



Hospices and the new smokefree law

Frequently asked questions

About this guide

The new law to ban smoking in enclosed workplaces and public places comes in to force on the 1st July 2007.

These frequently asked questions have been put together by Help the Hospices and the National Council for Palliative Care to provide hospices with further information and advice on what the new legislation means for them. The content of these frequently asked questions has also been checked by the Department of Health.

If you have any comments on the questions and answers below, please contact Hazel Cheeseman at h.cheeseman@helpthehospices.org.uk

Q: What will the smoking ban mean for hospices when it comes into effect on 1st July 2007?

A: The new law bans smoking in nearly all enclosed public spaces. Hospices, like other enclosed premises, will be obliged to ensure that the smokefree law is upheld.

This means that hospices must:

- Take reasonable steps to ensure staff, customers, members and visitors are aware that premises *and vehicles* are legally required to be smokefree
- Close any indoor smoking rooms which will not be designated smoking rooms under the law
- Display 'no-smoking' signs in smokefree premises and vehicles which comply with the law
- Ensure that no-one smokes in smokefree premises or vehicles

(Source Department of Health advice)

Signage needs to be displayed at the entrances to smokefree premises. Signs and stickers can be obtained free of charge by calling freephone 0800 169 1697.

Q: Where will the law apply?

A: The law applies to all premises and vehicles being used primarily for work, including voluntary work. This may mean that hospices need to develop or review, for example, policies around smoking in vehicles used by hospice volunteers. Even where such vehicles are not being used primarily for work, we would encourage you to review existing policies as a matter of good practice.

The law makes no requirements about smoking in private residences. This means, for example, that there is no legal requirement for patients' homes to be smokefree when staff are visiting them. The Royal College of Nursing has produced best practice guidelines covering nursing staff who work in people's own homes which are available from the Smokefree England website (www.smokefreeengland.co.uk). The TUC has also produced guidelines for other staff working in people's own homes. Although the legislation places no requirements on private dwellings, employers continue to have a responsibility for the health and safety of their staff .

Q: Are hospices exempt from the smokefree legislation?

A: Hospices have been granted an exemption under the law where '*their whole or main purpose*' is to '*provide palliative care for persons resident there who are suffering from progressive disease in its final stages*'¹. This means that smoking is permissible in a designated room or rooms, provided these comply with specified criteria. All other parts of the hospice must be smokefree at all times. Where hospices do not provide inpatient care they will not be exempt from the law and must be smokefree throughout.

The purpose of the new law is to make it the norm for all enclosed spaces to be smokefree and exceptions to be made only where this is not possible.

Q: Does the exemption mean patients can smoke anywhere?

A: No – there are clear limitations governed by law which hospices must comply with. These state that only a designated room or rooms (?) can be used for smoking. A designated room can either be a bedroom or a room used ONLY for smoking.

Q: Does the designated smoking room need to comply with criteria?

A: Yes – A designated room must:

- be designated in writing as a smoking room (see further below)
- have a ceiling and, except for doors or windows, be completely enclosed on all sides by solid floor-to-ceiling walls
- not have ventilation systems that ventilate into any other part of the premises (except other rooms designated for smoking) or into any other smokefree premises

¹ Regulation 5(2)(b), The Smoke-free (Exemptions and Vehicles) Regulations 2007, <http://www.opsi.gov.uk/si/si2007/20070765.htm>

- have mechanically closing doors. This means doors that shut automatically after you enter or leave the room. Fire doors that close when a fire alarm is activated are not sufficient for this purpose.
- be clearly marked as a room in which smoking is permitted. You can create your own signs warning people about where they could be exposed to second hand smoke².

Q: Are there any other duties that hospices with a smoking room must comply with?

A: Yes. Rooms in which smoking is allowed must be designated as such in writing by the manager of the premises. This designation must remain on file, and can be requested by councils enforcing the law. There is no set template for this designation and it does not need to be submitted to local authorities in advance.

Hospices must also display no-smoking signs that meet requirements of the new law at all entrances.

Q: Who can use the room?

