



Briefing 07/37 May 2007

Smoking ban

This briefing is for all UK local authority contacts including Chief Executives and Council Leaders and will be of particular interest to human resource officers, health and safety officers and trade union representatives.

Key issues

On Sunday 1 July 2007 a smoking ban in public places and workplaces will come into effect at 6.00 am in England.

Smoking bans are already operational in Scotland as of 26 March 2006, Wales as of 2 April 2007 and Northern Ireland as of 30 April 2007.

Whilst this briefing predominately concentrates on the new English smoking ban the workforce issues to arise from the new legislative measures contain similarities and issues of risk that apply across all four administrations.

1. Public policy and 'second-hand' smoke

The UK currently leads the European Union in a catalogue of ill health issues including heart disease and diabetes and lung diseases. Many prevalent diseases have a direct link to smoking and growing concern amongst the medical profession and public opinion in general has led to demands for action on exposure to second hand smoke. Such moves have also been supported by the TUC and trade unions representing workers in public places who are exposed to second hand smoke.

The Health Act 2006 provided the basis for the introduction of smokefree regulations in England and Wales. In Northern Ireland the Northern Ireland Order 2006 provides for similar measures to those contained within the Health Act. In Scotland the Smoking, Health and Social Care (Scotland) Act 2005 provided the legislative framework for the introduction of the smoking ban.

2. What is included within the legislation

The English legislation sets out measures to include within the application of the Act '*all workplaces, public transport, pubs, restaurants, bars, clubs, cafes, shopping centres, and offices*' to be smokefree. This wide ranging definition includes:-

Premises open to the public:-

Which is defined as premises where the public have access, whether invited or not, and includes premises where members of the public may attend only occasionally for the provision of goods and services

Premises used as a place of work:-

Means any place used as a place of work by more than one person, even if they are never at work at the same time and includes voluntary work.

Enclosed and substantially enclosed premises:-

Enclosed means any premises which have a ceiling or roof and (except for doors windows and passageways) are wholly enclosed either on a permanent or temporary basis. Substantially enclosed means any area that has a roof or ceiling but have an opening in the walls that is less than half the total area of the walls. The area of the opening does not include doors, windows, or any other fittings that can be opened or shut.

Work vehicles and public vehicles:-

Work and public vehicles are included in the ban. This includes pool cars, sports club minibuses, taxis, buses and vehicles used during the course of voluntary work.

The ban also applies to fleets of vans that are used by more than one person for work purposes. The ban does not apply to private vehicles used primarily for private use with occasionally use for work purposes to give lifts to friends or colleagues. However please note there is no specific English guidance on what is considered to be 'primary use as a private vehicle'.

3. Duties on local authority, police fire and civil defences authorities

Public sector bodies face a number of new duties in terms of the ban. Firstly the duty to ensure that the ban of smoking in public places is enforced and secondly that as employers all employees are aware of the new requirements and that the workforce is adequately prepared.

Signage requirements

At **every entrance** to premises covered by the smoking ban signage needs to be put in place. This must be:-

- A minimum A5 in size (210mm x 148mm)
- Display the international no smoking sign (at 70 mm in diameter)
- Carry the wording in a suitable font size '**No smoking: It is against the law to smoke in these premises**'

Even where an employer may have already adopted a no smoking policy in workplaces these signage requirements should still be met.

Heritage and listed buildings: Some local authorities who have civic building with listed status would naturally be concerned about affixing permanent or inappropriate signs to the buildings but the legislation states the signs need to be displayed and therefore displaying signage in a manner that meets with the décor of the building, for example in a free standing sign holder would appear to be compliant with the requirements.

Smokefree vehicles will also be required to carry appropriate signage which is to display the international no smoking symbol in each compartment of the vehicle in which people can be carried and must be at least 70mm in diameter.

4. Exemptions from the new law

There are very few exemptions within the legislation and some exemptions are of themselves time limited. It is important to note that with the exception of the exemptions detailed below there are no permissible 'smoking rooms' within enclosed premises and employers cannot rely on designated staff smoking rooms.

