



Helping to get your business or organisation ready for the new law on smoking.

A guide for employers, managers and those in control of premises.



SCOTTISH EXECUTIVE

clearing the air\*



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# Key facts on the new smoking law

- The Smoking, Health and Social Care (Scotland) Act 2005 and the Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 come into effect on 26 March 2006 at 6am. The new law is being introduced to save lives and prevent diseases caused by passive smoking<sup>1</sup>.
- From 6am on 26 March 2006 you, your staff, customers and visitors will not be allowed to smoke within your business or organisation's premises, if these are wholly or substantially enclosed<sup>2</sup>. This includes previously-designated 'smoking rooms'.
- There are very few exemptions to the smoking ban. The new law will affect most public premises, including workplaces and work vehicles.
- Failure to comply with the law will be a criminal offence. Individuals may be fined a fixed penalty of £50 for smoking in no-smoking premises. The manager or person in control of any no-smoking premises could be fined a fixed penalty of £200 for either:
  - allowing others to smoke in no-smoking premises
  - failing to display warning notices in no-smoking premises

Refusal to pay or failure to pay may result in prosecution and a fine of up to £2,500<sup>3</sup>.

- Your business or organisation will need to take steps to ensure that employees, customers, members and visitors obey the new law.
- Authorised officers of the local council will enforce the law and offer businesses support.

If you'd like to know more, visit [www.clearingtheairscotland.com](http://www.clearingtheairscotland.com) or contact the Scottish Executive's Tobacco Control Team using the details on the back cover. Authorised enforcement officers can be contacted at your local council (details of which can be found in your local telephone directory).

<sup>1</sup> Passive smoking means breathing in other people's tobacco smoke. Other people's tobacco smoke is also known as second-hand smoke or Environmental Tobacco Smoke (ETS).

<sup>2</sup> A public place, including workplace, which has a roof, and walls on more than 50% of its perimeter.

<sup>3</sup> A prosecution may be instigated instead of the fixed penalty notice route or where a fixed penalty notice has been issued and the person fails to pay the penalty.

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# Introduction

On 26 March 2006 the law on smoking in Scotland will change. From this day onwards smoking will no longer be allowed in certain wholly or substantially enclosed public places in Scotland, such as workplaces. This brochure offers information and advice on the new law for employers, managers and other people in control of work and public places – including licensed premises such as bars, hotels, all types of clubs, cafés and restaurants.

The aim is to make sure that every business and other public place, classed as 'No Smoking' under the new law, is ready when the ban on smoking takes effect at 6am on 26 March 2006 – in compliance with the law.

This brochure has been developed in consultation with businesses. Please bear in mind however, that it's for guidance only. If you're in any doubt about your legal obligations, you're advised to seek your own independent legal advice.

## Why we're introducing the new law

The Scottish Parliament has passed this new legislation to protect people in Scotland from the harmful effects of passive smoking.

The Scientific Committee on Tobacco and Health reviewed the evidence on passive smoking in 2004. They found it to be a serious public health hazard – increasing the risk of lung cancer, heart disease and respiratory illness in adults, and causing a variety of conditions in children.

Many people assume that proper ventilation can eliminate the health risks associated with passive smoking. But substantial evidence shows that ventilation systems only eliminate the smell and visibility of smoke – not the toxic carcinogens. As there's no safe level of exposure to second-hand smoke, ventilation is not an option.



# Places where the new law will apply

The law prohibits smoking in certain public places which are ‘wholly or substantially enclosed’. This is an area with a ceiling or roof that – except for doors, windows and passageways – is either wholly enclosed (whether permanently or temporarily); or is enclosed but for an opening which is less than half of the area of its walls. This means that previously-designated ‘smoking rooms’ will no longer be allowed.

Vehicles used for business purposes will also be affected by the new law. These include light and heavy goods vehicles, and public transport such as taxis, buses, trains and ferries. However, if you use a car (your own or company car) for business purposes, it will be exempt.

A list of those premises which will be ‘no-smoking premises’ under the new law, if they are wholly or substantially enclosed, is set out in full in Appendix B.

## Places not included

There are only a few exemptions to the new law. These are fully listed in Appendix C.

