



Smoking in public places

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This note outlines the provisions of the smoking ban in England that came into effect on 1 July 2007 in a practical context. It also includes recent developments such as the introduction of new regulations in 2015 regarding smoking in private vehicles.

New regulations brought a smoking ban into force in England at 6am on 1 July 2007. Almost all enclosed and substantially enclosed public places and workplaces are included, as are public transport and most work vehicles and company cars. Following the introduction of new regulations in 2015, it is now also against the law to smoke in a private vehicle when children are present.

There are a few limited exemptions to the ban where smoking may take place in designated rooms providing certain requirements are met, including: overnight sleeping accommodation in hotels, hostels and private members' clubs; prison cells; hospices; long stay care settings; specialist tobacconist shops and tobacco research facilities.

Whilst the places where tobacco and other substances can be smoked is heavily restricted, smoking itself is not banned, and may still take place outdoors (subject to other restrictions or local by-laws) and in the home, provided the area is not used as a workplace by more than one person. All common parts of flats and communal accommodation must be smoke-free. Where smoking shelters are provided, these must comply with the requirements to be less than fifty per cent enclosed otherwise they will be deemed substantially enclosed under the regulations.

The Regulations reflect the *minimum requirements* to comply with the ban. Some employers and premises owners may choose to go further and impose a smoking ban in all areas under their control, including outside grounds and car parks.

Guidance on the Regulations can be found on the Smokefreeengland website: [Everything you need to prepare for the new smokefree law on 1 July 2007](#).

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1 The legislation

The powers under Part One of the *Health Act 2006* relating to smokefree areas are largely regulation making powers. Five sets of regulations originally enforced the smoking ban; all came into force on 1 July 2007 in England. Some provisions came into force in Wales on 2 April 2007 to enforce the ban on smoking brought in on that date there. In 2012, one of them (Smoke-free (signs)) was revoked and replaced, and in 2015 a new set of regulations was approved by Parliament which make it a criminal offence to carry children in a vehicle that is not smoke-free.

The original Regulations were:

- *The Smoke-free (Premises and Enforcement) Regulations 2006 [SI 2006/3368]*
- *Smoke-free (Signs) Regulations 2006 [SI 2007/923]*
- *Smoke-free (Exemptions and Vehicles) Regulations 2007 [SI 2007/765]*
- *Smoke-free (Penalties and Discounted Amounts) Regulations 2007 [SI 2007/764]*
- *Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007 [SI 2007/760]*

Smoke-free requirements are also contained within the provisions of the *Merchant Shipping Act 1995*.

In 2012, new regulations came into force:

- *The Smoke-free (Signs) Regulations 2012 [SI 2012/1536]*

These regulations revoked and replaced the previous *Smoke-free (Signs) Regulations 2006 [SI2007/923]*. The main difference is that since 2012 at least one legible no-smoking sign must still be displayed in smoke-free premises and vehicles, but owners and managers are now free to decide the size, design and location of the signs.

Finally, on 11 February 2015, MPs voted in favour of new regulations that will come into force on the 1st of October 2015:

- *The Smoke-free (Private Vehicles) Regulations 2015*

2 The Smoke-free (Private Vehicles) Regulation 2015

2.1 The change in legislation

The *Smoke-free (Private Vehicles) Regulation 2015* changes the law regarding smoking in vehicles carrying children. As such, a vehicle becomes smoke-free if:

- (a) it is enclosed,
- (b) there is more than one person present in the vehicle, and
- (c) a person under the age of 18 is present in the vehicle.¹

Anyone who does not comply with this law will be committing a criminal offence and will be subject to a fixed penalty notice of £50.

¹ [The Smoke-free \(Private Vehicles\) Regulation 2015](#), SI 2015/286

2.2 Developments leading to the change

In February 2014, MPs voted in favour of an amendment to the Children and Families Bill (376 votes to 107).² This gave Ministers in England and Wales the power to bring in a ban on smoking in cars when children are present. The powers on smoking in cars are now found in [Section 95 of the Children and Families Act 2014](#).

On 15 July 2014, the Department of Health launched a six-week public consultation on draft regulations to end smoking in private vehicles carrying children in England. The [Government response to the consultation on smoking in private vehicles carrying children](#) provides an overview of the consultation and responses.³

The main results suggest that there was general agreement among all respondents that reducing children's exposure to second-hand smoke is important. However, there was some disagreement on how to achieve this: while some wanted to go further and end smoking in private vehicles altogether, others preferred a behaviour change approach. It was suggested that enforcement might prove particularly difficult.

