

Smokefree England factsheet

SMOKEFREE REGULATIONS – FEBRUARY 2007 UPDATE

Introduction

From 1 July 2007, virtually all enclosed public places and workplaces in England will become smokefree. A smokefree England will ensure a healthier environment, so everyone can socialise, relax, travel, shop and work free from secondhand smoke.

Smokefree legislation is set out in Part 1 of the Health Act that was passed by Parliament in 2006. The Act sets out the broad provisions for smokefree legislation, and also provides a number of legal powers to enable the more detailed aspects of smokefree legislation to be dealt with in smokefree regulations.

The Government has now made or published the final draft versions of the five sets of smokefree regulations that are intended to be made under the Health Act 2006:

- a. The Smoke-free (Premises and Enforcement) Regulations,
- b. The Smoke-free (Signs) Regulations,
- c. The Smoke-free (Exemptions and Vehicles) Regulations,
- d. The Smoke-free (Penalties and Discounted Amounts) Regulations, and
- e. The Smoke-free (Vehicle Operators and Penalty Notices) Regulations.

The purpose and content of each set of regulations are outlined within this factsheet, as well as the current status of the regulations.

Important note: This fact sheet is intended as a guide, and has no legal basis. Most of the sets of regulations are only in the final draft form, and two sets will need to be approved by Parliament before they can be made law. The Department of Health and Smokefree England will make guidelines freely available that set out the finalised detail of smokefree legislation once all regulations have been made. Guidelines are expected to be available around Easter.

You can register to receive guidelines and other updates from Smokefree England now on the Smokefree England website at smokefreeengland.co.uk or by calling the Smokefree England Information Line on freephone 0800 169 169 7.

The Smoke-free (Premises and Enforcement) Regulations

These regulations set out:

- a. the definitions of “enclosed” and “substantially enclosed” premises, and
- b. the bodies that will enforce smokefree legislation and other provisions dealing with enforcement.

The regulations have been made and were laid before Parliament in December 2006, and will apply to England only.

Enclosed and substantially enclosed premises

Section 2 of the Health Act 2006 sets out that premises that are open to the public, or are used as a place of work by more than one person or where members of the public might attend to receive or provide goods or services are to be smokefree in areas that are enclosed or substantially enclosed. These regulations define what is meant by “enclosed” and “substantially enclosed” premises.

Premises will be considered to be enclosed if they have a ceiling or roof and, except for doors, windows or passageways, are wholly enclosed, whether on a permanent or temporary basis.

Premises will be considered to be substantially enclosed if they have a ceiling or roof, but there are permanent openings in the walls which are less than half of the total areas of walls, including other structures which serve the purpose of walls and constitute the perimeter of premises. When determining the area of an opening, no account can be taken of openings in which doors, windows or other fittings that can be open or shut. This is known as the 50% rule.

A roof includes any fixed or movable structures, such as canvas awnings. Tents, marquees or similar will also be classified as enclosed premises if they fall within the definition.

Enforcement of smokefree legislation

The regulations designate lower-tier local authorities and port health authorities as enforcement authorities for smokefree legislation within the areas for which they have responsibilities. The regulations also provide for the transfer of enforcement functions between enforcement authorities.

The Smoke-free (Signs) Regulations

These regulations set out:

- a. the requirements for no-smoking signs under smokefree legislation, and
- b. whose legal responsibility it will be to ensure that smokefree vehicles display no-smoking signs.

The regulations were published by the Government in their final draft form in December 2006 and will apply to England only. Due to the nature of the requirements that these regulations propose, the Government is currently providing European Union nations with the opportunity to comment on the proposals under European Commission requirements, before the regulations are made.

Section 6 of the Health Act places a legal duty on persons who occupy or manage smokefree premises to display no-smoking signs that meet requirements set out in regulations. Regulations can also make similar legal duties for the display of no-smoking signs that meet requirements set out in regulations in smokefree vehicles. Under the Health Act, it will be against the law to not display required no-smoking signs from 1 July 2007.

The Department of Health and Smokefree England will make signs that meet the requirements of these regulations available free of charge (in reasonable quantities) to order after Easter. Signs will also be included with the guidelines that will also be made available.

No-smoking signs in smokefree premises

The regulations will require all smokefree premises to display a no-smoking sign in a prominent position at each entrance that:

- a. is the equivalent of A5 in area,
- b. displays the international no-smoking symbol in colour, a minimum of 70mm in diameter, and
- c. carries the words in characters that can be easily read:

“No smoking. It is against the law to smoke in these premises”.

On the sign, the words “these premises” may be changed to refer to the particular premises where the sign is displayed, for example “this hotel” or “this NHS clinic”.

The regulations also set out that a no-smoking sign that simply displays the international no-smoking symbol in colour, a minimum of 70mm in diameter is the minimum requirement at entrances to smokefree premises which:

- a. are for staff only (on the basis that the premises displays at least one A5-sized sign with words, as set out above), or
- b. are located within other smokefree premises (for example, a shop within an indoor shopping centre).

