



If we see you smoking we will assume you are on fire and take appropriate action.



ON SUNDAY 1 JULY THIS YEAR PART 1 OF THE HEALTH ACT 2006 COMES INTO FORCE AND ENGLAND WILL FOLLOW IN THE FOOTSTEPS OF IRELAND, SCOTLAND AND WALES AND BAN SMOKING IN PUBLIC PLACES.

Whether you view the ban as an essential step to protect employees and the public from passive smoking or a draconian measure introduced by an interventionist government, its effects will be inescapable and we are all well advised to consider how it will affect us at work, in the home and in public places.

The new law will apply to anything that can be smoked, such as cigarettes, pipes (including shisha or hookah pipes), cigars and herbal cigarettes. People will be guilty of breaking the law if they are smoking or in possession of a lit substance capable of being smoked in a smoke free area.

### **Premises**

The ban will make it illegal to smoke in virtually all 'enclosed' and 'substantially-enclosed' public places, work places and public and work vehicles and no-smoking signs must be displayed in all smoke free areas. The ban will apply to permanent structures as well as temporary ones, such as tents and marquees, and premises will be 'substantially enclosed' if they have roof or a ceiling and an opening or openings in the walls (not including doors, windows or other fittings that can be opened or shut) that is less than half the total area of the walls. For example, a three sided bus stop will be smoke free whereas a gazebo will not.

In general premises will be smoke free if and when they are open to the public unless they are also classified as a 'place of work' in which case they will be permanently smoke free. Premises are a 'place of work' if more than one person works there, even if at different times, or if the public might attend the premises to receive goods of services from the people working there. If only part of the premises are open to the public or used as a place of work then only that part will be smoke free. For example, a private dwelling above a restaurant or bar will not be smoke free.

Although the ban will not generally apply to private dwellings it will apply to the common parts of buildings containing more than one dwelling, such as lifts, stairwells and entrance halls. It will also apply to parts of a dwelling used solely for the purposes of a business if it is used by more than one person who does not live in the dwelling or it is visited by the public to deliver or receive goods or services.

Some premises or parts of premises may be classified as exempt, in particular those where a person has their home or is living, whether permanently or temporarily. Those places include hotel rooms, care homes and prisons. Others include research facilities or specialist tobacconist shops. In addition, areas reserved for performances where smoking is necessary for the artistic integrity will also be exempt. Nonetheless, clubs, pubs and other premises that sell alcohol are specifically excluded from being exempt.

### **Vehicles**

Once the ban is introduced, all vehicles used for public transport will be required to be smoke free at all times. Furthermore, where a vehicle is used for work by more than one person it will be required to be smoke free at all times, whether or not they are in the vehicle at the same time and regardless of whether they each smoke. Therefore, taxi drivers will have to smoke outside of their cabs and builder's trucks will also be smoke free. However, smoking will be permitted in vehicles that are for the sole use of the driver and are not used as a workplace by anyone else, either as a driver or passenger.

### **Enforcement**

Although local councils will be responsible for enforcing the new law a free phone number (0800 587 1667) has also been set up for employees and the public to report breaches of the law. In addition the managers of smoke free premises and vehicles will have legal responsibilities to prevent people from smoking and individuals caught smoking can be penalised. Failure to comply with the new law will be a criminal offence punishable by a fine, as detailed below:

- Smoking in a smoke free premises or vehicle: a fixed penalty notice of £50 (discounted to £30 if paid within 15 days) or a fine of up to £200 by a court;

- Failure to display no smoking signs in smoke free premises and vehicles: a fixed penalty notice of £200 (discounted to £150 if paid within 15 days) or a fine of up to £1000 by a court; and
- Failing to prevent smoking in a smoke free premises or vehicle: a fine of up to £2500.

There is no provision at this time for a failure to comply with the ban to lead to other sanctions, such as the loss of a pub licence, since it is anticipated that the fines will be sanction enough.

### **Preparing for the ban**

There are various practical steps you should take prior to the introduction of the smoking ban to ensure that you comply with the new legislation. Make sure you have all of the required no-smoking signs in place. The size and general description of the signs is prescribed so make sure yours comply with the new law. Consider how you will enforce the ban in your premises and if necessary introduce training for staff and a non-smoking policy to ensure that everyone knows their responsibilities. Remove all ashtrays and existing smoking rooms but, if you have staff or customers who will continue to smoke, think about where to accommodate smokers without damaging your business or bringing you into conflict with landlords, tenants or neighbours. If you decide to build an outside shelter for smokers you will need to consider issues such as planning permission, licensing, building control, noise and litter.

General guidance and assistance on how to comply with the ban may be found on the government website ([www.smokefreeengland.co.uk](http://www.smokefreeengland.co.uk)). Alternatively, if you require specific advice on whether or not your premises are required to be smoke free, please do contact us here at Pemberton Greenish.



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