Difficulties around enforcement have also been debated in the House of Commons. It has been suggested it would be difficult to spot offenders as cigarettes tend to be held at a lower level in the car and that it would not always be easy for police to see how old passengers are in the car. However supporters have pointed to the success of previous legislation such as the seatbelt ban:

Alex Cunningham (Stockton North) (Lab): [...] To argue that it would be too difficult and burdensome for officers to spot the act of smoking in a car, or to identify whether a child is being carried at the same time, is therefore no excuse. Indeed, I argue that such actions are markedly easier to recognise than gauging the height of a seated child to ascertain whether correct restraints are used. To suggest that officers would be unable to identify such instances is to underestimate their competence. I take much comfort from knowing that when educational campaigns on seatbelts accompanied the legislation, seatbelt use shot up from 25% to 91%, and from knowing that Department of Health figures indicate that there was 98% compliance from the moment the smoke-free legislation was introduced. I hope that the instances of such rules being flouted would be few and far between as a result of Britons' law-abiding nature. I remain confident that, as with compliance on seatbelts, such regulations would become largely self-enforcing. Let us not forget that it is the role of the police to enforce the law.⁴

The Welsh Government also launched its own six-week public consultation in September 2014 on the same topic. The [Summary of responses](#) document shows that 83% of respondents were in favour of a change in legislation.⁵

In Westminster, MPs voted in favour of the measure 342 to 74 on 11 February 2015.⁶

2.3 Basis for the change: health effects on smoking in cars for children

The Government consultation document provides a good overview of the evidence for health effects of smoking in cars on children.⁷

² [HC Deb 10 February 2014 c627](#)

³ Department of Health, [Government response on smoking in private vehicles](#), December 2014

⁴ [HC Deb 10 February 2014 c621](#)

⁵ Welsh Government, [Consultation – summary of responses: Smoke-free private vehicles carrying children under 18](#), January 2015

⁶ [HC Deb 11 February 2015 c929](#)

The Royal College of Physicians (RCP), in their 2012 Parliamentary briefing, provide information about the dangers and disease burden of passive smoking on children:

Health harms to children as a result of passive smoking

Passive smoking in the home is a major hazard to the health of the millions of children in the UK who live with smokers. Children are particularly vulnerable to passive smoke exposure, most of which occurs in the home. About 2 million children currently live in a household where they are exposed to cigarette smoke, and many more are exposed outside the home.

Passive smoking causes the following each year among children:

- Over 20,000 cases of lower respiratory tract infection
- 120,000 cases of middle ear disease
- At least 22,000 new cases of wheeze and asthma
- 200 cases of bacterial meningitis
- 40 sudden infant deaths – one in five of all SIDs

[...] In addition to the burden of disease, passive smoking also places a large financial burden on the NHS – at least £9.7 million each year in UK primary care visits and asthma treatment costs, £13.6 million in UK hospital admissions, and £4 million on asthma drugs for children up to the age of 16. The future treatment costs of smokers who take up smoking as a consequence of exposure to smoking by parents could be as high as £5.7 million each year. Each year, these cases generate over 300,000 UK GP consultations and about 9,500 hospital admissions, and cost the NHS about £23.3 million.⁸

A report from the RCP tobacco advisory group in 2010 provided information about the level of smoke children are exposed to in cars. They advised that cars and other vehicles are a source of high levels of smoke exposure for children and adults and this is associated with adverse health effects, including increased risk of respiratory and allergic symptoms.⁹ A study published in the journal *Tobacco Control* in 2012 found that the concentration of fine particulate matter in cars where smoking takes place is high and exceeds international indoor air quality guidance values.¹⁰

2.4 International examples

Bans on smoking in cars with children present have been introduced in the following places:

- Some [US](#) states including Arkansas, California, Illinois, Louisiana, Maine, Oregon and Utah. Other states have counties or cities where bans are in place, such as Hawaii, Indiana, New Jersey and New York.
- [Some jurisdictions in Australia](#)- all states except Northern Territory.

⁷ Department of Health, [Smoking in private vehicles carrying children - consultation on proposed regulations to be made](#), July 2014

⁸ RCP, [Royal College of Physicians Parliamentary Briefing Passive smoking and children](#), May 2012

⁹ RCP Tobacco Advisory Group, [Passive smoking and children](#), March 2010

¹⁰ Tobacco Control, [Secondhand smoke in cars: assessing children's potential exposure during typical journey conditions](#) *Tob Control* 2012;21:578-583 doi:10.1136/tobaccocontrol-2011-050197

¹¹ Action on Smoking and Health, [Laws Banning Smoking in Vehicles Carrying Children – International Overview](#), 2014

- Some jurisdictions in Canada (10 out of 13)
- South Africa
- Mauritius
- Bahrain
- Puerto Rico
- Kuwait (smoking in any vehicle is banned) ¹²

Each region has applied its own age restriction and varying degrees of penalties.

3 Common queries on the smoking ban

3.1 Smokefree premises

Section 2 Part One of the *Health Act 2006* explains which premises are to be smokefree; the details are set out in the *Smoke-free (Premises and Enforcement) Regulations 2006*.

A place must be smokefree if:

it is used as a place of work by more than one person, even if the people that work there do so at different time of the day, or only intermittently

or

it is open to members of the public

and it is enclosed or substantially enclosed.

A place of work used only by one person must also be smokefree *at all times* if members of the public enter to receive goods or services.

