



Detention services order 2/2014 (Replaces DSO 12/2011)

Smoke-free legislation

Application to immigration removal centres, short-term holding facilities, pre-departure accommodation & escort vehicles

1. The Smoke-free Regulations 2007, implementing provisions of the Health Act 2006, took effect in England¹ on 1 July 2007. A summary of the principles of the legislation is at Annex A.
2. Broadly, the regulations require all indoor areas to be smoke-free and for arrangements to be in place to minimise the dangers of passive smoking. Unlike prisons, where legislation makes provision for accommodation for persons aged 18 or over to be exempt from being smoke-free, subject to specified conditions, no such exemption applies to the immigration detention estate. However, given the particular circumstances of the estate, it has been decided that a pragmatic approach should be applied in the implementation of the legislation so far as it affects detainees in removal centres and residential short-term holding facilities. This is based on the principle that these premises are, in effect, detainees' places of residence during their period of detention. For staff, the premises are places of work so the same considerations do not apply.
3. Each removal centre and residential short-term holding facility needs to implement a smoking policy based on one of the following principles:
 - a. no smoking in any indoor area – This is the ideal position but where this is not possible due to restrictions on access to the open air;
 - b. indoor smoking permitted only in bedrooms designated for smoking where these are the 'home' of the occupants and consistent with the conditions set out in the Health Act Regulations.
4. Local policies based on (b) above will need to implement the following:
5. **Designated rooms.** Centre managers may designate a room as a place where smoking is permissible when occupied only by smokers. This can only be a bedroom and must hold no more than four persons, all of whom

¹ Parallel legislation came into force on 26 March 2006 in Scotland, and 2 and 30 April 2007 in Wales and Northern Ireland respectively.

are smokers. These rooms need to meet certain criteria:

- a. They must be designated by the person in charge of the premises as being rooms in which smoking is permissible;
- b. They must not have a ventilation system which opens onto any smoke-free part of the premises;
- c. They must not have any doors that open on to smoke-free parts of the premises, which are not mechanically closed immediately after use; and
- d. There must be a sign at the entrance to each unit containing rooms in which smoking is permitted indicating that this is the case.

No other parts of the building may be designated as smoking areas and staff will not be permitted to smoke within any designated room.

6. Centre managers must prepare risk assessments, and review existing assessments on how the health and safety of employees, visitors and detainees will be best protected, and the availability of and/or access to outside space for smoking. Centre managers must also assess the risk to staff with pre-existing medical problems, such as asthma, on a case-by-case basis.
7. Centre managers must establish protocols for when staff or visitors enter an area where smoking is or has been permitted. Some general guidance is given at Annex B but protocols will vary according to local circumstances – layout of rooms, ventilation, etc.
8. Rooms in which smoking is allowed must be certified in writing as rooms in which smoking may take place. Centre Managers must keep copies of the written designation for inspection by an enforcement officer at any time.
9. **Family units.** Units designated for families with children must have entirely smoke-free buildings. This in effect means that adult family members will only be able to smoke outdoors. Persons under 18 will not be permitted to smoke.
10. **Staff smoking.** A policy on when and where staff may smoke should already be in place but it should be reviewed in the light of the legislation and this Order. In establishments holding families with children, a completely smoke-free environment is to be implemented within family units. In establishments that do not hold families with children, or the non-family unit parts of centres that do hold families with children, smoking is not to be permitted in any enclosed area not designated as a smoking area. This prohibition applies to detainees, staff, visitors and contractors. Members of staff must not smoke in any room even where it is designated to be a smoking area. In effect, therefore, staff must not smoke anywhere

within the buildings of the centre at any time. Home Office Immigration Enforcement staff working in removal centres, pre-departure accommodation and short-term holding facilities are expected to comply with the [Home Office smoking policy](#).

11. **Signage.** Centre managers must arrange for the appropriate signage to be displayed (see Annex C).

Non-smokers sharing rooms with smokers

12. Where accommodation rooms have been designated as smoking areas, non-smokers must not be required to share a room with smokers who are actively smoking. The status of a detainee as a smoker or non-smoker should be established as part of reception procedures. Thereafter, arrangements must be made to place non-smokers and smokers in separate accommodation.