Further guidance will be provided to those premises in the care sector which are exempt. This will ensure that sound smoking policies are in place and that ‘designated rooms’ for smoking are only used on humanitarian grounds – so non-smoking patients, visitors and staff are not unnecessarily exposed to second-hand smoke.

Proprietors and managers in the care sector are advised to carefully consider the definition of ‘designated rooms’ within the legislation (Appendix A) if designating any room as a smoking room, to ensure that they comply with the new law.

Hotels, boarding houses, inns or hostels etc – containing at least two apartments set apart exclusively for the sleeping accommodation of guests – can designate one or more bedrooms where the occupants can smoke, if they wish. Again, however, proprietors and managers should carefully consider the definition of ‘designated hotel bedroom’ in Appendix A to ensure that they meet the requirements of the law.

There is, of course, no legal obligation on the proprietors of those premises exempted under the new law to provide designated areas for smoking if they do not wish to do so.



# How to comply with the new law

From 6am on Sunday 26 March 2006, every business and organisation in Scotland to which the law applies will need to take all 'reasonable precautions' to ensure that employees, customers and other visitors don't smoke on their premises.

We recommend you take the following minimum action:

- Display the required 'No Smoking' signs (see below) in such a way as to make staff, customers and visitors aware that they must comply with the new smoking law.
- Remove all ashtrays.
- Develop and implement a smoke-free policy with staff to ensure that infringements by employees, customers, members etc are dealt with under agreed procedures (see page 13).
- Inform anyone smoking that he/she is committing an offence.
- Request that they extinguish their smoking material immediately or leave.
- Refuse service to individuals who are smoking against the law (if your business provides a service for customers or members).

## No-smoking signage for premises

You are required by the law to display 'No Smoking' signs in or on any premises affected by the ban, so that they can be seen and read by people in the premises and approaching the premises. They must be obviously displayed and protected from tampering, damage, removal or concealment.

The minimum signage requirement for premises is a 'No Smoking' notice which:

- Is at least 230mm by 160mm in size.
- States that the premises are no-smoking premises and that it is an offence to smoke there or knowingly to permit smoking there.
- Displays the international 'No Smoking' symbol, at least 85mm in diameter.
- Displays the name of the person to whom a complaint may be made by anyone who observes someone smoking.

It's up to the manager or person in control to decide on the number of notices required to make sure everybody on the premises is made aware that smoking is not allowed. If you decide that you need more than one 'No Smoking' notice, the additional notices need to:

- State that the premises are no-smoking premises and that it is an offence to smoke there or knowingly to permit smoking there.
- Display the international 'No Smoking' symbol, at least 85mm in diameter.





# No-smoking signage for vehicles

You are also required by the law to display 'No Smoking' signs in or on any vehicles that are affected by the ban in such a way that the signs can be seen and read by persons who are in the vehicle, as well as persons approaching the vehicle in question. The reference to vehicles includes trains, buses, taxis, private hire cars and any vessel, boat or hovercraft. There's no legal requirement on the size of these signs but they must still meet certain requirements.

The minimum signage requirement under the new law for any relevant vehicles is a 'No Smoking' notice which:

- States that the vehicle is no-smoking and that it is an offence to smoke there or knowingly to permit smoking there.
- Displays the international 'No Smoking' symbol.
- Displays the holder of a particular post (e.g. the manager) to whom a complaint may be made by anyone who observes someone smoking.

Copies of sample signage can be downloaded from [www.clearingtheairscotland.com](http://www.clearingtheairscotland.com). You may, of course, wish to develop your own signs, but please ensure that they meet the above requirements to comply with the law.

## Areas where staff or customers can smoke

If you'd like to provide outdoor smoking areas for your staff and customers, you should consult with your staff, then take legal and local planning advice to make sure your proposals comply with the law. In planning any such outdoor smoking area, please remember that the legal definition of a 'wholly or substantially enclosed area' – which will determine whether or not the law applies to it – is outlined in Appendix A.

Where an outdoor smoking area is not being created, and staff and/or customers require to leave the premises to smoke, you might also want to provide external stubbing-out bins at entrances or exits to keep litter to a minimum.

