

Leicester
City Council

Guidance on Smoking Shelters and Premises

Provided by the Public Safety Team

Revised June 2017



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ACKNOWLEDGEMENTS

Some of the information contained in these guidelines has been developed by Ellesmere Port and Neston City Council, Rushcliffe Council and Gateshead Council and are reproduced here with their knowledge. Information has also been provided by the Planning Officers Society. Pictures of different types of shelters/enclosures have been reproduced here from various commercial websites but this should not be taken as an endorsement of any particular type or make.

INTRODUCTION

If you are considering putting up a smoking shelter or altering your business premises to allow smoking, we advise you to contact us for guidance and advice before you take any action. This could save you time and money.

To assist you, this document has been produced to highlight the issues that businesses need to be aware of when designing a smoking area/shelter. It also gives advice on compliance with the law.

You should read this document and contact Leicester City Council's Public Safety Team for further guidance and advice.

LEGAL CONSIDERATIONS

When planning your smoking area/shelter you must take into account the laws with which you must comply. This is to ensure that the health and safety of your customers and employees is not put at risk.

You must also ensure that your business does not cause a nuisance to nearby businesses and domestic dwellings.



Smokefree legislation

The **Health Act 2006** prohibits the smoking of tobacco or anything which contains tobacco, or being in possession of any other lit substance in a form in which it can be smoked in enclosed and substantially enclosed parts of virtually all public places and work places that employ more than one member of staff.

What does enclosed and substantially enclosed mean?

Enclosed: A premises will be considered to be enclosed if they have a ceiling or roof, and except for doors, windows or passage ways are wholly enclosed, whether on a permanent or temporary basis. This includes tents and marquees as well as solid structures.

See examples below:



Substantially enclosed: A premises will be considered to be substantially enclosed if it has a ceiling or roof, but there are openings in the walls which have an area that is **less** than half of the premises perimeter area. This is often referred to as the **50% Rule**. Other structures that serve the purpose of walls and constitute the perimeter of the premises should be counted as part of the enclosed area. Doors, windows or other fittings that can be opened or shut must always be counted as part of the enclosed area, as stated in the legislation.



What is the 1.5m rule?

Leicester City Council requires businesses to ensure that the ‘open sides’ of their smoking area /shelter are at least 1.5m away from any materials or structure that would act to enclose these sides, for e.g. a garden wall, trellis, furniture, etc. If such materials were too close to the open side then they may prevent smoke escaping from the shelter and lead to it becoming an enclosed area.



How can I make my smoking shelter/area compliant?

A smoking area/shelter with a roof can legally be used for smoking when at least 50% of the perimeter walls are open on a **permanent** basis and **unobstructed** by any nearby walls or other material up to a distance of 1.5m.



Please note that any premises without a roof or ceiling can be used for smoking.

The Calculation

How do I know if my smoking area is 50% open and meets the Smoke Free legislation?

Businesses must calculate what percentage of their smoking area is open and what percentage is enclosed to be sure it complies with the smokefree legislation. The calculation is as follows:

1. Measure the area of the whole perimeter of the smoking area/shelter that falls beneath the roof/ceiling. Do not include the area of the roof or floor.



2. Measure the area of all the enclosed parts of the perimeter of the smoking area/shelter. This could be walls or other structures that serve the purpose of walls. Again do not include the area of the roof and floor but do include the area of all doors and windows as these are always counted as enclosed parts. This calculation will be part of the enclosed area of your smoking area/shelter.

3. Divide the enclosed area (E) by the perimeter area (P) and times by 100 as shown below:

$$\frac{E}{P} \times 100 = \% \text{ Enclosed}$$



If your smoking area/shelter is more than 50% enclosed then it does not comply with Smoke free legislation and smoking cannot be permitted.

ADVICE AND GUIDANCE

Once you have selected a suitable location/premises for your smoking area/shelter and put together a design for a structure that you believe will comply with the smokefree legislation, then you should contact Leicester City Council for further guidance and advice.

Who do I contact at Leicester City Council?

It is important that you contact each of the following teams for advice before proceeding with your smoking area. All three teams must be satisfied that your proposal will be compliant with the law.

Please remember that approval from one team or part of the Council alone does not mean approval by all of Leicester City Council! Therefore, you should seek approval from all teams/parts of Leicester City Council for your proposal.

Planning Permission

In the first instance it is vital that you find out whether or not you need planning permission to go ahead with building or developing your smoking area. There is no point spending money to build a structure that Planning Officers may ask you to pull down or alter at a later date! You can obtain free advice for an initial enquiry but if you are required to submit a formal application you will be charged a fee. Contact the Planning Department for further advice on 0116 454 1000 or email planning@leicester.gov.uk.

