

# Smoking at work



## ► Inside

Which premises must be smoke-free

Which vehicles must be smoke-free

Penalties for non-compliance



## Introduction

Following the introduction of the smoking ban in England in July 2007, it is a criminal offence in England, Scotland, Wales and Northern Ireland to smoke in virtually all enclosed public places and workplaces, on public transport and in work vehicles used by more than one person.

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### What is 'smoking'?

Smoking is defined as smoking tobacco or anything which contains tobacco, or smoking any other substance, and includes being in possession of anything lit which contains tobacco, or being in possession of any other lit substance in a form in which it could be smoked.

Basically, this covers all forms of smoking, including cigars, pipes and shishas. Provided the substance is lit, there is no need for it to be inhaled for it to be covered.

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### Where is smoking banned?

Smoking is banned in two main areas – in enclosed or substantially enclosed premises and in enclosed vehicles (with some exemptions – see below). If the premises are not enclosed or substantially enclosed and if the vehicle is not enclosed, smoking is allowed.

#### Premises

Premises are 'enclosed' if they have a ceiling or roof and (apart from doors, windows and passageways) are wholly enclosed whether permanently or temporarily.

Premises are 'substantially enclosed' if they have a ceiling or roof but have openings in the walls which make up, in aggregate, less than 50% of the total area of the walls. (In calculating the area of an opening or an aggregate area of openings you ignore openings in which there are doors, windows or other fittings that can be opened or shut).

'Roof' includes any fixed or moveable structure or device which is capable of covering all or part of the premises as a roof, including, for example, a canvas awning. Any premises without a roof are exempt from the ban.

#### Vehicles

A vehicle (or part of a vehicle) counts as enclosed if it is enclosed wholly or partly by a roof and by any door or window that may be opened.

Smoking is allowed in any vehicle which has its roof completely stowed away.

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### When is smoking in premises banned?

It's probably easier to say when it isn't banned:

- If only one person ever works in the premises and the public is never given access to them, then smoking is permitted
- If the premises are only ever used by one person and the public is given access for reasons other than to seek or receive goods or services, smoking will also be permitted when the public is not present. However, smoking is banned at all times in such premises if the public is given access to seek or receive goods or services
- In private dwellings, unless work is carried out there (see the next section for details on this)

So where more than one person works in the premises, even if they do not work together, smoking is forbidden. 'Work' means both paid and voluntary work.

#### Private dwellings

In general the smoking ban does not apply to private dwellings. However there are some complex exemptions relating to private dwellings in which work is carried out. This is the most complicated part of the legislation, and we do not have space to explain it in detail but, in essence, smoking is forbidden in any part of a private dwelling which is used solely as a place of work:

- by two or more people who do not live there
- by someone who does not live there and someone who does
- by one person who works there (whether they live there or not), and people who do not live there come to give or receive goods or services

except where the work is solely:

- to provide care for a person living in the dwelling
- to assist in domestic work for the household of the dwelling
- to maintain the structure or fabric of the dwelling
- to install, maintain or remove services provided to the dwelling for the benefit of persons living in it

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## What about vehicles?

This is a little simpler. If a vehicle is 'enclosed' (meaning where it is enclosed wholly or partly by a roof and by any door or window that may be opened) smoking is banned where it is used by members of the public or a section of the public (whether or not for reward or hire) and where it is used in the course of paid/voluntary work by more than one person.

The only exceptions are where the roof is completely stowed away while conveying passengers; or where the vehicle is used primarily for the private purposes of a person who either owns it or has a right to use it which is not restricted to a particular journey.

So, smoking will only be banned in a company car if it is shared by two or more staff (even if they don't use it at the same time). Someone who uses their own private car for work purposes will, however, be allowed to smoke in it.

