposition	Power
2.1Selling the message	2.1.a Focusing on specific groups and events	Management
	2.1.b Building momentum	Management
2.2 Managing Change	2.1.a Enforcing new regulations	Compliance
	2.2.b Restructuring Relationships	Management
2.3 Aligning domestic and international goals	2.3a Debating the issues in Europe	Accountability
	2.3.b Influence of the tobacco industry	Power
2.4 Progressing the policy	2.4.a Supporting and Undermining the initiative	Power
	2.4.b Leading on change	Management
3.1 Consolidating the legal basis	3.1.a Derogations and concessions	Management
	3.1.b Finalising the legislation	Compliance
3.2 Instruments for change	3.2.a Providing education and advice	Management
	3.2.b Groups and Institutions	Management
3.3 International Issues	3.3.a Ratifying the Convention	Compliance
	3.3.b Hosting the Conference	Management
3.4 Taking the final step	3.4.a Late Opposition	Power
	3.4.b Compliance and reaction	Management

The four challenges identified are: compliance, accountability, and management and power. The components of each concept, drawn from the analysis undertaken in this research, are outlined in Figure 9-1 and discussed in the following section.

Figure 9-1 Challenges for Civil Servants

***C**ompliance*	*with internal procedures*
	with legal requirements
	with state obligations
***A**ccountability*	*Bureaucratic Accountability*
	Ministerial Accountability
***M**anagement*	*of resources*
	of the process
	of internal and external actors
Power	*State power*
	Ministerial power
	Bureaucratic power

9.2.1 Compliance

The concept of compliance is related to the procedural and legal obligations of the State and the necessity for civil servants to be aware of these, especially when new policy is being developed. The Oxford English Dictionary defines compliance as 'the state or fact of according with or meeting rules or standards', a definition which sets the parameters of the concept for this discussion. Here these include domestic, international, departmental and cross government requirements. The policy process for the smoking ban, provides several instances where compliance, or non-compliance, resulted in delays to the development of the policy, and even changed the contents of the final legislation. The deferral of the date for the implementation of the ban is a good example of a failure of this type of compliance. Because the Irish legislation had not been notified to the EU Commission for circulation to all member states for comment before it was enacted, there was insufficient time to meet the requirements of the EU before the original implementation date of January 1 2004.This failure in compliance was considered to be the responsibility of the Civil Servants by the Minister, and necessitated a lengthy press release by the Taoiseach to explain the delay.

The official record acts as proof of compliance, or non compliance, with legal and state obligations that surround policy making. It is possible to trace the internal procedures undertaken and the timeline of the milestones reached, or missed, during a policy making process. This is a useful feature for mapping and explaining delays that occur during the process. When a failure to comply with a regulation or legal requirement occurs, the record is a starting point for establishing how and why such failure occurred. In this regard the record is considered to reflect what occurred in relation to specific procedures.

9.2.2 Accountability

Different but related types of accountability are relevant to civil servants in the policy making environment. The first relates to the accountability of the Minister to the public and to the Dáil, as the Government Minister who has political responsibility for the actions of his Department. The principle

mechanism for Ministerial accountability is the parliamentary system. The role of the civil service in this type of accountability includes providing replies to parliamentary questions, contributions to speeches for Dáil debates and the management of ministerial representations. The second mechanism captures the concept of civil service accountability to the Minister and involves reporting, discussing and memo-ing by senior civil servants in relation to specific issues that arise, and of which the Minister needs to be aware. This can occur proactively, when information is supplied to the Minister prior to an issue arising, or in response to a Ministerial request for an explanation of a specific matter. This is the type of material which is rarely made publically available and must be sought under the provisions of FOI legislation, but which is recorded on file in each of the policy units supplying it.

The third mechanism for ensuring accountability relates to the line management system which operates in Government departments. This system is designed to ensure that policy decisions are signed off at senior level, and that accountability for these decisions rests at the highest level, regardless of the level of involvement a senior civil servant might have with a particular process. Sign off is important for the record, and is recognised in signatures, handwritten notes, dated initials as well as more formal forms, emails , notes, etc. Formal ministerial sign off is important for the work of a government department, and governmental sign off is crucial to the use of some policy mechanisms (such as the introduction of legislation) and is achieved through a formal process of memos and submissions by and to the relevant government departments.

As noted previously, a particular strength of these data is the recording of formal processes, including sign off and finalisation processes, indicating the importance it has for those keeping records.

The official record is used by civil servants to meet the requirements placed on them to be accountable for their actions and decisions. This applies to both the hierarchical system within Government Departments, where sign off and agreement at a higher level are actively secured, and in relation to the Departments remit to support the Minister in relation to his accountability to

the Dáil. A high importance is placed on answering PQ's, for example, and sign off on the replies supplied by individual Units is at Principal Officer or Assistant Secretary level. Each of these will be recorded on a dedicated PQ file, often with draft versions of the answer and the final, signed off answer that was submitted. Accountability is also important in relation to issues of procurement and such processes as issuing requests for tender, the tendering process and evaluation of submissions, contract negotiations and monitoring of contracts, are subject to audit by the Office of the Comptroller and Auditor General[192], as is expenditure by individual Departments and the Units within them. The response to such an investigation will be dependent on the official record kept of these transactions, with audited Units required to provide proof that correct procedures were followed.

9.2.3 Management

The concept of management is broad as it includes relevant activities such as: the organisation and management of resources, planning the stages of policy development, identifying and initiating the necessary internal procedures, and negotiating with internal and external stakeholders. Management has been defined as referring to 'the set of conscious efforts to concert actors and resources to carry out established collective purposes' (O'Toole, 1999:21). The concept of management is applicable to many of the categories derived in this analysis and accounts for the bulk of activity undertaken by civil servants in the process.

The management of the resources allocated to a policy are an important part of the process, in terms of staff and budgets. This type of management will be more difficult to accomplish when resources are constricted by economic circumstances, and even when resources are plentiful, individual departments

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[192] The function of the Office of the Comptroller and Auditor General is to provide independent assurance that public funds and resources are used in accordance with the law, managed to good effect and properly accounted for and to contribute to improvement in public administration (http://www.audgen.gov.ie/ViewDoc.asp?fn=/home.asp, accessed 24.02.2014)

can be called on to justify their expenditure or even to surrender monies not considered necessary. Ministerial commitment to a policy area is one means of deferring or removing this type of challenge.

Management of the policy making process is important especially when specific mechanisms, such as legislation, are being used. Senior policy makers must be aware of the timing of specific stages, in order to ensure that the correct structures are in place or the correct preparation has been completed. Failure to manage processes correctly can result in delays, missed opportunities, reputational damage or embarrassment for the Minister and /or the Department, with senior management held responsible. This also applies to some extent to the management of the actors in the process. The hierarchical nature of the civil service usually means that internal actors conform to their assigned roles. On occasion, the expectations and understandings of the Minister will also need to be managed, which can be a contentious process. The management of external actors can be a time consuming and, depending on the influence of the external actor, a complex matter. Consultation is now a standard part of policy development, and the management of the process, and of the expectations and demands of those within it, is part of a policy making process.

Much of the policy making process involving civil servants is related to management activities, and many of the management decisions taken are recorded in file material. Management of internal and external actors can be traced through correspondence and interactions with various stakeholders and their representatives. Management of resources may also be reflected on file but may not if a policy issues is largely cost neutral, or if funding is channelled through an external agency. Such resource management could only be traced by accessing records from the Unit making these payments, presenting a limitation in the data in relation to the completeness of information about or coverage of certain issues.

Some stakeholders in a policy making process are managed in a different way than others. There may be, for example, little or no correspondence from the

Minister on the official record, apart from formal sign off on high level policy decisions. Informal communication with the Minister, if it occurs, is not recorded on the official file. This results in formal notes being attached to the file which outline the provision of information to the Minister about specific topics at specific times. Memos for information are another means of informing, and recording the information giving, of the Minister on particular issues.

A second, related, gap in the management of stakeholders in the policy making process is the absence of the contribution of the Ministerial advisors from the record. Often the inclusion of a name in a list of meeting attendees or on a group email are the only references to them, yet they are have been acknowledged as having a pivotal, albeit temporary role in the Irish policy making sphere (Connaughton, 2010). This represents a serious limitation in the data, particularly in policy making processes where the advisor has had a significant influence on the direction of the process.

9.2.4 Power

In models of the bureaucratic structure, the image of a Greek temple has been used, in which the pediment represents senior management, who co-ordinate the work of the pillars, which represent the organisation's functions or specialities (Malone, 2010). Position is the major source of power, and there are many rules and procedures attending the exercise of, and respect for, the power of high positions. This type of model is traditionally associated with organisations such as the civil service, in which Ministerial power, interdepartmental power relations and the power of the parliamentary system will all play a part.

The State will generally have the dominant role in making public policy (Buse et al., 2009) and, as discussed in Chapter 3, there are differing theories about how independent or representative the State is of other influences in society. Legislation is one of policy mechanisms that utilises the unique power of the State to formalise its decisions in a binding way. Civil servants are therefore exercising, or influencing the exercise of, State power, when they prepare

legislation for enactment. The data source used in this research also suggests that, during a policy making process, civil servants hold a department-centric view of power. With the internal actors there is a nuanced awareness of where the Department stands in relation to other departments, and of the power of the Minister to resolve conflicts between departments.

It is in dealing with external actors that the conceptualisation of Departmental power is most clearly displayed. As demonstrated earlier (see Appendix 8B), civil servants view each of the actors which play a part in the process in comparison to the power of the Department in the process. The power of external actors relates to their resources, supports, and influence on the public and/or with the Minister or government. The power of the Department is conceived as stronger than some actors and weaker than others, but being 'the Department' is a source of strength in negotiations.

As the analysis has shown, the power of other departments to influence policy outcomes relating to issues for which they have peripheral or no direct responsibility needs to be recognised. Some Government Departments have more influence than others. These Departments possess or control particular expertise, or are empowered to make demands on other departments in relation to the resources allocated centrally to them; or control access to resources relevant to the policy issue. Issues arising will either be resolved by the civil servants making the concessions they are empowered to make, or by the relevant Ministers at Cabinet level.