Smokefree Advice

We also strongly recommend that you contact the Public Safety Team to discuss with us your plans for your smoking area so that we can advise you as to whether or not it will be compliant with the smokefree legislation. Please complete the attached form (see Appendix 1) with as much information as possible about your proposed smoking area and either post it or email it to the addresses on the form. Contact the Response Officer for further advice on 0116 454 3220 or email publicsafety@leicester.gov.uk

Building Regulation Approval

If you are planning to construct, extend or alter a structure in a certain way, for example install a bathroom that will involve plumbing or replacing windows and doors, then you may require Building Regulation approval. For further advice please contact Leicester City Council's Building Control Team on 0116 454 3160. Alternatively you can consult a private approved inspector of your choice but you must be confident that they are competent to advise you correctly.

OTHER LEGAL CONSIDERATIONS

Once you are satisfied that your smoking area/shelter is compliant with the Smokefree legislation, planning and building regulations, you must consider any other legal requirements you may also need to comply with.

Please consider the following and if you answer yes to any of the following then you may need further guidance and advice:

Will you be employing anyone to work for you?

Will you be serving food and drink to customers?

Do you have neighbouring domestic dwellings?

Will you be selling tobacco products on site?

Is there a risk of a fire occurring on site?

Will your employees be exposed to second hand smoke?

Is your business likely to attract any anti-social behaviour?

Will you be serving hot refreshments after 11pm?

Will you be using gas appliances on site?

Is your smoking area accessible to disabled persons?

The attached **Business Compliance Guide** leaflet (see Appendix 2) provides details of any other legal requirements you may need to comply with. It provides contact details of the relevant Leicester City Council teams and other agencies who can provide further advice.

CONTACT DETAILS

For further information or advice about any of the sections discussed above please contact the relevant Leicester City Council team or external agency. Contact details are as follows:



Leicester City Council

- **Planning:**
Address: City Hall
115 Charles Street
Leicester
LE1 1FZ
Tel: 0116 454 1000
Email: planning@leicester.gov.uk

- **Building Control Team:**
Address: 3rd Floor
Phoenix House
1 King Street
Leicester
LE1 6RN
Tel: 0116 454 3160
Email: buildingcontrol@leicester.gov.uk

- **Noise and Pollution Control Team:**
Address: 3rd Floor
Phoenix House
1 King Street
Leicester
LE1 6RN
Tel: 0116 454 3141
Email: noiseteam@leicester.gov.uk

- **Licensing Team (licenses/street cafés):**
Address: Customer Services
91 Granby Street
Leicester
LE1 6FB
Tel: 0116 454 3040
Email: licensing@leicester.gov.uk

- **Public Safety Team (health and safety/smokefree):**
Address: 3rd Floor
Phoenix House
1 King Street
Leicester
LE1 6RN
Tel: 0116 454 3220
Email: publicsafety@leicester.gov.uk

- **Food Safety Team (food safety and standards):**
Address: 3rd Floor
Phoenix House
1 King Street
Leicester
LE1 6RN
Tel: 0116 454 1001
Email: food@leicester.gov.uk

- **Trading Standards:**

Address: 3rd Floor
Phoenix House
1 King Street
Leicester
LE1 6RN

Tel: 0116 454 3200

Email: trading.standards@leicester.gov.uk

Other Agencies

- **Leicestershire Fire and Rescue Service:**

Address: 12 Geoff Monk Way
Birstall
Leicester
LE4 3BU

Tel: 0116 2872241

Email: info@lfrs.org

- **Leicestershire Police:**

Address: Force Headquarters
St Johns
Enderby
Leicester
LE19 2BX

Tel: 0116 222 2222

- **HM Revenue and Customs:**

Tel: 0845 010 9000

Web: www.hmrc.gov.uk



Smoking Shelter / Premises
Enquiry Form

Please complete the sections below in block capitals with as much information as possible. If you have any problems completing this form or would like some advice, please contact the **Public Safety Team** on **0116 454 3220** and ask for the **Response Officer**.

Section 1

1. Applicant

Name.....
Address.....
Postcode.....
Telephone No.....
E-mail.....

2. Name and full address of property to be constructed, altered or extended

.....
.....

3. Summary of proposed works (continue on another page if required)

.....
.....
.....

