

• *Smoking at Work* Last updated in October 2010

There are a number of issues around smoking at work that are of relevance to UNISON members:

- the health risks,
- the legal position,
- provision for smokers,
- those members not covered by the legal ban, and
- the drafting of workplace policies.

The health and safety issue for the workplace is not whether employees or others smoke, but where they smoke; and not whether a non-smoking policy should be introduced, but how it is introduced.

THE BENEFITS OF SMOKE-FREE WORKPLACES

For many years, UNISON has been campaigning for the right of employees to work in safe and healthy work environments, including the right not to be exposed to second-hand or passive smoke. It is now widespread knowledge that second-hand smoke is harmful, so the benefits of being smoke-free will only be briefly considered here. It is also known that it is not possible to ventilate an enclosed space sufficiently to remove all toxins. At best, the ventilation will just make the environment appear more pleasant or less smoky, but the toxins will remain.

In 1998, the Government's Independent Scientific Committee on Tobacco and Health reported that second-hand smoke is a cause of lung cancer. The Department of Health's website mentions the risk of heart disease. ASH, the campaigning public health charity, otherwise known as Action on Smoking and Health, states that second-hand smoke causes: lung cancer and heart disease in adult non-smokers; increased sensitivity and reduced lung function in people with asthma; irritation of the eye, nose, and throat; and reduced lung function in adults with no chronic chest problems. It also goes on to list the various ways in which exposure to second-hand smoke also harms babies and children.

In the past UNISON has taken legal action on behalf of members who have had their health permanently damaged by exposure to passive smoke at work. A couple of examples include: Veronica Bland, who received £15,000 compensation in 1993; and Beryl Roe, who received £25,000 compensation in 1995. Both awards were against a local authority employer. Veronica suffered years of passive smoking at work and eventually developed chronic bronchitis. Beryl had to retire on ill-health grounds after suffering eye, nose, throat, and bronchial hypersensitivity. This hypersensitivity returns if she goes into a smoky atmosphere.

Throughout the whole consultation process, an underlying theme has been that if workplaces and public places become smoke-free, it makes it easier for those who wish to quit smoking, to give it up.

SO WHAT IS BANNED?

On 1 July 2007, public places and workplaces in England went smoke free. This was the last of a series of bans which now cover the entire UK. A number of laws implement the smoking bans. Most provisions are identical or similar, but there are some differences. This information sheet considers how the bans affect UNISON members, examines any differences relevant to UNISON members, and goes on to give policy advice.

What, where, and when - the three W's

In general, smoking within an enclosed or substantially enclosed public place or workplace is now illegal.

Am I smoking? Smoking is defined as smoking or being in possession of a lit substance such as tobacco or any other substance that may be smoked.

Is this place enclosed or substantially enclosed? If the place has a ceiling or roof, with walls (including doors and windows, etc.) around all or at least half the perimeter, then it is enclosed or substantially enclosed.

Is my workplace covered? The ban applies to enclosed or substantially enclosed workplaces where more than one person works, regardless of whether they are paid or voluntarily, or whether they work at the same or different times or only intermittently (but see the exceptions below).

What public places are covered? The ban applies to enclosed or substantially enclosed public places for the periods during which they are open to the public, unless also a workplace when they must remain smoke-free at all times.

Are vehicles covered? The laws for England, Northern Ireland, Scotland, and Wales appear to say the same thing. If a vehicle is enclosed it must be smoke free if it is used by the public, or if used by more than one person for work, regardless of whether they are paid or voluntarily, or whether they work at the same or different times or only intermittently. A vehicle is exempt from the ban if it is primarily used for the private purposes of a person who owns it or has a general right to use it, as long as it is not used for transporting members of the public. However, the guidance from the Scottish Executive states that cars used for work (and only cars), whether privately owned or a company car, are exempt from the ban, so long as they are not used as a private taxi. The guidance with its weaker interpretation of the ban in Scotland is probably what those enforcing the law will follow, although it is possible that a future test case may find that the stricter reading of the Scottish law should be applied.

Are private dwellings covered by the ban? Private dwellings such as a clients or patients homes are generally exempt from the ban (but see below for more information on what employers can do to protect those working in such environments). However, any communal parts, such as shared halls or stairways must be smoke-free. The regulations applying to England, Northern Ireland, and Wales (but not Scotland) also state that where any part of a private dwelling is used solely for work, this must be smoke-free if either: a) it is used by one or more persons who do not live there, or b) other persons may visit in relation to the work.