Civil service files record the type of power exercised internally and externally during a policy making process. This is reflected in the decisions taken at the highest level, the influences detectable in the final outcomes, and the reaction to, and consequences of mistakes, and misjudgement. Also reflected in the file material is the support of civil servants for some policy actors and not for others. While these can be traced by means of a detailed analysis of file material, the gaps in the data are a limitation in the record, especially when sensitive or high level disagreements are involved.

9.3 Summary of Chapter 9

This chapter has addressed the research question:
Can the analysis of civil service records inform researchers about the policy making process in general?
Before the answer was attempted, the strengths and limitations of the data as a source of research evidence was assessed. Scott's four criteria for judging documentary evidence were applied-authenticity, meaning, credibility and representativeness. In keeping with other authors who have applied these criteria to a documentary data source, the first two criteria were met relatively easily. The authenticity of the documents is attested by their official nature, they were accessed through a formal register of similar collections of documents and contain material relevant to the topic of interest. The meaning of the documents is also mainly clear, both the surface meaning and the meaning they have as components of a particular version of reality which they contribute to creating.

The remaining criteria, credibility and representativeness, are more challenging to establish, and this data source has limitations with regard to both. Potential source bias raises questions about the credibility of the documents in terms of their accuracy and their freedom from distortion. One possible source of bias in this context is the consciousness among civil servants of the consequences of Freedom of Information legislation, which may influence decisions about the selection of documents to place on file. It is also argued here that this bias may ensure that the documents which are filed are 'accurate and free from distortion' (Scott, 1990) because civil servants know that they are subject to release, potentially, if requested.

Researcher bias can also present a threat to the credibility of the documents as a source of data. This can arise at the sampling stage, when exclusions are made based on specific criteria, or later as the analysis begins and the researcher selects individual documents and topics to focus on. A number of measures were taken to avoid researcher bias in this research, including the

decision to include every document on the files sampled, and the use of memos to consider and explain the decisions taken.

Representativeness in the data is the final criterion for assessing a documentary source as research evidence, and the limitations of the data in relation to it have been discussed. The conclusions drawn involve a balance between the unique and untypical nature of the records created during a specific policy making process, and the typicality of the data in government departments across the civil service. While the data are limited by relevance to only one type of policy mechanism involving legislation, they are sufficiently typical of record keeping in the civil service to provide insight on a wider scale.

That wider scale is then considered when the categories and themes from the thematic analysis are reframed to consider the question what are civil servants doing' in this situation?' The answers in the case of each theme and its categories led to the identification of four concepts which represent the challenges for civil servants during the policy making process. The concerns identified were: compliance with civil service requirements, procedural and legal obligations of the State; management of resources, actors and procedures; bureaucratic and ministerial accountability; and Ministerial power, interdepartmental power relations and the power of the parliamentary system. The specific ways in which these challenges are captured in the data are explained and the gaps in the data are highlighted in relation to each. These include limitations in information about

- The role of specific policy actors
- The interpretation of interactions with external policy actors
- The completeness of information about or coverage of certain issues in the file material
- The resolution of contentious or sensitive issues

9.3.1The official record and Freedom of Information Legislation

Whether or not Freedom of Information legislation has stimulated better practice in record management but this has yet to be firmly established. In fact, as Healy notes:

> Although the Irish Freedom of Information Act recognised the connection between rights of access to information and the records containing that information, it went no further than requiring each public body to publish 'a general description of the classes of records held by it, giving such particulars as are reasonably necessary to facilitate the exercise of the right of access (Healy, 2009:167)

A recent study of the effects of FOI legislation in an adjacent jurisdiction has reported 'modest at most' effects, and concluded that

> It is not powerful enough to do much good or much ill, and the feared 'chilling effect' on candour and record-keeping has not materialized (Hazell et al., 2011:1664)

Even though the effects of Freedom of Information legislation have not been evaluated in relation to record keeping, there is a consciousness among civil servants about its existence and its potential consequences. This awareness may or may not affect record keeping but should be borne in mind when analysing the output from a formal record keeping system, as used in this research.

This chapter has examined whether the data source used in this research, one which is created by all government departments as part of the everyday work undertaken by civil servants, is a useful and reliable source of data about the policy making process in general. The conclusion reached is that it offers significant information to a study of the policy making process which cannot be obtained elsewhere. Assessing the data against Scott's criteria for documentary sources reveals the limitations of this data, which must be

considered, and if possible compensated for, when this data is being used. A framework, which further studies could test, has been outlined, incorporating the key challenges for civil servants in a policy making process. The final chapter outlines the principal findings from this analysis and how these make a contribution to knowledge about the public policy making process.

Chapter 10 Contributions and Conclusions

10.0 Introduction

The Irish work place smoking ban came into effect on 29th March 2004, and took its place as the world's first such ban in the history of tobacco control. This research analysed the official record of the policy making process which led to the workplace smoking ban, to assess what this record could reveal firstly about this policy making process and secondly about the policy making process in general. The records of the process were created in a number of different policy units in the Department of Health and Children, and these were identified and accessed through the centralised records management system within that Department.

10.1 Aims of the research

The aims of the research were to:

1. Describe a novel data source and convert it into a text base resource for research purposes
2. Identify key themes in the data that are relevant to the research questions
3. Position the key themes in the policy making process, linking them to each other
4. Provide an account of the major themes identified using the analysed data to explain, illustrate and track the policy making process
5. Present the policy process within a policy analysis framework
6. Draw conclusions about the utility of this data source for providing insight into the policy making process

Chapters 8 and 9 present the main findings relating to the two strands of interest in the research - the substantive policy making process that produced the work place smoking ban, and the utility of the data source to provide insight into that process. This chapter summarises the main findings from the

research and illustrates the significance of the findings in the wider research field. The questions posed in this study were:

1. What can the records assembled by civil servants during a policy making process tell us about that process?
2. How can the records assembled by civil servants during a policy making process be analysed when they are treated as a single data source?
3. Can the analysis of civil service records inform researchers about the policy making process in general?

10.2 Findings relating to the Irish work place smoking ban

The policy making process which led to Ireland's work place smoking ban has been previously researched , and much of what has been found is confirmed in this research. The process benefited from strong cross-government support led by a senior Minister who announced his strong public commitment to improving public health through tobacco control measures. The Ministers' efforts were supported by an active health lobby group and opposed by the hospitality and retail sector, led by the Vintners representative groups. This research, however, presents a different perspective on these and the other elements identified in the analysis of the official record of the policy making process. The perspective the record gives is internal, and is that of the policy makers working in the Department with responsibility for the policy, mediated by the documentation placed on file. The limitations of this documentation have been discussed and, with those in mind, the following are the major findings in this study which relate to the specific policy making process that produced the Irish workplace smoking ban.

10.2.1 The final form of the policy

The total ban on work place smoking that was introduced in 2004 was not envisioned when the new Minister for Health and Children took office and announced that tobacco control would be his number one public health

priority. Tighter controls on the sale, marketing, manufacturing, and cost of tobacco products were the original foci for policy makers. The key policy document guiding the policy development contained a number of recommendations about restricting smoking in certain workplaces, but also recommended exclusions from such a ban for some workplaces (places of adult entertainment), the extension of restricted areas in some workplaces (restaurants and cinemas) and allowing employers to provide smokers with reasonable access to an area where they can smoking without affecting others (2000:50). A voluntary code of practice for pubs and licensed sporting facilities was also recommended (2000:51).

The concept of a total work place smoking ban, and the possibility of imposing one in Ireland, emerged gradually as support for stronger control measures grew, and consolidated into a policy decision when strong scientific evidence about the effects of Environmental Tobacco Smoke was published. The official record does not record the how or when the concept of a total work place smoking ban became the focus of discussion, but the key informant interviews suggest that the idea was articulated by one of the Minister's advisor's. The key concept, which was used to refute almost all subsequent arguments against a total workplace smoking ban, was that this was a workers protection issue, not an overt attempt to get people to stop smoking. From this perspective, protecting the health of a pub worker was every bit as important as protecting the health of any other worker.

Given the success of the Irish workplace smoking ban, this is a key point, highlighted to visiting policy makers from other jurisdictions in which stronger tobacco control measures were being considered.

10.2.2 International considerations and internal barriers

Although several prominent stakeholder groups (the hospitality sector, the domestic tobacco industry, the retail sector) were strongly opposed to tighter tobacco control, restrictions on what the Irish policy could achieve came from two other sources, often overlooked when barriers to policy implementation are considered. These were Ireland's international commitments under EU

legislation, and the internal restriction imposed by other Government departments on the final shape of the policy.

As note previously, requirements to enact EU Directives by specified dates forced Irish policy makers to make progress on some issues, while requirements to comply with existing Directives meant that some of their planned changes could not be made. This occurred in relation to Ireland's prohibition of indirect advertising by tobacco companies, through use of their logos on non-tobacco products. This type of advertising, also known as brand stretching, was banned in the Irish Tobacco Act of 2002 (2002). Two issues arose, one, whether the Irish government could restrict advertising in this way, which the tobacco companies claimed they could not as the EU had not sanctioned such a prohibition, and two, Ireland's failure to fulfill its commitments under Article 8 of EU Directive 98/34 of 1998 (Council Directive (EC),1998). This amounted to a failure by Irish legislators to provide details of the technical changes they were imposing in the 2002 Act[193], to the European Commission for comment by all member states, 3 months prior to enactment.

The outcome from these issues was the removal of the prohibition on brand stretching from Irish legislation, a significant delay in the implementation of the workplace smoking ban, and the drafting of a new Bill incorporating all the agreed amendments to the Tobacco Act of 2002, excluding the prohibition on using tobacco brand names to sell non tobacco products. The Bill was notified in advance to the EU Commission. This example shows how EU legislation acted as a barrier to the realisation of Irish ambitions for tobacco control, and how failure to comply with EU requirements led to a deferral of the entire policy.

