

Smoking in Public Places

Introduction

The ban on smoking in public places came into force in England on 1 July 2007 and in Wales on 2 April 2007. A ban was already in place in Scotland and the Republic of Ireland.

Where will smoking be banned?

In England, the ban on smoking affects all business premises if they are wholly or substantially enclosed. This includes office premises, restaurants, pubs, hotels and shops. Premises will be considered to be enclosed if they have a ceiling or roof but there are openings in the walls, which are less than half of the total area of the walls, including other structures that serve the purpose of walls, and constitute the perimeter of the premises. No account may be taken of openings in which doors/windows or other fittings can be opened or shut.

Residential accommodation

Private residential space does not have to be smoke-free. However:

- Any part of a dwelling must be smoke-free if it is used solely as a place of work by anyone who does not live there or by anyone who receives people such as customers, clients or colleagues there. (The provision of personal care, assistance with domestic work, building maintenance and installation etc of services do not count as work for this purpose.)
- Any part of a private dwelling does need to be smoke-free if it is shared with other premises (whether a private dwelling or not). This means that communal lifts, indoor stairwells,

communal corridors, shared kitchens or laundries and reception areas to apartment blocks will all need to be smoke-free.

Hotels

A designated bedroom in a hotel or members' club does not have to be smoke-free if it is designated, in writing, by the person in charge of the premises, not to be smoke-free.

A designated bedroom means a room which:

- Is set apart exclusively for sleeping accommodation
- Has been designated by the person in charge of the premises in which the room is situated as being a room in which smoking is permitted
- Has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid floor to ceiling walls
- Does not have a ventilation system that ventilates into any other smoke-free part of the premises (except any other designated bedrooms)
- Does not have any door that opens on to smoke-free premises which is not mechanically closed immediately after use and
- Is clearly marked as a bedroom in which smoking is permitted.

Exempt premises

Certain premises are allowed designated rooms that are free from the requirement to be smoke-free. These include:

- Care homes
- Hospices providing care for people in the final stages of progressive disease
- Prisons
- Mental health units (Until 1 July 2008 only)

A designated room means a room which satisfies the criteria set out above for a hotel designated bedroom save that the room does not need to be set aside for sleeping accommodation (or, in the case of prisons, have mechanically closing doors). It must, however, be either a bedroom or a room used only for smoking. (A room used only for smoking is also permitted in offshore installations and facilities used for smoking-related research and tests.)

Vehicles

There is no requirement for private vehicles to be smoke-free. An enclosed vehicle must be smoke-free if it is used for the transport of members of the public. Taxis and mini-cabs must thus remain smoke-free even when not carrying passengers.

Any enclosed vehicle used in the course of work by more than one person, regardless of whether they are in the vehicle at the same time, does need to be smoke-free. This impacts on company pool cars and heavy goods vehicles and it is intended to protect workers from the effect of second-hand smoke.

Trains are included, but aircraft and currently most ships and hovercrafts are excluded from these requirements. Smoking is not permitted on train platforms that are substantially enclosed.

Theatre

Following controversy during the Edinburgh Fringe, the law in England allows, where the artistic integrity of a performance makes it appropriate, for a person taking part in a performance to smoke. This exemption does not

apply to other people who are present during the performance, such as members of the audience.

Signage

In each entrance to smoke-free premises there must be at least one A5 sign (148 x 210 mm). The sign must:

- Display the no smoking symbol (at least 70 mm in diameter)
- Contain the following words in easily-read characters "No smoking. It is against the law to smoke in these premises"

The Government has stipulated that there can be some flexibility in this wording so, for example, the word "pub" or "hotel" could be substituted for the word "premises".

The no smoking symbol alone in a prominent position will suffice in:-

- Entrances from other smoke-free premises (e.g. to shops within an indoor shopping centre); and
- Secondary entrances used only by staff.

Anyone with management responsibilities for a smoke-free vehicle must also ensure that at least one sign with the no smoking symbol is prominently displayed in each enclosed compartment of the vehicle.

Penalties

For failure to display signage, the penalty is up to Level 3, currently £1,000 or alternatively a penalty notice of £200, reduced to £150 if paid within 15 days.

For smoking in a smoke-free place, the penalty is up to Level 1, currently £200 or alternatively a penalty notice £50, reduced to £30 if paid within 15 days.

For failure to prevent smoking in a smoke-free place, the penalty is up to Level 4, £2,500 with no alternative penalty notice .

Enforcement

Anyone in charge of smoke-free premises is under a duty to stop people from smoking there. This duty extends also to drivers of smoke-free vehicles and anyone with management or safety responsibilities for such vehicles.

The law will be enforced by environmental health officers of the local councils and port health authorities. They have the power to enter smoke-free premises in order to establish that the smoke-free legislation is being enforced in accordance with the law.

It is an offence:

- To obstruct intentionally an officer who is enforcing the smoke-free legislation;
- To fail to give enforcement officers facilities, assistance or information they reasonably require;
- To make a statement in purported compliance knowing it to be false or misleading.

The penalty is a fine up to Level 3, currently £1,000.

What steps will an employer need to take?

Reasonable measures should be taken to ensure that staff, customers and visitors are aware of the law and they do not smoke in smoke-free premises or vehicles.

If a person is smoking in the smoke-free premises the employer should:

- Draw the person's attention to the no smoking signs and remind them that they are committing an offence
- Advise the person that it is also an offence for the employer to allow anyone to smoke
- Explain to them that the business has a smoke-free policy to ensure a safe working environment for all staff and customers.

If the person smoking is an employee:

- If the warning has been ignored, immediately ask them to leave the premises

- If the person refuses, implement the normal disciplinary procedure for anti-social/illegal behaviour in the workplace
- Maintain a record of all such incidents and outcomes.

If the person smoking is a customer, the employer should:

- Explain that staff are obliged to refuse to serve if they continue to smoke
- If the customer carries on smoking, ask them to leave the premises
- If he or she refuses, implement the normal procedure for anti-social/illegal behaviour on the premises
- Maintain a record of all such incidents and outcomes.
- Proprietors should retain a record of written designation of rooms that are not smoke-free so that it is available for inspection by an enforcement officer.

How will pubs and clubs cope?

A range of outdoor shelters are already available and can be seen in many locations. Premises licences will need to be checked if publicans wish their customers to be able to smoke and consume alcohol in the shelters. In many cases, an application to vary the premises licence is necessary and, in addition, planning consent may be required.

Employers wishing to provide outdoor smoking areas for staff and customers should consult with staff and then take legal and local planning advice to make sure that the proposals comply with the law. Any smoking shelter or area must not be enclosed (under the definition summarised in the second paragraph of this note). Consideration may also need to be given to ensure the safety of individuals in an outside area if the location is isolated or poorly lit.

Conclusion

The law creates new offences of smoking in smoke-free premises, of permitting persons to

smoke in smoke-free areas and of failing to prevent smoking or to display warning notices in smoke-free premises.

Despite misapprehensions, the new law has been widely acclaimed and seems to be adhered to in the vast majority of places. Some businesses have had to be imaginative to create new income streams. There are those that have genuinely suffered a significant reduction in trade as a consequence of customers being unable to smoke on their premises.

STOP PRESS!

From October 1 2012 the requirements for “No Smoking” signs in England are to be relaxed. The Smoke-free (Signs) Regulations 2007 have been revoked and replaced with the Smoke-free (Signs) Regulations 2012.

Please click here >>> to see our new Briefing on the changes.

For further information, please contact:



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