

# Guidance on Shisha and Smoking Shelters



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## **1. Introduction**

Since 1 July 2007 it has been against the law to smoke in virtually all enclosed public places and workplaces. 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.

## **2. Law on smoking**

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/>

## **3. 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. This opening does not include windows, doors and any other fittings that can be opened or shut i.e. shutters/tarpaulin.

This means that at least 50% of its sides must be permanently open. 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 become substantially enclosed. Although there is no legislation on the placement of shelters, South Ayrshire Council has adopted a policy of 1.5 metres between a shelter and sheltering wall.

#### **4. 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.

#### **5. Smoking Shelter Calculations**

Enclosed/Open calculation

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

Measure the whole of the perimeter, excluding the roof and floor (that is, work out the TOTAL area of the four walls).

Measure the TOTAL area of ALL ENCLOSED PARTS of the four walls (again, exclude the roof and floor)

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:

E

--- X 100 = % Enclosed

T

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.

#### **6. Smokefree policy**

It is recommended that owners/managers implement a written smoking policy to demonstrate compliance with the law. Under Section 2, Health and Safety at Work Act 1974 employers should ensure that they provide and maintain a safe working environment which is 'so far as reasonably practicable without risk to health'. There is an example of a smoke free policy in Appendix 1.

## 7. Failure to comply with the law

Offence	Who is liable?	Fixed Penalty Notice (if paid in 15 days)	Fixed Penalty Notice (if paid in 29 days)	Court awarded fine
Smoking in a smokefree place	Anyone who smokes in a smokefree place	£30	£50	Up to £200
Failing to display the required no-smoking signs	Anyone who manages or occupies the smokefree premises	£150	£200	Up to £1000
Failing to prevent smoking in a smokefree place	Anyone who manages or controls the smokefree premises	N/A	N/A	Up to £2500

## 8. Other Issues

### 8.1 Health and safety issues

Under Section 4, Health and Safety at Work Act 1974 it is the duty of persons in charge to ensure, so far as reasonably practicable that the premises and any equipment or substance used is safe and without risks to health. Safe working practises (with up-to-date risk assessments) must be established and followed, potential hazards identified, and employees provided with suitable information, instructions and training. It is a legal requirement to protect employees from the damage caused by shisha smoke. Failure to do so is a criminal offence.

The following health and safety issues also need to be considered:-

#### **Covid-19**

- Limit the numbers allowed into the premises and maintain social distancing.
- Ensure customers wash hands before and after smoking.

- Thoroughly sterilise pipes after use.
- Use disposable mouthpieces/pipes.
- Avoid sharing pipes.

### **Smoking Shelters**

- Any heating devices installed should be suitably located and secured.
- Suitable and sufficient lighting is present in smoke free premises/shelters to prevent slips and trips
- Safe access and egress from shelter

### **Shisha**

- Use of naked flame to ignite charcoal or wood cinders
- The means and methods of preparation, storage and extinguishing of lit smoking materials
- If the mouthpieces used to smoke shisha are shared between a number of people without adequate cleaning there is a greater risk of transmitting infections such as oral herpes, hepatitis C, colds, Covid-19 and tuberculosis.
- LPG should not be stored in cellars, basements or sunken locations as LPG vapour is denser than air and poses an asphyxiation risk.
- The maximum amount of LPG that can be stored at a premises with no residential accommodation or with accommodation with 60-minute fire resisting separation between the two is 70KG (not more than 5 cylinders or 20 if the capacity is 3kg. No cylinder must exceed 20kg). Any more than this amount contact Derbyshire Fire & Rescue Service on 01332 777850.

## **8.2 Food Safety**

If your business is going to become a shisha bar and provide food and/or drink, then you must ensure that the premises is registered with the Food and Safety Team. Forms can be completed online at [www.gov.uk/food-business-registration](http://www.gov.uk/food-business-registration).

