

Regulations Q&A

This question and answer document was released by the Department of Health to address some of the issues raised by businesses.

BEST POINTS

- The legislation will ensure virtually all public places and workplaces will be smokefree. This will reduce everyone's exposure to the harmful effects of second hand smoke, as well as providing smokers who want to quit with a much more supportive environment to do so.
- The Department for Health worked closely with a wide range of stakeholders in drafting the regulations and continues to listen to public opinion in the countdown to going smokefree next summer.
- Independent Office of National Statistics (ONS) data published recently shows the vast majority of people support action to restrict smoking in enclosed public places and workplaces.
- A MRUK omnibus survey data from Scotland released recently shows how popular smokefree public places and workplaces are in practice – with three out of four people saying that smokefree legislation in Scotland has been a success.

GENERAL

Q1: Ireland went smokefree indoors in 2004, Scotland in 2006 – why is it taking England and Wales until 2007?

A: Delivering smokefree environments required the passing of legislation — this is a lengthy process. However, the Health Bill has now almost completed its passage through Parliament. Health ministers have committed to implementing smokefree legislation in summer next year and there needs to be time to consult stakeholders on the details of regulations, and to provide everyone with enough time to prepare before the law comes into place.

Q2: Is smokefree legislation not an infringement or personal choice? Too much interference from the nanny state?

A: The vast majority of people support restrictions on smoking in workplaces and other public places – including 66 per cent of people supporting restrictions on smoking in pubs.

It must be remembered that seven out of 10 people choose not to smoke. The Government wants to take account of the choice of the majority of people who want to have clean smokefree air.

In countries where similar legislation has been introduced, support for legislation has grown after implementation – even among smokers.

Q3: The regulations make provision for the Government to extend smokefree legislation to bus shelters etc. Is this a step towards banning smoking altogether?

A: The Government believes that people should have the choice to smoke, but believes it is also right that people are both made aware of the major health risks of smoking and also provided with support to quit.

At the same time, it is right that others should be protected from exposure to hazardous second hand tobacco smoke. This is what the legislation aims to achieve, with smoking eliminated in virtually every enclosed public place and workplace in this country.

Although smokefree legislation does include provision to make non-enclosed places smokefree, the Government has no intention to use those powers at present. That means that smoking **will** still be permitted outside of buildings and in other non-enclosed places.

Q4: Why could we not just have ventilated smoking rooms?

A: Evidence shows that ventilation does not provide a solution to eliminating the health risks associated with second hand smoke. A total of 85 per cent of second hand smoke actually consists of invisible and odourless gases.

Research has shown that to remove the risks of second hand smoke, enclosed premises would need wind tunnel-like rates of ventilation.

Ventilation systems are also expensive and many businesses simply could not afford to fit the systems even if they were effective,

Q5: Will this mean the death of the British pub?

A: There is considerable international evidence from countries that have introduced legislation for smokefree public places and workplaces that the impact on the hospitality industry is not detrimental.

Analysis and international experience shows that going smokefree can actually be beneficial to the hospitality industry. Almost 80 per cent of England's population do not smoke, and this represents a very large market.

There is much evidence about the benefits to hospitality of smokefree legislation, but after the first year of being smoke free, New York City saw that:

- Business tax receipts in restaurants and bars go up by 8.7 per cent,
- Employment in restaurants and bars has increased by 10,600 jobs,
- New Yorkers overwhelmingly supported the law,
- Tests showed the air quality in bars and restaurants improved dramatically.

There is also comparable evidence of the benefits of smokefree legislation for the hospitality industries in other countries including Ireland, and similar evidence is emerging in Scotland since its smokefree legislation was implemented in March this year.

Smokefree legislation will be good for the health of hospitality workers and patrons. The British Institute of Innkeeping's magazine recently said:

“...we are talking about banning the use of a carcinogenic substance which in enclosed spaces kills or damages the health of passive smokers — that means licensees and bar staff and customers. This is a scientific fact, and we should bear this in mind along with the economic arguments.”

