

The Council is committed to tackling wherever possible the negative health effects arising from direct and passive smoking.

Businesses within the leisure and hospitality sector, many of whom are licensed, must act responsibly and comply with smoke-free legislation in the course of their activities. Both staff and patrons of such premises must be protected from exposure to tobacco, and other smoke, by good management. In particular children and young adults should be protected from such exposure and should be made aware of the health risks associated with smoking.

Ealing Council are the responsible enforcing authority for the Health and Safety at Work, etc. Act 1974 as well as for the Health Act 2006 and the Licensing Act 2003.

Scope and Legislation Definition

Under the *Smoke-free (Premises and Enforcement) Regulations 2006* nearly all public places and work places that are "enclosed" or "substantially enclosed" must be smoke-free from 1 July 2007.

Premises are considered "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.

Premises are considered "substantially enclosed" if they have a ceiling or roof, but there are openings in the walls which are less than half (50%) of the total wall area, including other structures that serve the purpose of walls and constitute the perimeter of the premises. When working out the area of an opening, no account can be taken of openings in which doors, windows or other fittings can be opened or shut.

Premises are considered compliant if they have a ceiling or roof, but there are openings in the walls which are more than half (50%) of the total wall area, including other structures that serve the purpose of walls and make up the perimeter of the premises. When working out the area of an opening, no account can be taken of openings in which doors, windows or other fittings can be opened or shut.

Therefore if an area has no roof or ceiling, smoking can normally be permitted as there should be no obstruction to the ready escape of smoke contaminants. Please note however that blocking open-sided structures with curtains, drapes, plants or high backed seating, can help prevent the free-flow of air, and will be taken into account in any calculation to estimate the level of permanent ventilation provided.

Location and Health and Safety considerations

Your entire work place must be set up to be as safe as possible, and you should at the very least have RISK ASSESSED your business operation.

The smoking area needs to be risk assessed for all potential hazards such as slips, trips and falls, fire safety, gas safety (e.g. LPG), electrical safety, safe working capacity etc. Ideally these risk assessments should be documented and reviewed periodically by someone competent in health and safety matters.

Space heaters should not be located in customer walkways and hot coals should be kept away from customers. Patio heaters are normally prescribed as unsuitable for use in covered areas. Check manufacturers' guidance on this matter.

At the end of the trading day, hot coals should be thoroughly doused with water to stop them burning or creating smoke. There is a risk of carbon monoxide gas forming if coals are insufficiently cooled

down. Carbon monoxide inhalation can be fatal if it is allowed to build up in an unventilated space e.g. residential accommodation above commercial premises.

Businesses should not just rely on the "50% rule" in the event that smoke is not sufficiently removed from an area. The amount of permanent ventilation may need to be increased or assisted by mechanical ventilation.

Fire Safety

Apart from electric and gas safety measures, the presence of hot coals and soft furnishings makes many Shisha Cafes a higher risk premises for fire safety. Ensure that fire safety arrangements are sufficient, for example by providing fire detection and firefighting equipment. Soft furnishings should be of flame proof standard.

Fire exits should be signed as such and kept free of obstruction at all times. Flammables eg solvents, white spirit should be removed from site or stored in a flameproof cabinet.

You should have a completed a RISK ASSESSMENT under the Regulatory Reform (Fire Safety) Order 2005. If you require further advice, please contact Ealing's Fire Office on telephone number 0208 555 1200 or email northwestareasupportteam@london-fire.gov.uk

Prevention of Underage Purchases

It is an offence to sell any tobacco products to persons under the age of 18 and a statutory sign displaying the statement "It is illegal to sell tobacco products to anyone under the age of 18" must be displayed. The sign should be A3 size (so people can read it behind a counter).

Staff should require proof of age to be shown by young people on the premises. Best Practice is to "Challenge 25" which means to require proof of age from anyone you think might be less than 25 years old.

Train your staff thoroughly so they know the law and what precautions to take. Staff may be guilty of an offence if they sell to anyone under 18. Keep a refusals book and monitor it so that you can be confident that staff are following your instructions. CCTV can also be helpful in recording work areas.

You should be especially vigilant if you are located near to schools and colleges when at lunch time or after- school (late afternoon). Some young people have been known to try and gain access to smoking areas and pressurise managers into letting them in. They must be age challenged, refused entry to smoking areas and details recorded. Any persistent problems should be reported to the local authority or to the Police.

Liability for Excise Duty

Shisha materials containing tobacco are liable for excise duty. Any product offered for sale with the appropriate duty unpaid may be subject for seizure or further action by HMRC. Businesses need to ensure that they can provide evidence of the legitimacy of their supplies, or that they supply only tobacco free shisha mixtures on which duty is not required to be paid.