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## Some more exemptions

Other areas which are not covered by the smoking ban include:

- A designated smoking bedroom in a hotel, guest house, inn, hostel or members' club, provided the room is only used as a bedroom, is completely enclosed (except for windows and doors, which must mechanically close if they open into a smoke-free area), is ventilated only to the outside or into another designated smoking bedroom and which is clearly marked as a bedroom in which smoking is permitted
- Dormitories, or other rooms that the management makes available for sharing, are not covered by this exemption and must be smoke-free
- Designated rooms in care homes, hospices and prisons which are used as accommodation for over 18s. Similar rules apply as for hotels etc, save that designated smoking rooms in prison do not have to be completely enclosed
- In theatres and other places where the 'artistic integrity of a performance' makes it appropriate for a performer to smoke (in which case the part of the premises in

which he is performing is not smoke-free in relation to him during his performance)

- Specialist tobacconists
- Designated rooms in off shore installations
- Designated rooms in certain research and testing facilities

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## No smoking signs in smoke free premises

Anyone who 'occupies or is concerned in the management of' premises where smoking is banned has a duty to make sure that no-smoking signs are displayed. There are detailed regulations about what these signs look like and where they have to be put.

The signs have to be displayed at each entrance to smoke-free premises in a prominent position. Each sign has to be at least A5 size, must display the no-smoking symbol and must contain 'in characters that can be easily read by persons using the entrance' the words:

*'No smoking. It is against the law to smoke in these premises'*

although other words can be used instead of 'these premises' eg 'this hotel'.

A smaller no-smoking sign (70mm in diameter) showing only the no-smoking symbol is allowed under certain circumstances (such as by an entrance to smoke-free premises from other smoke-free premises).

The no-smoking symbol




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## No smoking signs in vehicles

Anyone who has 'management responsibilities' for a smoke-free vehicle must make sure that he puts up at least one of the smaller (70mm) no-smoking signs in a prominent position in each compartment of the vehicle.

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## Offences, defences and penalties

It is a criminal offence to smoke in a smoke free place or, if you control or manage a smoke-free place, not to stop someone smoking there. Enforcement is by local councils, and the government will be setting up a hotline number for members of the public to report suspected breaches of the rules.

Smokers

The smoker has a defence if he can show that he didn't know (and couldn't reasonably have been expected to know) that it was a smoke-free place. Otherwise, he faces a fine in the magistrates court of up to £200 or a fixed penalty of £50 (reduced to £30 for payment within 14 days).

Managers and controllers

The person who 'controls or is concerned in the management of' smoke-free premises who fails to stop someone smoking in a smoke-free place has a defence if he can show:

- that he took reasonable steps to stop the person smoking, or
- that he did not know, and could not reasonably have been expected to know, that the person in question was smoking, or
- that it was reasonable for him not to comply with the duty on other grounds

Otherwise, he faces a fine in the magistrates court of up to £2,500.

Failure to put up the right no-smoking signs in premises or vehicles can result in a fine in the magistrates court of up to £1,000 or a fixed penalty of £200 (£150 for quick payment) unless the manager/controller can show:

- that he did not know, and could not reasonably have been expected to know, that the premises or vehicle were smoke free, or
- that he did not know, and could not reasonably have been expected to know, that no-smoking signs were not being displayed, or
- that it was reasonable for him not to comply with the duty on other grounds

Other possible criminal offences are (i) intentionally obstructing an authorised officer in the exercise of his functions, (ii) failing to give an authorised officer any facilities, assistance or information which he reasonably requires and (iii) making false or misleading statements, all of which can attract a fine of up to £1,000.

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### Enforcement

Enforcement officers appointed by local councils to police the ban are entitled to:

- enter premises (except private homes) 'at any reasonable hour'
- carry out 'necessary inspections and examinations'
- require people to hand over any substance for inspection
- keep or keep samples of any such substance and
- require any person to give him the information or assistance that he considers necessary

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### General health and safety rules also apply

Even if smoking is permitted in some circumstances under this legislation, general health and safety considerations can still arise and young people and pregnant women in particular should be protected against exposure to second hand tobacco smoke while at work.

For further information on this subject please contact:

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