

DIRECTORATE OF THE URBAN ENVIRONMENT
FOOD AND OCCUPATIONAL SAFETY SERVICE

Health Act 2006

The Smoke-Free (Premises and Enforcement) Regulations 2006

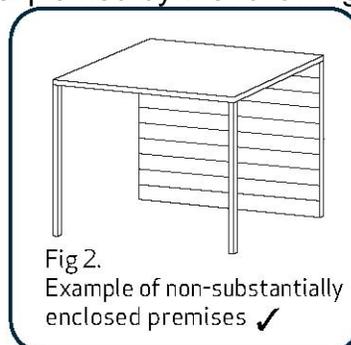
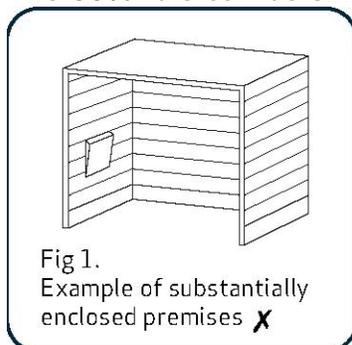
Guidance for Licensed Premises proprietors on the installation of smoking shelters

From 1st July 2007, all enclosed (i.e. internal) and substantially enclosed parts of premises used as a place of work and public places will have to be smoke free. This includes all licensed premises. The only exemptions for licensed premises are for the private dwelling of anyone living on site and for designated guest bedrooms (subject to conditions) if accommodation is offered.

From 1st July, the only areas in most licensed premises where smoking will be allowed by customers or staff will be in the open air, such as in the beer garden or other outdoor areas, or in a structure which is not substantially enclosed. Therefore, if you intend to install a structure in which to allow smoking, you must ensure that it is not substantially enclosed as failure to do so will mean that offences will occur if persons are permitted to smoke in a substantially enclosed structure.

Premises are substantially enclosed if they have a ceiling or roof, but there are 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 the premises. This is known as the 50% rule because in order for smoking to be allowed in the structure, at least 50% of the walls to the structure must be missing. When determining the area of an opening, no account can be taken of openings in which doors, windows or other fittings are present as these openings are regarded as closed for the purposes of the 50% calculation. A roof includes any fixed or movable structures such as canvas awnings. Tents, marquees or similar will also be classed as enclosed or substantially enclosed premises if they fall within the definition.

The 50% rule can be simply explained by the following diagrams.



Should you wish to install a structure in which smoking can be allowed, you will need to consider whether planning permission, building regulations approval and /or a variation of the premises licence is required. You must contact the relevant services detailed below in order to check whether an application is required prior to proceeding.

Planning permission

Most types of permanent external structures, whether freestanding or attached to existing buildings, will require the benefit of planning permission prior to installation/erection. This requirement applies equally to awnings and canopies which are attached to buildings.

You can check the need for planning permission in principle by contacting the Planning Department on 01384 814116 and speaking to the duty officer. If you wish more detailed pre application advice as to whether or not planning permission would be likely to be granted you will need to submit sketch details of your proposal to Development Control, Directorate of the Urban Environment, 3 St James Road, Dudley, DY1 1HZ.

Alternatively, if you require a legally binding response you could submit an application for a certificate of lawful proposed development. These forms are available from Development Control reception at the above address, telephone 01384 814136.

Planning applications (and applications for certificates) would normally take up to 8 weeks from the time a valid application is received. If the application has to go to Development Control Committee this could delay a decision.

Applications for structures should clearly indicate they are for smoking shelters and need to include calculations to demonstrate that the structure would not be substantially enclosed, i.e. show that at least 50% of the wall areas are missing.

Building Regulation approval

Building Regulation approval will generally not be required if the building or structure falls into the following exempt structure categories:-

Small detached buildings:

1. A detached single storey building, having a floor area which does not exceed 30m²:-

(a) no point of which is less than one metre from the boundary of its curtilage; or

(b) which is constructed substantially of non-combustible material.

2. A detached building, having a floor area which does not exceed 15m².

Extensions:

The extension of a building by the addition at ground level of a covered yard or covered way where the floor area does not exceed 30m².

Information on Building Regulation Approval can be obtained from Mr. J Humphrey, Senior Building Control Officer, Directorate of the Urban Environment 3 St James Road, Dudley, DY1 1HZ, Tel: 01384 814176.