4. Details of Architect (if applicable)

Name: Company:
Contact Number: Email Address:

5. Planning Application Number (if applicable):

6. Signature of Applicant..... **Date:**.....

Return to: By Post - Public Safety Team, Phoenix House, 1 King Street, Leicester, LE1 6RN or
By Email: publicsafety@leicester.gov.uk

<u>OFFICE USE ONLY</u>		
SR Ref:		CP Ref:

Notes

In order for us to determine whether your proposal will comply with the Smokefree legislation, we need to have an idea as to what your shelter/area will look like when complete. Therefore please attach one of the following with this form:

- A copy of your planning application if you are required to submit one;
- Plans drawn up by an architect if you have employed one; or
- A hand drawn sketch showing the layout of the smoking shelter/area as well as any other buildings within the curtilage of your premises.

Your proposal should include dimensions of the smoking shelter/area as well as distances to any nearby structures such as non-smoking areas, perimeter wall, etc. Calculations must also be included to show that the smoking area will be more than 50% open

APPENDIX 2

Business Compliance Guide (Revised April 2015)

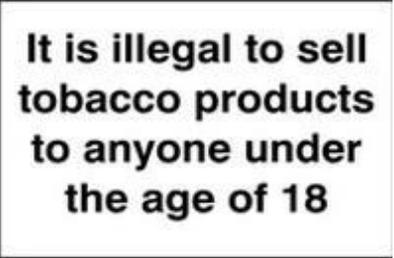
If you are the owner of a business that is planning to permit smoking on site then you need to make sure you are doing it legally. The following table sets out the different areas of the law you may need to comply with and which department/authority can advise you further.

<p>1. Planning Permission and Building Regulation Approval <i>Town and Country Planning Act 1947</i></p> <p><i>Building Regulations 2010 (as amended)</i></p>		<p>Planning Permission If you are thinking about changing the use of a building, making physical changes to the premises or erecting a smoking shelter then you are likely to need planning permission.</p> <p>Building Regulation Approval If you are erecting a new structure or altering an existing building then you may also be required to make a Building Regulations Application.</p>	<p>Leicester City Council's Planning Department Tel: 0116 454 1000 E-mail: planning@leicester.gov.uk</p> <p>Leicester City Council's Building Control Team Tel: 0116 454 3160 E-mail: buildingcontrol@leicester.gov.uk</p>
<p>2. Licensing <i>Licensing Act 2003</i></p>		<p>If you are providing hot food and/or drink between 11:00pm and 5:00am then you must apply for a Late Night Refreshment licence.</p> <p>All alcohol sales require a licence.</p> <p>If you are providing any entertainment then you must apply for a licence.</p>	<p>Leicester City Council's Licensing Team Tel: 0116 454 3040 E-mail: licensing@leicester.gov.uk</p>

<p>3. Food Safety/Standards <i>Food Safety Act 1990</i></p>		<p>If you are providing food or drink to customers then you are legally obliged to register your business with Leicester City Council's Food Safety Team. There is no charge and the registration cannot be refused. Once registered it is not necessary to re-register, unless there is a significant change in the business (such as change of name, or Food Business Operator).</p>	<p>Leicester City Council's Food Safety Team Tel: 0116 454 3208 E-mail: food@leicester.gov.uk</p> <p>Online registration: please go to: www.leicester.gov.uk/food</p>
<p>4. Health and Safety in the Workplace <i>The Health and Safety at Work etc. Act 1974</i></p>		<p>All businesses owners are required to ensure that their premises, work equipment and work activities do not pose a risk to the health and safety of their employees and members of the public.</p> <p>This can be achieved by carrying out a risk assessment to identify any hazards that pose a risk to health and safety and taking appropriate action to prevent anyone from being harmed. If you have five or more employees you must record the findings of your risk assessment.</p>	<p>Leicester City Council's Public Safety Team Tel : 0116 454 3220 E-mail: publicsafety@leicester.gov.uk</p>

<p>5. Fire Safety <i>The Regulatory Reform (Fire Safety) Order 2005</i></p>		<p>All business owners are required to carry out a Fire Risk Assessment of the premises. The assessment must be written down if you have five or more employees or you have a licence.</p> <p>You must take steps to prevent a fire starting but also have means to stop a fire spreading and raise the alarm if a fire occurs. All furnishings, drapes and furniture should be fire retardant.</p>	<p>Leicestershire Fire and Rescue Service Tel: 0116 287 2241 E-mail: info@lfrs.org</p>
<p>6. Noise Nuisance <i>Environmental Protection Act 1990</i></p>		<p>If your premises produces noise loud enough to be heard by your neighbours (e.g. music or people talking) you could be causing a Statutory Nuisance. A nuisance can occur at any time of the day or night.</p>	<p>Leicester City Council's Noise and Pollution Control Team Tel: 0116 454 3141 E-mail: noiseteam@leicester.gov.uk</p>
<p>7. Smoking Shelters <i>Health Act 2006 and The Smokefree (Premises and Enforcement) Regulations 2006</i></p>		<p>It is an offence to permit smoking inside virtually all enclosed workplaces and public places. Smoking can only be permitted to take place inside a premises/structure that is at least 50% open.</p>	<p>Leicester City Council's Public Safety Team Tel: 0116 454 3220 E-mail: publicsafety@leicester.gov.uk</p>

