PRIVATE DWELLINGS – Common Parts

This section provides further guidance on the application of smokefree legislation to the common parts of Houses in Multiple Occupation (HMOs) and purpose built/converted blocks of flats. See also page 50 of the LACORS/CIEH Guidance on 'Implementation of smokefree legislation in England – Guidance for local council regulatory officers' and section 2 Health Act 2006.

The legislation only applies to the common parts of the building if the common parts are:

- open to the public, or
- used as a place of work by more than one person (even if the persons who work there do so at different times, or only intermittently)

Common parts include common entrance lobbies, stairwells, lifts, corridors plus any facilities/areas shared by the occupants of more than one household. So, for example, if the property is split into bedsits, the common parts would include any kitchens, bathrooms or living/dining areas that are shared by more than one household.

The smokefree legislation will apply within the common parts of the building if they are 'open to the public'. The common sense approach to the wording 'open to the public' implies that there is open access to the public through an unlocked door. Therefore a block of flats with an open entrance or unlocked communal entrance door would be considered 'open to the public' and the smokefree legislation would apply. However, any residential property with a locked front door either controlled manually or via a door entry system would be considered private.

If the common parts of the building are not open to the public, the smokefree legislation will only apply if the common parts are used as a place of work by more than one person (including voluntary work). The kind of work which will need to be taken into account is work which is regular and frequent such as cleaners, porters, security guards, etc, who are specifically employed to work in the common parts of the residential property. Where there is only one such person employed then the provision of a second person on a temporary basis to cover a period of sickness absence or holiday might be discounted.

In addition to people specifically employed by the owner, landlord or property manager to work in the common parts of the building, there may also be other employees who use the common parts 'as a place of work'. For example, daily postal or milk deliveries to individual flats which necessitate people walking through the common parts of the building.

The question or whether the common parts are used as a place of work by more than one person will be a question of fact and degree. So, for example, it would be appropriate to discount work which by its nature means that entry to the common parts is irregular and ad-hoc; e.g. parcel deliveries, fast food deliveries, supermarket shopping deliveries, house removal firms, estate agents, etc.

The regulations also specifically exclude work that is carried out to maintain the structure or fabric of the dwelling and/or to install, maintain or remove any service provided to the dwelling for the benefit of persons living in it.

If the common parts are used as a place of work by more than one person, section 2(3) of the Health Act 2006 states that the smokefree legislation will apply to the parts of the property that are open to the public and/or used as a place of work by more than one person.