No-smoking signs in smokefree vehicles

The regulations will require any person with management responsibilities for a smokefree vehicle to have legal duties to display a no-smoking sign in each enclosed compartment that can accommodate people. These no-smoking signs must simply display the international no-smoking symbol in colour, a minimum of 70mm in diameter.

The Smoke-free (Exemptions and Vehicles) Regulations

These regulations:

- a. set out the limited exemptions from the smokefree requirements of section 2 of the Health Act, and
- b. specify that most public and work vehicles are to be smokefree under section 5 of the Health Act.

The regulations will require the approval of Parliament before they can be made. On 31 January 2007, the Government laid before Parliament the final draft of the regulations that they are asking to be approved. The regulations will apply to England only.

Exemptions from smokefree legislation

The Government has proposed a number of exemptions from smokefree legislation in these regulations, for premises that would otherwise be required to be entirely smokefree in enclosed parts under smokefree legislation.

Private dwellings. The regulations set out that private dwellings will not be required to be smokefree, with the exception of:

- a. any parts of a dwelling which are used *solely* as a place of work for:
 - i. more than one person who does not live in the dwelling,
 - ii. a person who does live at the dwelling and any person who does not, or
 - iii. any person whether they live at the dwelling or not, if people who do not live at the dwelling come to give or receive goods or services.
- b. any parts of a premises that are used in common by more than one premises (for example, a common indoor stairwell in a block of flats or a communal kitchen in a student halls of residence).

The regulations will not restrict people from smoking in any part of their private dwellings used for work, if the work is undertaken solely to:

- a. provide personal care for someone living in the dwelling,
- b. assist with the domestic work of the household in the dwelling,
- c. maintain the dwelling, or
- d. install, maintain or remove any service provided to the dwelling for the benefit of people living there.

For the regulations, private dwellings also include self-contained residential accommodation for temporary or holiday use (such as a holiday cottage or caravan rented in its entirety for private residential use), as well as any other structures such as garages or sheds that are for the exclusive use of persons living in the dwelling.

Accommodation for guests and members. The regulations allow for designated bedrooms in hotels, guest houses, inns, hostels and members' clubs to be not smokefree if they meet conditions set out in the regulations, including being designated in writing by the person in charge of the premises. The conditions required to be met for designated rooms in these premises are detailed at Appendix A.

The regulations require that dormitory rooms, or other rooms for accommodation that a person in charge of premises makes available under separate arrangements for persons to share at the same time, must always be smokefree.

Other residential accommodation. The regulations allow either for designated bedrooms to be not smokefree, or for designated rooms used *only* for smoking in care homes, hospices and prisons if they meet conditions set out in the regulations, including being designated in writing by the person in charge of the premises. Designated rooms are only for persons over the age of 18 years. The conditions required to be met for designated rooms in these premises are detailed at Appendix A.

Offshore installations. The regulations allow for designated rooms *only* used for smoking in offshore installations to be not smokefree if they meet conditions set out in the regulations, including being designated in writing by the person in charge of the premises. The conditions required to be met for designated rooms in these premises are detailed at Appendix A.

Research and testing facilities. The regulations allow for designated rooms in a research or testing facility to be not smokefree during the time it is being used for research or tests that pertain to:

- a. emissions from tobacco and other products used for smoking,
- b. development of products for smoking with lower fire hazards,
- c. the fire safety testing of materials involving products for smoking,
- d. development of smoking or pharmaceutical products that could result in the manufacture of less dangerous products for smoking, or
- e. smoking cessation programmes.

Designated rooms in these premises must meet conditions set out in the regulations, including being designated in writing by the person in charge of the premises. The conditions required to be met for designated rooms in these premises are detailed at Appendix A.

Temporary exemption for residential mental health units. The regulations allow either for designated bedrooms to be not smokefree, or for designated rooms used *only* for smoking in mental health units that provide residential accommodation if they meet conditions set out in the regulations, including being designated in writing by the person in charge of the premises. Designated rooms are only for persons over the age of 18 years. The conditions required to be met for designated rooms in these premises are detailed at Appendix A.

This exemption is only temporary, and will cease on 1 July 2008 (after this date, all residential mental health units will be required to be smokefree in any enclosed parts).

Specialist tobacconists. The regulations allow for the shops of specialist tobacconists (as defined in the Tobacco Advertising and Promotion Act 2003) to be not smokefree for the time they are used for persons sampling cigars and pipe tobacco, if certain conditions are met. The conditions required to be met for designated rooms in these premises are detailed at Appendix A.

Performers. Where the artistic integrity of a performance makes it appropriate for a person who is taking part in that performance to smoke, the regulations allow for parts of premises in which a person performs to be not smokefree in relation to that person only during the time of the performance.

Smokefree vehicles

The regulations will require enclosed vehicles to be smokefree at all times, if they are used:

- a. by members of the public or a section of the public (whether or not for reward or hire), or
- b. in the course of paid or voluntary work by more than one person, even if those people use the vehicle at different times, or only intermittently.

