



The ban on smoking in enclosed public places and workplaces will come into effect in England on 1 July 2007.

THE SMOKING BAN

SECTION 1 - AN OVERVIEW

The ban on smoking in enclosed public places and workplaces will come into effect in England on 1 July 2007.

What premises must be smoke-free?

Premises are covered by the legislation if they are:

- (a) used as a place of work, or
- (b) open to the public or any section of the public, whether or not by invitation or on payment. The ban applies to enclosed or substantially enclosed premises.

Affected premises will include stadiums and sports grounds (as well as shops, bars, clubs, restaurants and health centres), to the extent that these are enclosed or substantially enclosed.

What Premises are exempt?

The law does not cover private dwellings. However, any enclosed part of a dwelling which is shared with other premises such as a communal staircase will have to be smoke free if it is open to the public or used as a place of work e.g. by a postman or security guard.

What premises are enclosed?

Premises are enclosed if they have a ceiling or roof, and (apart from doors, windows and passageways) they are wholly enclosed, permanently or temporarily. A roof can be a fixed or moveable structure which covers all or part of the premises and can include a canvas awning.

Premises are substantially enclosed if they have a ceiling or roof and less than half of their perimeter consists of openings in the walls (other than windows, doors or openings which can be shut). More details about the "50% rule" are set out below at Section 4.

Given the wide range of designs of stadiums and/or stands with overhanging roofs it will not be possible to categorically state whether stadiums generally will be exempt. Each individual stadium and/or stand will have to be considered based on its design in order to work out whether it falls within the definition of substantially enclosed. Accordingly, some clubs may simply decide to designate the whole stadium as smoke free in order to comply with the new legislation. Even if a stadium is designated as smoke free the new legislation imposes specific requirements about signage (see Section 2 below). If you are in any doubt as to whether your club's ground or premises are covered by the new legislation then you should contact your local authority as it will be in charge of enforcing the legislation within your area.

Smoking areas

There is no obligation to provide smoking areas. If a venue provides smoking shelters it will need to ensure the shelters comply with the regulations and, of course, consider other safety issues, such as blocking fire exits.

Smoking outside

The law does not prevent people from smoking in the open air; it will be a matter for management if a venue wishes to declare its entire grounds smoke free.

Vehicles

Enclosed vehicles used by more than one person for work – regardless of whether they are smokers – must be smoke-free. The ban applies to all vehicles used by members of the public, or any section of the public, whether or not for payment (see further example in Section 3 - Frequently Asked Questions).

Criminal offences

It will be a criminal offence for a sports ground to fail to put up 'no-smoking' signs in a non-smoking area. It will be a criminal offence for a sports ground to fail to stop a person from smoking in a non-smoking area. For advice on what to do if a person refuses to stop smoking please see Section 3 below - Frequently Asked Questions. It will be a defence to show that the sports ground:

- took reasonable steps to cause the person in question to stop smoking,
- did not know the person in question was smoking, or
- had other reasonable grounds for non-compliance.

Smoking in a smoke-free place will be an offence. It is also an offence to fail without reasonable cause to give one's name and address on request to an enforcement officer, or to obstruct an enforcement officer.

Criminal Liability

Criminal proceedings may be brought against any person who is responsible for or manages smoke-free premises. This could include PLCs, limited companies and/or an individual manager, secretary, director of a club or company if an offence has been committed and one of the defences referred to above cannot be relied on.

Penalties for non-compliance

Failure to display a 'no-smoking' sign will incur a fine of up to £1,000 on summary conviction but more likely a £200 fixed penalty (with a £50 discount if paid within 15 days). Smoking in smoke-free premises or a smoke-free vehicle will cost the individual up to £200 if they are found guilty in court or a £50 fixed penalty (£30 for early payers). The courts may impose a fine of up to £2,500 for those who fail to prevent smoking in their premises.

Enforcement

Local authority officers will be trained by the Department of Health to enforce the new legislation.

'No-Smoking' signs

At least one sign in a smoke free area must be A5 size, display the 'no-smoking' symbol and contain the words "No Smoking. It is against the law to smoke in these premises." No-smoking signs are available free of charge from the local authority. They can also be downloaded from various websites including <http://www.smokefreeengland.co.uk/resources/guidance-and-signage.html>.

Practical Guidance

In order to prepare for the new law coming into effect, the Government has offered the following advice:

- Introduce a smoke free policy and make all employees and visitors aware of the new smoke free law and that the premises are now smoke free;
- Train staff to understand the new law and what their responsibilities are. You may also consider offering support to those employees who want to give up smoking (see <http://www.gosmokefree.co.uk/>);
- Erect new no-smoking signs in any non smoking area (see Section 2 – Signage);
- Refer to NHS guidance available at:
http://www.smokefreeengland.co.uk/files/everything_u_need_new_sf_law.pdf
- Read the remainder of this guidance note that offers advice on (i) Signage requirements (Section 2); (ii) some frequently asked questions (Section 3); and (iii) a more detailed explanation of what premises are required by law to be non-smoking (Section 4); and
- Remove all ash trays.

