

Rooms or Shelters in which people can legally smoke

If you are considering allowing persons to smoke on your premises you need to ensure that the room or shelter complies with the law.

What does the law say?

Premises that are open to the public will be required to be smokefree in all enclosed and substantially enclosed parts. Premises are open to the public if the public, or a section of the public, has access. It does not matter whether access is open to everyone, or if access is restricted to certain members of the public by way of invitation or payment – the premises will still be required to be smokefree.

*There are specific exemptions for designated rooms in hotels, care homes, prisons, artistic performances and specialist tobacconists.

What is smoking?

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 (Hookah, goza, narghile) cigarettes (including bidis & kreteks) pipes, cigars etc. It is also illegal to smoke tobacco free cigarettes and tobacco free shisha.

What is not smoking?

The use of electronic devices such as e-cigarettes and e-shisha pipes are not smoking.

What do 'enclosed' and 'substantially enclosed' mean?

Premises will be considered to be enclosed if they have a ceiling or roof and, except for doors, windows or passageways, are wholly enclosed, whether on a permanent or temporary basis. Premises are substantially enclosed if they have a ceiling or roof, but there are permanent openings in the walls which are less than half of the total areas of walls, including other structures which serve the purpose of walls and constitute the perimeter of premises.

This is known as the 50 per cent rule – put simply:

- if 50 per cent of the walls or more are missing then it is legal to smoke in the area; or
- if more than 50 per cent of the walls are present then it is illegal to smoke in the area.

Are doors and windows excluded?

No. Doors, windows or other fittings (e.g. roller shutters) that can be opened or shut are included as part of the structure.

What is classed as a roof?

It 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.

How can I calculate whether the room or shelter complies?

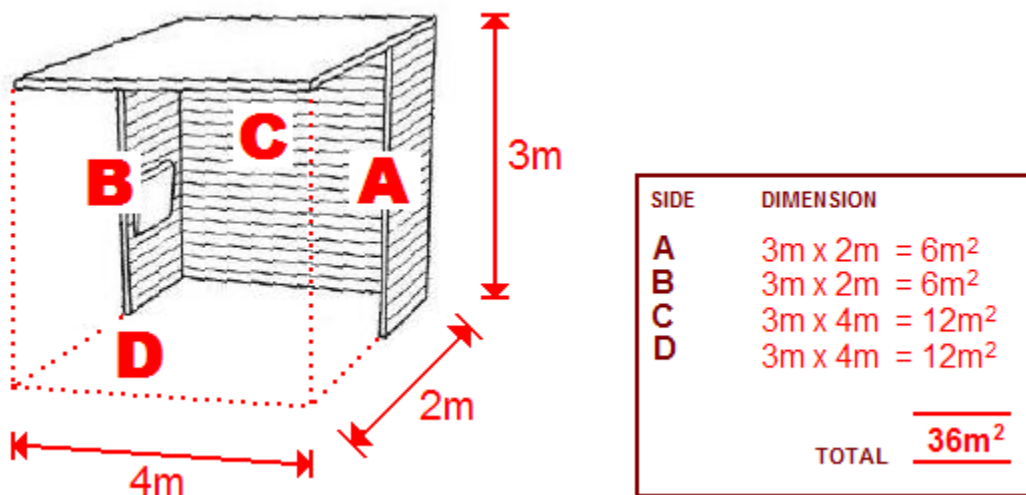
1. Establish the perimeter of the room/shelter, this is the area under the roof.
Once you know the perimeter, ignore the roof, this is not part of the calculation.
2. Work out the Total Area (TA) around the perimeter (include all wall, windows, doors and open spaces).
3. Work out the enclosed area (EA). (Don't forget to include walls, windows and doors).
4. Subtract the Enclosed Area (EA) from the Total Area (TA), this gives you your Open Area (OA).
5. If your Enclosed area (EA) is greater than your Open Area (OA), then your shelter does not comply.

If your Open Area (OA) is equal to or greater than your Enclosed Area (EA), then your shelter complies.

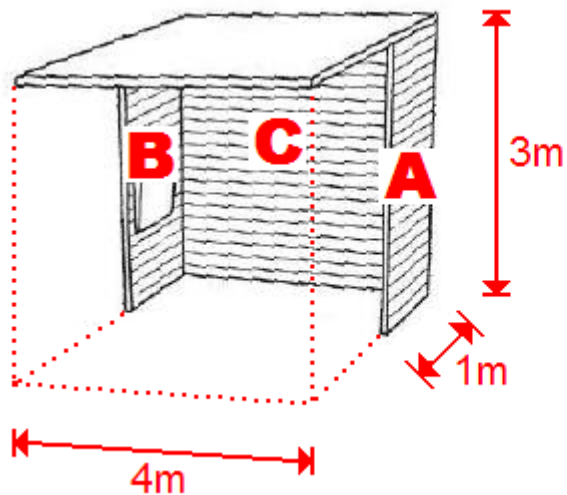
Calculating whether a shelter complies

EXAMPLE 1

1. Work out the total area (TA):



2. Work out the total 'enclosed area' (EA):



SIDE	DIMENSION
A	$3\text{m} \times 1\text{m} = 3\text{m}^2$
B	$3\text{m} \times 1\text{m} = 3\text{m}^2$
C	$3\text{m} \times 4\text{m} = 12\text{m}^2$
TOTAL <u>18m^2</u>	