Dormitories

13. Dormitory (i.e. containing more than four persons) accommodation must be smoke-free. Centres with dormitory accommodation will therefore need to ensure it is smoke-free. However, there should normally be sufficient flexibility within the regime to provide sufficient time for detainees to be in the open air in order to smoke.

Non-residential short-term holding facilities (holding rooms)

14. Smoking must not be permitted in holding rooms. This applies to both detainees and staff. Signs in compliance with legislation must be displayed in all holding rooms.

Smoking in vehicles

15. Smoking must not be permitted in any escort vehicles. This applies to both detainees and staff. Signs in compliance with legislation must be displayed in all escort vehicles.

Other tobacco products

16. Snuff and chewing tobacco are not affected by the legislation because, although they remain harmful to the user, there are no significant hazards to the health of others.
17. Electronic cigarettes are not affected by legislation but, where permitted, must be treated in the same manner as real cigarettes. This means their use indoors must be restricted to designated smoking bedrooms.

The legislation

1. All smoking is prohibited in enclosed premises and vehicles, with the exemption of a few specific cases.
2. Under the smoke-free legislation, designated rooms that are used as accommodation for persons aged 18 and over will not have to be smoke-free in certain specified premises. The Government has made it clear that there is no intention through smoke-free legislation to prevent individuals from smoking in areas of premises that are considered to be private residential space. Nevertheless, in certain types of residential accommodation, a balance is needed between allowing people to smoke in their own residential spaces and protecting others from exposure to second-hand smoke, including the other people who live within the building and those who work there.
3. This policy has been drafted in such a way that recognises all premises are unique. This provides flexibility for managers to make decisions about whether to implement exemptions, based on factors that will be specific to the premises concerned. Such considerations include the nature of the detainee population, the physical layout of the centre and how other legislation (including fire and building regulations and health and safety laws) applies.
4. Under the legislation, there is no legal obligation for detainees to be allowed to smoke. However, it is accepted that, where detainees' access to the open air is significantly restricted, adult detainees who wish to do so may be permitted to smoke in their bedrooms where circumstances permit.

An outline model protocol for a safe system of working for security searching of, or other entry to, rooms where passive smoking gives cause for concern

1. Local circumstances will dictate the specific protocol required for staff to safely enter rooms where a detainee who smokes resides. The following points are offered as sensible brief general advice. It is recognised, for example, that in certain rooms it may take longer than in others for the passive smoking risk to lessen, perhaps because a window cannot be opened to help smoke dissipate.
2. Before entering a room, the first action of the staff, in compliance with best practice, is to check whether the room is occupied or not. If a detainee is smoking in the room, staff are not required to enter, but may instruct the detainee to extinguish the cigarette, and where appropriate open the window and vacate the room. The detainee and member of staff should wait until they are content that the cigarette smoke has dissipated to allow safe entry into the room.
3. If a detainee has recently left the room, and the presence of smoke is evident, a detainee may be instructed to return to the room to open, where appropriate, the room window. Security searching can take place when staff are content that the smoke has dissipated sufficiently to sensibly allow safe entry into the room.
4. **Safety of life.** This protocol does not override the duty for centre staff to intervene to protect a detainee or member of staff in danger of immediate harm in a room where smoke has not yet cleared.

Signage

The legislation prescribes that certain signs must be displayed and details of the requirements can be found in the Smoke-free (Signs) Regulations 2007 (SI. No. 2007/923). Guidance is available on the smoke-free website at: <http://smokefreeengland.co.uk/resources/guidance-and-signage.html>. The exemptions allowing smoking in designated areas lie in Part 1, Chapter 1 (section 3) of the Health Act 2006.

The appropriate signage is as follows:

- A flat rectangular sign of a minimum size A5 (148mm by 210 mm).
- It must display the international no smoking symbol, consisting of a graphic representation of a burning cigarette in a red circle with a red bar across it.

At the entrance to all premises, an A5 sign with the following wording, in characters that can be read easily, must be displayed:

- **No smoking. It is against the law to smoke in these premises.**

A prominent sign is to be displayed at each entrance to a residential unit in centres where smoking is permitted in designated rooms:

- **Rooms in this building may be designated smoking areas and may contain smokers.**

For all vehicles, the international no smoking symbol must be displayed in the vehicle.