## **8.3 Licensing**

If you are going to provide late night refreshment (the sale of hot food and drink between the hours of 23:00 – 05:00) or provide regulated entertainment in the form of playing live/recorded music and/or dancing then you will need to apply for a premises licence from the Councils Licensing Team on 01332 641951.

#### **8.4 Entrances**

Outside entrance areas of premises are not covered by the legislation, however employers may want to consider making it a policy that smoking is not permitted within a certain distance from outside entrances if possible. This is so that staff and visitors do not have to walk through a cloud of smoke.

#### **8.5 Litter**

It is an offence to drop, throw, or deposit and leave litter anywhere and if you are caught committing the offence of dropping litter in the city, you may face prosecution or a fixed penalty. To prevent this, it is recommended that ashtrays or suitable cigarette butt disposal are provided at premises.

#### **8.6 Underage Sales**

It is an offence to sell any tobacco product to a person under the age of 18 years old and a statutory sign displaying the statement "It is illegal to sell tobacco products to anyone under the age of 18" must be displayed where tobacco/shisha sold by retail for further information contact Derby City Councils Trading Standards Team on 01332 640780.

#### **8.7 HMRC Customs**

Shisha tobacco must carry the relevant health warnings and be properly imported with all the UK taxes paid. The owner of the business must be able to provide documentation/invoices to show where the item has been purchased from. You can call the HMRC on 0300 2003310 for more information.

#### **8.8 Fire**

The responsible person of the premises has a duty under the Regulatory Reform (Fire Safety) Order 2005 to ensure that a fire risk assessment has been carried out. This assessment must identify all sources of ignition, fuel and what measures have been introduced to reduce all risks for all relevant persons. For further information please contact the Derby Fire and Rescue Service on 01332 777850.

#### **8.9 Planning/Building control**

Most smoking shelters or similar structures will require planning permission and sometimes approval under building regulations. Planning permission is not normally required for umbrella type shelters and space heaters. You should seek advice from Derby City Council's Planning Control department by phone 01332 641657 or email [developmentcontrol@derby.gov.uk](mailto:developmentcontrol@derby.gov.uk) before building the structure.

## APPENDIX 1 - Example Smoking Policy

### SMOKING POLICY

Smoking policy for [*name of organisation*] Effective from [*date*]

#### INTRODUCTION

In provisions made under the Health Act 2006, all enclosed and substantially enclosed workplaces and public places are legally required to be smoke free.

The following policy has been adopted by [*name of organisation*] to take all possible steps to protect employees from secondhand smoke exposure and to comply with legislative requirements.

#### 1. THE POLICY

- 1.1 From [*date*] smoking is prohibited in [*name of organisation*]'s premises and on the surrounding grounds, including the car park. Smoking is also prohibited in company vehicles used by more than one person, and in private vehicles if a passenger is carried. This applies to employees whether employed directly by [*name of organisation*], through an agency, by a contractor or other organisation, and visitors [*include any other users*]. [*Specify any outdoor areas provided for smokers if applicable.*]
- 1.2 Employees who wish to smoke may do so in their own time during lunch breaks. Employees will not be permitted to smoke whilst carrying out their duties and responsibilities for [*name of organisation*].

#### 2. THE POLICY FOR THIRD PARTY PREMISES

- 2.1 Employees required to visit other premises not covered by smoke free legislation as part of their duties (i.e., domestic premises) should advise the visitor when arranging a visit of [*name of organisation*]'s smoking policy. Although [*name of organisation*] has a duty of care to protect its employees it cannot control the smoking policy on these premises. Employees should agree that the visitor arrange for a non-smoking area to be provided for the duration of the visit. Where this is not possible, employees should ask the visitor to refrain from smoking inside the premises or in the meeting area for one hour before the visit and that the visitor does not smoke during the duration of the visit.
- 2.2 In circumstances where it is not possible to arrange a visit beforehand, employees should seek advice from their line manager, who should take all reasonable steps to protect them from exposure to secondhand smoke.

