

Department of Health and Children guidance for Exempted Premises under section 47 of the Public Health (Tobacco) Act 2004 prohibiting smoking in enclosed workplaces

Arrangements have come into force under the Public Health (Tobacco) Acts 2002 and 2004 relating to the prohibition of smoking in most enclosed work places: there is however a number of exemptions in the health sector and these include:-

- Nursing homes.
- Non-acute, long stay facilities including community nursing units, community hospitals, welfare homes, district hospitals and former county homes.
- Residential facilities for people with physical, intellectual and sensory disability.
- Psychiatric Hospitals, but please note that Psychiatric Units attached to acute hospitals are not exempt.

General

The introduction of the smoke free at work arrangements will assist employers and managers to meet their legislative duty of care under the Safety, Health and Welfare at Work Act (1989) and their common law duty of care to their employees. However, the exemption of a place or premises from the ban does not remove from an employer or manager that legislative or common law responsibility. Employers and managers with responsibility for exempted premises are advised to review their policies with a view to eliminating exposure where possible but at least to minimise exposure to ETS. Nothing in the legislation obliges an employer or manager of exempted premises to permit smoking or to provide a smoking area.

Psychiatric Hospitals

The exemption in the case of Psychiatric Hospitals was intended to cover cases that might arise with very disturbed patients who could not be permitted to smoke in e.g. the grounds of the hospital. In the case of the majority of patients there should be no need to avail of this exemption and, in this regard, attention is drawn to the fact mentioned in the previous paragraph that the employer or manager of an exempted premises is not obliged to permit smoking or to provide a smoking area.

Smoking by Staff Members and Non-Residents

As stated previously, the basis of the exemptions was the difficulty anticipated in not permitting smoking by residents in these premises. It should, therefore, be made clear to staff and non-residents that the exemption was never intended to apply to them.

Designation of Smoking and Non Smoking Accommodation

ETS leaves dangerous residues which build up over time, however, where provision of smoking accommodation is considered to be necessary, accommodation should be designated either 'smoking ' or 'non smoking' and this designation should be adhered to where practicable.

Protection of Staff who are required to Enter Accommodation where Smoking has occurred

Care should be taken to ensure that areas where residents have been smoking are fully ventilated before staff members are required to enter them in the normal course of their duties.

Duty of Care

All persons in positions of authority should be aware that notwithstanding the exemption, employers retain a 'Duty of Care' and are of course responsible for ensuring a safe and healthy place of work. In particular, it should be noted that the fact that this accommodation is exempted from the general prohibition on smoking is not intended to provide a defence in the event that a person takes legal or other action to vindicate their rights to live or work in a safe and healthy environment. Where staff or clients raise specific concerns about exposure to ETS they should be addressed promptly.

Queries in Regard to Premises

Any queries in regard to whether or not a particular premises are exempted should be directed to the Tobacco Control Unit of this Department

General Guidance

General guidance in respect of the new measures is now available from www.smokefreeatwork.ie and has been distributed to employers generally. If further information is required please contact the Tobacco Control Unit of the Department of Health and Children. Please note that this guidance may be updated from time to time.