Vehicles required to be smokefree will not need to be smokefree when they are conveying persons if they have a removable or stowable roof during the time the roof is completely removed or stowed.

Vehicles will not be required to be smokefree if they are used *primarily* for the private purposes of a person who:

- a. owns it, or
- b. has a right to use it which is not restricted to a particular journey

These regulations will apply to all vehicles, except:

- a. aircraft, and
- b. ships or hovercraft in respect of which regulations could be made under section 85 of the Merchant Shipping Act 1995 and other provisions as set out in the regulations, or to persons on any such ships or hovercraft.

The Smoke-free (Penalties and Discounted Amounts) Regulations

These regulations specify the penalties and discounted amounts for the smokefree offences created in the Health Act 2006.

The regulations will require the approval of Parliament before they can be made. On 31 January 2007, the Government laid before Parliament the final draft of the regulations that they are asking to be approved. The regulations will apply to England and Wales.

The regulations propose that the maximum fine on conviction for an offence relating to the display of no-smoking signs as set out in section 6 of the Health Act 2006 is level 3 on the standard scale (currently £1000). Where the fixed penalty procedure is used for an alleged offence relating to the display of no-smoking signs, the fixed penalty is £200 and a discounted amount of £150 if the penalty is paid within 15 days from when the notice is issued.

The regulations propose that the maximum fine on conviction for an offence of smoking in a smokefree place as set out in section 7 of the Health Act 2006 is level 1 on the standard scale (currently £200). Where the fixed penalty procedure is used for an alleged offence of smoking in a smokefree place, the fixed penalty is £50 and a discounted amount of £30 if the penalty is paid within 15 days from when the notice is issued.

Section 8 of the Health Act 2006 places a legal duty on any person who controls or is concerned in the management of smokefree premises to cause a person there to stop smoking. The regulations propose that the maximum fine on conviction for failing to prevent smoking in a smokefree place as set out in section 8 of the Health Act 2006 is level 4 on the standard scale (currently £2500). The Health Act does not provide for a fixed penalty notice to be given for this offence.

The Smoke-free (Vehicle Operators and Penalty Notices) Regulations

These regulations:

- a. set out the persons who will have legal duties corresponding to that in section 8(1) of the Health Act 2006 to cause any person who is smoking on a smokefree vehicle to stop smoking, and
- b. specifies the form of the fixed penalty notice for use by enforcement authorities.

The regulations were published by the Government in their final draft form on 31 January 2007 and will apply to England only. The Government intends to make these regulations in their current form at the time when the Smoke-free (Penalties and Discounted Amounts) Regulations are made, after Parliamentary approval has been granted.

Preventing smoking in smokefree vehicles

These regulations propose that the following persons will have a legal duty corresponding to that in section 8(1) of the Health Act 2006 to cause any person who is smoking in a smokefree vehicle to stop smoking:

- a. the driver,
- b. any person with management responsibilities for the vehicle, and
- c. any person in a vehicle who is responsible for order or safety on it.

Form of fixed penalty notices

These regulations specify the form of fixed penalty notices to be used by enforcement authorities. The regulations also specify how penalty notices can be adapted by enforcement authorities.

Conditions required to be met for designated rooms

This chart details the conditions that must be met for designated rooms in specified premises, as set out in the draft Smoke-free (Exemptions and Vehicles) Regulations. A “✓” on the chart means that the condition must be met in order to designate a room for smoking. If all required conditions are not met in any designated room in a specified premises, the room must be smokefree under the provisions in the Health Act 2006.

Type of premises	Accommodation for guests and club members (hotels, guest houses, inns, hostels or members' clubs), not including dormitories	Other residential accommodation (only care homes, hospices and prisons)	Offshore installations	Research and testing facilities (limited to those engaged in research or tests specified in regulations)	Mental health units that provide residential accommodation (exemption allowed until 1 July 2008)	Specialist tobacconist shops (as defined in the Tobacco Advertising and Promotion Act 2002)
Type of room that can be designated	Guest bedrooms, set apart exclusively for sleeping accommodation	Bedrooms or rooms used only for smoking	Rooms used only for smoking	Rooms used for specified research or tests	Bedrooms or rooms used only for smoking	Entire shop
Room designated in writing by the person having the charge of the premises in which the room is situated as being a room in which smoking is permitted	✓	✓	✓	✓	✓	
Room has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid, floor-to-ceiling walls	✓	✓	✓	✓	✓	✓
Room does not have a ventilation system that ventilates into any other part of the premises (except any other designated rooms)	✓	✓	✓	✓	✓	✓
Room does not have any doors that open onto smoke-free premises, which is not mechanically closed immediately after use	✓	✓ (except prisons)	✓	✓	✓	✓
Room is clearly marked as a room in which smoking is permitted	✓	✓	✓	✓	✓	✓