



The
Property
Institute

ADVICE NOTE

SMOKE FREE REGULATIONS

A guide to the smoking ban in blocks of flats



CONTENTS

| | |
|--|----------|
| At a glance | 3 |
| The impact on blocks of flats | 3 |
| The impact on flat owners | 3 |
| Signage requirements in Wales | 3 |
| Signage requirements in England | 3 |
| Enforcement and penalties | 3 |
| E-Cigarettes | 3 |
| Final word | 4 |
| Further information | 4 |

NOTE

As the leading trade body for residential leasehold management, TPI is also an important resource for leaseholders. Our Advice Notes cover a range of topics on the leasehold system to help leaseholders understand their rights and responsibilities and ultimately get the most out of living in their flat.

AT A GLANCE

Since 2007, the internal communal areas of block of flats must be smoke-free by law. Residents who smoke in the internal communal areas can be prosecuted by the local authority and fined up to £200.

No-smoking signs should be placed in all internal communal areas. There are different regulations about signage for England and Wales but it's an offence not to display the signs.

Whether or not you agree with the smoke-free law, your landlord and managing agent have a duty to prevent anyone from smoking in the communal parts of your block. If they don't, they can be fined.

The impact on blocks of flats

Enclosed communal areas of blocks of flats are designated smoke-free premises. Even external porches that are less than 50% open sided must be smoke-free.

Residents' Management Companies (RMCs), landlords or their agents must display no-smoking signs that meet the regulations.

If your block of flats has an office for onsite staff (a porter for example), then that must also be kept smoke-free. Likewise, smoking should not be permitted in any storeroom, boiler room or meter cupboard.

The impact on flat owners

Individual flats are exempt from the regulations. They don't prevent leaseholders from smoking in the privacy of their own homes. But they must not smoke in the internal communal areas — it's against the law.

If you smoke inside communal areas, you could be fined up to £200 by the local authority!

So if you're a smoker, you should put your cigarette out at the front entrance of the building if you don't do so already. If you smoke inside the communal areas, you could be fined up to £200 by the local authority.

If you continue to smoke in the communal areas of the block your landlord, RMC directors or your managing agent have to ask you to stop. It's not that they're necessarily anti-smoking, or picking on you personally, but the law puts a duty on them to challenge smokers. If they don't, they can be fined up to £2,500.

Also bear in mind as a smoker that if you want a member of the onsite team or your managing agent to visit you in your home, the law puts a duty on their employer to consider their health and safety from smoke. So some companies may adopt a policy where employees can refuse to visit or work in a flat where the resident smokes.

It is not uncommon for complaints to arise in respect of the smell of smoke within the common parts as a result of a resident smoking within their flat. Your landlord, RMC directors or your managing agent can be asked to speak with the resident to explain the impact the smell of smoke has on the common parts and on other residents,

if of course you are able to confirm the identity/flat number of the resident. However, beyond that, there is not much else that the landlord, RMC directors or your managing agent can do, as in most cases, their authority does not include inside individual flats.

Signage requirements in Wales

All smoke-free premises must display prescribed signs. The minimum size of the sign and wording is set out in law. The no-smoking sign for each entrance to a blocks of flats or office must:

- Be in a prominent position
- Be at least A5 size in area
- Display the international no-smoking symbol in colour at a minimum of 70mm (3 inches) 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 something more specific like 'in communal parts of this building' or 'in this doorway').

If there's a room or office in the block for onsite staff (like a porter's office), then the sign can simply be the no-smoking symbol in colour at a minimum diameter of 70mm (assuming the main entrance of the building has the larger sign described above).

Your TPI agent can advise you where to get the signs from.

Signage requirements in England

From 1st October 2012 the requirements for No Smoking signs in England were relaxed.

It's still a legal duty to display at least one sign in smoke-free premises and vehicles, but there will be discretion for their design and location.



Enforcement and penalties

Local authority environmental health officers enforce the smoke-free regulations. They can issue the following penalties:

- Failing to display a no smoking sign: fine of up to £1,000 or a fixed penalty notice of £200 served on the landlord, RMC or their agent
- Failing to prevent smoking in a smoke-free place: fine of up to £2,500 on the landlord, Resident Management Company, landlord or their agent.
- Smoking in a smoke-free place: fine of up to £200 or a fixed penalty of £50, discounted to £30 for early payment, served on the resident caught smoking in the internal communal areas.

E-Cigarettes

Loca E-cigarettes (vaping devices) are not 'smoking' for the purposes of the Health Act 2006 and are therefore not prohibited in communal areas by the smoke free Regulations. However, managing agents and RMCs should be aware of the following:

1. Fire safety: lithium-ion batteries in vaping devices and their chargers present a significant fire risk if damaged, improperly charged or of poor quality. In Higher Risk Buildings particularly, residents should be advised not to charge vaping devices unattended or to store them in a way that creates a fire risk.
2. Lease enforcement: many modern leases (and house rules) can be amended to restrict vaping in communal areas. Managing agents should review leases and consider whether house rules or a residents' policy should address vaping, particularly if complaints arise from other residents.
3. Health considerations: whilst not covered by legislation, many agents and RMCs choose to discourage vaping in communal areas for health and comfort reasons. This can be addressed through house rules rather than the Smoke Free Regulations. Managing agents should not advise leaseholders that the law prohibits vaping in communal areas it does not. Any restriction must be based on the lease or a validly adopted house rule.

Final word

The smoke free law applies to residential blocks of flats in the same way as to other communal premises. Landlords, managing agents and RMC directors all have a statutory duty to prevent smoking in communal areas. For properties experiencing persistent smoking in communal areas, the law provides clear tools for enforcement.

Further information

Here's a summary of the smoke-free Regulations:

- The Smoke-free (Premises and Enforcement) Regulations 2006 SI 3368
- The Smoke-free (Penalties and Discounted Amounts) Regulations 2007 SI 764
- The Smoke-free (Exemptions and Vehicles) Regulations 2007 SI 765
- The Smoke-free (Vehicle Operators and Penalty Notices) Regulations SI 760
- The Smoke-free (Signs) Regulations 2012 SI 1536 To read them in detail visit: legislation.gov.uk

For guidance on the smoke-free law in Wales visit: wales.gov.uk

The Property Institute

The Property Institute

3rd Floor, 2–4 St George's Road
Wimbledon
London
SW19 4DP

Tel 020 7978 2607
info@tpi.org.uk
www.tpi.org.uk

Note:

Whilst every effort has been made to ensure the accuracy of the information contained in this TPI Advisory Note, it must be emphasised that because TPI has no control over the precise circumstances in which it will be used, TPI, its officers, employees and members can accept no liability arising out of its use, whether by members of TPI or otherwise.

The TPI 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.