



BRIEFING

SMOKING BAN – 50 DAY PLAN

The ban on smoking in England will take effect from 6am on Sunday 1 July. Having considered the implications of this for customers and external facilities now is the time to focus on the actions you need to take as a company to ensure that you are ready to comply.

With little over a month to D-Day, you need to revise and update health and safety and staff training policies to ensure that workers take account of new legal obligations. You will need to make sure that staff know how the ban will affect them and any actions they need to take.

A **company smoking policy** is a good way to begin the process and it can also act as a checklist of the measures needed to ensure that the company as a whole is compliant on 1 July. The *ALMR* has drafted a standard template setting out the key areas such a policy should cover. We cannot provide a definitive answer in all cases, but we can help to prompt you to consider all the compliance and operational issues unit staff will need to grapple with.

Adopting such a policy will ensure that you have met your health and safety obligations in respect of staff and will also help to prove due diligence should you face enforcement action as a result of someone smoking on the premises. It is evidence that, as a company and premises licence holder, you have taken reasonable steps to comply with the new law.

A policy will also provide advice and guidance to front-line staff. Remember, in the first instance, it is the unit manager who has responsibility for ensuring that no-one smokes on the premises. The policy will equip them with the tools and procedures for handling incidents of non-compliance and highlight issues which they may need to develop operational policies to deal with.

We have also included a **checklist** for directors and managers to work through to ensure that the company and units are compliant.

KN
Ealing
4 May 2007



SMOKE FREE POLICY

EXAMPLE

Purpose

This policy has been developed to protect all employees, customers and visitors from exposure to second hand smoke and to assist in compliance with the Health Act 2006.

At 6am on Sunday 1 July 2007, national legislation in England changes the law on smoking. Smoking will no longer be allowed in any enclosed or substantially enclosed public place. This includes all workplaces, offices and company vehicles as well as licensed retail units.

This policy provides an overview of the new law and information to staff on changes to company and operational practice required to comply.

Policy

It is the policy of *[insert name of business]* that all of our workplaces are smoke free. The policy shall come into effect on *[date – no later than 1 July]* and be reviewed on *[date]* by *[name]*.

Staff are not permitted to smoke at any time in any office, room or public space inside company premises, with no exceptions. This policy applies to all employees, workers, contractors or consultants, whether employed directly by the company or through an agency.

Staff are only allowed to smoke in the following areas and subject to the following provisions

[if there are any external areas or facilities for staff to smoke, please outline here. Be specific. Can staff smoke in customer smoking facilities, or must they smoke in designated areas? Stress that they are only able to smoke in external areas.

At an outlet level, you need to think about how you handle smoking breaks – will they be paid or unpaid, will they count as part of a rest break eg as part of a lunch hour or as part of a statutory break – helpful to specify policy here]

Implementation

Overall responsibility for implementing the policy and ensuring compliance with the Health Act 2006 rests with *[name – the unit manager is legally required to ensure no-one smokes]*

The person named above shall inform all existing employees and other workers of the policy. They will also give all new personnel a copy of the policy on recruitment/induction. The person named above will also be responsible for ensuring that customers and other visitors to the premises respect the fact that the workplace is smoke free.

Appropriate no-smoking signs will be placed and maintained at the premises.



Non-compliance

All staff are obliged to adhere to, and facilitate the implementation of the policy. All staff are therefore responsible for ensuring no-one smokes in the workplace.

Standard company disciplinary procedures will be followed if a member of staff does not comply with this policy and smokes at work. Those who do not comply are also liable to a fixed penalty notice and possible criminal prosecution.

Standard company policies will apply to customers engaging in illegal activity and refusing to comply.

Operational policy

The law also applies to non-workers smoking in a workplace eg customers or other visitors to the premises who are not employed by the company. All staff will have a responsibility for ensuring that these individuals comply with the law and do not smoke in the workplace.

[you may wish to include here any standard company policy or unit level policy you have developed to deal with customer-related issues. The attached checklist highlights some of the issues for consideration]

Help to stop smoking

The NHS offers a range of free services to help smokers give up. Visit gosmokefree.co.uk or call 0800 169 0 169 for details.