Q6: What support is available for people deciding to quit as a result of the smokefree legislation?

A: The NHS provides a wide range of excellent and easily accessible smoking cessation services including local NHS Stop Smoking Services, The Together Programme, the NHS Smoking Helpline on 0800 169 0169, www.givingupsmoking.co.uk and Nicotine Replacement Therapy (NRT) available on prescription.

Q7: Is second hand smoke really *that* harmful?

A: In reviewing the evidence of the health risks from second hand smoke, the Government's independent Scientific Committee on Tobacco and Health concluded that exposure to second hand smoke was a cause of a range of medical conditions, including:

- lung cancer
- heart disease
- asthma attacks
- childhood respiratory disease
- sudden infant death syndrome, and
- reduced lung function

In 2005, research published in the *British Medical Journal* estimated that more than 600 deaths each year in the UK are due to exposure to second hand smoke in the workplace.

The World Health Organisation has classified tobacco smoke as a known human carcinogen. The US Environmental Protection Agency classified second hand smoke as a "class A" human carcinogen, along with asbestos, arsenic, benzene and radon gas.

Q8: What evidence is there that second hand smoke is a health risk?

A: The evidence base that second hand smoke harms health is substantial, and has been reviewed extensively, both in this country by the Government's independent Scientific Committee on Tobacco and Health, and overseas.

The World Health Organisation's International Agency for Research on Cancer's report "Tobacco Smoke and Involuntary Smoking" published in 2004 reviewed the evidence of the health risks associated with smoking and second hand smoke — the report is more than 1,400 pages long.

The US Surgeon General published a 700 page report in June that examined a great deal of evidence and found even brief second hand smoke exposure can cause immediate harm. The report says the only way to protect non-smokers from the dangerous chemicals in second hand smoke is to eliminate smoking indoors and that exposure of adults to second hand smoke has **immediate adverse effects** on the cardiovascular system and causes coronary heart disease and lung cancer. On publication of the report the Surgeon General said:

“The scientific evidence is now indisputable: second hand smoke is not a mere annoyance. It is a serious health hazard that can lead to disease and premature death.”

Q9: Has the introduction of smokefree legislation been successful in other countries?

A: Across the world, as the evidence of the risks associated with second hand smoke exposure has accumulated, action has been taken to reduce people’s exposure to second hand smoke.

Ireland (2004), Norway (2004), Scotland (2005), New Zealand (2004), various Canadian territories and Singapore are examples of countries which have introduced comprehensive smokefree legislation.

In America, California has had a state-wide smokefree public places since 1998 and New York City passed smokefree legislation in 2003. In total, more than nine US states have smokefree legislation which requires completely smokefree restaurants and bars.

This legislation has proved to be effective in protecting people from the health risks of second hand smoke. The Journal of the American Medical Association documented a significant improvement in respiratory health among bartenders after the passage of the Californian smoke free workplace legislation.

According to the British Medical Journal, the US state of Montana saw a 40 per cent drop in hospital admissions for heart attacks during a six month period of smokefree workplaces.

Smokefree legislation is proving to be very effective in protecting health and very popular.

LOCATIONS

Q10: Will my home be required to be smokefree?

A: No. The regulations state very clearly that the Government has no intention to make private residential spaces smokefree.

Q11: I work from home will it be required to be smokefree then?

A: It depends. Any part of a private dwelling that is used **solely** as a place of work may be required to be smokefree if it is used by more than one person who does not live there, or if members of the public can actually come into that part of the dwelling in the course of work. The situation is set out in much more detail in the regulations.

Q12: Does this legislation cover sports stadiums? I don't want to sit (in a covered stand) next to a smoker when I have paid £800 for a season ticket.

A: The Bill allows regulations to be made that designate additional smokefree places which are not covered by Clause Two where people are at risk of being exposed to significant quantities of second hand smoke. This might include sports stadia or other non-enclosed places, but it is a decision for the future and only after the Government consults the public.

Q13: I do not like breathing smoke outdoors either – why does this legislation apply to indoors only?