If part of the home is used as a place of work by more than one person that area must also be smokefree. The private areas of a home need not be smokefree.

What does open to the public mean?

Premises are deemed to be open to the public if the public, or a section of the public, has access. It does not matter if the access is restricted to certain members of the public, either by way of invitation or payment – they are deemed to be the public and the premises will be required to be smokefree. There is no age restriction under the regulations as to whom the term public might apply.

The *Health Act 2006* explains that the regulations apply to premises that are open to the public. Part 1 section 2 (7) states:

2 Smoke-free premises

(1) Premises are smoke-free if they are open to the public.

But unless the premises also fall within subsection (2), they are smoke-free only when open to the public.

(2) Premises are smoke-free if they are used as a place of work—

(a) by more than one person (even if the persons who work there do so at different times, or only intermittently), or

¹² Action on Smoking and Health, [Smoking in cars fact sheet](#), February 2015

(b) where members of the public might attend for the purpose of seeking or receiving goods or services from the person or persons working there (even if members of the public are not always present). They are smoke-free all the time.

(3) If only part of the premises is open to the public or (as the case may be) used as a place of work mentioned in subsection (2), the premises are smoke-free only to that extent.

(4) In any case, premises are smoke-free only in those areas which are enclosed or substantially enclosed.

(5) The appropriate national authority may specify in regulations what “enclosed” and “substantially enclosed” mean.

(6) Section 3 provides for some premises, or areas of premises, not to be smokefree despite this section.

(7) Premises are “open to the public” if the public or a section of the public has access to them, whether by invitation or not, and whether on payment or not.

(8) “Work”, in subsection (2), includes voluntary work.¹³

What about private members’ clubs?

Despite the fact that the membership may be a restricted sub-set of the public at large, if they access a place that is enclosed or substantially enclosed by virtue of their membership then the smoking ban applies.

Originally, the Labour government decided that the *Health Bill 2005-06* should include certain exemptions to the smoking ban, including licensed premises not serving food, and private members’ clubs. MPs opposing the partial ban tabled amendments on the contentious issue during the report stage on 14 February 2006.¹⁴ The government allowed a free vote to determine the matter. In the event, the opposition to a partial smoking ban was sufficient to mean that an amendment to the new clause was carried and a complete ban on smoking in enclosed and substantially enclosed public places and workplaces became part of the Health Bill.

The *Health Act 2006* specifically precludes any possibility of an exemption for anywhere that is licensed or has a club certificate - Part 1 Chapter 1, 3(3)(a)(b).

We’re a Masonic lodge – so we aren’t public

There is no exemption for masonic lodges; they venue is treated in exactly the same way as private members’ clubs, societies, churches or mosques, all of which are covered by the Regulations.

3.2 Enclosed and substantially enclosed

If the structure has a ceiling or roof (this includes movable structures such as awnings) and it is wholly enclosed (except for doors, windows or passageways, then it is deemed to be **enclosed**, whether the structure is permanent or temporary. Smoking cannot take place in there. Otherwise the fifty percent rule applies.

¹³ [Health Act 2006, Part 1 Section 2.](#)

¹⁴ [HC Deb 14 February 2006 c1340](#)

If there is a ceiling or roof and more than 50 per cent of the walls are present, then the premises is **substantially enclosed** and smoking cannot take place. No account can be taken of any doors, windows or other structures that can be opened or shut.

If the premises has a ceiling or roof, but there are permanent openings that are more than half the total area of the walls (including any other structures that serve as walls and constitute the perimeter) then smoking can take place.

Tents, marquees or similar structures that fall within the classification of enclosed or substantially enclosed above must also be smokefree, even if the sides are rolled up.¹⁵

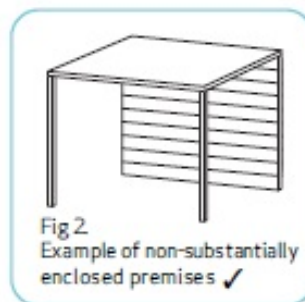
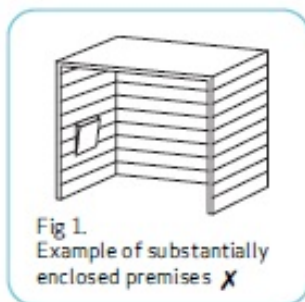
WHICH PLACES MUST BE SMOKEFREE?

SMOKEFREE PUBLIC PLACES AND WORKPLACES

The new smokefree law will apply to virtually all 'enclosed' and 'substantially enclosed' public places and workplaces. This includes both permanent structures and temporary ones such as tents and marquees. This also means that indoor smoking rooms in public places and workplaces will no longer be allowed.

Premises will be considered **'enclosed'** if they have a ceiling or roof and (except for doors, windows or passageways) are wholly enclosed either on a permanent or temporary basis.

Premises will be considered **'substantially enclosed'** if they have a ceiling or roof, but have an opening in the walls, which is less than half the total area of the walls. The area of the opening does not include doors, windows or any other fittings that can be opened or shut.



