

Smoke-Free Regulations

Note:- One of ARMA's key roles is to provide its members with technical support. However, from time to time, technical or other issues arise where guidance for lessees as well as their property manager is deemed appropriate. Such guidance is contained in these Lessee Advisory Notes (LANs) which ARMA members can copy and distribute to their lessees as appropriate.

KEY POINTS

- Regulations come into effect from 5th April in Wales and 1st July 2007 in England and specify premises which must be smoke-free.
- Internal common parts of block of flats must be smoke-free by law.
- Residents who smoke in common parts can be prosecuted by the local authority and fined up to £200.
- Signage announcing smoke-free premises must be placed at the entrance to all blocks with internal common parts.
- It will be an offence not to display the signs.
- Whether you agree or disagree with the new law your landlord and managing agent have a duty to prevent anyone from smoking in common parts of blocks of flats. If they do not challenge smokers they can be fined.

IMPACT ON BLOCKS OF FLATS

The enclosed common internal parts of blocks of flats will be designated as smoke-free premises. It does not matter whether someone is working in them or not. External porches if less than 50% open sided must also be smoke-free.

Resident management companies, landlords or their agents will have to put up and display no-smoking signs that meet the requirements of regulations because it is against the law not to display signs from July 1st in England and 5th April in Wales.

If there is an office within a block for a member of staff, say a porter or concierge, then that also must be smoke-free and the entrance door to it will require a sign. If there are rooms used by employees only (perhaps store rooms or meter rooms) they also will be smoke-free and should display signs.

IMPACT ON OWNERS OF FLATS

Private dwellings are exempt. The new regulations do not prevent lessees from smoking in the privacy of their own flats. But you must not smoke in the internal common areas of the block, it is against the law. So you will have to put out your cigarette at the front entrance of the block if you do not do so already. Lessees that smoke in the common

areas can be fined up to £200 if prosecuted by the local authority.

If you continue to smoke in the common areas of the block your landlord, resident management company's directors or your agent will have to challenge you to stop. It is not that they are anti-smoking per se but the new law puts a duty on them to challenge smokers. If they do not then they can be fined up to £2500, if prosecuted, for failure to prevent smoking in smoke-free premises.

Also bear in mind that if you want a member of staff or your managing agent to visit you in your home and you are a smoker, the law puts a duty on their employer to consider their health and safety from smoke. So some companies may adopt policies whereby employees decline to visit or work in a flat if the resident is smoking or is a regular smoker.

SIGNAGE

All smoke-free premises will have to display prescribed signs. The minimum size of sign and wording is set out in the law. Whether you think the signs are tasteful or not, this is what has to be done.

The no-smoking sign for each entrance to blocks of flats or offices must be:

- In a prominent position
- At least equivalent to A5 size in area.
- Display the international no-smoking symbol in colour and a minimum of 70mm or 3inches in diameter.
- Carry the following words that can easily be read "No Smoking. It is against the law to smoke in these premises." Alternatively the words "these premises" can be changed to refer to "this block" i.e. something more specific to the usage of the premises.

If a room or office is located within the block for staff (say a porter's office), then the signage can be simply the no-smoking symbol in colour at a minimum diameter of 70mm (assuming the entrance has the larger sign described above).

Your ARMA agent can advise how to obtain the signs.

ENFORCEMENT AND PENALTIES

The enforcement bodies will be local authority environmental health officers. The penalties are:

- Failure to display a sign - up to £1,000 or a fixed penalty notice of £200 on the landlord, resident management company or their agent.
- Smoking in a smoke-free place - up to £200 or a fixed penalty of £50 discounted to £30 for early payment on a resident smoking in the internal common parts.
- Failure to prevent smoking in a smoke-free place - level 4 fine up to £2,500 on the resident management company, landlord or their agent.

FURTHER INFORMATION

- Smokefree England is an organisation set up by Government to promote the regulations. www.smokefreeengland.co.uk.
- There are several useful guides available from Smokefree England website which can be downloaded or ordered in bulk.
- 'Your guide to the new smokefree law' - is written for businesses
- 'Everything you need to know about the smokefree law' is a general overview.
- There are also leaflets for individuals to tell them about the new law.
- The regulations can be downloaded free from www.opsi.gov.uk.
- The Smoke-free (Premises and Enforcement) Regulations 2006 SI 3368.
- The Smoke-free (Penalties and Discounted Amounts) Regulations 2007.
- The Smoke-free (Exemptions and Vehicles) Regulations 2007.
- The Smoke-free (Vehicle Operators and Penalty Notices) Regulations.

Whilst every effort has been made to ensure the accuracy of the information contained in this Lessee Advisory Note, it must be emphasised that because the Association has no control over the precise circumstances in which it will be used, the Association, its officers, employees and members can accept no liability arising out of its use, whether by members of the Association or otherwise. The Lessee Advisory Note is of a general nature only and makes no attempt to state or conform to legal requirements; compliance with these must be the individual user's own responsibility and therefore it may be appropriate to seek independent advice.

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