What other exemptions are there? There are some variations across the UK. It should also be noted that generally, these exemptions do not have to be applied, must often meet specific criteria, and in some cases will expire after a given date.

- **Hotel (or similar) bedrooms,** may be exempt in the UK if: designated in writing and clearly marked as such, completely enclosed (excluding doors and windows), with no shared ventilation except with other designated rooms, and with any doors onto smoke-free areas being self closing.

In Scotland, self-closing doors are not required, but there is an additional requirement for some form of ventilation. This may simply require windows that open unless such openings would not provide sufficient ventilation, for example in the case of windows that only partially open. The regulations for England and Northern Ireland specifically mention that this exception does not apply to dormitories or other similarly shared rooms.

- **Rooms for those aged 18 or over in care homes and hospices** within England and Wales (the Welsh regulations specifically mention “adult hospices”), either bedrooms or specific “smoking” (only, that is, if they are used for only this purpose) rooms may be exempt if they meet the same criteria as for hotel bedrooms. In Northern Ireland, **rooms for those aged 16 or over in residential care homes, nursing homes, or hospices** may be exempt if they meet the same criteria as for hotel bedrooms. In Scotland, **rooms in adult care homes** may be exempt if they meet the same criteria as for hotels bedrooms in Scotland. **Adult hospices** are exempt from the ban in Scotland.
- In England, **rooms for those aged 18 or over in prisons** may be exempt if they meet the same criteria as for hotel bedrooms, with the exception that they do not need to have self-closing doors. In Northern Ireland **prisons, young offenders centres, and remand centres** are generally not smoke-free, except for social and physical recreation areas or areas for visitors. **Police detention and certain interview (“CARE” suite) rooms** may be exempt if they meet all the criteria as for hotel bedrooms, except for the requirement to have self-closing doors. In Scotland, **detention or interview rooms in police stations, including cells** may be exempt if they meet the same criteria as for hotel bedrooms in Scotland. There is no mention of similar exemptions in the regulations for Wales.
- **Rooms for patients aged 18 or over in mental health units**, either bedrooms or specific “smoking” (only, that is, if they are used for only this purpose) rooms may be exempt in England if they meet the same criteria as for hotel bedrooms. There is a similar exemption in Wales, but appears to be a permanent exemption here as no date is given for its expiry. Northern Ireland also has a similar exemption, but with a lower age requirement of **16 or above**, and an expiry date of 30 April 2008. In Scotland, **rooms in psychiatric hospitals and units** may be exempt if they meet the same criteria as for hotel bedrooms in Scotland.
- **Research and testing facilities** throughout the UK may be exempt from the ban if they meet the criteria for hotel bedrooms, and additional criteria regarding the nature of the research and testing.

SIGNS AND OFFENCES

All the laws applicable to the UK require specific types of signs to be appropriately displayed in smoke-free premises including vehicles, and several offences are created.

Anyone in control of, occupying, or managing premises or a vehicle causes an offence if they knowingly permit another to smoke (or ought to have known), or if they fail to appropriately display a required no-smoking sign. There is a further offence of smoking in no-smoking premises.

UNISON BRANCH / SAFETY REPS ACTION

Use this information sheet to ensure:

- that your employer is following the law,
- that you are consulted on the workplace policy,

- that the policy is fair and workable,
- that workers are positively encouraged to quit smoking,
- that those who do not quit are not victimised, and
- that provision is made for members not covered by the ban such as those who work in someone else's home.

The new law and regulations will affect many union members, including those in premises that already consider themselves “smoke-free”. Smoking rooms (apart from those meeting the requirements set for residents of care homes and mental health units) are no-longer permitted. Some employers may also take the opportunity of the change in the law to review other issues such as smoking outside or breaks.

Safety representatives and stewards should therefore aim to negotiate a smoking policy, or review any existing ones. Smoking policies that have been consulted upon enable the employer to deal with this controversial and sensitive issue not only in a practical and effective way, but also in a way acceptable to their workforce.

SMOKE-FREE POLICIES

The aims of a smoke-free policy should be to:

- protect all staff from the harmful effects of second-hand tobacco smoke;
- ensure that all parties including employers, smokers, and non-smokers have a clear understanding of their rights and responsibilities to prevent problems arising; and
- ensure that the workplace complies with the law.

What needs to be done will depend on the current situation and any smoking policy already existing. Some workplaces will have to start from scratch; others may have a ban that does not fully comply with the law. Others will already be smoke-free but will use the new legislation to review existing practices, and their no-smoking signs, which will have to comply with the new regulations.

