

8.12 Smoking and your premises

- a) On 26th March 2006 the Smoking Health and Social Care (Scotland) Act 2005 came into force. From this day onwards smoking will no longer be allowed in any wholly or substantially enclosed public places in Scotland. This includes bars, hotels, all types of clubs, cafes and restaurants.
- b) Smoking is not permitted in any wholly or substantially enclosed public places in Scotland, including all licensed premises and members' clubs.
- c) Proprietors who do will be liable to a Fixed Penalty Fine of £200
 - Individuals may be fined a fixed penalty of £50 for smoking in no smoking premises
 - Refusal to pay or failure to pay the fine may result in prosecution and a fine of up to £2,500
 - Breaches of this law will be reported to the licensing board and could lead to the licence being revoked.
- d) The law will be enforced by specially trained Environmental Health Officers, who have been authorised by their local authority to carry out this work.
 - These authorised personnel will have the power to enter no smoking premises to carry out announced or unannounced inspections to determine whether the law is being upheld
 - This will include checking for the smell of smoke on the premises and to see if ashtrays are present.
- e) Certain hotel rooms are exempt from the smoking ban, if they are specially designated as smoking rooms and sufficiently ventilated.
 - It is advisable to check with your Local Authority's Environmental Health Service **before** allowing smoking in any area of your business.

- f) The Scottish Executive states that the reason for this ban is that second-hand smoke causes lung cancer, heart disease and respiratory illnesses in adults and a variety of conditions in children.
- g) Proprietors will need to ensure they have a policy covering no smoking and staff should be trained accordingly.
- h) The changes in the law with regard to smoking may displease some customers in your premises. You do have a duty not to allow smoking, however this should be done tactfully, so not to provoke any conflict. Information about preventing and dealing with violence is included within sub-sections 10.3 and 10.4 of this handbook.
- i) Contact your Local Authority and the Environmental Health Service for advice.
- j) Your premises must display No Smoking notices. As from 26th March 2006 premises are required by law to display 'No Smoking' signs in premises affected by the ban, so that they can be seen and read by people in the premises and approaching the premises.
- You will need as many notices as are required to ensure that all patrons approaching, entering and remaining on your premises are in no doubt that smoking is not permitted there
 - No smoking signs should also be placed in the toilets.
- k) The signs must be obviously displayed and protected from tampering or damage, removal or concealment.
- l) The minimum signage requirement for premises is a 'No Smoking' notice which:
- Is at least 230mm by 160mm in size
 - States that the premises is a 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.

m) Cigarette vending machines must also carry a notice.

This machine is only for the use of people aged 16 or over

n) If someone is breaking the law the Scottish Executive states that you should:

- Advise them that smoking is prohibited by law and politely ask them to stop smoking
- Draw their attention to the 'No Smoking' signs
- Advise them of any place where smoking is permitted, such as beer gardens or shelters
- Refuse service to anyone who continues to smoke and ask them to leave
- If a customer refuses to leave, follow usual procedures for dealing with anti-social behaviour, including maintaining records of such incidents and outcomes
- If threatened, seek the assistance of the police. Do not put yourself in any danger.

o) It may be advisable to issue staff with small, lidded containers that can be half filled with water. Staff can then carry one of these when approaching customers that are smoking and ask them to extinguish their cigarettes into the container.

- It is not, however, advisable to leave the containers around the premises, as it could be considered that they are being used as ashtrays.

p) It is the responsibility of the licensee and all door staff employed to ensure that any customers using the area outside to smoke are orderly and quiet and do not cause a disturbance to local residents.

- Customers using the area outside the premises to smoke must not drink alcohol in areas where this would be in breach of local by-laws.
- q) You can erect a shelter outside your premises, that is less than 50% enclosed, if you have appropriate Licensing Board consent, planning permission and a building warrant.
- No shelter can be erected before the required permissions are obtained and it is recommended that advice from a solicitor and an architect is sought.

More information on the Smoking Law in Scotland can be found at www.clearingtheairscotland.com

and

on the BII Scotland Home Page at www.BII.org