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Avoiding the side-effects of the smoking ban

Since 1st July England has been 'smoke-free'. It is a criminal offence to smoke or allow smoking in almost all 'enclosed' and 'substantially enclosed' work places and public places.

Smoke-Free Premises

If premises have a ceiling or roof and an opening in the walls (not including doors or windows) which is less than half the total area of the walls they are 'substantially enclosed'. This includes temporary structures such as tents, awnings and marquees.

Common areas within residential flats are 'public places'. If you own a share of the freehold or are a member of the management company you must ensure that the appropriate signage is displayed at the entrance and that the area remains smoke-free.

Vehicles must be smoke free if they are used to transport members of the public. If more than one person uses a particular vehicle in connection with paid or voluntary work it must also be smoke free. Therefore any shared or 'pool' vehicles must always be smoke-free.

Considerations for employers and owners of commercial premises

If you run a business or own commercial premises you will have prepared for going smoke-free by displaying the appropriate signs and taking steps to prevent people smoking in the workplace. You should, however, consider the side-effects of the smoking ban. Certain legal matters should be considered when planning any smoke-free alterations.

Smoking rooms are not permitted. If you intend to provide employees or visitors with an outside smoking shelter (although you are under no obligation to do so) you should ensure that it will not be substantially enclosed.

Planning permission may be required for both permanent and temporary structures. Specific consents for alterations and signage are likely to be required for listed buildings and buildings within a conservation area. If the premises are held under a lease you may need to obtain the Landlord's consent to alter the premises or put up the requisite signs; you should check the terms of your lease.

Advice on planning issues and consents is important not only in relation to major building works but also for structural alterations such as opening up a rear wall to give better access to outside areas and attaching heaters or retractable blinds or awnings to the building.

Employers have a duty of care to their staff. If you do not take reasonable measures to ensure that your premises are smoke-free you could be liable for future claims if an

employee is affected by an illness that can be attributed to working in a smoky environment.

Licensed Premises

Licensees and owners of licensed premises may wish to make use of outdoor space to accommodate smokers. Before doing so, you should check the terms of the Premises Licence and consider applying to remove or vary certain conditions.

You should check whether there are any conditions restricting the use of the outside space. There may be a condition that any noise from the premises must not be audible from nearby residential properties. If more people congregate outside the premises it may be difficult to comply with this condition.

If you don't have a beer garden and wish to place tables and chairs on the pavement outside your premises then you will need to apply for a Highways Act Licence.

Any condition on your licence which states a last entry time or a condition that customers cannot be re-admitted may be problematic. You may need to apply to remove or amend these conditions or implement a wristband or stamping system.

If any changes are made to the structure or layout of the licensed area (inside or outside) you will need to apply for a variation of the Premises Licence or even a new Premises Licence depending on the extent of the changes.

For further information and advice on how the legislation may affect your business premises please contact us on 01392 258451. For general advice on going smoke-free please visit www.smokefreeengland.co.uk