

May 2007

Employment

Smoking Banned in Workplaces in England from 1 July 2007

On 1 July 2007 a blanket ban on smoking in the workplace and enclosed public places comes into force in England. Similar bans are already in place in Scotland, Wales and Northern Ireland. As failure to comply with the law will be a criminal offence punishable by a fine of up to £2500, employers will want to make sure they understand their obligations and how they can prepare themselves for the new legislation.

Where will smoking be banned?

Smoking will be banned in virtually all enclosed and substantially enclosed public places and workplaces and in public and work vehicles. Employers who provide indoor smoking rooms will no longer be able to do so, although they may choose instead to provide an outdoor smoking shelter.

Workplaces must be smoke-free if they are used as a place of work by more than one person (even if at different times or intermittently) or if members of the public might attend to deliver or receive goods and services.

Working from home

Working from home will not generally be covered by the ban. However, the ban does apply to any part of a private dwelling used **solely** as a place of work:

- if used as such by more than one person (assuming they do not both live there); or
- if people other than those working or living there are invited to attend that part for work-related reasons.

Work vehicles

Work vehicles must be smoke-free if they are used in the course of paid or

voluntary work by more than one person - regardless of whether they are in the vehicle at the same time. So pool cars are clearly covered by the ban, as are vehicles used solely for business purposes, such as delivery vans (assuming they are used by more than one person either as a driver or passenger).

However, a vehicle is deemed not to be used in the course of paid or voluntary work if it is used primarily for private purposes and is either owned by the employee or he has a right to use it which is not restricted to a particular journey. In such circumstances, smoking is still permitted. This seems to cover the situation where an employee occasionally uses their own car for work purposes or where the car is provided as a perk but there is occasional business use - and business use involves, say, giving a lift to a colleague or client. But the position becomes less clear as the amount of business use increases - the test is whether it can be said that the vehicle is used primarily for private purposes and there is no guidance on this. No doubt, a car owned by the employee will normally be considered as being used primarily for private purposes (and exempt) but cars provided as a perk might be more at risk of being covered, depending on the level of business use. This may become clearer

through case law once the law is in force.

Exemptions

There are a limited number of premises that will be exempt under the new smoke-free law, and all exemptions are subject to strict conditions. The exempt premises include, amongst others, designated bedrooms in hotels, guest houses and similar establishments, designated rooms used as accommodation in care homes, hospices and prisons, specialist tobacconists and a temporary exemption (until 1 July 2008) for designated rooms for adults in mental health institutions.

Displaying signs

No-smoking signs must be displayed in all smoke-free premises and vehicles to make it clear which premises and vehicles are smoke-free. The display of signs in premises will be the responsibility of the manager who will have to ensure that the signs comply with the strict requirements of the new law. The signs will have to:

- be a minimum of A5 in area (210mm x 148mm);
- display the international no-smoking symbol at least 70mm in diameter; and

- carry the following words in characters that can be easily read: "No smoking. It is against the law to smoke in these premises."

The no-smoking signs will need to be displayed in a prominent position at every entrance to the smoke-free premises. Where smoke-free premises are located within other smoke-free premises, or where an entrance is for staff only, a smaller sign consisting of the international no-smoking symbol at least 70mm in diameter may instead be displayed at the entrance to the premises.

As regards vehicles, the person who manages the vehicle will be responsible for displaying no-smoking signs in smoke-free vehicles - these signs must be placed in a prominent position in each compartment (as defined) and display the international no-smoking symbol at least 70mm in diameter. Signs can be downloaded and printed or ordered from the Smokefree England website at www.smokefreeengland.co.uk/resources/guidance-and-signage.html

Offences and Penalties

The new laws will be enforced by local councils and a telephone line will be in operation from 1 July 2007 to allow employees and members of the public to report possible breaches. Failure to comply with the new law will be a criminal offence. Anyone committing an offence will be issued with a fixed penalty notice. They can generally either pay the fixed penalty or ask for the matter to be dealt with

by a court, in which case they risk a higher fine. The table below sets out the offences, who is liable and the penalties and fines applicable.

There is a defence where a person has taken reasonable steps to stop the person smoking, or if they did not know, or could not reasonably be expected to know, that the person was smoking or where on other grounds it was reasonable for them not to comply with the duty.

What should you be doing now?

In preparation for the smoking ban, you should:

- ensure all the required no-smoking signs are in place by 1 July 2007;
- ensure staff, customers and visitors are aware that the premises and work vehicles are legally required to be smoke-free from 1 July 2007;
- ensure staff understand the new law and what their responsibilities are;
- amend your disciplinary procedure to make smoking in smoke-free premises or vehicles a disciplinary offence;
- remove any existing indoor smoking rooms;
- remove ashtrays from smoke-free premises;
- consider introducing or updating an existing smoke-free policy in consultation with your staff; and
- consider providing your staff with support to give up smoking.

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 smoke-free place	Anyone who smokes in a smoke-free place	£30	£50	Up to £200
Failing to display required no-smoking signs	Anyone who manages or occupies the smoke-free premises or vehicle	£150	£200	Up to £1000
Failing to prevent smoking in a smoke-free place	Anyone who manages or controls the smoke-free premises or vehicle	N/A	N/A	Up to £2500

Should you have any questions please contact your usual Pinsent Masons adviser, your local office (see below) or hrnetwork@pinsentmasons.com.

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