A smoke-free policy should cover:

- the rights of non-smokers to breathe air that is free from second-hand smoke,
- the issue of compliance with the law relating to the smoking ban,
- the support that the employer provides to employees who wish to quit smoking,
- provision for those unable or unwilling to quit,
- what happens to employees who smoke in areas that are smoke-free,
- procedures for monitoring the effectiveness of and reviewing the policy, and
- procedures for resolving complaints and disputes.

For a draft policy, which may be amended as appropriate, go to the TUC website (details below).

HEALTH PROMOTION AND SUPPORTING THE QUITTERS

The smoke-free policy should not be an isolated action but part of a comprehensive approach to promoting health and preventing risks at work. Specific measures on smoking could perhaps be tied in with occupational health provisions. The smoke-free policy should seek to protect or promote the health of both the smoker and the non-smoker.

In guidance produced on behalf of the Department for Health, the National Institute for Health and Clinical Excellence (NICE) (details below) recommends that employers assist their employees who wish to give up. Local NHS Stop Smoking Services (contactable through local Primary Care Trusts) or NHS Direct (details below) can offer assistance. Ideally, this assistance will be offered both in the period leading up to the implementation of a smoking ban, immediately after, and for the future when others may later decide that they want to quit. Employers may assist by:

- arranging for advice on giving up smoking from a doctor or health professional,
- distributing self-help guides for giving up smoking,
- supplying free or subsidised nicotine replacement therapy such as gum or patches,
- developing programmes for giving up smoking which could consist of group meetings run by professionals, and
- paid-time off to attend relevant courses.

If an employer goes beyond just issuing an instruction about not smoking in smoke-free premises, by taking positive steps to encouraging smokers to quit, then those who do smoke are more likely to be view the employer in a positive light, are probably more likely to support any policy, and may be more likely to try and quit.

CONSULTATION

Similarly, as with any new or changing policy at work, the most effective way of achieving a successful implementation of the ban and total compliance, is for employers to consult with their employees through their union reps. If there is genuine consultation with the workforce, individual members of that workforce will more likely buy in to the policy ban and won't feel resentful about its introduction; even those who remain smokers.

Secondly, not only do safety reps have a legal right to be consulted on health, safety, and welfare matters; such consultation may identify issues or solutions that might not be considered by the one or two persons left to draw up the draft policy. It is far better to get the policy right in the first place through widespread consultation, rather than having to resolve problems at a later date.

DEALING WITH THE EXEMPTIONS

UNISON frequently receives enquiries from members on how to deal with passive smoking where they are exposed to it in a client's home or other residential accommodation. The legal ban does not apply to this situation. There are also exceptions for other residential settings, and for research and testing in laboratories. However, employers still have a duty not to expose their workers to hazards, and must therefore take appropriate steps to prevent or minimise any risks.

This is not easy to resolve due to the conflicting of one individuals right to take part in a legal activity in their home and another's right not to be exposed to passive smoking.

One solution proposed in the past was for the employer to try to match employees who smoke with smoking clients, or to those parts of residential accommodation where the residents are entitled to smoke. However, whilst this may protect a non-smoker, it does still mean that an employer is exposing their staff who smoke, to even higher levels of tobacco smoke, and is therefore not satisfactory.

Where it is possible to reason with the service user, a more satisfactory approach is being adopted by an increasing number of employers, and health promotion organisations. Basically, a service user (or anyone else present with them) is asked not to smoke for at least one hour before a home visit, nor

during the visit, and to allow the worker to ventilate the rooms they work in by opening the windows. Employers can further improve the situation by ensuring that their staff do not have to visit one smoker immediately after the other. Rotas can be drawn up to disperse the visits to smokers amongst as many staff and over a greater length of time as possible. This is not a perfect solution, since there will still be some exposure to residual smoke, but it is a step in the right direction. It is a compromise which does not ban an individual from taking part in a legal activity in their own home, but also respects the health of a visiting worker.

All employers who send workers into a patient's, client's, or customer's home should adopt this policy or service user agreement. It can be communicated to the resident by including mention of the policy in correspondence, by providing a leaflet explaining the policy and the health benefits to their carer, and even verbally when a first appointment is first made over the telephone. If someone refuses to comply with this policy, then it may be appropriate for a manager to visit and explain the reasons for the policy. Continued failure to comply might mean that an alternative means of providing the service might have to be found, such as at the employers site rather than in the home. If this is not possible, then the appropriateness of withdrawing the service should be considered. Of course, how this policy is implemented, or whether the service is withdrawn, will depend on the circumstances of the case, including how vital the service is, and whether the client or patient can reasonably be expected to comply or whether ill-health or disability means that they should not be held accountable for their non-compliance.

