

Mental Health Law Briefing

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Smokefree Legislation To Affect Mental Health Units

On the 31st January 2007 the Government laid the Smokefree (Exemptions and Vehicles) regulations before Parliament. While the regulations will be subject to Parliament's approval, the laid regulations represent the Government's finalised position on exemptions from smokefree legislation.

In July 2006, the Department of Health published a consultation on the smokefree regulations to be made under the Mental Health Act 2006, including proposals for residential mental health settings.

The majority view from respondents to the consultation was that, either there should not be any exemption to permit smoking within residential mental health units, or that any exemption should be time limited.

The view was shared by stakeholders including the Royal College of Psychiatrists, Cancer Research UK, the Royal College of Physicians, the British Medical Association and many NHS organisations that responded to the consultation.

The regulations laid before Parliament on the 31st January 2007 provide a time limited exemption from smokefree legislation for twelve months only. From 1st July 2008, smoking will be against the law in any enclosed or substantially enclosed part of any mental health establishment. This will include smoking by patients, visitors or members of staff and will include all residential mental health units, regardless of whether they provide acute or long term services.

Between 1st July 2007 and 30th June 2008, mental health units¹ that provide residential accommodation would be able to have "designated rooms" where smoking is permitted. These designated rooms could either be bedrooms or rooms used only for smoking and must meet specific conditions. Rooms designated for smoking must:

- Be designated in writing by the person in charge of the mental health unit as being a room in which smoking is permitted.
- Have a ceiling and except for doors and windows, be completely enclosed on all sides by solid, floor to ceiling walls.
- Not have a ventilation system that ventilated into any other part of the premises (except any other designated smoking room).
- Be clearly marked as a room in which smoking is permitted; and
- Not have any door that opens on to smoke free premises that is not mechanically closed immediately after use.

Importantly, like other enclosed public places and workplaces, it will be against the law for anyone to smoke in enclosed parts of mental health establishments that do not provide residential accommodation (for example, day units) from July 2007.

¹ For smokefree regulations, "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.

A range of support exists to assist mental health units to become smokefree:

- In 2005, the Health Development Agency published *Guidance for Smokefree Hospital Trusts* (available to download at www.nice.org.uk/page.aspx?0=502903.)
- In October 2006, Smokefree London in collaboration with Wandsworth Teaching PCT published *Smokefree Policy and Interventions in Mental Health Settings: A toolkit* (available to download at www.smokefreelondon.org/article.php?id=106.)
- The Tobacco Control Centre (TCC) has also developed resources, including a *Support Pack for Smokefree Mental Health Services* (available by contacting the TCC by email at

tcc@tobaccocontrolcentre.org.uk or by telephone on 01926 490190).

Smokefree mental health will help to ensure that mental health patients receive treatment in an environment that is equal to that to be provided for other patients in the NHS.

However, it is acknowledged that this will present severe challenges for mental health services who commonly have a high level of patients who are smokers. Detained patients in particular will find the new law a challenge and units will clearly need to include an assessment of the affect of this on their patients, and be prepared to offer care and assistance to assist during the period after admission when this smoke free policy is likely to impact adversely on the patients' mental state.

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Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

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