A: The Health Bill will require enclosed or substantially enclosed public places and workplaces to be smokefree. The Health Bill includes powers for other places to be required to be smokefree, but the Government has no plans to make anywhere smokefree at the present time.

Q14: Will this fill the streets with cigarette butts?

A: The Department for Health is working closely with businesses, local government sections and DEFRA to consider the issues of litter in outdoor areas. International experience has been that this matter can be managed effectively.

Q15: Will sending drinkers outside lead to noise problems?

A: Pubs and bars will not be obliged to provide outdoor areas for smoking. If they do want to open one, they will need to obtain necessary planning

permissions. Neighbours should not have to put up with high noise levels from drinkers now, or once smokefree legislation has come into force.

Q16: Is this just about smoking in pubs?

A: No. All enclosed workplaces and public places, including restaurants, pubs, schools, public transport and membership clubs will be required to be completely smokefree once the legislation is implemented in the summer. There will be limited exemptions from smokefree legislation, mainly for premises that act as an individual's dwelling, or are clearly a private space. These exemptions are set out in the regulations.

Q17: My office is not smokefree when the smokers stand outside and all their smoke blows back in through my window. Why can they not be made to smoke away from the building?

A: The provisions made under the Health Bill only pertain to enclosed and substantially enclosed workplaces and public places. Employers and business owners will need to consider issues as they arise and seek the most appropriate action.

EXEMPTIONS

Q18: Why are adult care homes exempt?

A: The Choosing Health White Paper made a commitment that special arrangements would be needed for certain workplaces when considering legislation. These workplaces were places such as hospices, prisons, and long-stay residential care establishments, which are also places of residence. We can see good reason for treating these workplaces differently to recognise the human rights of those people who call such places home.

Q19: Why are the people who work in places where smoking will be allowed to take place not protected from second hand smoke?

A: [see answer 18]

The regulations set out requirements for rooms in premises where people can smoke, which will protect against drift of second hand smoke into other areas of the premises. This includes the requirement for closing doors to the room.

Q20: Am I going to be guaranteed a smokefree hotel room? What is to stop the hotelier letting the room as smoking one day and smokefree the next?

A: Smokefree legislation will not guarantee people will get a smokefree hotel room, the regulations require hotel proprietors designate in writing which rooms are not smokefree and ensure that hotel rooms for smoking are clearly signed.

Q21: I am a health visitor, can I insist the client stop smoking when I visit them at home?

A: The proposed regulations will not require that, but home visitors can always ask a resident not to smoke during home visits.

Q22: Will the 50 per cent rule on defining “substantially enclosed” lead to confusion?

A: All enclosed and substantially enclosed public places and workplaces will be required to be smokefree.

The regulations make clear what is meant by an “enclosed” and “substantially enclosed” premises, and what is not.

VEHICLES

Q23: I am a mini cab driver, can I smoke in my own vehicle if I do not have any passengers?

A: No. Under the regulations, all vehicles used for public transport will be required to be smokefree at all times. This means that a member of the public will know that whenever they use public transport of whatever type, it will be free from hazardous second hand smoke.

Q24: Will the regulations include *all* company vehicles?

A: Where a vehicle is used as a workplace by more than one person, regardless of whether they are in the vehicle at the same time, it will be required to be smokefree at all times. This protects shift and other workers who use the same vehicle from the health risks associated with second hand smoke.

Smoking will, however, be permitted in vehicles that are for the sole use of the driver and are not used as a workplace by anyone else, either as a driver or passenger.

Q25: Can I smoke in my privately owned vehicle?

A: We are not proposing that smokefree legislation extends to privately owned vehicles.

Q26: Can you smoke on train platforms?

A: This would depend on whether the platform was substantially enclosed or not.

Q27: How will I know whether or not they are substantially enclosed?

A: Those with responsibility for the train station will be expected to ensure that appropriate signage is in place, so travellers can be sure where they can and cannot smoke.

Q28: I share a company vehicle with one other person. We are both smokers and want to smoke in that vehicle. Why shouldn't we?