If you require further advice on whether your premises are 'enclosed' or 'substantially enclosed' please contact your local council.

There is no requirement for outdoor smoking shelters to be provided for employees or members of the public.

If you do decide to build a shelter, we suggest you discuss any plans you may have with your local council, as there may be a range of issues you need to consider. These might include planning permission, licensing, building control, noise and litter.

Please note, the Department of Health cannot provide advice on the design or construction of smoking shelters.

Source: [Everything you need to prepare for the new smokefree law on 1 July 2007](#). NHS 2007

¹⁵ [The Smoke-free \(Premises and Enforcement\) Regulations 2006](#), SI 2006/3368, Part 2

What if I hold a party in a marquee in my garden?

If a household makes a formal invitation to guests to attend an event, such as a wedding in a marquee, they will be required to ensure that the marquee is smokefree and display the correct signage if more than fifty per cent of the structure is enclosed by walls, even if these can be rolled up. The reason for this is that the venue is enclosed or substantially enclosed and one to which the public has been invited and is therefore covered by the regulations.

If the host hires in staff [or even relies on volunteers – see below] to entertain and cater at a private event then the venue is also deemed to be a workplace and the ban applies.

Why is my bus stop / railway station non-smoking when it's not enclosed?

In some cases it may prove impractical to maintain an enforceable smoking ban in some areas of a premises covered by the regulations, which are immediately adjacent to areas not technically covered by the regulations, for example a covered railway station next to open platforms, or at a bus station where there are bus shelters and bus lanes. The operator may then decide it is easier for enforcement purposes to make the whole area smokefree.

In terms of the railways, all train operating companies and Network Rail have worked together under their own by-laws to prohibit smoking in all areas of their premises, with the possible exception of car parks and forecourts. The British Transport Police are responsible for enforcement of the smoking ban on railway premises. The Railway Bylaws state that:

No person shall smoke or carry a lighted pipe, cigar, cigarette, match, lighter or other lighted item on any part of the railway on or near which there is a notice indicating that smoking is not allowed.¹⁶

3.3 Employing staff

Clubs, societies and local groups often say they employ no staff to service bars, food or cleaning and take the work upon themselves.

Section 2(8) of the *Health Act 2006* makes it clear that “work” includes “voluntary work”. Thus the activities are deemed to be voluntary work or paid work and the venue a place of work; hence the ban will apply.

Do I have to stop smoking when my cleaner comes in?

Section 2 of the *Health Act 2006* makes provision to designate areas of private space that will need to be smoke-free. *Part 2(3) of the Smoke-free (Exemptions and Vehicles) Regulations 2007* provide that a private dwelling is not smoke-free *except* in those common parts, and those areas that are deemed to be workplaces or places open to the public.

Part 2 (3)(3) states that: ‘In this regulations “private dwelling” includes self-contained residential accommodation for temporary or holiday use, and any garage, outhouse or other structure for the exclusive use of persons living in the dwelling.’

Work that is excluded from the requirement under Part 2 (3)(1b) is set out in Part 2(2)(2) of the Regulations and includes: work that is undertaken solely to provide personal care for a person living in the dwelling; to assist with domestic work; to maintain the fabric or structure

¹⁶ [Railway Bylaws](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/4202/railway-byelaws.pdf), p.6.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/4202/railway-byelaws.pdf

of the dwelling or to install, maintain or remove any service provided to the dwelling for the benefit of persons living in it.

I run a hotel – do all my chambermaids have to be smokers?

Under [The Smoke-free \(Premises and Enforcement\) Regulations 2006](#) [SI 2006/3368] smoking will be permitted in guest rooms in hotels, guest houses or rooms in members' clubs where the member may stay overnight, *if designated by the owner*.

Certain requirements are set out in the Regulations as to what the meaning of a designated bedroom is for these purposes, including the fact that it must be completely enclosed and does not have a ventilation system that vents into any other smoke-free areas.

In designated rooms for guest accommodation or residential accommodation, smoking rooms are intended for residents only, and for their guests *at management discretion*. All employees in such premises would be expected not to smoke. Communal smoking rooms may not be used for any other purpose, such as recreational rooms where non-smoking residents may be exposed to secondhand smoke. Smoking will not be permitted in dormitories or in rooms where persons share at the same time.

It is not a requirement under the regulations to designate such rooms, only that such rooms *may* be designated at the discretion of the owner. Otherwise, the assumption is that all rooms will be smokefree unless otherwise designated. Hotel owners or managers will have to balance a number of considerations before designating such rooms, including; their customer base; the costs of making relevant adaptations to comply with the ventilation and signage requirements; staff management issues around cleaning and health and safety considerations. The employer's duty of care responsibilities under the *Health and Safety at Work etc. Act 1974* will still apply.