<p>8. Paying Tax on Tobacco <i>Tobacco Products Duty Act 1979</i></p> <p><i>Tobacco Products Description of Products Order 2003</i></p> <p><i>Tobacco Products Duty Regulations 2001</i></p>		<p>Both products containing tobacco and those classed as 'herbal' are liable for excise duty.</p> <p>If you are currently purchasing Shisha tobacco in the UK for less than £10 per 100 grams it is likely that this is an illicit product and the duty and the VAT haven't been paid.</p> <p>If you are caught storing, transporting and selling illicit tobacco in the UK, the goods will be seized by the HMRC and you may face:</p> <ul style="list-style-type: none"> • An assessment for any unpaid excise duty and a penalty of up to 100% of the duty amount. That could be as much as £200 per kg. • A criminal conviction for the evasion of duty and VAT, which carries a maximum sentence of up to 7 years imprisonment. <p>Relevant business taxes and income tax must also be paid.</p>	<p>HM Revenue and Customs Helpline: Tel: 0845 010 9000 (Mon to Fri, 8am to 8pm)</p> <p>HM Revenue and Customs Tax Evasion Hotline 24/7: Tel: 0800 59 5000</p>
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<p>9. Access for all <i>Building Regulations 2010 (as amended)</i> <i>Approved Document M</i></p>		<p>All new builds, extensions and certain alterations to existing buildings must be accessible to all persons. When designing a smoking shelter you must consider how you are going to make it accessible to all customers and employees.</p>	<p>Leicester City Council's Building Control Team Tel: 0116 454 3160 E-mail: buildingcontrol@leicester.gov.uk</p>
<p>10. Under Age Sales <i>The Children and Young Persons Act 1933 (as amended)</i></p> <p><i>The Children and Young Persons (Protection from Tobacco) Act 1991 (as amended)</i></p>		<p>It is an offence to sell products containing tobacco, cigarette papers or smoking mixtures intended as a tobacco substitute to anyone under the age of 18. This offence carries a maximum penalty of £2,500.</p> <p>If you are unsure as to a person's age you should ask for some form of photo identification. We recommend you adopt a Challenge 21 policy and keep a refusal log. Posters and a refusals log can be provided to you upon request.</p> <p>It is also a legal requirement to display a notice at the point of sale where tobacco products are sold (see left). The notice must be no less than A3 size and the characters no less than 36mm in height.</p>	<p>Leicester City Council's Trading Standards Team Business Line: 0116 454 3200 E-mail: trading.standards@leicester.gov.uk</p>

<p>11. No Smoking Signs <i>The Smoke-free (Signs) Regulations 2012</i></p>		<p>The legislation requires anyone who occupies or is concerned with the management of a smokefree premises to display at least one legible no-smoking sign in the premise. The same requirement applies to smokefree vehicles. The recent change to the law means the responsible person can decide the size, design, content and location of the sign.</p>	<p>Leicester City Council's Public Safety Team Tel: 0116 454 3220 E-mail: publicsafety@leicester.gov.uk</p>
<p>12. Health Warnings and Labelling <i>The Tobacco and Related Products Regulations 2016</i></p>	 <p>Smoking causes mouth and throat cancer</p> <p>Get help to stop smoking at www.nhs.uk/quit</p> <p>Smoking kills – quit now</p> <p>Tobacco smoke contains over 70 substances known to cause cancer’.</p>	<p>It is illegal to sell tobacco products (including shisha) which do not comply with the requirements of the Tobacco and Related Products Regulations 2016.</p> <p>Shisha unit packs and any container must carry combined health warnings (CHW). This is a photo and accompanying text warning and a smoking cessation information message – “Get help to stop smoking at www.nhs.uk/quit”</p> <p>You must also comply with the general warning and information message. All unit packs and any container must also carry a general warning saying ‘Smoking kills – quit now’ and ‘Tobacco smoke contains over 70 substances known to cause cancer’.</p>	<p>Leicester City Council's Trading Standards Team Business Line: 0116 454 3200 E-mail: trading.standards@leicester.gov.uk</p>

