

## CYMORTH CYMRU BRIEFING

### **Ban on tobacco smoking - implications for supported housing providers**

The following briefing refers to The Smoke-free Premises etc. (Wales) Regulations (2007). The regulations concern the prohibition of tobacco smoking in certain enclosed spaces, pursuant to powers contained in the Health Act (2006).

The ban comes into effect on April 2<sup>nd</sup> 2007.

The Welsh Assembly Government website [www.smokingbanwales.co.uk](http://www.smokingbanwales.co.uk) makes available:

- The Health Act (2006) and The Smoke-free Premises etc. (Wales) Regulations (2007)
- Guidance on the implications of the legislation
- Guidance on complying with the regulations

However, certain aspects both of the regulations and the guidance may be unclear to providers of supported accommodation in Wales. This briefing is intended to outline the key issues which agencies will need to consider in order to comply with the legislation, and to clarify a number of areas which may not otherwise be clear.

This briefing is informed by discussions and correspondence with Assembly officials and others involved in the development of the smoking ban regulations.

*Interpretations* of the legislation are given, according to the best advice we have been able to obtain, though it should be noted that this advice is currently untested in law and may be subject to future updates.

We recognise the difficulties which the implementation of smoking bans may create for some service providers working with vulnerable people, and understand that there is the potential for complex and challenging day-to-day management issues to arise in some cases – particularly, perhaps, during the early stages of the ban.

Responsibility for enforcing this legislation will rest with local authorities, who will also be expected to support organisations in complying with the new law. The WLGA has convened a liaison group, which is working with representatives across the twenty-two authorities to develop a consistent, Wales-wide understanding of the regulations.

## **Key points**

The regulations apply very broadly across most areas of industry, commerce and public service provision in Wales, including the voluntary sector. From 6am on April 2<sup>nd</sup> 2007:

- With certain important exceptions (discussed below), smoking will be prohibited in all ‘enclosed’ or ‘substantially enclosed’ work/living spaces used by staff, service users or visitors.
- Smoking will be prohibited in all vehicles used by more than one employee or for transporting passengers.
- Agencies will be required to display bilingual no-smoking signs at the entrances to all affected premises, and the no-smoking symbol will need to be displayed in affected vehicles. Signs (and information on minimum sizes, etc) are available from the above website.
- Agencies will have a legal duty to comply with the legislation, and to enforce no-smoking policies, as required. The maximum penalty for failing to display the appropriate signage will be a £1,000 fine; the maximum penalty for a manager or ‘person in control’ failing to prevent smoking in smoke-free premises will be a £2,500 fine.

A ‘compliance helpline’ is to be established, through which alleged breaches of the law may be reported to the local authority.

## **Exceptions to the smoking ban**

### **Private dwellings**

The regulations use the term “private dwelling” to include ‘self-contained residential accommodation for temporary or holiday use [...] for the exclusive use of persons living in that dwelling’.

Private dwellings are not required to be smoke-free, except for any part which is shared with other premises (such as halls, stairwells, etc) or parts used *solely* as places of work.

The requirement that external workers regularly enter a private dwelling (for example, for maintenance, care or support purposes) does not affect this, and organisations/ landlords remain at liberty to operate their preferred smoking policies.

Shared accommodation such as housing association flats or houses may be considered 'private dwellings' and wholly exempt from the smoking ban so long as it may be considered to accommodate a single 'household' – ie, all facilities on the premises (other than bedrooms) are shared by residents.

Cluster flats, for example, could not be considered in this way, and communal areas in this kind of provision must therefore be smoke-free. However, in these circumstances, residents may be permitted to smoke in designated bedrooms (see below).

### **Shared accommodation with on-site full/part-time support**

As described in the Health Act (2006), premises (or parts of premises) must be smoke-free if they are used as a place of work by more than one person (even if the people who work there do so at different times, or only intermittently), or if members of the public may visit the premises in order to receive goods or services.

However, as previously noted, only those areas which are used solely as places of work (such as an office, staffroom or keywork room) are required to be smoke-free within services described as 'shared accommodation'; organisations may permit smoking in remaining parts of the building.

### **Designated communal spaces**

The legislation allows that a number of non-shared accommodation types may designate *specific rooms* which are not smoke-free. These are:

1. Adult residential care homes
2. Adult hospices
3. Residential mental health treatment settings

In these cases, rooms in question (either bedrooms or communal areas) must be specifically designated by the management and identified with appropriate signage.

Rooms must be fully enclosed, and not fitted with a ventilation system which ventilates into another part of the premises (unless also a designated smoking

room). If designated rooms open onto areas which are not also designated smoking rooms, doors between them must be mechanically self-closing.

## **Designated bedrooms**

The legislation allows that a number of non-shared accommodation types may designate *specific bedrooms* which are not smoke-free. These are:

1. Hotels
2. Guesthouses
3. Inns
4. Hostels
5. Members' clubs

The term 'hostel' is not defined in the regulations, and it is understood to apply broadly to a range of hostel-type provision, including homelessness hostels, night shelters and other forms of non-shared supported accommodation.

Designated bedrooms must comply with the ventilation and signage criteria outlined above, though it is understood that the power to designate bedrooms as not smoke-free does not extend to bedrooms which are occupied by two or more residents.

Agencies may designate as many of their bedrooms non-smoke-free as they wish.

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As noted, this guidance is based on interpretations of the legislation and regulations which remain to be tested in law. In cases of any uncertainty, or in order to explore further details of the smoking ban as it applies to individual projects, we would advise organisations to contact their authority's Environmental Health Department.

Cymorth will be interested to hear any feedback regarding the implementation of the smoking ban in the coming weeks and months, and would welcome comments from across the supported housing sector.