3. Work out the difference:

Total Area - Enclosed Area = Open Area

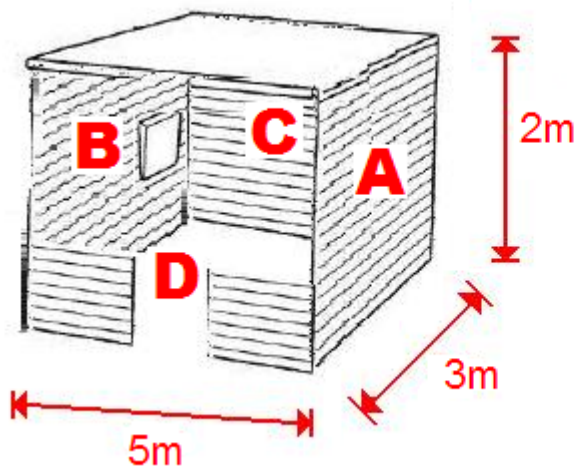
$$\begin{array}{ccc}
 \downarrow & \downarrow & \longleftarrow \\
 36\text{m}^2 - 18\text{m}^2 = 18\text{m}^2
 \end{array}$$

If the Open Area (OA) is greater or equal to the Enclosed Area (EA), the shelter complies.

As the OA in this example is equal to the EA, the shelter **would be compliant**.

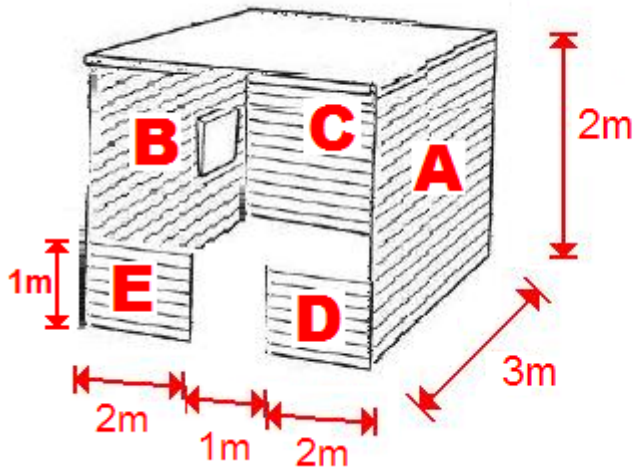
EXAMPLE 2

1. Work out the total area (TA):



SIDE	DIMENSION
A	$3\text{m} \times 2\text{m} = 6\text{m}^2$
B	$3\text{m} \times 2\text{m} = 6\text{m}^2$
C	$5\text{m} \times 2\text{m} = 10\text{m}^2$
D	$5\text{m} \times 2\text{m} = 10\text{m}^2$
TOTAL <u>32m^2</u>	

2. Work out the total 'enclosed area' (EA):



SIDE	DIMENSION
A	3m x 2m = 6m ²
B	3m x 2m = 6m ²
C	5m x 2m = 10m ²
D	2m x 1m = 2m ²
E	2m x 1m = 2m ²
TOTAL <u>26m²</u>	

3. Work out the difference:

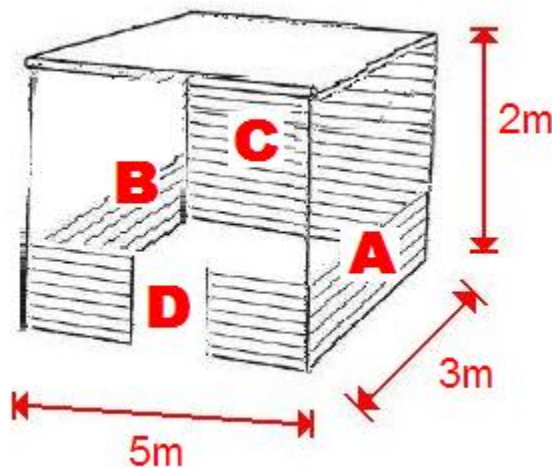
Total Area - Enclosed Area = Open Area

$$\begin{array}{ccc}
 \downarrow & \downarrow & \longleftarrow \\
 32\text{m}^2 & - & 26\text{m}^2 = 6\text{m}^2
 \end{array}$$

If the Open Area (OA) is less than the Enclosed Area (EA), the shelter will not comply. As this OA in the example is less than the EA, the shelter **would not be compliant**.