[there has been some media coverage about companies giving time off to attend no-smoking support sessions or providing assistance – there is no legal obligation, but if you want to offer this, state it here]

Signed _____

Date _____

On behalf of _____



SMOKING BAN – 50 DAY PLAN CHECKLIST

From 6am on Sunday 1 July, smoking will be banned in all workplaces as well as enclosed and substantially enclosed public places. If you manage or are in charge of licensed premises, it is your legal responsibility to ensure that the ban is complied with.

The following checklist will help to ensure that your company and outlets comply with the new law, and the issues you need to consider. You need to:

- inform your staff about the new law and their obligations
- display appropriate signs
- review your facilities
- develop operational policies
- ensure compliance

1. Inform

You need to make sure that your **staff** are aware of the new law and their obligations in ensuring compliance. A **smoking policy** will demonstrate that you have taken steps to provide them with this information. Ideally, the policy should be developed in consultation with staff and a copy provided to each worker.

Develop a clear list for staff of where they are allowed to smoke and more importantly where they are not eg communal staircases, back of house areas – the bar will always remain a workplace even when not open to customers so they can never smoke front of house. If you operate letting rooms and have designated guest smoking rooms, you may want to spell out that staff are not allowed to smoke in them, nor are staff allowed to use the managers' flat for a smoking break. Clarify whether staff are able to use external smoking facilities provided for customers.

A unit level policy should be developed to cover staff smoking breaks. For example, will this be paid or unpaid? How many breaks are reasonable and how long should they be? Will they form part of statutory rest provision or be deducted from a lunch break? You are legally obliged to give staff a rest break if their working day is more than 6 hours, but this need not be paid.

Staff also need to be reminded of their legal obligation to stop people smoking in the premises. Update staff handbooks and induction training to ensure that smoking is covered and that staff are aware of what to do if someone lights up (see compliance below)

Consider banning smoking at work for staff ahead of the public ban to get them used to the changes and familiar with their own obligations before they have to enforce the ban on customers.

The ban applies to smoking of all forms, including shisha/water pipes or herbs.

2. Sign

You are also legally obliged to ensure that the outlet has appropriate signage which meets minimum requirements. This will help to ensure that **customers** and visitors are aware of where they may and may not smoke.



You must display a **no-smoking sign** of A5 size or larger at all public entrances to the premises. This is not just the front door, but any side entrance or gated entrance which customers or the general public may use eg a door from the beer garden back into the bar. The sign must be displayed in a prominent position.

The sign must carry the international no-smoking logo and the words “**No smoking. It is against the law to smoke in these premises**”. You can personalise the sign by referring to this pub/restaurant/hotel etc

Smaller signs with only the no-smoking logo (min 70mm diameter in red) may be displayed at staff entrances or entrances to premises which are inside larger smoke free buildings eg. an office block or a bar inside a shopping arcade.

Although not a legal obligation, you may also wish to consider table top signage, particularly in outside areas deemed to be substantially enclosed or where customers may be unsure as to whether they are allowed to smoke. Prominent signage within the outlet – as well as at the front door – will make it easier to deal with difficult customers.

The signage requirement applies not only to the outlets but also to **head offices**. Make sure you put signs up in all premises. Company **vehicles** which are required to be smoke free should also carry the smaller no-smoking symbol.

You need to work out exactly how many mandatory signs you need and make sure that you have them available in advance of 1 July. You can download signs from www.smokefreeengland.co.uk/resources or by calling 0800 169 1697. You can also order posters for display at the start of the ban to remind customers of the new law.

3. **Facilities**

If you currently provide a dedicated staff smoking room, you will have to decommission it before 1 July. You can still have a staff room providing it is smoke free. Review its use.

Staff also need to be aware of where customers can and cannot smoke. The ban applies to all public places that are enclosed or substantially enclosed. ‘Substantially enclosed’ means an external area with a roof or roof covering where less than 50% of the perimeter walls are open. Clarify whether staff can smoke in any external facility provided for customers.

Existing external facilities should be reviewed as a matter of urgency and any changes made if they appear to breach this rule eg. a walled courtyard garden with a jumbrella covering the entire roof space would have to be smoke free, but if the jumbrella was taken down, then customers could smoke there. If you want to put up new structures, talk to your local Environmental Health and Planning Department to ensure compliance.

Temporary structures will often not require planning permission, but staff need to ensure that they are removed each night to avoid falling foul of the new law.

You also need to consider the provision of litter bins and bespoke cigarette bins both in any external area and at the entrance to the premises. These may require planning permission. Even if you have an external area, customers may arrive at the premises



smoking or may choose to stand outside the pub. You need to plan for and accommodate this where possible.

