



SMOKING BAN INFORMATION

The smoke-free legislation has now been passed under the Health Act 2006.

There was a question mark on how far the regulations would go in limiting smoking in private members clubs. This question has now been answered with an amendment to the Government's proposal for a partial ban tabled on 14th February 2006, by the Chairman of the Health Select Committee, Kevin Barron together with 9 other committee members. The amendment was passed by an overwhelming majority of 200. The effect of the amendment means that there will now be a total ban on smoking in all enclosed public places. This means that private members clubs are no longer exempt under the proposals.

MP's believe that all workers, including bar staff, deserve protection from the dangers of second hand smoke and that the initial proposals to exempt pubs that do not serve food and licensed clubs ignored the advice of the Chief Medical Officer.

Timescale:

All enclosed public places and workplaces will become smoke-free from 6am, 1st July 2007.

The smoke-free legislation Regulations for England are being published and are set to come into force in England on 1st July 2007.

The Government have stated that the impact of the ban will be monitored from the outset and a review completed at the end of three years.

Fines:

On the spot fines of £200 have been set under The Smoke-free (Penalties and Discounted Amounts) Regulations 2007 for licensees and operators who fail to display no smoking signs. These have been set up to a maximum of £1,000 if a case goes to court.

Fines for failing to prevent smoking are set at a maximum of £2,500 for licensees and operators – compared to a maximum fine of just £200 in Scotland!

Customers caught smoking on premises face just a £50 fine.

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There is provision in the Regulations for a discounted fine if paid promptly.

Exemptions:

The Smoke-free (Exemptions and Vehicles) Regulations 2007 provide for a number of exemptions to the ban; for example a designated bedroom in a members' club. However, it is worth noting that there are a number of conditions attached to the exemptions.

Definition of 'enclosed' and 'substantially enclosed':

The definition can be found in The Smoke-free (Premises and Enforcement) Regulations 2007.

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 are 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 area of walls**, including other structures which serve the purpose of walls and constitute the perimeter of the 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.

The Government has promised to provide further guidance on this definition.

Signage:

The signage requirements can be found in The Smoke-free (Signs) Regulations 2007. These Regulations are currently in draft form and it is expected that they will be passed un-amended.

The Department of Health has confirmed that it will make signs available to businesses free of charge. This is something that we

requested in our response to the consultation and are therefore pleased that the Government has taken this issue on board.

Overlap between smoking and Licensing Law:

If, as a result of the ban, your club is considering the possibility of extending outside areas to allow smoking, eg patio and structures in the garden, structures which may not fall within the definition of 'substantially enclosed', then you would be well advised to try to coincide any structural alterations with the renewal of your Club Premises Certificate. This is because alterations to premises included within a Club Premises Certificate or Premises Licence, even minor ones, must be notified to your Licensing Authority and you may well need to submit a variation application. This is because a strict interpretation of the Licensing Act 2003 lends to the view that the required plan of the premises forms part of the operating schedule and so any change in layout is a variation. For more information on this particular aspect, please do contact the Legal Department.

History:

The proposals were originally outlined in the Government's White Paper **Choosing health, making healthier choices easier**.

The Government published its initial Health Bill which aims to deliver the pledge outlined in the Choosing Health White Paper.

The Government Department responsible for introducing this legislation is the Department of Health, details of the legislation can be viewed on its website www.dh.gov.uk.

The Government's Consultation on the Smokefree Elements of the Health Improvement and Protection Bill closed on 5th September 2005.

Our response to the Consultation is available in the table below as a download.

Other UK Bans:

Scotland's total smoking ban came into effect on 26th March 2006.

Wales's total smoking ban took effect on 2nd April 2007.

The ban in Northern Ireland will start on 30th April 2007.

Contacts:

The White Paper can be downloaded from the Department of Health's website www.dh.gov.uk or by calling the Department on 0207 210 4850.

The Act can be obtained from the Stationary Office via its website <http://www.tsoshop.co.uk> or by telephone on 08457 023 474.

www.smokefreeengland.co.uk is a website dedicated to providing advice on the ban.

For further information contact the RYA Legal Department on 0845 3450373 legal@rya.org.uk

Disclaimer:

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