A: This legislation has been developed to protect both smokers and non-smokers from second hand smoke.

ENFORCEMENT

Q29: Fines are all very well, but if the publican of my local persistently fails to provide a smokefree environment, shouldn't they lose their licence?

A: There is no provision in smokefree legislation for offences to result in a review of a pub's licence. We believe the penalties described in the regulations are a sufficient deterrent, and we expect that pubs and other hospitality venues will want to comply with the legislation to make their premises a better and more healthy place to visit and work.

Q30: Who's going to enforce all of this – the smoke police?

A: Within regulations, we propose that enforcement will be a matter for local authorities, who will appoint their enforcement officers. In England, we envisage this would likely be local environmental health officers, but local authorities may wish to appoint other officers, including for example, trading standards or local enforcement officers.

Nevertheless, we know from the experience of other countries that smokefree legislation is largely self-enforcing.

Q31: Who do I call if I see someone smoking – is there going to be an 0800 number?

A: Yes. Further details will be made public in due course.

Q32: I am a landlord of a busy pub, what do I do if I cannot get someone to stop smoking on my premises? Who do I call – the police?

A: In such situations, management should follow their standard procedures as they would in other situations where a customer was behaving in an unacceptable and uncooperative manner.

Q33: Why are only local authorities expected to enforce this legislation? Why not the Health & Safety Executive, the police and Community Safety Wardens? Surely the more people who are authorised, the greater the deterrent?

A: To ensure consistency of enforcement across England. Local authorities are also responsible for enforcement in Scotland which looks to be working well.

Q34: When will we know when the proposed new legislation will be implemented?

A: The Government has said that smokefree legislation will come into force in summer next year, and will make an announcement about an actual implementation date in the near future.

Q35: How soon after the new legislation has been implemented will the enforcers be inspecting workplaces for non-compliance?

A: Enforcement officers will be working closely with businesses in the lead up to implementation in order to build understanding of the requirements of the legislation and will be on-duty to ensure compliance is maintained once the legislation comes into force next summer.

Q36: What funding will local authorities receive to make this work, and when will it arrive?

A: As set out in the *Choosing Health* White Paper in 2004, the Government is committed to provide adequate funding for local authorities to undertake this work, in line with the *New Burdens Doctrine*. The funding will arrive in due course.

SIGNAGE

Q37: Will there be requirement for signage in smokefree areas?

A: Yes. All premises and vehicles that are required to be smokefree will have to display signs as set out in the consultation.

Q38: Whose name will go onto the no-smoking signage?

A: The regulations do not require signs to carry anyone's name. However, organisations may choose to do this should they wish to. People who want to make a complaint about smoking in a smokefree place should speak to the manager of the premises.

Q39: Who will be responsible for providing signs for company vehicles?

A: Anyone with management responsibilities for the vehicle will be required to ensure signage that meets requirements is displayed.

Q40: Where will the signage be available from and when will it be available?

A: The Department of Health will make signage available on request and via a website in the lead up to the law coming into place. However, the onus will be on individuals with management responsibility for smokefree premises or vehicles to ensure that signage that meets requirements is in place.

Q41: Will the signage be the same as the signage in Scotland?

A: Through consultation with stakeholders, we have developed signage requirements that are appropriate for England.

Q42: Will trains and trucks that travel between England and Scotland need two sets of signage?

A: Scotland's pre-existing signage requirements will meet the signage proposals set out in the consultation.

GUIDANCE

Q43: When will we get guidance on the new law?

A: After the regulations have been approved by Parliament.

Q44: Will there be guidance available on the web to assist workplaces implement the proposed changes?

A: Yes and we intend to ensure resources are available in many forms and advice is easily accessible to assist businesses to prepare for smokefree legislation.

Q45: Will there be clear guidance on the provision of smoking shelters?

A: As long as smoking shelters are not enclosed or substantially enclosed, they should be lawful. We will define “enclosed” and “substantially enclosed” in the proposed regulations and once finalised, in guidance that will be given to businesses.