Consideration should also be given to helping to ensure the safety of such individuals, for example if the outdoor area used for smoking is in a location which may be isolated or poorly lit. Your local community safety officer may be able to advise you. They can be contacted via your local Police Headquarters.

# What to do if someone ignores the smoking ban

We're confident that the majority of people will respect the new law on smoking. However, it's important that you know what to do if someone does continue to smoke:

- Draw the person's attention to the 'No Smoking' signs and remind them that they're committing an offence. Politely ask them to stop smoking.
- Advise the person that it's also an offence for you (as owner, manager etc) to let anyone smoke.
- Explain to them that the business has a smoke-free policy to ensure a safe working environment for all staff and customers.

If the person smoking is an employee:

- If your warning has been ignored, immediately ask them to leave the premises (and, where relevant, inform them where they can smoke).
- If the person refuses, implement your normal disciplinary procedure for antisocial/illegal behaviour in the workplace.
- Maintain a record of all such incidents and outcomes.

If the person smoking is a customer:

- Explain that staff are obliged to refuse service if they continue to smoke.
- If the customer carries on smoking, ask them to leave the premises (and, where relevant, inform them where they can smoke).
- If he/she refuses, implement the normal procedure for anti-social/illegal behaviour in the premises.
- Maintain a record of all such incidents and outcomes.

In all cases where physical violence or intimidation is threatened or encountered, seek the assistance of the police.

A National Compliance Line will operate after the new law is introduced. This will be charged at local rates and allow the public to report anyone smoking in enclosed public places. The number will be advertised before the law comes into force, and all complaints will be investigated.

# Enforcing the new smoking law

The law will be enforced by Environmental Health Officers, who have been authorised by their local authority to carry out this work. These officers already work closely with businesses in areas like Food Safety and Health and Safety. A similar approach will be used to implement the new smoking law – providing advice and support to businesses wherever possible.

Authorised enforcement officers will have the power to enter no-smoking premises to determine whether the law is being upheld. They'll also assess whether or not those in control of the premises have taken all reasonable precautions to avoid people smoking.

Inspections carried out by enforcement officers will either be pro-active (to advise businesses and to confirm compliance with the law), or re-active (in response to a complaint). Inspections may also be incorporated within other health and safety and food hygiene inspections.

Enforcement officers may carry out inspections in a number of different ways. This could include inspections:

- where officers will announce themselves prior to assessing the situation within the premises; or
- more covert surveillance, where officers will assess the situation by observation, then identify themselves following the period of surveillance.

At all times officers will strive to adopt a non-confrontational approach.

## Smoke-Free Policy

To communicate the new law and all of its implications, we strongly recommend that you develop and implement a written smoke-free policy. This policy should:

- Be concise and simple to understand.
- Identify the members of management and staff who have responsibility for its implementation.
- State the procedures to be followed in the event of non-compliance.
- Acknowledge the right of employees to work in a smoke-free environment.
- Provide information on how to obtain help to quit smoking.
- Be communicated to all staff – and in particular to new and part-time staff before they commence employment.

If the policy is broken, disciplinary action should be taken. This ought to be similar to the procedures used for violation of other health and safety matters. Employees should be given 12 weeks' notice of any change in working conditions.

To give you an idea of what should be included in the policy, there's a sample copy overleaf. A blank copy of the policy is also enclosed within this pack. This can be filled-in and used within your own business or organisation.

The Scottish Centre for Healthy Working Lives (incorporating Scotland's Health at Work) can also help you develop a policy. You can contact the national helpline on 0800 019 2211 or log onto the website at [www.healthyworkinglives.com](http://www.healthyworkinglives.com) for further information.

# Smoke-Free Policy

## Purpose

This policy has been developed to protect all employees, service users, customers and visitors from exposure to second-hand smoke and to assist compliance with the Smoking, Health and Social Care (Scotland) Act 2005.

Exposure to second-hand smoke, also known as passive smoking, increases the risk of lung cancer, heart disease and other illnesses. Ventilation or separating smokers and non-smokers within the same airspace does not completely stop potentially dangerous exposure.