In other residential settings, staff should not generally be expected to work in areas where smoking is permitted. For example, if a patient is allowed to smoke within their bedroom, then any care should be administered elsewhere in a smoke-free area. If this is not possible, it might be more preferable to have a "smoking" only room where patients can go to smoke so that their bedrooms remain smoke-free. The cleaning of any room where smoking is allowed should be timed to allow it to be vented between its last use and when the cleaners start their work.

Lastly, special consideration should be given to those workers who may be especially at risk from exposure to smoke. This includes pregnant women, those with asthma or other respiratory diseases, and those with cardiovascular disease (heart disease or diseases of the blood vessels, including being at risk of having a stroke).

TRANSPORT WORKERS

UNISON and the TUC are concerned that the regulations impose a specific duty to prevent smoking on a driver or guard of a vehicle. We believe that this duty should be on the operator rather than the driver. UNISON reps should meet with employers to ensure that arrangements are in place to support drivers or guards in preventing smoking by passengers. This may include the installation of additional CCTV equipment, agreement with the local police that they will deal with any calls for assistance urgently, training, and assurances that legal action will always be taken against those who threaten or abuse staff. The policy for dealing with passengers who fail to comply with a request to stop smoking should expect the driver or guard to do no more than they would normally do with any other breach of the law. Indeed, advice to employers is that they adopt a similar approach.

GOING BEYOND THE LEGAL BAN

While a good employer will wish to support workers by helping them to quit smoking, employers must also accept that the decision to smoke outside of work is for the individual. UNISON is often called upon to advise local UNISON branches who are negotiating policies with their employers. Some draft policies have sought to go beyond what the law requires, by proposing to prohibit staff from smoking anywhere on site; or during working hours, whether on or off the employers premises, or whilst wearing a uniform.

It is UNISON's belief that these policies must be both sensible and realistic. Any policy must recognise that smoking is addictive, and as such, some smokers appear not to be able to give up, no matter how much they want to or try. Given the addictive nature of smoking, employers must consider whether a complete ban is just setting-up the policy or smokers to fail. The consequence of this could be that the entire policy might become difficult to enforce. Alternatively, disciplinary action might eventually be required against otherwise good workers for taking part in a legal activity, and possibly leading to the loss or suspension of trained and experienced workers.

Another consequence is that addicted smokers may be forced to hide and smoke in secret. This will continue to allow some second-hand smoke to continue to drift around premises. Perhaps more seriously, if employees are compelled to hide and smoke, probably in out of the way and less used areas such as stores, laundry rooms, archive rooms, and basement, the risk of fire must surely increase. These areas will probably have many combustible materials, will probably not have been cleaned recently, and will have no provision for waste ash and used cigarettes.

Another consideration is that if staff are not permitted to smoke when outside but on site, there may be serious concerns around their safety when they have to leave the employers site to smoke. The location of the employer's premises and perhaps its remoteness may put such workers at risk of violence. Specific consideration should also be given to those who may work at quieter times such as early in the morning, late in the day, or even at night.

Lastly, a few employers have expressed concerns around smokers taking cigarette breaks. However, most workers take breaks and this makes them more productive. There will be formal break times for some, and /or other times when workers take a brief respite from work, whether getting a coffee, having a chat at the water dispenser, or just popping outside to get some fresh air. Any worker could possibly abuse this situation, not just smokers, but most workers use the opportunity of a coffee, a smoke, a chat, or go for a short stroll to refresh their mind and relax their body; returning to work more productive a few minutes later.

Smoking policies should not stigmatise, victimise, or discriminate against smokers, but instead should seek to eliminate employee exposure to passive (second-hand) smoke. Employees need only comply with the law and any legitimate workplace policy. UNISON is opposed to advertisements and policies which state that smokers will not be employed.

FURTHER INFORMATION AND SOURCES OF ADVICE

Complimentary **UNISON** Bargaining Support factsheet –

www.unison.org.uk/file/Smoking%20-%20July%202007.1.doc (or tel: 020 7551 1402)

The **TUC** website - www.tuc.org.uk/smoking

The **NICE** website - <http://www.nice.org.uk/PHI001>

NHS Direct - www.nhsdirect.nhs.uk (or tel: 0845 4647).

The **UK regional advice websites** for:

- England - www.smokefreeengland.co.uk (or tel: 0800 169 169 7)
- Northern Ireland - www.spacetobreathe.org.uk
- Scotland - www.clearingtheairscotland.com
- Wales - www.smokingbanwales.co.uk