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[193] These technical provisions related to the use of tobacco branding on non tobacco products. The court case in which this compliance failure was revealed was taken by an organisation trading under the Camel brand. The Irish State lost this court case and the prohibition proposed in the Tobacco Act of 2002 was subsequently removed from the new Tobacco Act of 2004(Government of Ireland, 2004)

Internally in the civil service, other Government departments, although not opposed to tighter controls and implicitly included in the cross government support given to the policy measures, opposed provisions that impinged on their own areas of responsibility. This was manifest in the objections raised by a specific department to the smoking ban in workplaces controlled by the Department in question. A pragmatic approach was taken to overcoming these barriers and specific concessions were made in the legislation, allowing the bulk of the policy to remain intact. External stakeholders were less effective in getting concessions, with minor exceptions, and ultimately were unable to oppose the legislation or its perceived effects.

10.2.3 The significance of internal procedures

The data revealed important insights into the processes in the policy making process that led to the workplace smoking ban. One of the purposes of filing working documents is to record how, when and with what authority the processes are started, progressed and completed. Because these records span the entire period during which the policy was being actively developed and implemented, several of these processes can be tracked. The policy making process was delayed but not significantly hampered by oversights and failure to comply with internal processes. These delays occurred at several levels: the national when a Ministerial decision to bypass an established process was treated as unacceptable; and at Department level when civil service procedures were not followed and progress was halted until compliance was achieved.

10.2.4 Key relationships in the process

A significant relationship in this process was that between the lead Department (DOHC) and the lead government agency established to develop and implement the policy (OTC). Analysis of the documentation suggests that almost immediately there was tension between these two organisations, which arose from different understandings of the role and responsibilities of the OTC, and the appropriate reporting structure between the two bodies. This was exacerbated by the close working relationship between the Minister and the CEO of the OTC, which derived from the expertise, knowledge and

enthusiasm the latter brought to his post. This was admired and supported by the Minister but was less valued by the civil servants working with the OTC, who viewed it as unnecessary and sometimes inappropriate. Ill health forced the CEO to leave his post before the policy was concluded, and his subsequent death shortly after that was referred to in all key informant interviews. While that event may have restrained the informants in their comments on the relationship between the OTC and the DoHC, sufficient detail is discernable from both the documents and the interviews to characterise it as a difficult working relationship. This did not, ultimately, hamper the success of the policy and the difficulties it caused were confined to those experienced by the civil servants in DoHC. These difficulties were managed by imposing tight control on the OTC in terms of finances and oversight of activities, impressing on the Minister the necessity of following established procedure, and on some occasions taking over the work of the OTC office.

10.2.5 Effects of success

The workplace smoking ban was more successful than anticipated by policy makers. Compliance with the new law was high from the first day, which came as a welcome surprise to those policy makers involved. The ban attracted much national and international media attention on the day it was announced. When it became clear that the ban was being successfully implemented, Ireland became a destination for politicians and policy makers from other jurisdictions seeking to take similar measures. This conferred a status on Irish policy makers which they had not anticipated and which they appeared to enjoy. The effect of being involved, from a governmental perspective, in such a successful policy making process was considered rare and gratifying. For the purposes of conducting research on the policy it is more likely that access to the files created during a highly successful policy making process will be allowed, as it was in this research. The pride taken in the success of the policy may also have made those involved willing to speak freely about the process.

10.3 Informing the policy making process research field

The question 'Can the analysis of civil service records inform researchers about the policy making process in general?' is answered in this research in two ways. First, the usefulness of the record is considered, including what it contains, how reliable it is, what its limitations and strengths are. Then the reconceptualization of the findings from the analysis as a representation of the challenges for policy makers during the process is reviewed, as well as the limitations relevant to the data source. The basic concepts identified form a framework against which another, similar set of data might be tested, contributing to the further development of the framework.

10.3.1 Departmental files

All government departments keep files, although the exact process of doing so may differ from department to department. In this research, the data provided by an official record in DoHC included information about:

- Who was involved in the policy making process
- What were the relevant issues in relation to the policy
- The time frame for the development of the policy
- Who/what acted as a barrier and as a support during the process
- Who was influential in the policy making process
- How stakeholders are viewed by civil servants during the process
- What were the interests of stakeholders
- How civil service procedures and practices can impact on policy
- Who was in charge of the policy making process
- What was the chain of command among policy makers
- What was the dynamic between the departments involved
- What was the dynamic between key participants in a policy making process

This research has identified each of the above in relation to the policy making process for the Irish work place smoking ban. Further research, would be needed to establish if the same information could be extracted from every

official record, using other official data sets created during other policy making processes.

This study has also attempted to go beyond this one, idiographic policy making experience by constructing a preliminary framework of the challenges for policy makers throughout the process.

One of the key questions posed in this research relates to whether the analysis of this data set can inform the policy making process in general. The construction of a framework capturing the key concerns of policy makers during a specific process is an attempt to go beyond the discernible facts of one policy making process and describe a conceptual level which may be applicable across policy making in other situations. In this research the concepts compliance, accountability, management and power, were identified and seen to be operating at different levels and across the lifetime of the policy development. The applicability of these concepts to the wider policy making sphere could be tested through the analysis of other data sets of this type, adding to the information about

- How things work inside a government department
- What civil servants do in their daily work
- What are the key elements important to policy makers in any policy making process

Further testing of the framework could also generate further questions, such as

- When are opportunities to influence the policy making process most likely to occur
- How can the limitations in the data be addressed by a) record keepers and b) researchers using this data source

10.3.2 Links to the Policy Process Literature

The data used in this research provides a viable means of studying the policy making process, in terms of its idiocratic nature and in relation to the

theoretical perspectives which have been posited about the policy making process. By concentrated on the idiocratic elements of the data, this research presents a rich and detailed picture of one policy making process. There are however, several emergent characteristics of the data could challenge or support other theoretical approaches. The main tennets of the theoretical approaches to the policy making process presented in chapter three can be detected in the data used for this research. These approaches-Rationalism, Instutitionalism, Network Analysis and Bureaucracy indicate how policy making has been viewed by researchers and provide differing perspectives on the role of the policy maker within the process. In keeping with the common critiques of Rationalism this research demonstrates the non-linear, multi actor process with which Governments are involved, while supporting the validity of incrementalism as an approach to understanding how policy makers might 'muddle through' at different stages of the process.

The extent to which human actions are structurally determined is the central question in the Instutitionalist approach to understanding the policy making process. Data gathered by and representing a record of the work of an formal, rule bound institution which is the Civil Service presents opportunities to study these effects in detail, and potentially identifying the influences on decisions that the structural context, so evident in the data, might have. Network analysis places the policy maker at the centre of a process that involves a network of actors, who are apparent in this type of data, or whose absence is identifiable when the findings from the data are used to gather data from other sources, as in this research. The Bureaucratic approach detaches the policy maker from the Institution, the networks and even the rationality of the policy making process and views the process as a series of administrative exercises, governed not by the bureaucrat that conducts the exercise but by the political power that guides the decision making. The level of detail available in this data means that these exercises, and the political power that directs them, can be traced and analysed.

This research provides an alternative but complementary and reinforcing view of the policy maker in the policy making process. By using the official record of a process the entirety of the policy making environment is captured. It is

important therefore to assess the strengths of the data as source of information about the policy making process.

10.4 Strengths of the data source

This data source offers some unique insights to the policy making process that led to the development of the Irish work place smoking ban. A bureaucratic perspective on the issues, stakeholders, relationships and processes involved in the policy can be discerned in the record. The details of the stages and processes in the policy making process are contained in this record. The roles of different actors, the barriers and facilitators of success can be identified, as can the interests of the various stakeholders and the strategies taken by policy makers to deal with them.

The type of data contained in the record would be difficult, if not impossible to obtain from another source or sources. Having access to a full collection of files means that all information recorded about the issues, stakeholders, decisions, actions, approaches, stages and consequences encountered by civil servants are available for analysis. No other data source is as comprehensive in its coverage of the policy making process. While other sources, such as policy actors interview or questionnaires, published reports, media coverage, or other official documents, can be used to verify researcher understanding of a policy process, it is unlikely that the breath of the inputs to the process will be available from any other source.

What makes this data source unique is the context in which it is assembled. While the practices of filing may differ across Departments and even across units within Departments, the bureaucratic practice of filing as record keeping is the same for all civil servants. Each collection of relevant files is therefore a unique representation of the work of civil servants who create it.

There are two additional strengths of this data which apply to documentary sources generally. The first is that this is data that has been collected for

purposes other than research, and is therefore free of the bias that can occur with other types of data collection. The second is the permanency of the record, and consequently of this data source. This collection of documents has been and will continue to be maintained as an official resource, and is remains available for further research or for the verification of this research.

10.5 Limitations of the study

This study has used a unique data source to investigate a policy making process and draw conclusions about the important elements in the process. Having one source of data only limits the strength of the conclusions that can be drawn. Key informant interviews were carried out in this research as a means of fact checking and of filling the gaps that analysis of the documents revealed. But only a small number of interviews (N=6) were obtained, therefore, the bulk of the information about the policy making process came from the documentary source.

A related limitation of the study is its idiographic nature. Studies of the policy making processes which take an indepth, single case study approach share this characteristic and are, therefore limited in terms of the generalizability of the findings, and the applicability of the concepts derived from the analysis, to other policy making processes. Policy is made by people, within government departments in particular contexts and circumstances, and while experience from one process can inform and improve another, each episode of policy making is unique. Therefore it is a limitation of this study that only one policy making example is studied, as a comparison between two or more would strengthen the validity of the findings relating to the wider policy making process. However, given the exploratory and innovative nature of the research and the size of the data source, as well as the difficulties in accessing a second or third set of records, it was not possible to undertake the extensive additional analysis required to test this limitation.