It is NOT the case under the regulations that workers required to enter rooms where smoking will still be permitted have to be smokers. The assumption will be that all staff will not smoke in the workplace. Staff who do not smoke may register their unwillingness to clean rooms where smoking has taken place; the employer will continue to have his responsibilities under the *Health and Safety at Work etc Act 1974* and must therefore, make a risk assessment about the hazards of exposing staff to secondhand smoke before deciding on his arrangements for cleaning and servicing the rooms. He may offer the work to members of staff who are smokers if they do not object to working in these rooms. It is most unlikely that he could recruit staff on the basis that they were smokers, given that the hotel itself would be a workplace where smoking is not permitted.

The ability to open the window is one option for ensuring that a room is adequately ventilated for the purposes of the smoking ban. However, the Regulations are NOT specific about window size or the gap that must be left to ensure this, only that the smoke must not be allowed to vent into areas that are smoke-free. The owner may have to take other safety considerations into account; for example, that the windows may not be opened beyond a certain point to avoid people, particularly children falling from them. If they are in any doubt about which regulations should take precedence when deciding to designate a room, the hotel owner should consult with local environmental health officers, who will be responsible for enforcing the smoking ban, but are also the health and safety enforcement officers for the hospitality industry.

3.4 Areas outside workplaces or places open to the public

A key point to make about the smokefree regulations brought in under the *Health Act 2006* is that they are the *minimum* requirements that will help to protect people from the harmful effects of second-hand smoke; but some employers, organisations or companies may choose to go further. Employees or members of the public may congregate to smoke outside a building but *within its curtilage*,¹⁷ or within structures, canopies, porches or huts. The premises owner is within his rights to ask that smoking does not take place there even though they are substantially non-enclosed areas.

At EU level there were proposals in 2007 to extend smoke-free legislation to outdoor areas:

Restrictions could also be extended to outdoor areas around entrances to buildings and possibly to other outdoor public places where people sit or stand in immediate proximity to each other, such as open air stadiums and entertainment venues, bus shelters, train platforms etc. Very limited exceptions could be considered for places where people live on a day-to-day basis (e.g. designated rooms in residential premises, such as long-stay care homes, psychiatric units, prisons etc.).¹⁸

Section 4 of Part One of the *Health Act 2006* includes provisions for the appropriate national authority to designate additional areas to be smoke-free not already designated under Section 2 of Part One of the Act.

On 1 February 2010, the Labour government launched a new [Tobacco Control Strategy for England](#). It promised to review in 2010 whether to extend legislation from enclosed public places and workplaces to areas like entrances to buildings.¹⁹ It said, for example, that it would look at whether there is a case for extending the legislation to building entrances:

Smokefree legislation, introduced in 2007, continues to see high levels of compliance and public support. We have undertaken to review the impact of smokefree legislation in 2010. That review will provide an opportunity to examine whether the legislation is working and where it can be improved, and will also enable assessment of what more can be done to extend protection. Particularly, we will look to promote and support smokefree prisons and examine the case for extending smokefree requirements around building entrances. We will also review how 'smokefree environments' are implemented and managed in other countries.²⁰

So far, there have been no changes to the legislation in this respect. While other countries such as [Australia](#), the [US](#) or [Russia](#) have banned smoking within 4 metres, 25 feet and 15 metres of a public place respectively, there is no such official rule in the UK.

In terms of enforcement, the local authority or port health authority is only responsible for enforcement of areas covered by the regulations; it is not responsible for enforcing company smoking bans in other areas that are not covered by the regulations. If a company decides that employees or members of the public should not smoke in any areas within the curtilage of its premises or that fall outside the regulations then it must take its own steps to enforce a ban in these places.

¹⁷ Curtilage is a legal term describing the enclosed area of land around a building and distinct from the area outside the enclosure in that it is enclosed within a wall, barrier or boundary of some sort.

¹⁸ European Commission, [Green Paper: Towards a Europe free from tobacco smoke: policy options at EU level](#), Brussels, 30.1.2007, COM(2007) 27 final, p11

¹⁹ Department of Health Press Release, archived document: [A Smokefree Future](#), 1 February 2010

²⁰ Department of Health, archived document: [Tobacco Control Strategy for England](#) 1 February 2010, p.53

Issues of enforcement may arise where employees or the public smoke *outside the curtilage* of a premises. In these cases, other legislation may apply. Guidance published by LACORS notes that the *Environmental Protection Act 1990* may not apply if noise nuisance is an issue where the noise does not emanate from within the premises itself. Action may be possible using the *Licensing Act 2003* and/or by police action.

Smoking is not illegal under the legislation, except where the regulations apply, but neither is there a legal obligation on employers to facilitate smoking in non-regulated areas. Employers are under no obligation to make alternative provision for smokers in the form of shelters. If companies whose custom relies on smokers decide to do so, this will usually be for sound commercial reasons.

It is also important to remember that even in areas where smoking is still permitted under the regulations, for example in exempted areas, such as hospices and long term care settings, employers still owe their staff and members of the public a duty of care under the *Health and Safety at Work etc Act 1974* and will need to consider how best they protect their employees from harm, in this case, from secondhand smoke. If they decide that on balance, it is in the interests of all staff to have a smoking ban in these areas, then they are within their rights to do so. For instance, in certain schools, parents and teachers have been asked not to smoke outside school gates, both because of the consequences of second-hand smoke but also because it is considered to show the wrong example to pupils.²¹

Can I smoke outside a hospital?