A: There is no restriction in law about who can use the designated room. The Department of Health has advised us that the intention of the legislation is that all who can smoke outside should do so, and that a designated room is used only where there is no other option. Smokefree England has further advised Help the Hospices that it would not be expected that staff would be able to use the smoking room but the law does not prevent visitors from smoking in designated rooms if management allows. If you have any concerns over these issues you should consult the enforcement team at your local council. Details can be found at <http://local.direct.gov.uk/LDGRedirect/index.jsp?LGSL=359&LGIL=8>

Q: Is there any support available to help hospices comply with the law?

A: Further advice is available from Smokefree England, at 0800 169 1697 and www.smokefreeengland.co.uk. Material available on this site includes signage that you are obliged to display by law, and leaflets for the public explaining the change in the law, which you can download free of charge. Support and advice is also available from your local council, which will be responsible for enforcing the new law.

Q: How will the law be enforced?

A: Local Authorities have the responsibility for enforcing the new law. In most instances this responsibility will rest with environmental health teams. You can find the details of your local council and environmental health team here <http://local.direct.gov.uk/LDGRedirect/index.jsp?LGSL=359&LGIL=8>, or phone the council and ask for the team responsible for implementing the smokefree law. Local authorities will not undertake regular visits, but will undertake inspections on the basis of risk.

Even though you are not required by law to inform the Local Authority that you plan to implement an exemption, telling them will help them to be confident in what you intend to do. They are also there to provide advice and guidance, and will be able to help you to put your plans in to action.

² HM Government, *Everything you need to prepare for the new smokefree law on 1 July 2007*, at www.smokefreeengland.co.uk

Q: Who is legally responsible for enforcing the law within the hospice?

A: Any individual who manages the premises has the legal responsibility for making sure people do not smoke in any smokefree part of the hospice. This could, for example, be the registered manager, duty manager or ward manager. Responsibility rests with whoever has management responsibility at the time. Anyone who has responsibility for health and wellbeing of staff and patients at a given time, and could intervene to enforce the law, has a duty to do so.

Q: What should hospices do where staff are going into environments where there is smoking e.g. supporting people in designated rooms or visiting patients at home?

A: Employers continue to have a legal duty to protect their employees under existing health and safety law. As the new law officially acknowledges that second hand smoke is dangerous to health, it is necessary to assess or reassess the risk employees are subject to and how it might be mitigated.

It is important that risk assessments are carried out and policies in place which demonstrate how the hospice is fulfilling its duty to protect staff. It would not be sufficient to ask staff to agree in writing to any smoke-associated risk, because in law staff cannot agree to sign away their right to health and safety.

Q: Is there any guidance to support hospices in fulfilling their duty to employees?

A: Yes – you may find the following guidance helpful:

- The Health and Safety at Work Act 1974 can be found at <http://www.healthandsafety.co.uk/haswa.htm>
- The Royal College of Nursing (RCN) has developed guidance for protecting staff working in the community, which may be useful in formulating your hospice's policy. This is available at http://www.rcn.org.uk/publications/pdf/protecting_community_staff_smoke.pdf.
- The Trade Union Congress (TUC) has developed guidance regarding employees visiting people in their homes. This is available at <http://www.smokefreeengland.co.uk/files/guidance-for-people-working-in-the-home.pdf>.

Q: Have any hospices gone completely smokefree?

A: Yes – Some hospices have gone smokefree. If you would like more information about these hospices then please contact Hazel Cheeseman at the Help the Hospices on h.cheeseman@helpthehospices.org.uk.

Q: If I have further questions, where can I go?

A: In the first instance, consult Smokefree England by calling their helpline on 0800 169 1697, or visiting their website at www.smokefreeengland.co.uk.

- For more support on how the law will be enforced, contact your local council's enforcement team. You can find their details at <http://local.direct.gov.uk/LDGRedirect/index.jsp?LGSL=359&LGIL=8> .
- If you have any questions about this document or about how the new law relates to hospices, please contact Hazel Cheeseman at the Help the Hospices on h.cheeseman@helpthehospices.org.uk.

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