Make sure that staff are aware of the consequences for themselves and the business of discarding cigarette litter. Later this year, new laws will be brought in to allow businesses to be fined for such litter outside their premises. External shelters and front forecourts should be swept regularly. Brief door staff to remind customers that the street is not an ashtray. Staff should be encouraged to remind customers to use bins and ashtrays. Smokers caught littering can also be issued with on the spot fines.

Many EHOs will be looking for the removal of ashtrays from the main bar area as a sign that the premises is complying with the new law. This is not a legal requirement, however it would be sensible to remove them from obvious display and only to keep some behind the bar to use when asking customers to extinguish their cigarettes.

The fact that people are not able to smoke inside the pub does not mean that you are unable to sell cigarettes – indeed vending machines will help to keep smoking customers inside the pub. From October, the law will change to increase the minimum purchasing age from 16 to 18.

4. **Operational policies**

The operational issues thrown up by the ban will be different for each outlet, but it may be helpful to decide a company line at head office level or encourage unit managers to develop a site policy for dealing with common issues of concern. Some of the most common operational problems are highlighted below:

- **Noise:** The biggest issue of concern for most pubs and bars will be the potential for nuisance arising from customers outside their premises. You are obliged under the Licensing Act to prevent such nuisance. A company policy on managing and minimising this may be helpful if complaints are received or a licence review is instigated.

Many local authorities are keen to stamp out street drinking and discourage drinking on the pavement outside pubs other than on licensed forecourts. Check your licence carefully to make sure that there are no conditions relating to the taking of drinks outside, restrictions on activities in beer gardens (some licences ban consumption or restrict the hours of consumption others restrict the hours the garden may be used)

You may wish to display signs requiring customers to be quiet. You could voluntarily limit the times during which smokers will be able to use external areas or restrict the use only to smokers late in the evening thereby preventing large numbers of people congregating outside. If you do have licence restrictions on the use of external areas, you may find it easier to apply for later use of only a small part of the garden. If it is feasible, site external smoking facilities away from residential properties.

For larger premises with multiple entrance and exits eg large clubs or hotels, you may want to consider how best to encourage smokers to use the areas which will cause least disturbance and nuisance.

Doorstaff can be used to ensure that staff drinking and smoking on the pavement do not cause a nuisance, and should be briefed to remind people outside the premises to keep the noise down.



- **Re-admittance:** clubs and some bars have conditions prohibiting admittance or re-admittance of customers after certain hours. This is likely to be applied to customers going outside for a cigarette.

You should determine how to manage the queue to minimise potential flashpoints or difficulties surrounding this. For example, will you have a separate queue for customers returning after a cigarette or will they have to rejoin the main queue

- **Guest bedrooms:** if you let rooms you have the option to designate some bedrooms as smoking rooms for use by customers. However, there are stringent conditions which must be met. The rooms must be fully enclosed and must not ventilate into any other part of the premises. They must also have self-closing doors. You must also designate the bedrooms as smoking rooms in writing – you cannot pick and choose which rooms will be smoking rooms.

Staff are not able to smoke in these bedrooms even though they are designated smoking rooms. This is because for the staff, the rooms are workplaces.

5. Compliance

It is the business owner’s responsibility to ensure a smoke free environment for their staff and customers. However, it is the outlet manager’s responsibility to ensure that the law is complied with – that people do not smoke on the premises and enforce the ban. If they fail to do so, then the company could face prosecution.

The penalties are stringent:

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 required no smoking signs	Anyone who manages or occupies the smokefree premises or vehicle	£150	£200	Up to £1000
Failing to prevent smoking in a smokefree place	Anyone who manages or controls the smokefree premises or vehicle	N/A	N/A	Up to £2500

Managers and staff need to be prepared to take action if workers or customers smoke on licensed premises after 1 July. You should include detailed information on how to handle such incidents in staff training. An overview is set out below:

Inform	draw attention to no smoking signs and remind them of the new law.
Warn	advise them of the consequences of continuing to smoke – they will be refused service and remind them that both you and they could be liable for a fine
Request Action	ask them to stop and offer an ashtray for them to stub out if they persist in smoking ask them to leave and follow normal procedures for dealing with customers who conduct illegal activity on the premises.
Help	if the customer is difficult, ask the manager and door staff for help. If necessary approach police