In November 2013 the National Institute for Health and Care Excellence (NICE) issued a [Guidance on Smoking cessation in secondary care](#) that recommended banning NHS staff and patients from smoking on all hospital and clinic grounds. It states that secondary care providers have a duty of care towards their patients and that they should promote healthy behaviours as well as help their patients quit smoking while they are under their care. Commenting on the new guidance, Professor Mike Kelly, Director of the NICE Centre for Public Health said:

"We need to end the terrible spectacle of people on drips in hospital gowns smoking outside hospital entrances. This guidance can help make that contradiction a thing of the past by supporting hospital smokefree policies to make NHS secondary care an exemplar for promoting healthy behaviour."²²

Implementation of this guidance is left to the individual responsibility of local commissioners and/or providers. Critics have pointed out that not only is this measure difficult to enforce, it is also "inhuman" to prevent patients from using their way of relieving stress as well as "nagging" them and "bullying" them into quitting smoking while they are in hospital.²³

How about smoke drifts – when smoke seeps or drifts into people's homes or working spaces?

Since smoking is not prohibited in private homes, some people have complained that they were affected by their neighbours' smoking habits. The public health charity Action on Smoking and Health produced a [brief on smoke drifts](#) in 2011 to provide information on what

²¹ *BBC News* "Head teacher abused in Croydon school gates smoking row", 21 October 2013

²² NICE, Guidance on "Smoking cessation in secondary care: acute, maternity and mental health services", 2013. <http://www.nice.org.uk/guidance/ph48/resources/nice-says-hospitals-have-a-duty-of-care-to-help-all-patients-who-smoke-to-quit>

²³ *Daily Mail*, "Ban smoking on all your grounds, hospitals urged", 26 November 2013

affected people can do when they experience smoke drifts in their homes or workplaces. The main advice is to negotiate directly with the smokers as litigations are costly and often have uncertain outcomes.²⁴

We work with explosive substances – can we smoke outside?

Where there is an agreed safety case already in place on site that smoking is not permitted in outside areas, this would continue to be the norm. The statutory duty to ensure the safety of the workforce, the surrounding public and the environment from the risk of explosion would take precedence over whether employees may or may not be permitted to smoke, which is not a contractual duty. It would be for the site managers to take a final decision based on their own risk assessments.

Where dangerous substances are or may be present, employers are required to ensure that the risks to the safety of employees and others from dangerous substances are either eliminated or reduced as far as reasonably practicable. [[Dangerous Substances and Explosive Atmospheres Regulations 2002 Reg 6\(1\)](#) (DSEAR)].

Tolley's Health and Safety Handbook 2007 notes: "Where it is not reasonably practicable to eliminate or reduce the risks, they are required to take, as far as is reasonably practicable, measures to control the risks and mitigate the detrimental consequences should a fire, explosion or similar event occur. The DSEAR therefore advocate the established safety management principles of elimination, reduction, control and mitigation of risk." Control measures may include avoiding ignition sources such as sparks or naked flames.

3.5 Care homes

Section 3 of the *Health Act 2006* enables regulations to be made for certain premises, or *specific areas within premises*, not to be smoke-free i.e. smoking will be allowed in certain areas. The [Smoke-free \(Exemptions and Vehicles\) Regulations 2007](#) set out the few exemptions from smoke-free legislation. In all cases, apart from private dwellings (unless they are also a workplace) and specialist tobacconist shops, and certain smoking research establishments, premises with exemptions may designate in writing specific rooms where smoking will be permitted.

If the home is a designated care home under the terms of the relevant legislation, then there is the option to designate "bedrooms or rooms used only for smoking". However, managers may decide to implement a smoking ban where they judge the risks to the safety of the residents and employees outweigh the right to smoke. In this case, another room may be designated for smoking, but there are restrictions as to what the room may contain, in terms of furnishings and activities that take place there.

Designated rooms used for accommodation purposes for persons aged 18 years and over will not have to be smoke-free in:

- Care home defined in the *Care Standards Act 2000*
- Hospices providing palliative care
- Prisons

The Regulations spell out the meaning of designated room in such cases:

²⁴ Action on Smoking and Health, "[Smoke drift in the home and workplace](#)", December 2011

(3) In this regulation "designated room" means **a bedroom or a room used only for smoking** which—

(a) has been designated in writing by the person having charge of the premises in which the room is situated as being a room in which smoking is permitted;

(b) has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid, floor-to-ceiling walls;

(c) does not have a ventilation system that ventilates into any other part of the premises (except any other designated rooms);

(d) is clearly marked as a room in which smoking is permitted; and

(e) except where the room is in a prison, does not have any door that opens onto smoke-free premises which is not mechanically closed immediately after use.