#### 3. IMPLEMENTATION AND ENFORCEMENT OF THE POLICY



- 3.1 Managers will be responsible for the promotion and maintenance of the policy by their staff. Managers will receive training and guidance regarding their responsibilities in relation to the policy and enforcement of it.
- 3.2 Employees should inform the appropriate manager of anyone who fails to comply with the policy.
- 3.3 Employees not complying with the policy will be referred to Occupational Health/their manager for support subject to the usual disciplinary procedure.
- 3.4 Visitors not adhering to the policy will be asked to comply or leave the premises or site.
- 3.5 All job applicants will be made aware of the policy via application packs, where a requirement to abide by it will be part of the person specification. Applicants will be reminded of the policy at interview stage.
- 3.6 A copy of the policy will form part of new employees' induction packs. Training and guidance on enforcing the policy will form part of new managers' induction process.

#### **4. SUPPORT FOR THOSE WHO SMOKE**

- 4.1 [*Name of organisation*] recognises that smoking is an addiction and that the smoking policy will impact on smokers' working lives. [*Name of organisation*] wishes to support employees who want to stop and help individuals adjust to this change. [*Name of organisation*] will give each employee, who smokes, and wishes to stop, four hours paid time off to seek professional help from the local NHS Stop Smoking Service, their GP or other recognised method of smoking cessation.
- 4.2 [*Name of organisation*]'s Occupational Health department/manager/owner will provide smoking cessation support/information on local NHS stop smoking services.

#### **5. REVIEW OF THE POLICY**

The policy will be reviewed by [*appropriate reviewer/review group*] six months after the date of implementation and then 12 months from the date of implementation.

We can give you this information in any other way, style or language that will help you access it. Please contact us on **01332 640779** or **[derby.gov.uk/signing-service/](http://derby.gov.uk/signing-service/)**

### **Punjabi**

ਇਹ ਜਾਣਕਾਰੀ ਅਸੀਂ ਤੁਹਾਨੂੰ ਕਿਸੇ ਵੀ ਹੋਰ ਤਰੀਕੇ ਨਾਲ, ਕਿਸੇ ਵੀ ਹੋਰ ਰੂਪ ਜਾਂ ਬੋਲੀ ਵਿੱਚ ਦੇ ਸਕਦੇ ਹਾਂ, ਜਿਹੜੀ ਇਸ ਤੱਕ ਪਹੁੰਚ ਕਰਨ ਵਿੱਚ ਤੁਹਾਡੀ ਸਹਾਇਤਾ ਕਰ ਸਕਦੀ ਹੋਵੇ। ਕਿਰਪਾ ਕਰਕੇ ਸਾਡੇ ਨਾਲ ਇੱਥੇ ਸੰਪਰਕ ਕਰੋ: **01332 640779** ਜਾਂ **[derby.gov.uk/signing-service/](http://derby.gov.uk/signing-service/)**

### **Polish**

Aby ułatwić Państwu dostęp do tych informacji, możemy je Państwu przekazać w innym formacie, stylu lub języku. Prosimy o kontakt: **01332 640779** lub **[derby.gov.uk/signing-service/](http://derby.gov.uk/signing-service/)**

### **Slovak**

Túto informáciu vám môžeme poskytnúť iným spôsobom, štýlom alebo v inom jazyku, ktorý vám pomôže k jej sprístupneniu. Prosím, kontaktujte nás na tel. č.: **01332 640779** alebo na stránke **[derby.gov.uk/signing-service/](http://derby.gov.uk/signing-service/)**

### **Urdu**

یہ معلومات ہم آپ کو کسی دیگر ایسے طریقے، انداز اور زبان میں مہیا کر سکتے ہیں جو اس تک رسائی میں آپ کی مدد کرے۔ براہ کرم **01332 640000** یا **[derby.gov.uk/signing-service/](http://derby.gov.uk/signing-service/)** پر ہم سے رابطہ کریں