## Policy

It is the policy of **[INSERT NAME OF BUSINESS]** that all of our workplaces are smoke-free and all employees have a right to work in a smoke-free environment. The policy shall come into effect on **[DATE]** and be reviewed on **[DATE]** by **[NAME]**.

Smoking is prohibited throughout the entire workplace with no exceptions. This includes company vehicles. This policy applies to all employees, consultants, contractors, customers or members and visitors.

**[IF THERE ARE EXTERNAL AREAS WHERE EMPLOYEES AND CUSTOMERS CAN SMOKE, THESE SHOULD COMPLY WITH THE LAW AND CAN BE OUTLINED HERE]**

## Implementation

Overall responsibility for policy implementation and review rests with **[NAME (the manager or person in control of the premises)]**. All staff are obliged to adhere to, and facilitate the implementation of the policy.

The person named above shall inform all existing employees, consultants and contractors of the policy and their role in the implementation and monitoring of the policy. They'll also have to give all new personnel a copy of the policy on recruitment/induction.

Appropriate 'No Smoking' signs will be clearly displayed at the entrances to and within the premises.

## Non-compliance

Disciplinary procedures should be followed if a member of staff does not comply with this policy. The procedures set out on page 12 should be followed if a customer, visitor or passenger does not comply. Those who do not comply with the smoking law are also liable to a fixed penalty fine and possible criminal prosecution.

## Help to Stop Smoking

Support for smokers who want to stop will be provided. **[PROVIDE LOCAL DETAILS HERE]**

Sources of support are: Smokeline 0800 848484, [www.hebs.com/tobacco](http://www.hebs.com/tobacco), the Public Health Department of your local NHS Board, or your local GP surgery. Contact details can be found in your local directory.

# APPENDIX A

## THE SMOKING, HEALTH AND SOCIAL CARE (SCOTLAND) ACT 2005 THE PROHIBITION OF SMOKING IN CERTAIN PREMISES (SCOTLAND) REGULATIONS 2006

Part 1 of the Smoking, Health and Social Care (Scotland) Act 2005 prohibits smoking in certain wholly or substantially enclosed places. It sets out the offences relevant to the Act, the penalties for non-compliance, the requirements for display of no-smoking notices and gives powers to authorised officers of the appropriate council to enforce the law.

The Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006, made under the Act, set out the premises prescribed as 'No Smoking' and those premises (or parts of premises) which are exempt. They also make further provision in relation to the display of no-smoking notices.

A copy of the Act and the Regulations can be obtained from [www.clearingtheairscotland.com](http://www.clearingtheairscotland.com), or by contacting the Scottish Executive's Tobacco Control Team (contact details on the back cover).

Frequently asked questions from businesses and responses can also be found on the web site and you can e-mail for further information if your query is not shown.

Some relevant definitions, as set out in the Act or regulations, are given below:

'No smoking premises' – these are premises which are wholly or substantially enclosed and which are set out in Schedule 1 to the Smoking Regulations (listed at Appendix B), subject to any exemptions set out in Schedule 2 (listed at Appendix C).

The kinds of premises which can be defined within the regulations as 'no smoking premises' are limited under the Act to one of 4 categories of premises, namely:

- premises to which the public or a section of the public has access;
- premises which are being used wholly or mainly as a place of work;
- premises which are being used by and for the purposes of a club or other unincorporated association; or
- premises which are being used wholly or mainly for the provision of education or of health or care services.

'Smoke' means smoke tobacco, any substance or mixture which includes it or any other substance or mixture; and a person is to be taken as smoking if the person is holding or otherwise in possession or control of lit tobacco, of any lit substance or mixture which includes tobacco or of any other lit substance or mixture which is in a form or in a receptacle in which it can be smoked.

For the purposes of section 4(2) of the Act:

(a) 'Premises' includes –

- (i) any building or part of a building;
- (ii) any structure or part of a structure, whether moveable or otherwise;
- (iii) any installation on land or offshore;
- (iv) any tent, marquee or stall; and
- (v) any vehicle.

(b) 'Wholly enclosed' means –

- (i) for premises other than a vehicle or part of a vehicle, having a ceiling or roof and, except for doors, windows and passageways, wholly enclosed, whether permanently or temporarily; or
- (ii) for premises that are a vehicle, or part of a vehicle, having a top or roof and, except for doors, windows and passageways, wholly enclosed, whether permanently or temporarily.