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SECTION 2 - SIGNAGE

The law places a legal duty on a person who occupies or manages smoke free premises to display 'no-smoking' signs. It states: "at each entrance to smoke-free premises there shall be displayed in a prominent position at least one 'no-smoking' sign".

An entrance means any entrance used by people to enter premises. It would appear that "an entrance" could include a collection of doors, gates or turnstiles if absolutely adjacent and not divided by partition walls once inside the premises. In practice, as the majority of English stadia have turnstiles that lead directly to the "enclosed" section of the stadium, signage should be placed at the turnstiles as well as other stadium entrances. Entrances may include internal "entrances" from one area to another within premises such as entrances to a bar or restaurant area.

Additional signs are not required within a single smoke-free area but further signs (non smoking symbols) do have to be put up on entrances between two adjacent smoke-free premises.

Example: If turnstiles give immediate access to the interior concourse further signs are not required by law on the concourse but signs are required at the entrance to the stands but if both the stands and the interior concourse of the stadium are smoke-free only a non-smoking symbol sign is required.

The law provides that at least one sign must be displayed at each entrance to smoke-free premises which must be A5 size (148mm x 210 mm), display the non-smoking symbol (a graphic representation of a single burning cigarette enclosed in a red circle of at least 70mm in diameter with a red bar across it) and contain the words "No Smoking. It is against the law to smoke [in these premises]" or "[at this venue/stadium]" etc.

In smoke free vehicles the 'no smoking' symbol must be displayed in a prominent position in each compartment (part adapted or constructed to accommodate people) of the vehicle (an A5 sign is not required nor is the wording).

Example: If a stadium declared itself to be no smoking throughout (from the moment of passing through the turnstiles or gates to the stadium) the law specifies very clearly the signage required. Further (lesser) signs would be required within all those parts of the stadium which were by law to be smoke free (e.g. in boxes, bars).

There is an issue about the open section of the stands (not under the roof) as it would be a management decision rather than the law that decreed this to be non-smoking. Arguably it would be misleading to display any signs in this area that stated "it is against the law to smoke in these premises" although the non smoking symbol could still be used. A further issue arises as it is likely that the A5 signs would need to be displayed at the junction of the open air and covered stands if that is the point at which the legal ban takes effect.

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SECTION 3 - FREQUENTLY ASKED QUESTIONS

We do not understand the "50% rule". How will we know where should be smoke-free within our stadium?

The application of the 50% rule is quite complex and will depend on the design of the building (see example above). If more than 50% of the area in question is enclosed by walls and a roof then it will probably be a non-smoking area. It is possible to designate the entire stadium non-smoking which might reduce the need to make this calculation. If in doubt contact your Local Authority for assistance.

Do we have to provide a smoking area for spectators?

No – and any area which is currently used for smoking will also be subject to the ban if it is enclosed or substantially enclosed. Spectators may smoke in the open air (subject to any policies you have about smoking at your venue) or in a shelter which is not substantially enclosed (that is, more than 50% of its perimeter is open to the air).

Can people smoke in their private boxes at the ground?

No – whilst their box may not be open to the general public the premises would still fall within the definition of premises which must be smoke free because the definition includes premises which are only open to the public by payment (purchase of a debenture would be included) or by invitation (guests).

Can we still have smoking at the end of our annual members' dinner?

It will depend on the venue of your dinner, but if your event is in enclosed premises which are public or a workplace (such as a restaurant or a dining area at your club where staff are employed to prepare and serve food and drink) the venue must be smoke-free. Smoking would only be permitted if the event was held in a private dwelling or if it was an open air event.

We have booked a marquee for additional hospitality at our major sporting event - will this have to be smoke-free?

Tents and awnings are included within the definition of "roof" (which includes fixed and moveable structures) – if your marquee has sides it is likely to be enclosed or substantially enclosed unless you remove 50% or more of the sides.

If people want to smoke before the match where must they go?

People would not be allowed to smoke in any enclosed or substantially enclosed premises. Under the new law they can only smoke in an area which is open air (or not substantially enclosed), therefore they would not lawfully be allowed to smoke for example in changing rooms, the club house or club catering areas. Your own club rules, regulations or policies about smoking in open air parts of your premises may prevent them from, for example, smoking close to where the match will take place but this would not be unlawful if the area was open air. You might provide an external smoking shelter which is not substantially enclosed (that is, more than 50% of its perimeter is open to the air).

What should we do if spectators start smoking in a non-smoking area?

The Department of Health recommends that your stewards should ask them to put out the cigarette, explaining that you and they are breaking the law if they continue to smoke: if they won't stop, ask them to leave the premises. If they refuse, tell them you will get assistance or call the police if necessary. If there is a record of this conversation then according to the Department of Health you will have a defence to the potential criminal offence.

Our stewards find cigarette butts in the covered stands at the end of a competition – are we in trouble?

If the stands would be deemed "enclosed premises" the club (or individuals) could be liable for criminal proceedings. There is a defence to the offence of failing to stop a person smoking in a non-smoking area if you can show that you had put up the required 'no-smoking' signs and did not know that a person was smoking.