10.6 Contribution of the study

This study makes a number of contributions to the field of policy process research. Firstly, it demonstrates how the documents which comprise the official record of a policy making process can serve as a valuable data source in policy process research. This research process included the creation of an archive of a unique data source, which can be used for further research. A guide to extracting information from this data source systematically has also been created, which could be used with other sets of records relating to other policy processes. This thesis contributes to knowledge about the development of the Irish workplace smoking ban. This was deduced from the data source used, and reinforced by supplemental interview data gathered from the key policy makers involved in the process. Key concepts relevant to the challenges for civil servants working on national level policy have been identified and placed in a framework which could be used in future analysis of data sets of the type used in this research.

A small number of recommendations to improve the utility of the official record for future research use are listed below. These are based on the experience of using a set of official records as a primary source of data about a policy making process. Although relatively simple they would, if put into practice by civil servants, make a substantial contribution to the usefulness and clarity of the material filed in Government Departments.

1) All documents should be dated in the format dd/mm/yyyy. This would eliminate queries arising from a dd/mm/ format, especially common in files which span a number of years.
2) All documents should be signed or initialled by the person deciding that a document should be placed on file. This provision would help to ensure that filing was done in a more considered way and that the record would include details of who these decision makers were.
3) The contents of policy files should be indexed when files are completed- i.e. an index listing each document on the file, with details of its date, author, brief description of contents and any attached documents,

should be attached to the file. This would facilitate researchers in initial assessments of such material.

4) Civil service procedures and processes relevant to any particular policy making process (such as developing legislation, bringing a memo to Government, seeking observations from other Departments on draft policies, etc.) should be briefly described and these descriptions placed on file to provide technical details on the file contents. This would provide valuable learning material for civil servants starting to work on a policy process, as well as contextual material for researchers studying the data at a later date.

10.7 Conclusion

This research was undertaken to assess if and how a collection of official records could be used to provide insight into the policy making process. My interest in the project was informed by my experience as a civil servant and as a doctoral student of health services research. Academic understandings of the way public policies are made has generated the concept of a 'black box', in which mysterious and largely unrecountable things happen to policy inputs, and from which outputs, in this case policies, emerge. This research has gone inside the 'black box' of the civil service policy making world, revealing what happens when a policy is being developed and implemented, and identifying four challenges relevant to civil service policy makers in the policy making process.

To conclude, the data used in this research is a rich source of information about the policy making process and has potential to identify significant elements in an individual policy making process that are not recorded elsewhere. These challenges identified here-compliance, accountability, management and power-have been used to create a framework within which civil service policy making can be studied. It is the contention of this thesis that these challenges inform and direct much of the bureaucratic activity recorded in the official departmental files. Analysis of other data sets,

representing different types of policy output, would test and strengthen this framework.

This study paves the way for other studies that might be undertaken using a similar set of data, created not for research purposes but as a record of the work undertaken by policy making civil servants.

Appendix 4A: Provisions and Exemptions in the Freedom of Information Acts commonly used by DoHC

Sections in this listing refers to Sections of the Freedom of Information Acts 1997 and 2003*

4.5 Key Provisions used by DoHC

Under the Acts, the Department may, inter alia:

- Charge fees for search and retrieval of records (S.47);
- Negotiate the parameters of a request in order to narrow its scope to the exact information required by the requester (S.7(1)(b); 10(1)(b);
- Refuse to accept a request where processing it would cause the normal work of the Department to grind to a halt (S.10(1)(c);
- Refuse to accept a request that is frivolous or vexatious (S10(1)(e);
- Refuse a request if no records can be found following a reasonable search (S.10(1)(a);
- Refuse to create a record in order to answer a request for information (implicit in S.6, 7, 10(1)(a) and 12).
- Defer access in certain circumstances (S.11);
- Extend the deadline for an initial decision by an extra 20 days (S.9);
- Refuse access to records in accordance with exemption provisions, some of which are outlined below.

4.6 Exemptions commonly used by DoHC*

Section 19 Records for use at Government meetings (under 10 yrs old, excludes. factual material; mandatory exemption);

Section 20 Records containing the deliberative process of the Department (while the process is active; excludes factual information; public interest test);

Section 21 Records showing the Dept's management functions, negotiating positions, investigations etc. (subject to a public interest test);

Section 22 Records that attract legal professional privilege (mandatory exemption);

Section 26 Records containing information given in confidence (3rd party consultation provided for; subject to a public interest test);

Section 27 Commercially sensitive records (3rd party consultation provided for; subject to a public interest test);

Section 28 Records containing personal information (3rd party consultation provided for; subject to a public interest test);

Section 46 Not an exemption but an exclusion from the Acts of records of Tribunals, the AG, the Oireachtas and records already publicly available.

*Internal Document 'records Mangement Protocal Department of Health and Children (DoHC, 2008)

(Government of Ireland, 1997)

(Government of Ireland, 2003)

Appendix 4B: Details recorded from each document

Details recorded	**Comments/Description of information extracted**	**Data Format Examples**
Section of the Department of Health and Children in which file containing document was registered	The name of the different Units within the Department in which the file containing the document was registered is recorded. Files not registered recorded as 'not registered' and their contents were described.	ENV-Environmental Protection Unit PHU-Public Health Unit TCU-Tobacco Control Unit
File Type	The file type assigned during the registration process, which is incorporated into the FOI number generated for each file. Files which have no FOI number recorded on the file cover are recorded as 'not registered'	IMP-Implementation File POL-Policy File INF-Information File INA-Inactive File
Location of file	Location of file in which document was contained. Files were accessed within the Department or requested from off-site storage	HH-Hawkins House OFFSITE -Off site storage
Dates	Dates recorded in a dd/mm/yyyy format The date January 2, 2000 would be recorded 02/01/2000. Partial or missing dates are noted	01/02/2000 No date noted Not dated
Date File opened	Date on which file was opened, usually but not always recorded on the front cover of the file. Where no date was recorded the date on the first document in the file was noted Dates are recorded in a dd/mm/yyyy format Partial or missing dates are noted	File opened 19/07/2000 Date incomplete File not dated
File Name	The locally assigned name of the file in which the document is contained is recorded verbatim, as well as the volume and part number, if relevant	Smoke-Free Workplaces Implementation -29 March 2004 Vol 1 Part 1
Identifying number	The Freedom Of Information number generated by the Centralised Records and File Tracking System (CRAFTS) within the Department of Health and Children acts as an identification number for the files included in this research, in combination with the local file reference number and the file name	CH.100.1.120 ENV/INF/0/49602 Smoke-Free Workplaces Implementation -29 March 2004 Vol 1 Part 1
Other Number	Local Reference number, Volume number and Part number are recorded where relevant	CH.100.7.12 Vol III Part IV
Description of Documents on file	Description of content of each document on the file. The contents of each document is briefly described. A	Contains letters addressed to the Minister for Health and Children

	// appears at the end of each document description, to signify that the end of the description. In the example given here the contents of three documents is described	Micheal Martin TD from individuals and from public representatives on behalf of individuals in relation to the introduction, implementation and enforcement of tobacco control regulations//Contains template letter thanking selected Board Members for agreeing to participate...//Contains transcript of report stage of Bill//
Document Format	The format of the document is described	Letter ;Email; Attachment ;Fax ;Hand written letter/note
Document Title	Documents with specific titles are recorded as such	Reply to Parliamentary Question no; Memo for Government ; Aide de Memoire; Briefing Material; Speaking Notes
Document Details	Identifies the document by its format and also records who the document is from (author, signee, drafter) and who the intended recipient is , if known.	MEMO;To .....from Letter; To....From Email ; to....From Cc'd to... Parliamentary Question : Question asked by Minutes of meeting; Name of group and/ or Meeting attended by
Date document created	First date given on document, if given on document.	Contains note from.... dated 07/12/2000
Date File reviewed	Records the date on which the file was reviewed for this research	File reviewed 18/03/2011
Individuals /organisations identified in documents-external to DoHC	Name(s) of individual and organisations listed in the document. Names are recorded as found in the document although abbreviations, followed by the organization name are sometimes used.	DOHC –Department of Health and Children; AG's-Office of the Attorney General; OTC-Office of Tobacco Control
Author/ Authors Organisation	Name(s) and organizations of the authors of a document. Names are recorded as found in the document although abbreviations, are sometimes used. Multiple occurrences are separated by semi-colons.	DOHC –Department of Health and Children/AG's-Office of the Attorney General/OTC-Office of Tobacco Control
Organisation/individuals Copied	Name(s) of organizations of the person in the CC: or copied on the document. Names are recorded as found in the document although abbreviations are sometimes used for frequently occurring names	Tom Power, CEO/OTC
Organisation Mentioned	Name(s) of organisations referenced in the text of the document. Names are recorded as found in the document although abbreviations, followed by the organization name are sometimes used.	ICMOA-Irish Cigarette Machine Operators Organisation AGs-Attorney General's Office ASH-Action on Smoking and Health EHO-Environmental Health Office

Organization Noted	**Name(s) of individuals/organizations mentioned in the document are recorded in the descriptive text. Names are recorded as found in the document although abbreviations are sometimes used.**	ICMOA- Irish Cigarette Machine Operators Organisation RGDATA- Retail Grocery Dairy and Allied Trades Association OTC-Office of Tobacco Control **IRNA-Irish Retail Newsagents Association**
Organization Recipient	**Name(s) of organizations of the recipients of the document. Names of recipients or persons/organisations to which the document is address are recorded as found in the document although abbreviations are sometimes used. Multiple occurrences are separated by semi-colons.**	From: NU , DoHC **To: TP, CEO, OTC**
Person Author	**Name(s) of persons identified as authors of a document. Names of individuals are recorded as they appear on documents. Organisation /position of author is given when and as it first appears.**	NU Director EC Principal Officer KD Executive Officer GOD Higher Executive Officer Dermot McCarthy ARd-Runai an Rialtais
Person Copied	**Name(s) of persons identified as CC or copied on a document. Names of individuals are recorded as they appear on documents. Frequently occurring names of Dept officials are recorded as initials. Where individuals who are not civil servants are cc'd their position/organisation is recorded**	NU,EC,KD,GOD-DoHC Minister, Private Secretary MoS @ DoHC, AG'S Office Tom Power, CEO/OTC
Person Referred to	**Name(s) of persons referenced in the text of the document are recorded in the description of the document contents, giving persons organisation /position where relevant**	Acknowledgment signed by James Gibbs EHU P Linehan-Parliamentary Counsel to the Gov
Hand written notes	**Details of all hand written notes appearing in marginalia of documents, including name of person who wrote the note, who the note was to and subject matter. These details are recorded verbatim and italicised to indicate that they are hand written**	*hw note from Michael Kelly to Mr Mooney stating that ...*

