

## Provision of Smoking Shelters

### *The Smoke-free (Premises and Enforcement) Regulations 2006*



These regulations, made under the Health Act 2006, define the requirement that no smoking should be permitted in 'enclosed' or 'substantially enclosed' premises.

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. When determining the area of an opening, no account can be taken of openings in which doors, windows or other fittings that can be open or shut. **This is known as the 50% rule.**

### *Am I obliged to provide a designated smoking area?*

There is no requirement in the legislation to provide a designated smoking area. However, if you intend to do so, then that area must comply with the legislation and have regard to the definitions for wholly and substantially enclosed premises.

If you decide not to provide a smoking area, then it will be necessary for you to consider the secondary issues arising from the introduction of the smoking ban i.e. where your staff and customers are likely to smoke. Other issues are health and safety, litter, noise and anti-social behaviour (see page 3 for further information).

## What is a Smoking Shelter?

A smoking shelter is considered as any area under a roof or ceiling. It does not have to be a structure with walls and could simply be the area under a canopy, large umbrella or awning.

There is no set standard for a smoking shelter as there are simply too many ways to design a smoking shelter that would comply. You should therefore seek advice from Environmental Services as to whether your design would comply.

## Smoking Shelters

Premises will not be obliged to provide outdoor areas for smoking. If you do want to provide one, you will need to obtain necessary planning permissions and have regard to the definitions for *enclosed* and *substantially enclosed* premises.

The following photos of potential shelters have been included to assist you in providing shelters which comply with the legislation, however, you may have alternative ideas and suggestions.



Sides make up less than 50% of area (excluding roof/floor)- gaps at top and bottom of walls and back wall is perforated.

8 sides, 3 are solid and 3 of the other sides are only one third solid- adds up to 4 solid sides, therefore not greater than 50% of perimeter enclosed.



Pub umbrella with heaters, popular choice and cost-effective. Roof provided, but no sides.

Not enclosed, but shelter provided in bad weather. You should be mindful as to whether it will be located by a fire-exit, as smokers may block means of escape.



Not enclosed shelter; would require an outside licence for alcohol. Would need to consult with Highways regarding use of pavement.

## *Are Doors, Windows and Passageways not openings?*

Doors, windows and passageways have been excluded by the legislation when determining whether a premises or part of a premises is enclosed or substantially enclosed.

The purpose of the legislation is to ensure that there is natural and effective ventilation anywhere where smoking takes place; the ideal openings to ensure this are permanent spaces open to the outside air.

Doors, windows and other fittings are capable of being closed. Passageways tend to be wholly or substantially enclosed therefore will not assist in the ventilation of smoking areas.

## *What if the Roof is Retractable?*

**A roof** includes any **fixed or movable** structures, such as canvas awnings. If the roof is fully open, then smoking will be permitted, however, if the roof is fully closed, then the room becomes wholly enclosed and as a consequence smoking is not permitted.

If the roof is partially retracted, smoking may be allowed, provided that it complies with the 50% rule.

## *Other Considerations*

Environmental Services can provide advice regarding the suitability of smoking shelters and may take enforcement action where smoking shelters breach the legislative requirements.

It may also be necessary for you to consult with other departments such as:

- **Litter**- Cigarette butts are classified as litter and therefore it is an offence to drop butts on public land. Sending customers and staff outside to smoke could have a massive effect on the cleanliness and appearance of your business frontage. Salisbury District Council is in negotiations to secure discounts for Salisbury businesses, with a number of external ashtray suppliers.

It is worth knowing that many authorities find that most littering Fixed Penalty Notices are issued for dropping cigarette butts. It is important therefore that your premises does not gain a reputation for cigarette litter, or it will also gain a reputation for fixed penalty notices being issued outside it!

# Health and Safety

- **Licensing** – if customers are to be permitted outside to smoke, you will need to examine your license conditions to determine whether your license permits customers to be outside of the premises after certain hours.
- **Highways**- if you are considering putting a smoking shelter outside of your premises, but on a public highway.
- **Planning**- if you are planning on erecting a substantial-sized shelter or wish to make alterations to a listed building, it may be necessary to consult with the planning department to see whether consent is needed.
- **Building Control** – if you are planning on having ashtrays attached to a listed building.
- **Noise**- you must ensure that provision of a smoking shelter does not give rise to unacceptable noise levels and anti-social behaviour that may cause a nuisance to nearby residents.

## Further Information

There are a number of companies who sell smoking shelters, these can be sourced through an internet search.



Further information is available from [www.salisbury.gov.uk/business/health-and-safety/smoke-free](http://www.salisbury.gov.uk/business/health-and-safety/smoke-free)

Should you require any assistance with this matter, do not hesitate to contact this department using the details below.

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