(c) 'Substantially enclosed' means –

- (i) for premises other than a vehicle or part of a vehicle, having a ceiling or roof and, except for doors, windows and passageways, substantially enclosed, whether permanently or temporarily; or
- (ii) for premises that are a vehicle, or part of a vehicle, having a top or roof and, except for doors, windows or exits, substantially enclosed, whether permanently or temporarily,

and in determining whether premises are 'substantially enclosed', no account is to be taken of openings in which there are doors, windows or other fittings that can be opened or shut;

(d) Premises shall be taken to be 'substantially enclosed' if –

- (i) the opening in the premises has an area; or
- (ii) if there is more than one, both or all those openings have an aggregate area, which is less than half of the area of the walls, including any other structures serving the purpose of walls, which constitute the perimeter of the premises.

(e) Where an opening is in, or consists of the absence of, such walls or other structures or a part of them, their area shall be measured for the purposes of paragraph (d) as if it included the area of the opening; and

(f) 'Has access' means has access whether on payment or otherwise, and whether as of right or by virtue of express or implied permission.

In relation to exempted premises (see Appendix C), the Regulations also provide the following definitions:

'Designated room' means a room which –

- (a) has been designated by the person having the management or control of the no-smoking premises in question as being a room in which smoking is permitted;
- (b) has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid floor-to-ceiling walls;
- (c) has a ventilation system that does not ventilate into any other part of the no-smoking premises in question (except any other designated rooms); and
- (d) is clearly marked as a room in which smoking is permitted.

'Designated hotel bedroom' means a room which –

- (a) is set apart exclusively for the sleeping accommodation of travellers;
- (b) has been designated by the person having the management or control of the hotel as being a room in which smoking is permitted;
- (c) has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid floor-to-ceiling walls;
- (d) has a ventilation system that does not ventilate into any other part of the hotel (except any other designated hotel bedrooms); and
- (e) is clearly marked as a bedroom in which smoking is permitted.

# APPENDIX B

## ‘NO-SMOKING PREMISES’ (as listed in Schedule 1 to the Regulations)

Those premises which fall within the scope of the legislation, having been classed as ‘no-smoking premises’, are:

1. Restaurants.
2. Bars and public houses.
3. Shops and shopping centres.
4. Hotels.
5. Libraries, archives, museums and galleries.
6. Cinemas, concert halls, theatres, bingo halls, gaming and amusement arcades, casinos, dance halls, discotheques and other premises used for the entertainment of members of the public.
7. Premises used as a broadcasting studio or film studio or for the recording of a performance with a view to its use in a programme service or in a film intended for public exhibition.
8. Halls and any other premises used for the assembly of members of the public for social or recreational purposes.
9. Conference centres, public halls and exhibition halls.
10. Public toilets.
11. Club premises.
12. Offices, factories and other premises that are non-domestic premises in which one or more persons work.
13. Offshore installations.
14. Educational institution premises.
15. Premises providing care home services, sheltered housing or secure accommodation services and premises that are non-domestic premises which provide offender accommodation services.
16. Hospitals, hospices, psychiatric hospitals, psychiatric units and health care premises.
17. Crèches, day nurseries, day centres and other premises used for the day care of children or adults.
18. Premises used for, or in connection with, public worship or religious instruction, or the social or recreational activities of a religious body.
19. Sports centres.
20. Airport passenger terminals and any other public transportation facilities.
21. Public transportation vehicles.
22. Vehicles which one or more persons use for work.
23. Public telephone kiosks.

# APPENDIX C

## EXEMPTIONS (as listed in Schedule 2 to the Regulations)

Those premises (or parts of premises) which are exempt from the legislation are:

1. Residential accommodation.
2. Designated rooms in adult care homes.
3. Adult hospices.
4. Designated rooms in psychiatric hospitals and psychiatric units.
5. Designated hotel bedrooms.
6. Detention or interview rooms which are designated rooms.
7. Designated rooms in offshore installations.
8. Private vehicles.



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Alternative formats and community language versions of this document are available on request at the address below.

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