Appendix 4C: Categories of information extracted from organisational documents

Categories and examples extracted from the DoHC files relating to tobacco control files (in red) mapped onto the categories provided online by the Philip Morris Agency website (in grey)

Philip Morris Agency website categories and **DoHC Tobacco Control files**		
Field Name	**Data Format Examples**	**Comment s/Description of field content**
Area	ELLIS,CATHY/ OFFICE / N1	Source of the document at the time of collection.
Section in which file containing document was registered	Environmental Protection Unit ENV/ Public Health Unit PHU/ Tobacco Control Unit TCU/	Unit in which the file containing the document was registered. Files not registered recorded as NOFOI
Area/Site #	ELLIS,CATHY/ OFFICE / N1	Source and location of the document at the time of collection.
Location of file	Hawkins House(HH)/Off-site storage	Location of file in which document was contained
Characteristics	MARG, MARGINALIA; DRFT, DRAFT	Information on the physical attributes of the document. The entry includes a four letter code followed by the text expansion of the code. There can be multiple entries in this field which are separated by semi-colons.
Characteristics	HWN Hand Written Note DRFT Draft document FDOC Final Document	Information on the physical attributes of the document. The entry includes a four letter code followed by the text expansion of the code. There can be multiple entries in this field which are separated by semi-colons
Document Date	19830821	Date of a document. Dates are recorded as numeric strings where the first four digits represent the year, the next two digits represent the month and the last two represent the day. The date January 2, 1998 would be recorded 19980102. Partial dates are zero filled; for example, a document dated May, 1988 would be recorded as 19880500.

Philip Morris Agency website categories and **DoHC Tobacco Control files**		
Field Name	**Data Format Examples**	**Comment s/Description of field content**
Document Date	01/02/1998	Date of a document. Dates are recorded in a dd/mm/yyyy format The date January 2, 1998 would be recorded 02/01/1998. Partial or missing date are noted
Document Format		Identifies a document as an email, a non-email electronic document or a hardcopy document.
Document Format		Format is captured in Document type
Document ID/Other ID	1234567890 1234567890/7893 1234567890A	Ten-digit number used to identify each page in the collection. The ID is expressed as a range when it refers to a multi-page document; a forward slash (/) is used to separate the first page from the last page. On occasion, the ID will contain an alpha suffix in the eleventh or twelfth position. It is possible to retrieve a specific document when the ID number for the first page is known by entering that number in the search box. Double clicking on the ID number in the public or confidential document groups will retrieve the image of the document.
Document ID/Other ID	Government Memo Number-e.g. **ref CH 100/2/20/D** PQ Number –e.g. Ref 4080/03	Individual documents are not numbered uniquely, Any identification number assigned to documents recorded
Document Title		Titles found on the document. Each word in the title is searchable.
Document Title	Aide de Mémoire Parliamentary Question Reply	Titles found on the document recorded in file contents section
Document Type		Description of the physical format of the document. The entry may include a four letter code followed by the text expansion of the code. There can be multiple entries in this field which are separated by semi-colons.

Philip Morris Agency website categories and **DoHC Tobacco Control files**		
Field Name	**Data Format Examples**	**Comment s/Description of field content**
Document Type	MEMO Letter Email Parliamentary Question	Type of document recorded in file contents section
File Name	1234567890/ 1234567980/TIPPING PAPER ORDERS	Document ID range and text name of the file from which the paper document was collected. For electronic documents, records the file path of the document.
File Name	NEW TOBACCO & HEALTH BILL July 2001 Vol 5	The name of the file in which the document is contained is recorded
Master ID	1234567800/ 7893	Range of multiple document IDs that identify pages included in a complex document. An example of a complex document is a letter with attachments. The Master ID records the ID range of the letter and all its attachments; a separate index entry is created for the letter and each attachment.
Master ID	ENV/IMP/0/28440 CH.100.8.4.	The CRAFTS generated number under which the file is registered, and the local reference number assigned to the file is recorded
Organization Attending	US CONGRESS	Name(s) of organizations listed in the document as attending a meeting. Names are recorded as found in the document although abbreviations, followed by the organization name are sometimes used. Multiple occurrences are separated by semi-colons.
Attending	CEO, OTC Minister for H & C NU,ASec, TCU, DoHC	Name, position and organisation of those listed on document as attending a meeting
Organization Author	NIH; NIOSH	Name(s) of organizations of the authors of a document. Names are recorded as found in the document although

Philip Morris Agency website categories and **DoHC Tobacco Control files**		
Field Name	**Data Format Examples**	**Comment s/Description of field content**
		abbreviations, followed by the organization name are sometimes used. Multiple occurrences are separated by semi-colons.
Author's organisation	OTC, DoHC, MANDATE	Name of document author and organisation included when given
Organization Copied	NATIONAL INSTITUTES OF HEALTH	Name(s) of organizations of the person in the CC: or copied on the document. Names are recorded as found in the document although abbreviations, followed by the organization name are sometimes used. Multiple occurrences are separated by semi-colons.
Organisation/Individual s copied	CC; Tom Power, OTC	Name and organisation of individuals cc'd on correspondence or to whom documents were copied
Organization Mentioned	ALA; US CONGRESS; NEWSWEEK; NIOSH	Name(s) of organizations referenced in the text of the document. Names are recorded as found in the document although abbreviations, followed by the organization name are sometimes used. Multiple occurrences are separated by semi-colons.
Organisation Mentioned	OTC DoHC	Organisations mentioned captured in the description of document contents.
Organization Noted	TIME; NEWSWEEK	Name(s) of organizations recorded in marginalia on a document. Names are recorded as found in the document although abbreviations, followed by the organization name are sometimes used. Multiple occurrences are separated by semi-colons.
Organisation noted	HW-HSA HW-DJELR	Name(s) recorded as found in /on the documents. Hand Written comments including names and organisations recorded as HW-
Organization Recipient	ALA; US CONGRESS	Name(s) of organizations of the recipients of the document. Names are recorded as found in the document although abbreviations, followed by the organization name are sometimes used. Multiple occurrences are separated by semi-colons.

Philip Morris Agency website categories and **DoHC Tobacco Control files**		
Field Name	**Data Format Examples**	**Comment s/Description of field content**
Organisation Recipient	OTC DoHC	Name(s) of organizations of the recipients of the document recorded if provided . Names are recorded as they appear on the document
Other Number		Other Bates number or database-like number.
Other Number	CH.100.2.30.	Local Unit Reference recorded, if provided on file cover
Person Attending	DOE,J; JONES	Name(s) of persons listed in a document as attending a meeting. All names are recorded with the last name first followed by first and middle initials when available.
Person Attending	Minister Principal Officer CEO OTC	Name(s) of persons listed in a document as attending a meeting. All names are recorded as they appear on the document
Person Author	DOE,J; SMITH, Alan; JONES	Name(s) of persons identified as authors of a document. Names of individuals are recorded with the last name first followed by first and middle initials when available. For documents produced on or after November 1, 2011, names are recorded with the last name first, followed by the full first name and middle initial if available on the document. Multiple entries are separated by semi-colons.
Person Author	T Power Michéal Martin	Name(s) of persons identified as authors of a document. Names of individuals are recorded as provided
Person Copied	DOE,J; SMITH, Alan; JONES	Name(s) of persons identified as CC or copied on a document. Names of individuals are recorded with the last name first followed by first and middle initials when available. For documents produced on or after November 1, 2011, names are recorded with the last name first, followed by the full first name and middle initial if available on the document. Multiple entries are separated by semi-colons.

Philip Morris Agency website categories and **DoHC Tobacco Control files**		
Field Name	**Data Format Examples**	**Comment s/Description of field content**
Person Copied	Sec Gen Private Sec	Name(s) of persons identified as CC or copied on a document. Names of individuals are recorded as provided
Person Mentioned	DOE,J; JONES	Name(s) of persons referenced in the text of the document. All names are recorded with the last name first followed by first and middle initials when available.
Person Mentioned		Name(s) of persons referenced in the text of the document recorded as provided on the document , in the document contents section
Person Noted	DOE,J; JONES	Name(s) of persons recorded in document marginalia. All names are recorded with the last name first followed by first and middle initials when available.
Person Noted	DOE,J; JONES	Name(s) of persons recorded in document marginalia recorded as provided on the document, in the document contents section. Hand written notes recorded verbatim in file contents section and preceded by the letters HW
Person Recipient	DOE,J; SMITH, Alan; JONES	Name(s) of persons identified as recipients of a document. Names of individuals are recorded with the last name first followed by first and middle initials when available. For documents produced on or after November 1, 2011, names are recorded with the last name first, followed by the full first name and middle initial if available on the document. Multiple entries are separated by semi-colons.
Person Recipient	DOE,J; SMITH, Alan; JONES	Name(s) of persons identified as recipients of a document. Names of individuals are recorded with the last name first followed by first and middle initials when available. For documents produced on or after November 1, 2011, names are recorded with the last name first, followed by the full first name and middle initial if available on the document. Multiple entries are separated by semi-colons.

