

Licensing Act 2003 — Smoking Ban

The ban on smoking in workplaces from 1st July 2007 will affect all workplaces, including licensed premises (smoking rooms in pubs and private members clubs), and work vehicles such as shared taxis.

Employers, managers and those in charge of premises and vehicles will need to take reasonable steps to ensure that people are aware of the new law. Full details of the legislation can be found at the official website: www.smokefreeengland.co.uk

Worried about potential loss of customers, some licensees are thinking about building outdoor shelters, for customers to be able to smoke. However, there are practical and legal difficulties to consider first.

- Encouraging customers to stand outside in the grounds of licensed premises may upset neighbours. There is likely to be more noise (from people talking etc) and, if the shelter has lights, there may also be complaints about light pollution. Neighbours are able to ask us to "review" a licence, which might result in part or all of the licence being removed or new conditions added if necessary to uphold the licensing objectives.
- The plan of a premises is part of the licence. Any changes to the plan require the licence to be updated; this might be expensive. See details below.
- Commercial premises do not have "permitted development rights", and so construction of a shelter for smokers may require planning permission. Our Customer Service Advisors on 01684 862151 can tell you more.

After 1st July 2007, people will not be allowed to smoke in enclosed or substantially enclosed spaces.

- "Enclosed" spaces have a ceiling or roof and walls, whether permanent or temporary.
- "Substantially enclosed" spaces have a roof or ceiling and walls, where the total of any wall openings is less than half the total wall area. Windows and doors don't count when working out the open wall area.

What would a shelter look like ?

The structure cannot be "enclosed" or "substantially enclosed" (defined above): it can have a roof or ceiling but more than half of the sides must be open.

For example, something like a bus shelter with a back and two end walls cannot be used by smokers, because it is "substantially enclosed".

But a covered area created by fixing an awning to a wall with 3 open sides is not substantially enclosed, and so people would be allowed to smoke.

Changes at Licensed Premises - Variation

The Licensing Act implies that any change to premises which departs from the original licensing plan must trigger an application for variation. Taken at face value, this would mean wasting the time of businesses and public authorities alike with trivial matters, having no real bearing on the licensing objectives. We want to avoid costly and inappropriate regulation.

Our approach is that any matter which has no significance for the licensing objectives is outside the scope of the Act and so does not merit any formal process.

Licence holders can notify us of small and inconsequential changes — which *may* include shelters - by providing two copies of an updated plan to us together with a written request for the licence to be updated; with a further copy being sent to each of the appropriate Responsible Authorities listed below.

We will consider each case on its merits and will confirm in writing whether or not we agree to making such a change informally. The standard fee for updating the licence (where we accept the informal approach) is £10.50.

We will not allow this informal procedure where:

- A responsible authority states that the proposed change would be against licensing objectives.
- When a drinking area or drinks sale area is about to be made much bigger.
- Where use of an escape route will be affected in a significant way .
- Where there will be significant interference with sight lines, where alcohol is sold.
- If the new arrangement of the building and sources of sound may generate a nuisance.
- Where different licensable activities, operating hours or conditions are wanted.

The formal "variation" procedure exists to allow businesses to take advantage of the flexibility offered by the new licensing regime. Examples include:-

- Extended hours all year
- Extended hours for special occasions
- Permission to serve hot food after 11.00pm
- Removal of existing conditions
- Removal of restrictions
- Added licensable activities such as music/ dancing/ indoor sporting events.

Please ask for or download our separate information sheet "Applying for and varying premises licences"

Get help at:

Licensing Unit, Environmental Services
Malvern Hills District Council
Avenue Road
Malvern
Worcestershire
WR14 3AF

Phone 01684 862151
Fax 01684 574906
Minicom 01684 862181
Email worcestershirehub@malvern hills.gov.uk
Web www.malvern hills.gov.uk/licensing