



UNISON HEALTH & SAFETY
Information
sheet

• *Smoking at Work*

Last updated in March 2015

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,
- e-cigarettes, 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 and how it covers e-cigarettes.

THE BENEFITS OF SMOKE-FREE WORKPLACES

UNISON believes that employees have a right to work in safe and healthy work environments, including the right not to be exposed to second-hand or passive smoke. It is widespread knowledge that second-hand smoke is harmful. 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 the past UNISON took legal action on behalf of members who had suffered permanent damage to their health by exposure to passive smoke at work.

THE LEGAL SMOKING BAN

Public places and workplaces are now smoke-free across the entire UK, implemented by regional laws for Scotland, Wales, Northern Ireland, and England. The provisions are mostly identical or similar, so there are some differences. This information sheet considers how the bans affect UNISON members, examines any differences relevant to them, and goes on to give policy advice – also covering e-cigarettes.

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

In general, smoking within an enclosed or substantially enclosed public place or workplace is 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. So e-cigarettes are not covered by the legal ban, but see below for further information.

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 (outside edge), 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. It does not matter whether they are paid or voluntary, 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 voluntary, 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.

Are private dwellings covered by the ban? Private dwellings such as 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. Also, 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, but 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. They must be: designated as smoking/exempt 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”). These may be either bedrooms or specific “smoking” (only, that is, if they are used for only this purpose) rooms if they meet the same criteria as for hotel bedrooms (see above). 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 hotel 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. 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 Wales if they meet the same criteria as for hotel bedrooms. In Scotland, **rooms in psychiatric hospitals and units** may be exempt if they meet the same criteria as for hotel bedrooms in Scotland. **Mental health units** are smoke-free in Northern Ireland and England.
- **Research and testing facilities** throughout the UK may be exempt from the ban if they meet the same 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 (sometimes specific) 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,
- that provision is made for members not covered by the ban such as those who work in someone else’s home, and
- that sensible provision is made for those who use e-cigarettes.

The law and regulations affect even those premises that had already considered themselves “smoke-free”. Smoking rooms (apart from the defined exceptions for care homes and mental health units) are no-longer permitted. Some employers may also take the opportunity to review other issues such as smoking outside, smoking breaks, and e-cigarettes.

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;

- to prevent problems arising by ensuring that all parties including employers, smokers, and non-smokers have a clear understanding of their rights and responsibilities; and
- ensure that the workplace complies with the law.

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 or using e-cigarettes,
- 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.

HEALTH PROMOTION AND SUPPORTING THOSE WHO WISH TO GIVE UP

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 (<http://www.nice.org.uk/guidance/ph5>) produced on behalf of the Department for Health, the National Institute for Health and Care Excellence (NICE) recommends that employers assist their employees who wish to give up. Local NHS Stop Smoking Services can offer assistance. 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.

An employer should go beyond just issuing an instruction to not smoke in smoke-free premises by positively encouraging smokers to quit. In such scenarios, those who do smoke are more likely to be view the employer positively, are probably more likely to support any policy, and may be more likely to try to quit.

CONSULTATION

Similarly, as with any new or changing policy at work, the most successful way of implementing a ban and getting total compliance, is for employers to consult with employees through their union reps. If there is genuine consultation, employees even those who remain smokers, are more likely to buy in to the policy ban and less likely to resent its introduction.

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 conflict between one individual's right to take part in a legal activity in their own 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 (where possible) adopt this policy or service user agreement. It can be communicated to the resident by mentioning it in other correspondence, by providing a leaflet explaining the policy and the health benefits to their carer, or even verbally when an appointment is first made over the phone. If someone refuses to comply with the 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. Considerations might include 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 failure.

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 (where possible) 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. Instances such as these should be subject to risk assessment and continual monitoring in order to protect the health of the worker.

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, appropriate 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, so 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, 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 basements; 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 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 to 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.

E-CIGARETTES

Smoking as defined by the laws which ban smoking in work or public places is defined as smoking or being in possession of a lit substance such as tobacco or any other substance that may be smoked. Using an e-cigarette is not 'smoking' because no 'smoke' is produced, but instead is often referred to as "vaping."

Whilst e-cigarettes are not covered by the law banning smoking in the workplace, the TUC believes that because the long-term risks of e-cigarettes are not known, employers could ban their use under COSHH (the Control of Substances Hazardous to Health). Employers have a duty to assess the risks to their employees and take protective or preventative measures. If the employer identifies using an e-cigarette indoors as a risk, they may decide to take a protective or preventative measure such as asking people to use them outside. This position appears to be supported by at least some medical associations. Employers are also within their right to ban employees from undertaking certain acts within the workplace (particularly where there is no custom and practice) and using e-cigarettes could come within this.

As a relatively new technology the benefits and risks of e-cigarettes are not completely established. However, a recent report commissioned by Public Health England (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/311887/Ecigarette_s_report.pdf) found that electronic cigarette vapour is free from many of the toxic chemicals that accompany nicotine in traditional cigarette smoke. However, some toxic substances whilst at much lower levels are found, and regular exposure over many years is likely to present some degree of health hazard. But overall, the lower level of nicotine and toxic substances is likely to mean that e-cigarettes are healthier, but not harmless for the smoker. The risks to those exposed to passive vapour are also likely to be far less, though not necessarily absent.

There have been fears expressed that e-cigarettes may either act as a gateway for non-smokers to use or may normalise the use of traditional cigarettes at a time when smoking might otherwise become less prevalent. But according to the above report, this does not appear to be the case. It references another report, this time by Action on Smoking and Health (ASH - http://www.ash.org.uk/files/documents/ASH_891.pdf). This found that less than 1% of those who have never smoked traditional cigarettes had ever tried electronic cigarettes and virtually none continued to use them.

UNISON believes that employers need to have realistic and supportive policies in place, which recognise that smoking is an addiction so some individuals are unlikely to be able to give up, but that a positive step from the employer would be to offer encouragement to those wanting to give up. Allowing employees to use e-cigarettes along the same basis as traditional cigarettes (e.g. outside) could be a positive step towards assisting staff to give up.

At the same time, employers should probably not ask e-cigarette users to use their product in the same place as traditional smokers because it is possible that this may encourage them going back to traditional cigarettes. However, perhaps a greater risk is that the e-cigarette smokers would then be exposed to the passive smoke from traditional cigarettes. This would put them at increased risk to their health, and possibly leave the employer liable for future compensation for causing or encouraging this exposure. Therefore it would be prudent to provide different areas for both sets of smokers.

Branches that employ staff will need to reconsider their smoking policies with the development of e-cigarettes, and we would encourage them to be supportive towards staff wishing to give up.