Philip Morris Agency website categories and **DoHC Tobacco Control files**		
Field Name	**Data Format Examples**	**Comment s/Description of field content**
Physical Attachment 1	1234567890/ 1234567987	First level of physical fasteners (staples, rubber bands, binder clips, etc.) of a group of documents at the time of collection.
Physical Attachment 1		Attachments numbered and contents recorded in file contents. Multiple attachments separated by a forward slash (/). Final document followed by a double slash (//)
Physical Attachment 2	1234567890/ 1234567899	Second level of physical fasteners (staples, rubber bands, binder clips, etc.) of a group of documents at the time of collection
Physical Attachment 2		Attachments numbered and contents recorded in file contents. Multiple attachments separated by a forward slash (/). Final document followed by a double slash (//)
Production Date		First date a document was produced.
Production Date	Document dated 01/10/2000	First date a document was produced. Date provided if available
Site	OFFICE / N1	Location of the document at the time of collection.
Site	Tobacco Control Unit HH Off-site storage	Location of the document before it was accessed

Appendix 4D: Example of memo re using grounded theory as an approach to analysing the data source

29.11.2011

For:

Grounded theory is a rigorous process: This is an important consideration when designing a study that is taking an unusual path and which involves the use of very large data set. Grounded theory has as a core method theoretical sampling, which allows the researcher to sample as issues of interest arising in the dataset. This is useful for managing a large data set that is not structured in a particular way.

In the case of the policy making process in a Government Department , such local concepts might include the approach taken to the issue-mechanisms set up to examine the issue, public statements made, resources designated to its development, meetings held. Alternatively, a few key features of the policy making process could be used to give a foothold–agenda setting, policy actors, networks etc.

Grounded theory offers the potential to allow new knowledge to emerge inductively from the data –this underpins one of the aims of the research which is to provide an insider view of the policy making process which is not predetermined as belonging to one of the more usual policy analysis or policy framework models. Using grounded theory demands that the researcher approaches the topic with an open mind, 'not favouring a priori beliefs and being open to following the path of theoretical sampling and the resultant theory development suggested by the emergent data' –in Hunter, 2011

Against:

Grounded theory is typically applied to interview data-consequently it is difficult to find examples of studies where the primary data source has been static. It may not be possible to penetrate the data set which is being used because of the way that this collection of material was made. Not only was it not gathered for research purposes, it was gathered with an awareness of the need for everything within it to be scrutinised publically under new legislation. Whether this substantially changes the nature of record keeping is debateable –the collection is after all a working record of the work undertaken and as such presents a certain utility –large chronological gaps or unresolved issues would render the public record incomplete and expose the record keepers to criticism on those grounds

Appendix 4E: Memos re nature/characteristics of data source

27.11.2011

'Theoretical sampling in Grounded Theory is an active process; therefore the use of data from static sources is of limited value in isolation and the researcher has minimal, if any, opportunity to follow leads that arise in the collection of data.' (BM-this addresses directly the issue of using a static data source such as the one I am proposing to use)

07.12.2011

(BM but is my data in fact qualitative data? Need to revisit the definitions I have identified so far, and find one which encompasses the flat or not interactive data that I am using-are some essential elements missing from my data? Can they be compensated for or can methods designed for the analysis of true qualitative data be adapted to this data source?)

19.03.2012

Clarke (Clarke, 2005) suggests that the following questions are addressed in this map:

Who and what are in this situation?

Who and what matters in this situation?

What elements 'make a difference in this situation?

Who and what are in the broader situation?

The answers to these questions will be assembled in random formation to create the first Abstract Situational 'messy' map, the first of three situational analysis maps. Examining the data collected for this study for answers to these questions highlights the differences between the qualitative data for which the method was developed and the erstwhile qualitative data to which it is now being applied. The former, which applies to the majority of conceptualisations of 'qualitative' data, involves the analysis of data gathered from active, expressive participants, providing data that supplies responses –the people mentioned, the situations described, the expressions used, repeated, underlined or returned to again and again; the variety between respondents; the agreement between respondents; the elements that recur in their descriptions; the lived experience as described by those who lived it. From such data the answers to who is in the situation, who matters, what makes a difference, might be readily inferred. From a collection of static, extant documents, the answers are not so readily forthcoming. Nevertheless an attempt can be made, as the material here used for data has been purposefully assembled to reflect the work of the people who developed the policy and therefore can be taken to be reflective of the issues, individuals, organisations and procedures which applied to the process.

Appendix 4F: Memo re perspectives in the data

Is the data single perspectival as I continue to view it, because, I think, of my knowledge of how and why it was assembled in the way that it was. In another researchers hands could this be viewed as multi perspectival data? Could the different perspectives be identified in the data? Yes, the perspective of various stakeholders could be discerned from the correspondence they had with civil servants, with the Ministers, their statements in the press, their own organisational material copied to the DoHC or forwarded by other Departments. All of this is contained within the files but seeing it is part of one data set requires a different treatment than if it was data analysed to find indicators /evidence of different stakeholder positions.

My interest is in the entirety of the data, so having the type of material outlined here as part of the data adds to what I know about the policy making process. I know who the stakeholders were, what their concerns were, how they interacted with the civil servants and what the final results of that was. I know this for all of them because I have gone through the data and identified each one, selecting text that represented them (names, designations, organisations,) their concerns (from correspondence , statements, notes of meetings,) their approaches to accepting or rejecting change (from their reactions to announcements. But I need to have a means of looking at all the parts of the process that are identifiable in the data set-they all have a part in it to a greater or lesser extent.

Appendix 4G Examples of data assigned to the elements identified in documentation recording the development of the Irish Work Place Smoking Ban 2000-2004

*	A	B	C	D	E	F	G	H	I	J	K	L	M
	Individual Human Elements/Actors	**Collective Human Elements /Actors**	**Discursive Constructions of individual and/or collective human actors**	**Political/ Economic Elements**	**Temporal Elements**	**Major issues/ debates**	**Other kinds of elements**	**Nonhuman Elements Actors**	**Implicated / Silent Actors**	**Discursive Construction of Nonhumans Actants**	**Sociocultural /Symbolic Elements**	**Spatial Elements**	**Related discourses**
2000	Micheal Martin, Minister for Health and Children (2000)	Action on Smoking and Health –ASH Ireland (2000)	World Health Organisation (WHO) (2000)	Brian Lenihan TD; (2000)	First meeting of the International Negotiating Body for the FCTC (INB1) (2000)	Environmental Tobacco Smoke	Framework Convention On Tobacco Control (FCTC) (2000)	Toward a Tobacco Free Society Report (2000)	Private Secretary (2000)	DoHCs Anti smoking campaign aimed at young girls (NICO) (2000)	Health and Economic Consequences of smoking (HECOS) model (2000)	Northern Ireland (2000)	Cross-border sponsorship services in the community(2000)
2001	EU Commissioner For Health and Consumer Affairs (2000)	Licensed Vintners Association (2001)	Irish Master Snooker Tournament Sponsorship Evaluation Report (2001)	Economics of Tobacco Control & Irish Fiscal Policy - OTC Seminar: (2002)	Launch of the Action Plan for a Tobacco Free Europe (2001)	Removal of Tobacco Products from the Consumer Price Index (CPI) (2001)	Derogation in the Public Health (Tobacco) Bill for specialist tobacco shops (JJ Fox Cigar Merchants) (2001)	RGDATA, Irish Retail Newsagents Association (2001)	Ministerial Adviser (2001)	Euro Change Over Board Department of Finance (2001)	Targeting teenage smokers (2001)	EU Directive 2001/37 EC Sale of Tobacco Products (2001)	Litigation by the State against the Tobacco Industry (2001)
2002	CEO OTC (2002)	SMOKING TARGET ACTION GROUP (S.T.A.G.) (2002)	Orchid Award for breaking with the EU position (to Ireland from NGOs) (2002)	Public Health Tobacco Bill 2001-Committee Stage on 30/31 January 2002 (2002)	Irish Presidency (1/1/04-30/6/04) (2002)	Patronage by tobacco manufacturers (2002)	Restrictions in minimum number of cigarettes that might be sold in a pack (2002)	Aide Memoire/Government Decision 1999-2000 (2002) Publicaiton approved by Gov 7th March 2000 (2002)	International Tobacco Industry (2002)	Public Health Tobacco Bill 2001 (2002)	Sponsorship of the Irish Masters Snooker Tournament (2002)	Brand extensions/brand stretching **(2002)**	**Canadian tobacco legislation (2002)**
2003	Director of Strategy, Philip Morris Inc (2003)	Freedom of Information requests (2003)	'Irish Women and Tobacco-Knowledge Attitudes and OTC;(2003)	Action which the State might take against Tobacco companies- not active as an issue (2003)	Timeline for Ratification of FCTC (2003)	Tobacco Litigation Statue of Limitations (2003)	British American Tobacco (2003)	Smoke-Free Public Places-UK White Paper- (2003)		Tobacco Control Self Extinguishing Cigarettes (2003)	ASH Ireland complaint to RTE –Branding on Jordan Grand Prix Formula 1 (2003)	WHO Tobacco or Health Helsinki, Finland (2003)	Cigarettes to elderly/ psychiatric patients (2003)
2004	Environmental Health Officer, DoHC (2004)	Health Working Group Meetings 2004: FCTC (2004)	European Smokers against Discrimination, legal challenge-Waterford 2004)	Assement of Impact of Smoke-free Regulations on Exchequer Revenues (2004)	Sunset clause for OTC - (Prospectus) report) (2004)	Exemptions Psychiatric Hospitals/ places of detention/hotels Nursing Homes (2004)	Public Support - survey results (2004)	Impact of Smoke-free Regulations on Exchequer Revenues (2004)	Protest of the Irish Hospitality Industry Alliance (2004)	Tobacco Litigation: Documentary Counsel Report DoHC 2004 (2004)	EU Presidency Tobacco Control-Conference 2004 (2004)	Cross-border advertising and smuggling (2004)	Influence of Point-of-Sale Tobacco Marketing (2004)

***Categories adapted from Clarke, A. E. (2005). Situational Analysis: Grounded Theory After the Postmodern Turn. (Pg 90) Thousand Oaks, CA:, SAGE.**