Mental health units are now completely smoke-free premises. They were given a temporary exemption in 2007 during which they could have designated rooms where smoking could take place, but that ended in July 2008.²⁵

Why can't we have a TV in the smoking room?

The *requirements* under the legislation for a designated smoking room in such settings mainly relate to ventilation – if these are not met then an offence will be committed. The *advice* that the room should contain no furnishings or recreational equipment relates to the fact that designated rooms must not be used for other purposes, such as a Library, TV room, visitor suite etc. The aim of the legislation is to minimise exposure to secondhand smoke and to mitigate its effects on employees; managers must consider what needs to be done to achieve this. Reducing the potential for the room to become a haven for smokers through minimal furnishing and entertainments is part of a wider smokefree strategy.

A guidance document was produced for businesses and managers: [Everything you need to prepare for the new smokefree law in 1 July 2007](#). It sets out the requirements that must be in place if a designated room is to be compliant with the regulations.

WHAT CONDITIONS MUST BE MET FOR DESIGNATED SMOKING ROOMS?

To allow smoking in one of the designated rooms or bedrooms specified on page 16, it will be the legal responsibility of anyone who controls or manages the premises to ensure that the following conditions are met.

Any room where smoking is permitted must:

be designated in writing by the person in charge of the premises. This written designation needs to be kept permanently and produced for inspection by an enforcement officer if requested. This condition does not apply to specialist tobacconist shops have a ceiling and, except for doors or windows, be completely enclosed on all sides by solid floor-to-ceiling walls not have ventilation systems that ventilate into any other part of the premises (except other rooms designated for smoking) or into any other smokefree premises have mechanically closing doors, which should also be compatible with other laws, including fire regulations. This condition does not apply to prisons be clearly marked as a room in which smoking is permitted. You are free to

²⁵ [The Smoke-free \(Exemptions and Vehicles\) Regulations 2007](#), SI 2007/765, Part 2, Section 10.

create your own signs warning people about where they could be exposed to secondhand smoke.

If all the conditions above are not met, the room cannot be used for smoking and will need to be smokefree at all times. It is the legal responsibility of anyone who controls or manages the premises to prevent people from smoking in all parts required to be smokefree.

If you are in any doubt whether the rooms you propose to designate will meet with the conditions outlined above, then you are advised to discuss your proposals in advance with your local council. In those instances where a 'room to be used only for smoking' may be designated (see page 16), *this means that the room is not allowed to be used for any other purpose, for example, as a television room or library.*

Although the law provides for these exemptions, there is no legal obligation for any workplace to offer designated smoking rooms or bedrooms if they do not wish to do so.

Employers will also continue to have legal responsibilities to protect the health, safety and welfare of their employees under pre-existing health and safety at work laws. See page 18 for further advice.

Additional guidance is provided for local council regulatory officers, who will be responsible for enforcing the ban. Appendix 10 of [Implementation of smokefree legislation in England](#) (LACoRS 2007) explains the application of the requirements with respect to designated rooms in certain settings.

3.6 Ensuring smokefree premises

The duties as the employer or owner/manager of premises are to ensure that the appropriate signs are displayed to show that smoking is not permissible in the public areas of the premises. He must also take steps to ensure that smoking does not take place there. Failure to do so will become a new criminal offence and may result in a substantial fine.

Managers of smokefree premises have legal responsibilities to prevent people from smoking under the *Smoke-free (Exemptions and Vehicles) Regulations 2007*. A fixed penalty notice of £50 can be imposed on the person smoking or a maximum fine of £200 if prosecuted and convicted by a court. A maximum fine of £2500 can be imposed on whoever manages the vehicle if they fail to prevent smoking in smokefree premises.

Following the *Smoke-free (Signs) Regulations 2012*, at least one legible no-smoking sign must be displayed in smoke-free premises and vehicles. Managers are responsible for ensuring that such premises are smoke-free and that employees and customers are aware of the ban. Failure to display the correct notices may result in a fixed penalty fine of £200 imposed on whoever manages the smokefree premises or a maximum fine of £1000 if prosecuted and convicted by a court.

Following the *Smoke-free (Private Vehicles) Regulations 2015*, a fixed penalty of £50 will be issued to the driver for failing to prevent smoking in a smoke-free private vehicle.

3.7 How about electronic cigarettes?

The smoke-free regulations as they are currently in place do not apply to electronic cigarettes (e-cigarettes). However, as these regulations set out the *minimum requirements* to be put in place, a number of enclosed public places have individual company policies which extend the ban to e-cigarettes. As such, a number of restaurants, airlines, cinemas, theatres,

supermarkets and other public places have decided to ban the use of e-cigarettes on their premises. In September 2014, the World Health Organisation (WHO) issued a [Report ahead of the Conference of the Parties to the WHO Framework Convention on Tobacco Control](#) calling for legal steps to be taken to end use of e-cigarettes indoors in public and work places.²⁶ However, there are no current plans from the Government to amend the smoke-free regulations to extend the ban to e-cigarettes.

