

Royal Borough of Greenwich

Guidance:
Shisha and Smoking Shelters

NOVEMBER 2021

Introduction

Since 1 July 2007 it has been against the law to smoke in enclosed public places and workplaces. Owners and managers of these premises have a legal duty to prevent smoking and display appropriate signage. Failure to comply with the legislation can result in fines and penalties.

This guide explains the legal duties and legislation relating to shisha and smoking shelters. The law applies to anything that can be smoked i.e. cigarettes, cigars, shisha and herbal cigarettes.

All smoke free premises are required to display at least one legible no smoking sign. Signage can be obtained from <http://www.smokefreeengland.co.uk/resources/guidance-and-signage/>

Smoking Shelters

If you are in charge of a smoke free premises, you have a legal responsibility to prevent people from smoking in them. The regulations do not define how a smoking shelter should be located or constructed but does define that it should not be enclosed or substantially enclosed as mentioned below.

Premises are classed as '**enclosed**' if they have a ceiling or a roof and except for windows, doors and passageways are wholly enclosed, either permanently or temporarily.

'**Substantially enclosed**' is when a premises has a ceiling or a roof but have an opening in the walls which is less than the total area of the walls.

If you build a smoking shelter it must be at least 50% open - all of the time. This means that at least 50% of its sides must be permanently open.

Doors, windows and tent/marquee side-panels will be classed as part of the wall if they can be shut. If rugs, carpets or sheeting are used to cover up the spaces so that it is no longer at least 50% open, you will be in breach of the Health Act 2006 and could be fined.

If the smoking shelter is located too close to a wall or another obstruction, then the shelter could be classed as substantially enclosed. This also applies to temporary structures such as 'jumbrellas' or an awning that covers most of a courtyard which could make the space substantially enclosed.

Sighting of a smoking shelter

Shelters should be located away from other domestic/commercial premises. If it is too close to these premises it could lead to smoke infiltration which could be considered a nuisance, or prejudicial to health.

Owners of premises should also consider the noise generated, through people congregating in smoking areas and any music played through external speakers. If these issues affect an individual's enjoyment of their property and the issue happens frequently then this could be classed as a statutory nuisance. Shelters should also not be located near any chemical or LPG storage due to the risk of fire or explosion

Smoking Shelter Calculations

Enclosed/Open calculation

The calculation to establish if an area is open enough to allow smoking is as follows:

- 1) Measure the whole of the perimeter, excluding the roof and floor (that is, work out the TOTAL area of the four walls).
- 2) Measure the TOTAL area of ALL ENCLOSED PARTS of the four walls (again, exclude the roof and floor)
- 3) To determine whether smoking will be permitted within this structure the percentage of ENCLOSED (E) over TOTAL (T) perimeter areas must be calculated as shown below:
- 4) $E/T \times 100 = \% \text{ Enclosed}$ (E divided by T times by 100)
- 5) If the percentage calculated is MORE THAN 50% then smoking **WILL NOT** be permitted.

For the purposes of all of the above calculations, any openings (such as doors and windows) are considered to be enclosed areas.

Failure to comply with the law

Offence	Who is liable?	Fixed Penalty Notice	Court awarded fine
Smoking in a smoke free place	Anyone who smokes in a smoke free place	£50	Up to £200
Failing to display the required no smoking signs	Anyone who manages or occupies the smoke free premises	£200	Up to £1000

Failing to prevent smoking in a smoke free place	Anyone who manages or controls the smoke free premises	N/A	Up to £2500
--	--	-----	-------------

Planning permission & building control

If you are thinking about changing the use of a building; making physical changes to the building or erecting a smoking shelter you are likely to need planning permission.

If you are erecting any new structure or changing existing buildings then you may also be required to make a Building Regulations Application. Please ensure you contact the relevant Council Services before making changes or starting construction. However, please note that having planning permission and/or building regulation consent for a development does not mean that the development is permitted for use as a smoking/shisha shelter. Only the Environmental Health - Commercial Team can advise you on compliance with Health Act 2006.

Fire safety

The owner of the business must make sure that a written Fire Risk Assessment is undertaken. There must be means of tackling a fire. For example, fire extinguishers and have persons that are trained to use them.

There must be an adequate means of raising the alarm in the event of fire.

All furnishings and drapes need to meet the required standards so as not to ignite easily.

Tobacco advertising

Advertising any tobacco product is limited to single A5 sign at the point of sale.

The sign must include the warning 'Smoking kills' or 'Smoking seriously harms you and others around you'.

Posters in windows, banners on the side of premises or any other sign which carries a shisha brand or logo are all prohibited.

Age restricted sales and signage

It is an offence to sell Shisha containing tobacco or nicotine inhaling products to anyone under the age of 18. If you think someone is under-age you need to ask them for proof of age.

An A3 sign saying "It is illegal to sell tobacco products to anyone under the age of 18" must be displayed. The letters must be at least 36mm in height.

You must also display a statutory no-smoking sign in a visible position at each entrance to the premises.

Enforcement

The Royal Borough of Greenwich will follow the principals set out below when

enforcing legislation against shisha bars and retailers. These principles are consistent with the guidance on better enforcement and in line with the authority's enforcement policy.

Enforcement will be consistent – Any new premises that becomes known by the authority will be provided with guidance and information. However, it remains the responsibility of the business to familiarise themselves with the regulations that govern the use of shisha.

Where breach of smoke free legislation is witnessed – owners and/or managers of premises where a breach of the smoke free legislation is witnessed will receive a formal written warning outlining the offence and the date that the offence was witnessed.

On-going non- compliance will not be permitted –where advice and written warnings have been given continual infringement of the legislation should give rise to the consideration of formal action being taken by way of seizure, simple caution or prosecution.

Investigation and surveillance – unannounced visits, surveillance visits, mystery shoppers and test purchases may be made at premises offering shisha to ensure compliance with the legislation at all times.

Information will be shared with other interested parties – should an offence or relevant information come to light during investigations at any Shisha premises or retailer then this will be shared with the relevant body or enforcement agency.

Use of partner organisations – where considered appropriate partner organisations will be invited to attend inspections and enforcements at shisha premises.

Publicity – where appropriate, the community should be informed of the work carried out in regard to shisha premises, and the on-going commitment of the authority to the protection of the residents and visitors to the borough. Council will use news outlets and Social Media to publicise its action.

PLEASE NOTE: Only the Courts can interpret statutory legislation with authority and this leaflet may be revised or amended without notice.