

DH Gateway reference number: 9823

23 May 2008

To:
Chief Executives of Mental Health Trusts and
Independent Mental Health Care Providers
Chief Executives of Strategic Health Authorities

cc: NHS Foundation Trust Mental Health Trusts (*for information*)

Dear Colleague

We thought it would be timely to write to remind you of the need for mental health units to be smokefree from 1 July 2008. Details of the law, and how it applies to mental health units are attached in the Annex to this letter, together with information on where you can get additional support in preparing to go smokefree.


It is very important that you ensure that mental health facilities under your control are ready to be fully compliant with the requirements of smokefree legislation from 1 July 2008. It is your responsibility to ensure that all staff understand the requirements of smokefree legislation and what it means for them and their units, as breaking the law can result in penalties.

The positive impact of smokefree living cannot be over-estimated. Smokefree mental health units will help to ensure that mental health patients receive treatment in a healthier environment that is equal with all other patients in the NHS. Smokefree mental health units will also help to tackle the institutional use of tobacco within mental health settings and contribute to reducing the health inequality that mental health patients suffer because of smoking and exposure to other people's tobacco smoke.

In March 2008, the High Court heard a number of claims for judicial review of how smokefree legislation will apply to residential mental health units, on the basis that the temporary nature of the exemption for such units was believed to be unlawful by the claimants. The claimants believed that the new laws interfere with their right to respect for private and family life under the European Convention on Human Rights (ECHR). The High Court dismissed each of the claims, meaning that there is now no reason why mental health should not be compliant with the new law from 1 July 2008.

The Department of Health appreciates the hard work that has been invested across the country to prepare mental health units to become smokefree from 1 July. Further advice and support can be obtained directly from the Tobacco Control Collaborating Centre (Tel: 01926 490190).

Yours sincerely,



Louis Appleby
National Clinical Director for Mental Health



Nick Lawrence
Deputy Director,
Alcohol, Drugs and Tobacco
Programmes

From 1 July 2008, all smoking will be against the law in any enclosed or substantially enclosed part of a mental health establishment. Between now and the end of June 2008, mental health units that provide residential accommodation have a time-limited exemption from smokefree legislation. *The exemption for residential mental health units, allowing smoking to take place in certain indoor areas ceases on 30 June 2008.*

Under smokefree legislation, “mental health unit” 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. This definition extends to both NHS and privately provided facilities.

All mental health facilities, regardless of whether they provide acute or long-term residential services are to be smokefree in accordance with smokefree legislation. The law applies to smoking indoors by all people, including patients, visitors and members of staff. Please note, smokefree legislation does not require you to adopt a smokefree policy for your outdoor areas, although you may want to take the decision to do so.

You also need to be aware that there are penalties for breaking smokefree legislation that will be applicable to all mental health facilities from 1 July 2008.

The penalties and fines are:

- **For persons who control or manage smokefree premises who fail to prevent smoking within smokefree parts of premises or vehicles:** a fine by a court not exceeding level 4 on the standard scale (up to £2500).
- **For persons who manage premises who fail to display no smoking signs in smokefree premises and vehicles as required under smokefree law:** a fixed penalty notice of £200 (discounted to £150 if paid within 15 days from the issue of a notice) or a fine by a court not exceeding level 3 on the standard scale (up to £1000).
- **For any person found smoking in a smokefree premises or vehicle:** a fixed penalty notice of £50 (discounted to £30 if paid within 15 days from the issue of a notice) or a fine by a court not exceeding level 1 on the standard scale (up to £200)

You should be aware that you and your staff will have legal obligations to prevent smoking from taking place within smokefree parts of your premises, and may be liable to these penalties if the law is deliberately broken. This includes staff with day to day responsibility.

Enforcing smokefree legislation is the responsibility of local councils, which can also provide advice, support and resources (such as no smoking signs) to assist you to prepare to be smokefree from 1 July 2008. Please note, enforcement action is generally only considered appropriate when supportive efforts to encourage compliance with the law have failed. We, therefore, recommend you get in touch with your local council before 1 July to discuss your smokefree policy and plans.

A range of additional support is also available, including:

- The Health Development Agency's *Guidance for Smokefree Hospital Trusts* - available to download at www.nice.org.uk/page.aspx?o=502903
- The Smokefree London and Wandsworth Teaching PCT's *Smokefree Policy and Interventions in Mental Health Settings: A toolkit* - available to download at www.smokefreelondon.org/article.php?id=106
- The Tobacco Control Collaborating Centre (TCCC)'s *Support Pack for Smokefree Mental Health Services*. This guidance has been recently updated and mailed to all mental health providers and provides a range of information on smokefree legislation and on supporting clients who wish to quit smoking. It is also available by contacting the TCCC by email at tcc@tobaccocontrolcentre.org.uk or by telephone on 01926 490190. **The TCCC has been contracted to provide advice and support to all mental health units ahead of 1 July 2008. Please do not hesitate to contact the TCCC directly if would like further advice or support.**