Managers are permitted to designate specific rooms for smoking in the following types of premises:-

Care homes (as defined under Section 3 of the Care Standards Act 2003) and Hospices (which as their whole or main purpose provide palliative care for persons resident there who are in suffering from progressive diseases in its final stages) may designate either individual bedrooms or rooms to be used only for smoking for use by persons over the age of 18 years.

Residential mental health units means any establishment (or part of an establishment) maintained wholly or mainly for the reception and treatment of persons suffering from any form of mental disorder, as defined in Section 1(2) of the Mental Health Act 1983 may designate either individual bedrooms or rooms to be used for smoking for use by persons over the age of 18 years of age **but only until the 18th July 2008** when they will be required to be smokefree.

Other exemptions include offshore installations and specialist tobacco shops. Hotels, inns, hostels and guesthouses and members clubs that provide sleeping accommodation may designate individual bedrooms for smoking, but all other parts of the premises must be smokefree. Dormitories and other shared accommodation must be smokefree at all times.

Domestic dwellings are not covered by the new law but if a person uses any part of a private dwelling solely as a place of work then it will be required to be smokefree.

5. Enforcement

Enforcement of the smoking ban will be by local authorities through the work of environmental health officers and street wardens who will be encouraged to mix with

members of the public, conducting secret filming and taking photographs that will be admissible in criminal proceedings if an offence is detected

Enforcement officers will have powers to enter premises, conduct inspections and seize items. They may apply to the magistrate's court for a warrant to enter premises by force if necessary.

In England the following penalties apply: _

Offence	Who is liable?	Fixed penalty notice 15 days	Fixed penalty notice 29 days	Court awarded fine
Smoking in a smokefree place	Anyone who smokes in a smokefree place	£30	£50	Up to £200
Failing to display required no-smoking signs	Anyone who manages or occupies the smokefree premises or vehicle	£150	£200	Up to £1000
Failing to prevent smoking in a smokefree place	Anyone who manages or controls the smokefree premises or vehicle	n/a	n/a	Up to £2500

6. Issues for council services and human resource policies

Clearly the new duty will force upon local authorities, police and fire authorities the need to review and if necessary revise existing policies to ensure compliance with the new regulations. However there are a number of issues that have already arisen which APSE members may wish to consider:-

Fair and transparent smoking policy

The regulations do not require employees to refrain from smoking in working time. They do however require employers and employees to abide by the smokefree workplace rules. Individual employers may decide that smoking during working hours is not permitted but it is likely such an approach will lead to significant problems amongst smoking staff. So too however do issues arise where it is perceived that smokers,

leaving the place of work for 'cigarette breaks' are having considerably more rest periods than non-smoking staff.

That is why any policy adopted must be fair and transparent across all groups of workers. There ought not to be differing rules applying to workers based on the nature of the working environment.

Transport and fleet. Whilst many authorities will already have in place smokefree workplaces the new regulations will require that vehicles are also smoke free. Where employees work in and utilise fleet vehicles smoking can be part of an accepted 'culture' and it is important to convey to staff that the new regulations cover vehicles if used for work purposes by more than one person. Therefore failure to comply with the regulations could lead to fixed penalty notices under the new regulations or even a court awarded fine. It could also lead to disciplinary action by the employer if there are persistent breaches of the new smokefree regulations.

This also applies to the use of pool or fleet cars and it is especially important to ensure that such vehicles remain smokefree particularly if they are to be used to transport service users, for example through a social care service.

Outdoor workers. Many local authority employees work outdoors (such as in parks and cemeteries). Whilst there may already be a general rule that employees should not smoke on duty in such locations it is important to consider any differential treatment of groups of employees. For example permitting smoking if an employee is walking between different sites in a public street but then enforcing any kind of 'smoking on duty ban' for employees otherwise working out of doors. There needs to be a consistent application of rules applying to all workers to avoid any incidences of capricious or differential treatment of employees.

Social care workers, building maintenance workers and others. Many employees as part of their day to day duties will work within environments not covered by the regulations. This includes, for example, home care workers or social workers or building maintenance workers that may spend extended periods of time in domestic dwellings (whether privately owned or rented accommodation) which are not covered as workplaces for the purposes of the regulations and where smoking may well continue despite the presence of the public sector worker.