Original Categories below

A. Individual Human Elements/Actors -e.g. key individuals and significant (organized) people in the situation
B. Collective Human Elements /Actors- e.g. particular groups /specific organizations
C. Discursive Constructions of individual and/or collective human actors-as found in the situation (as above- Ideas, concepts, discourses, symbols, sites of debate, and cultural 'stuff')
D. Political/Economic Elements -e g the state; particular industry/ies; local /regional /global orders; political parties; NGOs; politicized issues
E. Temporal Elements-e.g. historical, seasonal, crisis and /or trajectory aspects
F. Major issues/debates (usually contested), as found in the situation and see positional map
G. Other kinds of elements-as found in the situation
H. Nonhuman Elements Actors/Actants-eg technologies, material infrastructures, specialized information, and /or knowledge, material 'things'
I. Implicated/Silent Actors/Actants-As found in the situation
J. Discursive Construction of Nonhumans Actants -As found in the situation
K. Sociocultural /Symbolic Elements-e.g. religion, race, sexuality, gender, ethnicity, nationality logos, icons, other visual and /or aural symbols
L. Spatial Elements-e.g. spaces in the situation; geographical aspects; local, regional, national, global issues
M. Related discourses -(Historical, narrative and /or visual) -e.g. normative expectations of actors, actants, and /or other specified elements; moral/ethical elements; mass media and other popular cultural discourses; situation-specific discourse

Appendix 4H: Original themes emergent from thematic analysis

1. **Addressing International Obligations**-Items which demonstrate the influence of Ireland's international obligations on the formulation of policy.
2. **Items in the data which point to the dissemination of research evidence**
3. **Announcing Intentions**-Items in the data which demonstrate how Government announcements/statement were used to change the old policy approach
4. **Disseminating research evidence** -Items in the data which suggest that research and research evidence was used politically or strategically as part of changing policy approach to tobacco control policies
5. **Exercising Power**-Items in the data which demonstrate the exercise of power during the policy change
6. **Identifying Policy Mechanisms**- Items in the data pointing to processes to identify policy mechanisms by which the policy change process was advanced
7. **Internal Conflict**-Items on file suggesting internal disagreements or conflicts about policy direction and/or policy mechanisms
8. **Process Issues** -Items in the files which indicate the type of internal Departmental or Governmental/Civil Service or international processes involved in developing this policy
9. **Strengthening existing supports**- Items in the data which indicate how and which existing supports /driving forces were strengthened in initial phase of the policy change
10. **Managing Support in the early stages –**Items in the files which indicate that individuals /groups /organisations that supported the introduction of the legislation were managed by the policy makers or required to be manage by them
11. **Utilising Research Evidence Politically** –Items in the data which suggest that research and research evidence was used politically or strategically
12. **Where Research recommendations were translated into policy**
13. **How research recommendations were translated into policy**
14. **Conveying a new message about tobacco control-**items on file indicating how and when the message about new tobacco control policy was conveyed/disseminated
15. **Overcoming Restraining Forces-**items on file indicating how restraining or opposing forces were overcome
16. **Demonstrating power-**items showing the overt or covert use of power
17. **Implementing change strategies-**items showing the strategies devised to implement change

18. Chang**ing or extending existing policy** –items relating to new policies or changes to old ones
19. **Opposition or criticism** of the proposed legislation –items indicating who opposed the proposed changes
20. **Support for change**-items in the data that suggest that drivers for change are being accessed, supported, and encouraged
21. **Individuals/groups/organisations supporting change**-items in the data indicating that the individuals and groups who support the changes in policy were being managed by the policy makers
22. **Processes**-Departmental / Governmental /Civil Service or International processes –items in the data indicating the type of processes that were involved in developing and progressing the policy
23. **Drawing on the experience** of other jurisdictions-items in the data indicating that policy makers drew on the experiences and knowledge of legislators in other jurisdictions
24. **International Obligations**-items in the data which indicate how policy makers addressed international commitments/obligations in relation to tobacco control and legislation on smoking
25. **International Stage** –items relating the role played by Irish policy makers/civil sevants on the international scene in relation to tobacco control, smoking legislation etc.
26. **Policy makers as experts**-items demonstrating ways in which the policy change was used to promote the policy makers as experts and/or successful in the field of tobacco control
27. **Management of supporters** –items indicating how policy makers dealt with individuals and organisations supportive of the policy initiative
28. **Announcing policy change-**items indicating that the policy change in Ireland was publically announced, explicated and promoted
29. **Process of completion**-items indication the type of internal Departmental, governmental , civil service or international processes that were involved in developing the policy
30. **Using research-**items indicating the ways in which research evidence was used to reinforce the policy changes
31. **Department relationships** –items which point to the nature of the relationship between the DoHC policy makers and other stakeholders
32. **Late Opposition**-items on file indicating how policy makers dealt with opposition to the ban at the final stage

Appendix 8A: Stages of the Research Process

<table>
<tr><td>Stage 1
Access data and convert into electronic resource</td><td>Stage 2
Thematic analysis</td><td colspan="6">Stage 3
Major themes and their underpinning categories were organised into a three stage structure based on Lewin's stages model. Each stage was written up drawing on the material coded to each category</td></tr>
<tr><td rowspan="8">Files relevant to tobacco control, health promotion, environmental protection and the work place smoking ban, created in the period 2000-2004, were identified, accessed and reviewed. The contents of each file was translated into an individual document and imported into an database created using NVIVO software, for analysis</td><td rowspan="8">A thematic analysis was undertaken of the file material.
The entire data set was systematically coded; These codes were collated into main thematic categories. Thematic categories were reanalysed to identify major themes and underpinning categories</td><td colspan="2">Unfreezing</td><td colspan="2">Mobilisation</td><td colspan="2">Refreezing</td></tr>
<tr><td rowspan="2">Framing the Policy Direction</td><td>International context</td><td rowspan="2">Selling the message</td><td>Focusing on specific groups and events</td><td rowspan="2">Consolidating the legal base</td><td>Derogations and concessions</td></tr>
<tr><td>Strategic use of research</td><td>Building momentum</td><td>Finalising the legislation</td></tr>
<tr><td rowspan="2">Following Procedures</td><td>Using Policy Mechanisms</td><td rowspan="2">Managing Change</td><td>Enforcing new regulations</td><td rowspan="2">Instruments for change</td><td>Providing education and advice</td></tr>
<tr><td>Legislation as a policy mechanism</td><td>Restructuring Relationships</td><td>Groups and Institutions</td></tr>
<tr><td rowspan="2">Discussing and justifying proposals</td><td>Government Intentions</td><td rowspan="2">Aligning domestic and international goals</td><td>Debating the issues in Europe</td><td rowspan="2">International Issues</td><td>Ratifying the Convention</td></tr>
<tr><td>Power and Persuasion</td><td>Influence of the tobacco industry</td><td>Hosting the conference</td></tr>
<tr><td rowspan="2">Managing the interest groups</td><td>Existing Supports</td><td rowspan="2">Progressing the policy</td><td>Supporting and Undermining the initiative</td><td rowspan="2">Taking the final step</td><td>Late Opposition</td></tr>
<tr><td>Handling Opposition</td><td>Leading on change</td><td>Compliance and reaction</td></tr>
</table>

Actor Individual /Group	Position on the issue of tobacco control Supportive/ Opposed/ Neutral	Issues/Concerns of this Actor	Influence considered *: Significant Necessary Not Significant
Minister	Supportive	Personal interest , Political commitment	**Significant** –made tobacco control a key priority in 2000 and sustained interest and commitment until smoking ban enacted
Chief Executive Officer of OTC	Supportive	Making Smoking Illegal in the workplace Defeating Big Tobacco	**Significant-** but contentious in relation to role, responsibility and reporting structure
Tobacco Control Unit, DoHC	Supportive	Part of Business plan objectives	**Significant** –responsible for preparation of legislation and leading on further developments
Health Promotion Unit DoHC	Supportive	Part of Business plan objectives	**Significant** –provided health promotion expertise and guided preparation for introduction of ban
Authors of report Towards a Tobacco Free Society	Supportive	Improving public health	**Significant**-the credibility of the authors gave credibility to the findings in the report
Health and Safety Authority	Supportive	Worked with OTC to commission and publish a significant report on Environmental Tobacco Smoke	**Not significant** at early stages, became more important when ETS became the focus of policy makers
Actor Individual /Group	**Position on the issue of tobacco control Supportive/ Opposed/ Neutral**	**Issues/Concerns of this Actor**	**Influence considered : Significant Necessary Not Significant**
Irish Permanent Representative to the EU	Supportive	Representing Ireland in Brussels at tobacco control related meetings and ensuring Irelands compliance with all EU requirements	**Significant** as the main conduit between Irish officials and the structures of the EU
ASH Ireland	Supportive	Supportive of government objectives and of the establishing a Tobacco Information and resource centre	**Significant** as ASH was a leading support group with a high profile in tobacco regulation

Health Advocacy Groups	Supportive	Reducing death and illness rates attributed to tobacco use	**Significant** –supportive of Government initiatives and useful for persuading neutral groups of the benefits of the proposals
Hospitality Sector Groups	Opposed	Commercial concerns-damage to tourist industry	**Significant** as some concessions from the ban granted for hotel bedrooms
Retail Groups	Opposed	Concerns included loss of sales in advertising , prosecutions for sale of tobacco products to minors,	**Necessary** to meet and discuss implications of the new legislation and the need for compliance
Vintners Associations	Opposed	Damage to traditional image of Irish pub and loss of sales and jobs in the industry-focus on need to find alternative means of cleaning air	**Significant** opponents to introduction of change, believed to have support of several TD's and other public representatives
Tobacco manufacturing Groups – Domestic	Opposed	Believed the introduction of the ban and the requirements of the new legislation would reduce the tobacco manufacturing industry in Ireland even further.	**Significant** because of court cases initiated against the Minister
Actor Individual /Group	**Position on the issue of tobacco control Supportive/ Opposed/ Neutral**	**Issues/Concerns of this Actor**	**Influence considered : Significant Necessary Not Significant**
Tobacco Industry –International	Opposed	Irish policy actions creating precedent for other countries to ban smoking	**Not Significant**-Minister did not meet with Tobacco Industry and efforts to change focus of legislation were not successful
Irish Cigarette Machine Operators Association (ICMOA)	Neutral	Attempted to anticipate the introduction of Tobacco legislation through a coin system	**Not Significant**-small commercial group attempting to engage with the Minister and Department
JJ Fox Retailers	Neutral	Exemption sought on the grounds of tradition and specialisation	**Significant** Achieved a derogation in the legislation for specialist tobacco shops