Variation of Premises Licence

The premises licence covers the sale and supply of alcohol, not the consumption of it. So unless you are selling and supplying alcohol from within the smoking shelter, or wish to provide regulated entertainment or late night refreshment, you may not need to apply for a variation to your premises licence merely because your customers are consuming alcohol whilst using the smoking shelter. You should however check whether a variation is required by contacting the Licensing service at 5 Ednam Road, Dudley, DY1 1HL, Tel: 01384 817812/815489 before proceeding.

If your premises licence has any conditions regarding the use of the beer garden, then you may need to apply for a variation if you want your customers to be able to use the beer garden for smoking outside of the conditions. For example, if there is a condition that requires the beer garden not to be used after a certain time, then you will not be able to allow your customers to smoke in the beer garden or in a shelter provided in the beer garden after this time unless you have applied for and been granted a variation of the premises licence.

Environmental Health Guidance on the provision of smoking shelters or similar

N.B. Guidance on the design and construction of smoking shelters or similar structures is not contained in the legislation with the exception of the 50% rule explained above. However the following guidance has been compiled from guidance issued to local authorities and businesses on how to comply with the legislation and deal with associated issues of smoking shelters, such as noise and litter issues.

1. Ensure that the shelter complies with the 50% rule explained above and demonstrate this in any drawing or plan you may submit to the Council for either advice or prior approval. Be sure to specify that the proposed structure is intended to be used for smoking.
2. Be careful that there are no nearby structures which block the ventilation of the open two sides (50%) of the structure as nearby structures such as perimeter walls or walls to outbuildings which obstruct the open sides will be included in the 50% calculation. There is no set distance between the smoking shelter and nearby structures; each case will be treated on its merits but any nearby structure which prevents air flow through the shelter will be against the spirit of the legislation and may render the structure substantially enclosed which may prevent its use for smoking.
3. The 50% wall calculation may be met by open trellis like walls as long as the calculation demonstrates that the 50% rule is met. However, should foliage be provided to the trellis, this may serve the purpose of a wall and restrict air flow through the shelter, so any wall formed from dense foliage will need to be included in the 50% calculation.
4. The smoking shelter should ideally not be located directly at entrances and exits to the premises but offset from entrances and exits to ensure that non-smokers do not have to walk through smoking shelters to access the smoke free areas.

5. The shelter should be located away from any openable window or air intake fan present at either your premises or an adjoining premises to ensure that smoke does not filter back into smoke free premises.
6. Consideration should be given to locating the shelter well away from any nearby residential premises to prevent increased potential for noise nuisance from customers using the shelter, particularly late at night.
7. As the shelter will be a substantially open structure, no music or entertainment should be provided within the shelter.
8. Any doors leading from the premises to give access to the smoking shelter should be self closing to minimize noise escape from the premises when persons are accessing the shelter.
9. Receptacles for cigarette butts and smoking related litter should be provided within the shelter and emptied daily.
10. You must consider any health and safety issues associated with smoking shelters including safe access and egress from shelters, floor construction and preventing slips and trips, lighting, outdoor electrical systems and heating equipment.
11. Your legal duty to produce a fire safety risk assessment under the Regulatory Reform (Fire Safety) Order 2005 will include a need to update the assessment to take account of the smoking shelter. You will need to consider the means of escape from the shelter and safe channelling to the assembly point, as well as the use of portable heating devices and LPG storage if heaters are to be used in the shelter. West Midlands Fire Service enforce the fire safety legislation in licensed premises and can be contacted on telephone number 0121 544 7209.

We hope that the guidance given above will prove useful to you in understanding the 50% rule and in considering all aspects of providing a smoking shelter or similar structure. In Environmental Health we are happy to provide further advice by telephone on the provision of shelters but we may not be able to visit premises to look at proposed sites for shelters as the main focus of our attention in the run up to 1st July has to be ensuring compliance with the smoke free legislation in those enclosed and substantially enclosed areas which constitute workplaces and indoor public places.

Should you require any further advice or information, please contact Ruth Olding, Smoke Free Implementation Officer on 01384 814620 or alternatively our Service Desk on 01384 814685 who will put you in contact with an Environmental Health Officer or another member of staff who will deal with your query.

Alternatively, we can be contacted at: Food and Occupational Safety service Directorate of the Urban Environment, Cloughton House, Blowers Green Road Dudley, DY2 8UZ.

Businesses are encouraged to contact the Department of Health's Smokefree England website which has a wealth of information on going smoke free. You will be able to register for free updates by telephone or e-mail on www.smokefreeengland.co.uk/stayinformed or on 0800 169 1697.