Warnings on shisha products

The selling and the use of shisha tobacco products is controlled by a wide range of legislation in the UK. It is the responsibility of all producers or importers of Shisha tobacco products to make sure that they are:-

1. Correctly Batch code Marked
2. Contain a list of Ingredients

3. Excise duty has been paid
4. Packets of shisha should carry on a 30% of the most visible surface (the front) one of the following two statements:
 - "smoking kills": or
 - "Smoking seriously harms you and others around you".

In addition to one of these two statements, one of the 14 picture warnings (contained in the amended regulations of 2007) must be given on the other most visible surface. See examples of warnings at the Appendix of this letter.

Warnings on Loose sale of Shisha

When Shisha is supplied to customers, usually in a bowl of a Shisha pipe, this becomes a packet and is required to be labelled. The requirement can be met by providing a notice to the consumer at the time of the supply of the Shisha giving the appropriate warnings. Alternatively the Shisha and Hookah pipes/ bottles must be labelled with these warnings.

Businesses who fail to comply with the above labelling requirements could have the Shisha products seized by Trading Standards or Customs Officers and be prosecuted in the Court.

Planning Consent

If you are constructing or changing the structure of the building for use as a smoking shelter, you may require planning permission. Planning permission may also be required to use any part of a property for a shisha smoking lounge.

Ealing Council's Planning Team can be contacted on telephone number 0208 825 6600 and the email address is planning@ealing.gov.uk.

Licensing Considerations

Potential breach of an existing premises licence may occur if you significantly change your business activity and change the nature of use of premises. A licence and its conditions normally pertain to specific business activities and the lay-out and design operating at that time.

Proprietors of licensed premises with smoking zones should be aware of the restrictions within their license. For example hot drinks and food should not be supplied between 11pm – 5am unless they have later hours permitted in their premises licence. Also premises should not be open beyond the time specified in the license.

Smoking in itself is not a licensable activity.

If you wish to seek advice about any licensing matter, you can contact Ealing Council's Licensing Team on 0208 825 6655 or email licensing@ealing.gov.uk.

Noise Nuisance, Anti-social behaviour and Criminal activity

If your business is located in or near a residential area, it is your responsibility to make sure that your activities do not create a noise nuisance for your neighbours. If you require further advice on how to prevent noise nuisance, please contact Ealing Council's Noise Team on telephone number 0208 825 8111 or email pollutioncontrol@ealing.gov.uk.

You are advised to monitor premises by use of CCTV and if any anti-social behaviour is experienced or recorded, it should be reported to the police. If you require further advice about criminal offences please contact Ealing Council's Police Licensing Team on 0208 825 5105, email: licensing-ealingpolice@met.police.uk.

Public Liability Insurance

It is advisable to take out Public Liability insurance. It provides cover against claims made by members of the public who have suffered injury or damage to property in connection with the business. If a member of the public is injured on your property you may be held liable for any compensation claims.

Education of Staff and Customers about the health effects of Shisha

It is important that you appreciate the acknowledged adverse health effects of shisha. The World Health Organisation (2005) warns that one hour of smoking Shisha is the equivalent of inhaling up to 200 times the volume of smoke in one cigarette. Even tobacco-free shisha is not a safe alternative; smokers can inhale dangerous levels of carbon monoxide and other toxins. Second hand shisha smoke also poses a serious health risk.

It is also important that shisha mouth pieces are not shared in order to avoid potential spread of disease e.g. Tuberculosis. Disposable mouth tips should be provided for each new customer. Mouth pieces should otherwise be carefully cleansed and disinfected, and stored in a clean place after use.

If you require advice on stopping smoking, and on information you can pass on to your customers, please contact Smoke free Ealing on 0800 876 6683 or 0208 566 3799.intra email:

ealingstopsmoking@nhs.net.

In conclusion, please consider all information provided in this letter in the operation of your business. We shall attempt to guide and advise you in achieving compliance but persistent non-compliance with legal requirements will not be viewed favourably. Non – compliant businesses can expect regular visits from Council Officers and others we work in partnership with, until we are satisfied that compliance has been achieved. It is likely that persistent non-compliant businesses will be prosecuted at the Magistrates Court.

Further information can be obtained from the Local Government Publication "Implementation of Smokefree Legislation in England" which can be accessed from the website www.cieh.org.uk. Another important source of information is the "Shisha Tobacco Products- a guide to legislation which can be obtained from the website:

[http://www.ntpd.org.uk/shisha tobacco products a guide to the legislation](http://www.ntpd.org.uk/shisha_tobacco_products_a_guide_to_the_legislation)