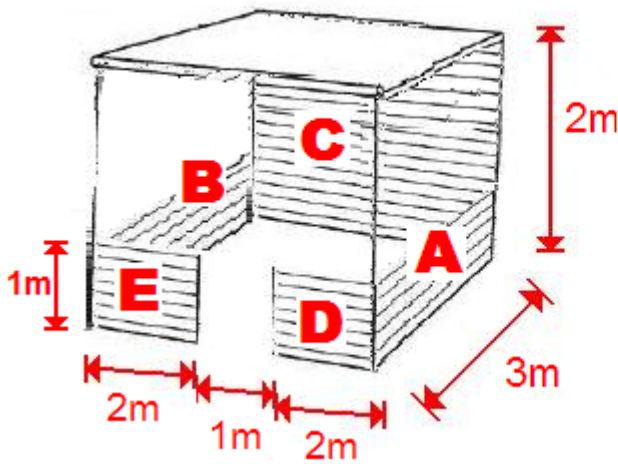
EXAMPLE 3

1. Work out the total area (TA):



SIDE	DIMENSION
A	3m x 2m = 6m ²
B	3m x 2m = 6m ²
C	5m x 2m = 10m ²
D	5m x 2m = 10m ²
TOTAL <u>32m²</u>	

2. Work out the total 'enclosed area' (EA):



SIDE	DIMENSION
A	3m x 1m = 3m ²
B	3m x 1m = 3m ²
C	5m x 2m = 10m ²
D	2m x 1m = 2m ²
E	2m x 1m = 2m ²
TOTAL <u>20m²</u>	

3. Work out the difference:

Total Area - Enclosed Area = Open Area

$$32\text{m}^2 - 20\text{m}^2 = 12\text{m}^2$$

If the Open Area (OA) is less than the Enclosed Area (EA), the shelter will not comply. As this OA in the example is less than the EA, the shelter **would not be compliant**.

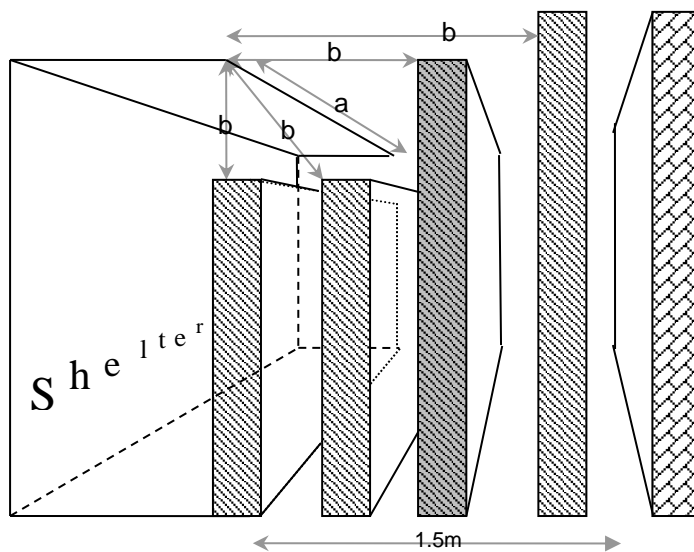
However, should the two smaller walls (D & E) be removed, you shift 4m² of enclosed space (EA=16m²) to open space (OS=16m²), thus **making the shelter compliant**.

Adjacent walls, fences, hedges etc.

The legislation does not specify a distance and each shelter will be assessed for compliance on an individual basis. However shelters need to be effectively ventilated and this all depends on their position to other walls, its height, width and construction. As a rough guide any shelter with an open side which is too close to another wall or other obstruction (including natural hedging etc) could mean that it does not comply

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.

Obstructions in the open areas

Obstructions covering the open areas of smoking rooms/shelters will also be taken into consideration. This includes fake or real bushes and plant, movable screens, wind breakers and even solid high backed furniture. Some premises choose to erect cage like 'bars' for security. The width of these bars will need to be taken into consideration and added to any calculations too.

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.

* 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

Enforcement

Environmental health officers have power to enter premises at reasonable times (typically considered to be when employees are present or when premises are open to members of the public) and may obtain warrants to enter by force if necessary. Officers have the power to take samples and photographs. 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 an Injunction to stop the illegal activity.

Please note:

It is the responsibility of the person in control of the premises (e.g. Owners & Managers) to ensure that the room/shelter complies with the smoke-free regulations before persons are permitted to come in that area.

Appropriate enquiries should be made prior to building or purchasing premises in which you intend to allow persons to smoke.

Commercial Regulatory Services
Environmental Health Department
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Preston
PR1 2RL

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www.preston.gov.uk/smokefreepreston