We employ drivers to bring team members to our events; can the drivers smoke in these cars?

Company vehicles must be smoke-free where they are used for work by more than one person (even if the persons who work there do so at different times or only intermittently). Drivers may only smoke in cars owned or leased by the club if the cars are only used by one person for work. This exception would therefore exclude any pooled cars or where your club rotates any company cars over a period of time. If the vehicle is used to transport staff or athletes then the vehicle will have to be smoke-free and at least one 'no-smoking' sign must be displayed in a prominent position in each compartment of the vehicle. (There are exceptions for vehicles with fully retractable and completely stowed roofs.)

Is it lawful for coach drivers to smoke in our car park?

Yes. The law does not prevent smoking in the open air outside an enclosed venue. Whether individuals are allowed to smoke on duty or take smoking breaks are matters of employment law rather than the new smoke free legislation.

THE SMOKING BAN SECTION 4 -"SUBSTANTIALLY ENCLOSED" APPLICATION OF THE 50% RULE

Premises must be smoke-free if they are open to the public or if they are used by more than one person as a place of work or where members of the public might obtain goods and services from the person or persons working there.

Premises only have to be smoke-free if they are enclosed or substantially enclosed.

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

Premises are substantially enclosed if they have a ceiling or roof and less than half of their perimeter consists of openings in the walls (other than windows, doors or openings that can be shut) – this is referred to as the 50% rule.

Understanding the "50% rule"

The first test is whether the premises have a roof (or ceiling). The regulations only apply if/when premises are under a roof.

Example: When a stadium is not covered by a roof and is in the open air it is not affected by the smoking ban (although the managers of the venue may still opt to ban smoking inside the stadium)

Once you are under a roof or ceiling the smoking ban may apply.

For the purposes of calculating whether the premises are "substantially enclosed" you should ignore doors, windows or openings that can be shut.

Example: A pavilion has French windows along the entire frontage and large patio doors at each end that total 50% of the perimeter of the building – the building would still be enclosed because such windows and doors do not count when calculating for the 50% rule.

In square or rectangular premises the calculation is relatively straightforward – if the aggregate area of (permanent) openings in the walls is less than 50% the premises must be smoke-free. If a venue has a back wall and side walls of 5m and the roof extends 10m then the premises are not substantially enclosed and the ban will not apply.

Example: New smoking shelters are on sale which comply with the new law because they have sides removed and permanent openings that mean 50% or more of the shelter is open and the shelter is therefore not "substantially enclosed". (See image 1)

In non-linear buildings with curving or complex wall structures and/or a rising roof the mathematical calculations as to whether the area under the roof is more than 50% enclosed is more complicated. It may be necessary to have areas surveyed or measured (or to consult the local authority who will be enforcing this legislation) to be certain. In theory a "bird's eye" plan of the premises will show the extent of any roof - it is then necessary to consider each area under the roof divided by walls (or other structures which serve the purposes of walls) and whether it is enclosed or substantially enclosed.

Example: It requires a complex mathematic calculation to establish whether x (pictured in image 2) in the stadium is within substantially enclosed premises. However, if the outer wall of the stadium has no permanent openings, the roof is flat and the only permanent openings are under the roof leading onto the pitch, then the openings would be <50% of the roofed area (the hoop). The venue would therefore need to be smoke-free. (See image 2)

The issue of smoke free premises will apply to any area over which a roof extends, so it could apply to areas outside a stadium that are under a roof, however the 50% rule would still apply.

Example: If x (pictured in image 2) was approaching the same stadium and the roof of the stadium extended several metres beyond the outer wall he would not be in a smoke free area because although he would be under a roof and the stadium wall would be in front of him in all other directions he would not be enclosed. Therefore at this point the premises are more than 50% open. (See image 2)



image 1

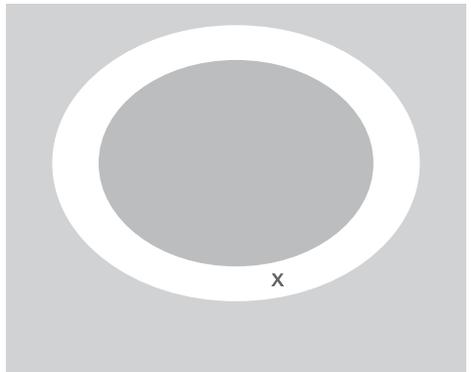


image 2

Disclaimer

The document is for guidance only and is believed to reflect the law and practice in the area as it applied at 1 June 2007. It is not intended to be a statement of law. It has been written in general terms and therefore cannot be relied upon to cover specific situations; application of the principles set out will depend upon the particular circumstances involved and we recommend that you obtain professional advice before acting or refraining from action on any of the contents of this publication. The Football Association Limited accept no duty of care or liability for any loss occasioned, whether caused by negligence or otherwise, to any person acting or refraining from actions as a result of any material in this document. This document has been prepared by or on behalf of The Football Association Limited. All rights reserved. Reproduction of any material from this document is permissible only when attributed to The Football Association.

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