

Thinking about setting up a Shisha Café?

Whether providing facilities for smoking as a main part of your business e.g. shisha café, or providing facilities for smoking incidental to the business e.g. pub's smoking shelter, you must comply with The Health Act 2006 and The Smoke-free (Premises and Enforcement) Regulations 2006.

Where smoking is a main activity, the objective is often to provide a comfy, warm place where people can stay for extended periods of time. This contrasts with the regulations which require enclosed or substantially enclosed premises to be smoke-free.

Businesses importing and/or supplying tobacco products, including Shisha, also face other regulations.

BEFORE entering into binding contracts to rent or purchase premises or spending money modifying a premise check that your ideas can comply with all relevant legislation.

'Smoking shisha for ½an hour is equivalent to smoking 100 cigarettes.'

Before setting up a shisha café you should consider:

- Planning
- Building regulations
- Statutory nuisances: e.g. noise and smells
- Gas safety: e.g. enclosing flues or contaminating make-up air
- Fire Safety
- Licensing Act 2003: e.g. providing regulated entertainment and late night refreshment
- Food business registration
- Health and Safety
- Trading standards – Under age sales of tobacco including required signage
- Revenue and Customs – duty liable on tobacco products etc
- and Smoke-free law.

Compliance with any of the above considerations does not automatically earn compliance with another. For example having planning permission does not mean that the structure is compliant with smoke-free law.

The above list is not intended to be exhaustive and it is your responsibility to ensure that you comply with all aspects of the law. This is a complex area and you should consider obtaining independent legal advice.

Because of the wide variety of laws and enforcing authorities involved, Preston Council regularly works in partnership with the Police, Customs and Revenue, and Trading Standards.

The Health Act 2006 (Smoke-free law)

Section 1(2) of the Act applies to the smoking of tobacco or anything which contains tobacco, and being in possession of lit tobacco or anything lit which contains tobacco, or being in possession of any other lit substance in a form in which it can be smoked. That includes smoking shisha. Smoking is described as being in possession of a lit article.

The Act prohibits smoking in an area which has a roof or ceiling and is enclosed or substantially enclosed, and which is:

- used as a place of work by more than one person (not necessarily at the same time and including volunteers)
- used as a place of work for one or more persons and where members of the public might attend to seek goods or services.
(In both the above circumstances the premises would be smoke-free all the time)
- a place not being as described above, but which is open to the public.
(In this circumstance the premises would be smoke-free only when the public were present).

A ceiling or roof is any fixed or moveable structure or device capable of covering all or part of the premises and can include things like canvas awnings, temporary covers etc.

Section 6 of the Act deals with the requirement for 'NO SMOKING' signs. It is the responsibility of the owner or person involved in the management of the premises to make sure that no-smoking signs are displayed in those premises in accordance with that section.

What are 'enclosed premises'?

Premises will be considered to be "enclosed" if they have a ceiling or roof, and except for doors, windows or passage ways are wholly enclosed, whether on a permanent or temporary basis.

What is a roof?

The term 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.

What is open to the public?

Premises are "open to the public" if the public or a section of the public has access to them, whether by invitation or not, and whether on payment or not.

Are the rules different in other parts of England?

No. All of England and Wales is covered by the same legislation*.

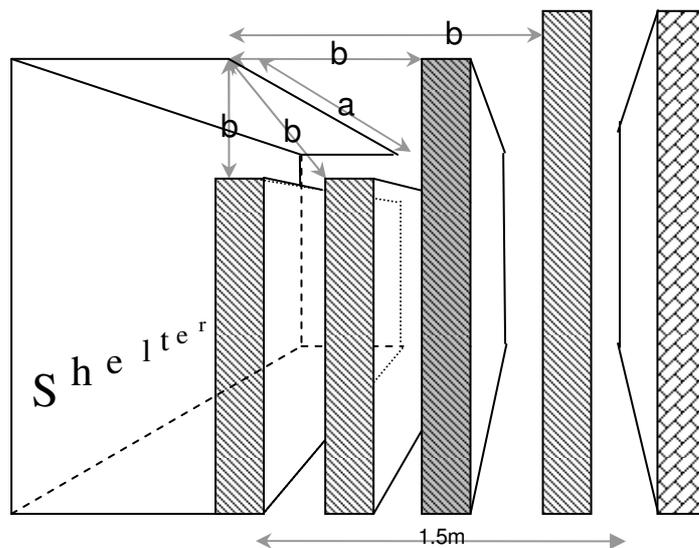
What are 'substantially enclosed' premises?

This is specified in the 'The Smoke-free (Premises and Enforcement) Regulations 2006'. Premises will be considered to be substantially enclosed if they have a ceiling or roof, but there are openings in the walls which are less than half of the total wall area, including other structures that serve the purpose of walls. When working out the area of an opening, no account can be taken of openings in which there are doors, windows or other fittings which can be opened or shut.

Please note that walls, other structures and items close to the shelter may be counted when determining the degree of enclosure.

Walls and other structures etc that are **more than** 1.5 metres away from the perimeter of the smoking shelter will not be considered by Preston City Council* as part of that shelter, while those that are 1.5 metres or nearer to the perimeter of the smoking shelter will be considered part of it.

In the case of a nearby wall; where the roof edge is the same height or higher than the adjacent wall then the distance between the wall and roof edge measured horizontally, will be used to calculate the openness of that wall. Where the edge of the roof is higher than the top of the wall the direct distance between them will be used. This calculation gives credit for increases in either or both the height of the roof above the top of the wall or the distance the structure is placed from the wall. Examples of where to measure are shown below.



In the cases shown to the left the area credited as being open is achieved by multiplying distance 'a' and the relevant distance 'b'. However where the wall is more than 1.5 metres away from the shelter, the wall won't be counted as part of the structure and no calculation is needed.

What if the Council say my smoking shelter is substantially enclosed, but I disagree?

If the Council believes that your smoking shelter is substantially enclosed and should be smoke-free they may prosecute you or people who smoke inside. The case would normally be heard in the Magistrates' Court: it is the opinion of the court that will decide whether the shelter is substantially enclosed or not.

Enforcement:

Due to the wide range of legislation involved, visits to premises where shisha is being smoked often include other enforcing agencies e.g. police, fire, customs and trading standards.

Environmental health officers have power to enter premises at reasonable times and may obtain warrants to enter by force if necessary. People who prevent officers carrying out their duties may commit an offence of obstruction.

Penalties:

Here are the maximum penalties you may be fined by a court:

Smoking in smoke-free premises - £200 (may be offered a fixed penalty notice with £50 to pay or £30 if paid early).

Failing to prevent smoking in smoke-free premises - £2,500.

Not displaying 'No Smoking' signs - £1,000 (may be offered a fixed penalty notice with £200 to pay or £150 if paid early).

Obstructing an officer - £1,000.

In the event that offences are repeated by an individual or company the Council may apply for a High Court Injunction to stop the illegal activity.

* The legislation gives rise to the need for local authorities to interpret how far away another structure or wall etc is from the smoking shelter before they do not class it as being part of it. In all cases it would ultimately be for the Courts to rule on whether the Council's interpretation was reasonable and correct.

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