



Smoke-free premises in England to become law on 1 July 2007

On 1 July 2007 smoking in all public premises in England (with limited exceptions) will be prohibited. The ban has come into effect in Wales on 2 April 2007.

The Health Act 2006 requires that public places and work places are to be smoke free if they are "enclosed" or "substantially enclosed". This will include pubs, restaurants, hotels, members clubs and certain residential accommodation. It will also extend to vehicles used by the public and to vehicles used primarily for work purposes by more than one person. It will apply to trains, buses and in some limited cases, ships or hovercraft. Aircraft are already subject to legislative control. Designated bedrooms in hotels or guesthouses will be exempted. However, this is subject to certain conditions being fulfilled.

"Enclosed or substantially enclosed"

Premises are defined as being "enclosed" if they have a ceiling or roof and, except for doors, windows and passageways, they are wholly enclosed either permanently or temporarily.

Premises are "substantially enclosed" if they have a ceiling or roof and there is an opening or openings which account for more than half of the area of the walls (walls include other structures that serve the purpose of walls and constitute the perimeter of the premises). In determining the latter point, no account is to be taken of openings in which there are doors, windows or other fittings that can be opened or shut. The term "roof" is defined to include any fixed or moveable structure capable of covering all or parts of the premises, including, for example, a canvas awning whether or not it is capable of being rolled open.

Notices to be displayed

At least one A5 sign will need to be displayed with the international no-smoking symbol and the wording: **"No smoking. It is against the law to smoke in these premises"** at each entrance to smoke-free premises.

A simpler sign consisting of just the international no-smoking symbol, at least 70mm in diameter, may be displayed at:

- entrances used only by staff providing at least one A5 sign is displayed on at least one entrance to the premises
- entrances to premises within larger smoke free premises that carry the A5 sign at entrances - such as shops or restaurants in shopping centres or railway stations

In relation to vehicles the international smoke-free sign (70mm in diameter) must be displayed in every compartment of the vehicle.

Local Authorities will carry out enforcement of the legislation. Guidance issued to Local Authorities suggests that there will be a stepped approach to enforcement, starting with a verbal warning for breaches of the legislation.

Ultimately there are financial penalties for any breaches and fixed penalty fines can be given for some offences:

- failure to display a no smoking sign carries a maximum penalty of £1,000 on conviction or £200 fixed penalty (£150 if paid within 15 days)
- smoking in a smoke free place carries a maximum penalty of £200 on conviction or £50 fixed penalty (£30 if paid within 15 days)
- persons controlling or being concerned in the management of smoke free premises or vehicles and failing to stop a person smoking there carries a maximum penalty of £2,500 on conviction with no option of a fixed penalty
- under the Environmental Protection Act 1990 it is already an offence if smokers litter the public highway (smoking materials and smoking waste) and they can be subject to a fixed penalty or risk prosecution. The fixed penalty will be £75 unless the Local Authority specifies a different amount

There are various due diligence defences available to persons being charged with any of the above offences committed under the Health Act 2006.

Practical considerations

The ban extends to management and staff as well as customers. Operators who wish to maintain smoking areas will only have limited options. External smoking shelters/awnings (that do not fall within the definition of being substantially enclosed) may be an option. However, some thought needs to be given as the following issues may arise:

- planning permission may be required, so the potential length of time for obtaining approval is relevant
- some Premises Licences have conditions restricting the terminal hour for external use of a beer garden or pavement area and preventing admission or re-admission after a particular hour. Such conditions would prevent customers popping outside for a cigarette after the terminal hour and returning after they had been outside
- there may be a risk of disturbance to residents due to the noise created. Appropriate measures to address the potential for noise disturbance should be considered, such as notices being displayed
- littering created by smoking materials/waste. Again, receptacles should be provided to avoid littering
- registered members clubs holding Club Premises Certificates under the Licensing Act 2003 are reminded that non-members who have purchased alcohol, are not allowed to consume such drinks off the club premises if they wish to leave the premises to go for a smoke. It will be necessary in such circumstances to vary the club premises certificate to include an external area

Care will also need to be taken in identifying those vehicles that must be smoke free. All 'pool' vehicles will need to be smoke free as it is anticipated that they are used primarily for work purposes. In cases of company cars where there is a primary user, but where other persons have access to the vehicle on occasions, consideration will have to be given to the overall use of the vehicle by reference to, for example, 'business' versus 'private' mileage. Operators may wish to consider adopting a 'no smoking policy in relation to all vehicles used whilst on company business.

Contact

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