This will be of obvious concern to employers and employees themselves. It may give rise to future litigation as some workers are exposed to smoke during their working day whilst other workers are protected because of the nature of their working environment. Accordingly it is necessary to consider how local authorities are able to both protect the workforce and limit the degree of risk both to the health and safety of the workforce whilst minimising the risk of future litigation.

Health and safety at work – duty of care

The Health and Safety at Work Act means employers will still have a general duty of care to employees. Therefore risk assessments of employees going into smoking environments should be carried out as should looking at ways of minimising risk.

Some examples of risk minimisation includes:-

Writing to tenants / residents in receipt of services and requesting that smoking does not take place for a set time in advance of and during a visit / or work on the premises.

Similarly it is worthwhile considering advice / guidance for service users and their families taking into account that even where a service user is compliant with a non smoking request a family member supporting the service user may be in ignorance of the no smoking request or indeed refuse to comply.

Consideration should also be taken of the differences between emergency and non emergency work or services. For example, if a day to day repair is not carried out which would not place the service user or public in any immediate danger, then it could be reasonable for the council to refuse to send its employees into premises where smoking has continued despite requests for smoking to stop. However it may not be reasonable to refuse to provide a home care or personal care service or a social worker visit in such circumstances where there could be a risk to vulnerable citizens because the service user or their family refuses to comply with no-smoking requests.

The following extract from supplementary Welsh Assembly guidance for domiciliary workers is useful as a check list for local authorities across a range of service areas:

- ✓ Draw up a protocol that covers all staff and volunteers who provide services to service users in their own homes. Provide a leaflet explaining the protocol and any risk assessment process for clients.
- ✓ If possible, establish a list of homes visited by your staff which are occupied by smokers. Also note homes which employees would consider as smoky environments because of others (i.e. client's spouse/ partner/ other family members) who may smoke in those premises.
- ✓ It is important to identify members of staff who have a pre-existing condition (such as asthma, chronic obstructive pulmonary disease or cardiovascular disease) that is made worse by exposure to tobacco smoke, and those who face additional risks, for example because of pregnancy. Members of staff who have such conditions are at higher risk and particular care should be taken to prevent or minimise their exposure to tobacco smoke.
- ✓ Once the situation relating to individual properties is ascertained, steps can be taken to reduce the exposure that staff might face. For example, write to all those who will be visited to ask them and those who may be with them not to smoke during the visit, and ideally not to smoke for an hour or so before the visit is scheduled to take place. In the case of scheduled services delivered at home, this could be achieved by including a paragraph in the appointment letter to all service users. If an appointment is made over the phone, the member of staff can advise the service user and/or member of the household of the protocol.
- ✓ Ensure that no member of staff is expected to make consecutive visits, or even a sequence of visits, to houses in which they are likely to be exposed to tobacco smoke. A good method is to alternate the visits, but this should not take the place of the steps detailed above as the only solution.
- ✓ When a staff member visits for the first time to a household where someone smokes, they should check that the service user understands the protocol and go through the leaflet, which informs the service user. It is expected that most service users will be willing to comply with the protocol. However there may be some service users who need more information, discussion and negotiation

before this will happen. In such cases the leaflet should be left with the service user.

7. APSE Conclusions

Local authority services need to ensure they are prepared for the smokefree obligations placed upon them as both employers and service providers. This includes

- Communicating the new smokefree regulations to all employees and workers
- Ensuring that policies and procedures are up-to-date and accommodate the new requirements including responsibility for ensuring the smokefree legislation is complied with in public buildings (including the possibility of fitting smoke detectors in toilet areas and appropriate signage)
- Protocols are in place for employees or workers in private dwellings
- Smoking cessation schemes are either established or supported by employers with readily accessible information on intranet systems for staff to access help if they wish to give up smoking.

APSE is working with Eversheds to deliver a series of short 'toolkit' sessions to local authorities looking at the liabilities, responsibilities and practicalities of the smokefree regulations. Information can be obtained from the APSE website on:-

<http://www.apse.org.uk/lifelong-learning.html>

Mo Baines
Principal Advisor