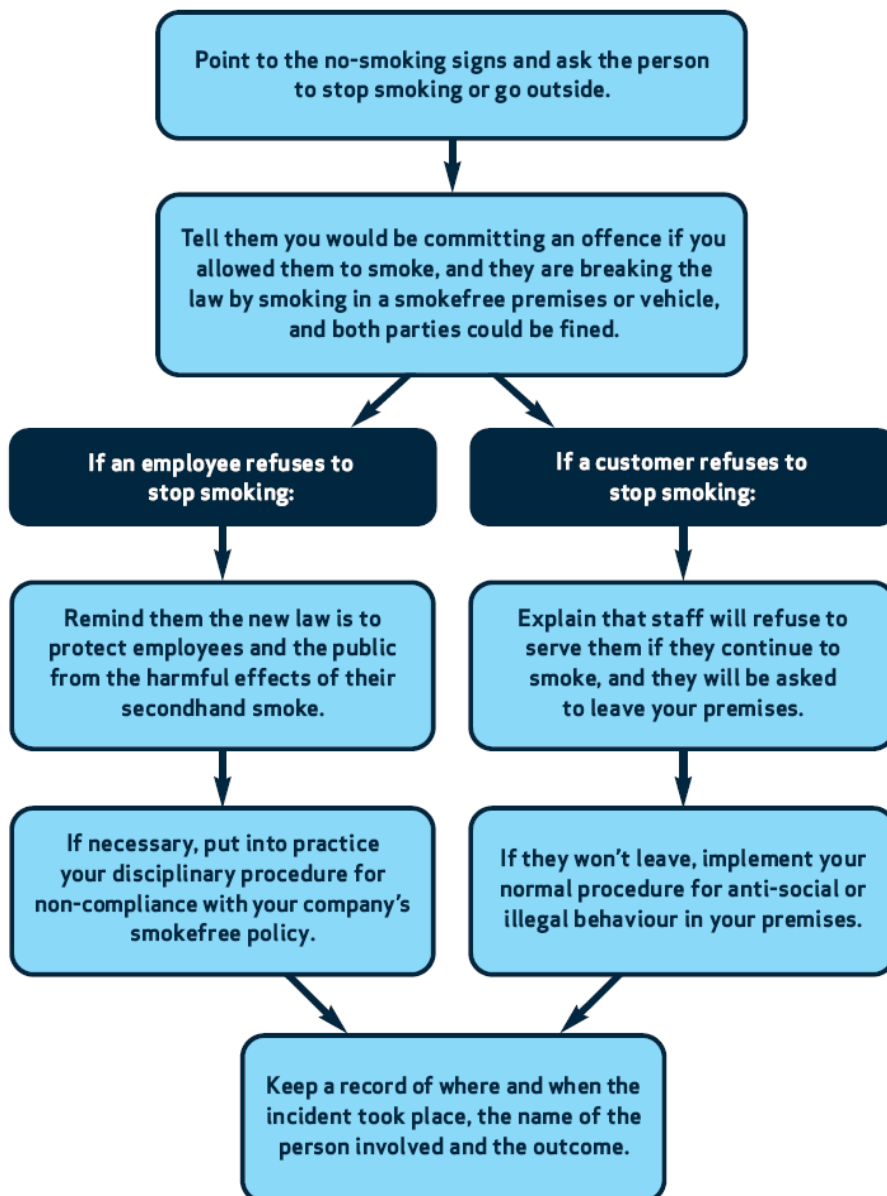
If a member of staff smokes on the premises, then you should follow normal disciplinary procedures.

It would be advisable to keep an incident log to record any action taken against customers who do light up. Immediately after the ban is introduced, it may be helpful to record this in a separate log. However, eventually incidents could be recorded in the general log book. This will be helpful in demonstrating due diligence should smoking offences be pursued against the company. A record to refusals to serve, requests to leave will show that the company has not knowingly allowed people to smoke or encouraged them to do so.

The attached sample incident log and flow chart will be helpful in advising staff on how to treat customers.

HOW TO DEAL WITH SMOKING IN A SMOKEFREE PLACE

If you are in charge of smokefree premises and/or vehicles, you will have a legal responsibility to prevent people from smoking in them. If someone does smoke in any premises or vehicles you are responsible for, here are some practical steps you might take to deal with them.



If physical violence is threatened by a person smoking, we suggest you notify and/or seek assistance from the police.