European Union	Supportive	Complying with EU Directives	**Significant** because of the need to comply with EU Directives and the leading role played by Ireland in that forum against tobacco use
WHO	Supportive	Ratifying the FCTC	**Necessary** –Ireland was a party to the formulation and ratification of the FCTC , underway during the period 2000-2004
Department of an Taoiseach	Neutral	Compliance with requirements for brining policy matters to Government	**Necessary**-failure to follow appropriate procedures could result in postponement of policy initiatives
Attorney General's Office	Neutral	Compliance with requirements for drafting legislation	**Necessary**-all legislation drafted by this Office failure to comply with this requirement caused delays in brining legislation forward
Department of Finance	Neutral	Compliance with the procedures in place for information sharing particularly in relation to expenditure on policy initiatives	**Necessary** –the financial implications of all policy initiatives must be made known to Dept of Finance in advance of implementation
Actor **Individual /Group**	**Position on the issue of tobacco control** **Supportive/** **Opposed/** **Neutral**	**Issues/Concerns of this Actor**	**Influence considered :** **Significant** **Necessary** **Not Significant**
Other Government Departments	Neutral	Addressing other Department s concerns on effects of ban in areas that are the policy responsibility of other Department's	**Necessary** –observations of other Departments and requests for concessions received when draft legislation circulated and DoH was required to respond
Irish Business and Employers Confederation (IBEC)	Neutral	The effects of tobacco control measures on the hospitality, tobacco manufacturing and retail industries	**Significant**- needed to provide support for adjustments to the Consumer Price Index
Trade Union Groups	Neutral	The protection of jobs, the rights of workers to smoke at work, policing the ban	**Significant** to win over in order to promote support for the work place smoking ban among the working population
Public Representatives (TDs)	Supportive /Opposed	Representing constituents who objected to the proposed ban	**Necessary** to respond to PQs and reps and to provide information as requested

Chief Pharmacists	Supportive	Providing opinion on proposed measures on request	**Significant** as advice contrary to Ministers wishes and decided the policy direction in relation to Nicotine Replacement regulation
Irish Medical Board/Poisons Council	Supportive	Providing opinion on proposed measures on request	**Significant** as advice contrary to Ministers wishes and decided the policy direction in relation to Nicotine Replacement regulation
Health Boards	Supportive	Concerned with the Implementation of tobacco control regulation on the ground	**Significant** for implementation at local level
Protocol Steering Group for Environmental Health Officers	Supportive	Preparing EHOs to monitor the implementation of the ban	**Significant** as expectations of compliance with the ban were uncertain
National Implementation Group	Supportive	Coordination of final preparation for implementation of ban	**Significant** as presenting a coordinated response to objectors was considered important
Actor Individual /Group	**Position on the issue of tobacco control Supportive/ Opposed/ Neutral**	**Issues/Concerns of this Actor**	**Influence considered : Significant Necessary Not Significant**
Irish Hospitality Alliance Group	Opposed	Opposition believed to be funded by international tobacco industry	**Not significant**-badly organised and poor media performance
Smokers Against Discrimination Group	Opposed	Waterford publicans objecting to the ban	**Not significant**-after some initial success the group disappeared
EU Commission Conference Committee	Supportive	Preparations for a joint Presidency /Commission Tobacco Control conference	**Significant** as Ireland held the presidency and were hosting the conference, through the OTC. Period of tension between the OTC and the Department
Individual citizens	Supportive/Opposed	Personal concerns about the ban and support for the Minister	**Significant** - all communications to the Minister and those forwarded by public representative required a reply

*The following categories indicate the level influence of different actors reflected in the file material

- Significant- having a major ongoing influence on policy development

- Necessary-having a function or a position that required an engagement from civil servants at certain stages of the process
- Insignificant-engagement with the policy makers without having a discernible impact

Appendix 9A: Examples of the development of conceptual categories relevant to the thematic headings and their underlying categories

1. Example 1 –Extracts taken from section 1.1 **Framing the policy direction**

1.1a International context

The development of tobacco control policy in Ireland took place in the context of growing international interest in tobacco control as a public health issue. As a member of the European Union (EU) Ireland had obligations to contribute to and implement legislation and regulations agreed at EU level on the issue of tobacco control.

The Directives issued by the EU are legislative instruments which require member states to achieve specific outcomes within a specific deadline, but do not prescribe how that result should be achieved.

Member states were invited by the Director General of the WHO to nominate a representative to participate in the International Negotiating Body (INB) for the Framework. The nomination of the appropriate representative was carefully considered in the Department, particularly the level of Irish representation that would be needed.

Question –What are civil servants doing'**?**

These extracts refer to how Irelands role in international fora was considered in the DoHC. The emphasis at this stage is on complying with requirements and ensuring that Ireland is represented , and that representation is at an appropriate level. As momentum in the development of tobacco control in Ireland grew, accountability for Irelands stance became increasingly important.

Concepts-Accountability

2. Example 2- Extracts taken from **2.2 Managing Change** /2.1.a Enforcing new regulations

A second point of continuous, and contentious, contact between the Department and the domestic tobacco industry was around the changes required to give effect to a new EU Tobacco Products Directive (EC, 2001), due to be implemented by 28th November 2001. ITMAC had previously raised a number of points in relation to the changes and now sought confirmation from the Department of its plans to push ahead with a requirement for an increased warning on cigarette packs, over and above those contained in the Directive, and the legal basis for the proposed increases. Also raised were the commercial competitive effects of having a reduced space left for branding presentations on the Irish manufactured pack, compared to the increased space on the imported produce. For ITMAC members, this new requirement would dictate that only imported products, with Directive size warnings on them, would be put on sale in Ireland, thus rendering the whole exercise pointless.

Non-cooperation with an Oireachtas Committee by the industry had led the Minister to break off consultation with the industry, and no requests for meetings or discussions were granted. When this embargo was lifted the tobacco companies highlighted their difficulty in complying

with the requirements of new EU Directive on packaging and sale of products in Europe. They stressed that the requirements of the Irish Government were over and beyond those required under the relevant EU Directive. These objections were largely dismissed and full compliance was achieved.

Question – what are civil servants doing'?

Material in this section relates to changes imposes on the DoHC by the proposed regulations , the need to comply with existing EU regulation and to inform and enforce change with key stakeholders effected by it. These requirements were used by opponents of the changes -

Concept-**Compliance** –with international requirements, with decisions of government in relation to the tobacco industry, and with EU Directives .

3. Example 3-Extracts taken from 3.4 Taking the final step 3.4.a Late Opposition
Despite the apparently smooth introduction of the ban concern was articulated around the staffing levels of the Tobacco Control Unit in light of anticipated workload generated by a new opposition group. Particular concerns were expressed about

'TCU's ability to deal comprehensively with the ETS issue in light of recent developments- mainly the establishment of a well resourced and vocal Irish Hospitality Industry Alliance and on-going news stories about a possible difference of opinion among Government Ministers on the Environment Tobacco Smoke Regulations [176]

Consisting of 17 Waterford publicans, SAD in Ireland were backed by a larger group of lawyers and publicans called European Smokers Against Discrimination (ESAD), who were preparing to fight the planned introduction of similar bans in their own countries. The groups opinion of the ban and the effect it was having, as well as a possible motivation behind its introduction was offered:

> the ban, here at home, is ruining the identity of the 'traditional Irish pub' and ..believes the introduction of the ban was a guise to cover-up bigger problems within the health department. Smokers against Discrimination or SAD, have also taken up the battle though smoking is not the main issue for them-they believe that freedom of choice should not be compromised in a democratic society.....This is a misuse and abuse of power by intolerant and arrogant Ministers who are not prepared to win their case by persuasion. Repressive, intrusive and draconian legislation is being backed up by jack boot tactics [180]

Question – what are civil servants doing'?

Challenges to the ban are being made at a late stage. The two groups involved are attempting to mobilise opposition to the ban by criticising the minister and presenting him as a nazi type dictator. These campaigns were totally ineffectual , and view with contempt by the policy makers involved. Obviously misunderstood the power of their own organisations , which was inadequate to cause a difficulty for the minister, and of the Minister, which was too great to be derailed. For the Civil servants it was a matter of not reacting and not letting the minister react. This opposition disappeared quickly when no public support emerged.

Concept: Power

4. Example 4 -Extracts taken from 1.4 Managing the interest groups /1.4.a Existing Supports

Correspondence between that organisation and Department related to requests for information and the submission of the requested details and planned budgets for approval. When the announcement about the new legislation was made, the companies and their representative group requested a meeting with the Minister to discuss the issues relevant to their business. This request was turned down by the Minister on the advice of the Department, on the basis that these companies had declined to appear, when requested, before the Oireachtas Subcommittee on Health and Smoking the previous year [43]

The role of the civil servants in this phase of the policy development was to brief the Minister on the issues relevant to each group he meets, meeting the groups he is unavailable to meet, summarising the outcome of these meetings and providing updates, background information or further details as required. This stage may have been viewed by the industries affected as an opportunity to influence the composition of the new legislation before it was introduced. It was used by the Minister and the civil servants as a means of signalling a new approach to the issues involved in controlling tobacco usage, marking a clear change from previous approaches.

Question – what are civil servants doing'?

These extracts relate to the management of the interest groups who approached the minister as the planned regulation changes became known to the industry. The health advocacy groups were also alerted and anxious to make a contribution.

Concept -**Management**

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