



Summary Guide to Smoking Ban at Work

This Summary Guide aims to provide accurate, authoritative information and comment on the subject it covers. The information contained within it is correct at the time of publication. The Road Haulage Association cannot accept liability for any civil or legal action taken by or against any user of this paper. July 2007.

From 2 April 2007 in Wales, 30 April 2007 in Northern Ireland and 1 July 2007 in England, virtually all enclosed public places and workplaces became smoke-free following implementation of the provisions of the Health Act 2006. Scotland became smoke-free in 2006.

What premises are covered?

The regulations set out the definitions of “enclosed” and “substantially enclosed” premises. “Premises” are 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 smoke-free in areas that are enclosed or substantially enclosed. 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.

What signs need to be in place?

There is a legal duty on persons who occupy or manage smoke-free premises to display no-smoking signs, and to display no-smoking in smoke-free vehicles. It will be against the law to not display the required no-smoking signs from 2 April 2007 (Wales), 30 April 2007 (N Ireland) and 1 July 2007 (England).

What do the signs need to look like?

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

- a. is the equivalent of A5 in area (or not less than 160mm by 230mm – slightly larger than A5, and be bilingual in Wales, or 148mm by 210 mm in N Ireland),
- b. displays the international no-smoking symbol in colour, a minimum of 70mm (in red and minimum of 75mm in Wales, or 75mm in N Ireland) 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/this office/building”.

Where can smokers smoke?

Use of previously designated “smoking rooms” in buildings will not be lawful as they are “enclosed or substantially enclosed”. Outdoor smoking shelters can be provided for staff as long as they are not deemed to be “enclosed or substantially enclosed” – converted garden sheds are not deemed suitable! It is up to employers to decide whether they wish to provide such shelters, or allow workers to have time to go outside to smoke.

Can drivers smoke in goods vehicles?

Yes, unless the vehicle is used by anyone else at any other time. The regulations will require enclosed vehicles to be smoke-free 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 work by more than one person, even if those people use the vehicle at different times, or only intermittently. Intermittent use by other people would include the intermittent use of the vehicle by a worker such as a fitter using the vehicle for testing purposes. If there is regular or intermittent use of the vehicle by other workers, then the vehicle must remain smoke free even during any daily rest break taken by a driver in a sleeper cab.

Vehicles will not be required to be smoke-free if they are used primarily for the private purposes of a person who owns it, or has a right to use it and which is not restricted to a particular journey. These regulations will apply to all vehicles.

What signs need to be used in smoke-free vehicles?

The regulations require any person with management responsibilities for a smoke-free vehicle to display a no-smoking sign in each enclosed compartment that can accommodate people eg the vehicle cab. These no-smoking signs must simply display the international no-smoking symbol in colour and be a minimum of 70mm (minimum of 75mm N Ireland, in red and minimum of 75mm in Wales) in diameter. Suitable signs can be bought from the RHA Hauliers Shop on 01733 263434.

What do employers need to do?

Employers will need to consider whether they wish to permit, or continue to permit, smoking breaks outside, which may take longer than smoking breaks taken in, for example, a dedicated smoking room. Employers are not under any obligation to allow employees to smoke at work, and any current concession on smoking would generally be regarded as a works rule rather than an implied term of the contract, so the ban does not represent a variation of contract. If breaks are to be permitted, employers may wish to restrict the amount of time spent on smoking breaks, and may want to consider ensuring the smokers make up the time spent smoking elsewhere during the working day, if non-smokers are not taking similar breaks. Providing smokers with a shelter might be an answer, but care would need to be taken to ensure that pedestrians were not at risk from manoeuvring vehicles in a yard, not be too close to any dangerous or hazardous goods or activities and preferably away from the main entrance in the view of visitors and customers.

Who enforces the regulations?

Local authorities will enforce the new regulations and enforcement functions can be transferred between enforcement authorities.

What are the penalties for non-compliance?

The penalties will be a maximum fine on conviction for an offence relating to the display of no-smoking signs will be £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; the maximum fine on conviction for an offence of smoking in a smoke-free place will be £200. Where the fixed penalty procedure is used for an alleged offence of smoking in a smoke-free place, the fixed penalty is £50. The maximum fine on conviction for failing to prevent smoking in a smoke-free place £2500, and there is no provision for a fixed penalty notice to be given for this offence.