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ADVICE NOTES

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***UPDATE* On 11 April 2017 the UK Supreme Court overruled the smoking ban at the State Hospital after an appeal by a patient. We are currently reviewing our guidance in light of these changes.**

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Smoking has been banned in public places in Scotland since 2006 by virtue of the Smoking, Health and Social Care (Scotland) Act 2005. The law does, however, make an exemption from the ban for residential mental health institutions, where it permits smoking in designated indoor rooms, if the health board or hospital decides to allow it.

During its visit programme, the Commission has visited NHS health board areas where there is a complete ban on smoking, including within the hospital grounds. We have also visited hospitals where smoking rooms are still provided. We have found that practices can vary greatly from hospital to hospital, even within the same health board area.

The Commission is often asked its opinion on whether smoking in mental health and learning disability inpatient services should be permitted. We have said previously that whether to allow smoking in designated areas within a mental health facility is ultimately a matter for hospital/service managers. Following a recent court case, there has been further discussion about this issue and again we have been asked our view.

The current legal position is:

It is not considered a breach of human rights for hospital managers to ban smoking in their facilities. There is no legal reason why hospital managers cannot ban smoking.

In December 2011, the State Hospital at Carstairs introduced a smoking ban. In 2013, a patient won a court ruling that the smoking ban at the facility breached his human rights. The State Hospital appealed this and, on 12 August 2014, Lord Carloway ruled that: "the decision about whether patients, or indeed staff and visitors, should be permitted to smoke within the boundaries of the State Hospital was, and is, one of management."

He added that: "It is not for the court to review the merits of the decision and to substitute its own views on the desirability of imposing a comprehensive smoking

ban in the State Hospital', further noting that the ban was 'proportionate to the legitimate aim of promoting the health of those detained and those at work.'

What we think

The Commission is of the opinion that hospital managers are legally entitled to ban smoking in a hospital and in its grounds if they see fit. This is also the position stated in the Scottish Government's 'Smoke Free Mental Health Services in Scotland Implementation Guidance', published by NHS Scotland in 2011. Our concern is that people with mental health problems face some of the greatest health inequalities in Scotland. They are much more likely to suffer chronic physical ill health, and premature death, than the general population. The Commission understands and fully supports the drive to reduce smoking rates and associated smoking related diseases in people with mental ill health.

In previous guidance, we stated that there was little evidence of any link between stopping smoking and treatment outcomes, but it is now established that stopping smoking can have a beneficial effect on the efficacy of some medications, and on mental health and well-being in general. We believe that many smokers with mental health problems do wish to stop smoking, and should receive as much help and encouragement as possible to stop. All patients in mental health service facilities must have quick and easy access to a smoking cessation specialist, and a member of staff should be identified as the smoking cessation 'link person' in every ward/unit.

There is often a lack of provision of therapeutic activities available to patients in mental health wards/units, and we believe that a lack of diversionary activities can increase the amount of cigarettes that people smoke. Many people describe using cigarettes as a way of dealing with stress and anxiety, and mental health services need to be able to provide alternative methods to help manage this.

Taylor G et al, 2014, *Change in mental health after smoking cessation: systematic review and meta-analysis*, BMJ 2014; 348:

Ratschen, E. Britton, J. McNeill, A. 2009. *Implementation of smoke-free policies in mental health in-patient settings in England*. The British Journal of Psychiatry, 154, pp. 547-551.





Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE

Tel: 0131 313 8777

Fax: 0131 313 8778

Service user and carer

freephone: 0800 389 6809

enquiries@mwscot.org.uk

www.mwscot.org.uk