There is a [POST note](#) on electronic cigarettes from January 2014 that provides a useful background on the topic, and a Standard note on [Advertising of e-cigarettes](#) published in October 2014 that sets out the regulations in that matter. Regarding the sale of electronic cigarettes, after carrying out a consultation on the topic, the Government published a [response](#) on 17 March 2015 and stated that it has decided to proceed with the introduction of a minimum age of sale of 18 years for nicotine inhaling products and related parts such as nicotine refill cartridges and liquids.²⁷

The debate on where and when not to use e-cigarettes has even reached Parliament directly as some MPs have been lobbying for a designated room to be established. At the time of writing, the House of Commons Administration Committee had decided on 11 February 2015 that the use of e-cigarettes should be restricted to designated outside spaces.²⁸

4 Compliance levels and effectiveness of the legislation

Data until 2009 regarding compliance levels can be found on this website: <http://www.smokefreeengland.co.uk/thefacts/national-compliance-data.html>

Public opinion polls have consistently showed an increased support for the smoke-free legislation in England. A recent report by the London Health Commission stated that as of 2014, 78% of adults approved of the changes. It also said that 98% of venues were compliant.²⁹

In March 2011 the Government published an academic review of the smokefree legislation in England. One of the main conclusions of the review was that the smokefree legislation had been effective at reducing exposure to second-hand smoke (SHS):

A significant body of UK and international evidence now exists which demonstrates that smokefree laws are effective in reducing exposure to SHS. In adults, previous studies have shown that barworkers have among the highest occupational exposure to SHS of any group of employees. A study of barworkers in England showed that their exposure reduced on average between 73% and 91% and measures of their respiratory health significantly improved after the introduction of the legislation. Children are particularly vulnerable to the effects of SHS and research in England has explored changes in exposure over time. A study found that between 1996 and 2007, SHS exposure among children declined by nearly 70%. The reductions were greatest

²⁶ WHO, Report on "[Electronic nicotine delivery systems](#)" ahead of the Conference of the Parties to the WHO Framework Convention on Tobacco Control (FCTC), 1 September 2014. FCTC/COP/6/10 Rev.1

²⁷ Department of Health, [Government response to the consultation on an age of sale for nicotine inhaling products](#), March 2015.

²⁸ [House of Commons Commission bulletin](#), 11 February 2015. <http://www.parliament.uk/business/committees/committees-a-z/other-committees/house-of-commons-commission/news/bulletin-11-february-2015/> [Accessed on 9 March 2015]

²⁹ London Health Commission, "[Better Health for London](#)", October 2014, p.15

in the period immediately before the introduction of smokefree legislation, coinciding with national mass media campaigns around the dangers of SHS.³⁰

5 Debates regarding potential future changes

Section 4 of Part One of the *Health Act* includes provisions for the appropriate national authority to designate additional areas to be smokefree *not already designated* under Section 2 of Part One of the Act.

4 Additional smoke-free places

(1) The appropriate national authority may make regulations designating as smoke-free any place or description of place that is not smoke-free under section 2.

(2) The place, or places falling within the description, need not be enclosed or substantially enclosed.

(3) The appropriate national authority may designate a place or description of place under this section only if in the authority's opinion there is a significant risk that, without a designation, persons present there would be exposed to significant quantities of smoke.

(4) The regulations may provide for such places, or places falling within the description, to be smoke-free only—

- (a) in specified circumstances,
- (b) at specified times,
- (c) if specified conditions are satisfied,
- (d) in specified areas,

or any combination of those.

In March 2011 the Government published a document, [Healthy Lives, Healthy People, A Tobacco Control Plan for England](#). This plan set out what the Government wanted to do to support efforts to reduce tobacco use until 2016. In the plan, the Government set out proposed actions to reduce exposure to second-hand smoke:

- work with national media to raise awareness of the risks in exposing children to secondhand smoke;
- support local areas to encourage smokers to change their behaviour so that they do not smoke in their homes or family cars;
- continue progress to reduce secondhand smoke in prisons; and
- support other countries that want to introduce smokefree laws by sharing our experience.³¹

³⁰ Professor Linda Bauld, University of Bath, [The impact of smokefree legislation in England: evidence review](#), March 2011, p1

³¹ Department of Health, [Healthy Lives, Healthy People, A Tobacco Control Plan for England](#), March 2011, p.37

5.1 Smoke-free prisons

On 28 April 2014 there was a Written Question about Government's plans to make prisons smoke-free environments:

Philip Davies: To ask the Secretary of State for Justice what assessment he has made of the effect of a smoking ban in prisons on the number of incidents of violence relating to cigarettes.

Jeremy Wright: The National Offender Management Service (NOMS) support the desirability of attaining a smoke free prison estate in the future and continue to work towards this objective. However, the timing of that implementation will take account of the operational realities of running safe, decent and secure prisons and in particular the impact any smoking ban may have on the general safety of staff and prisoners. Therefore the decision on timing to move to smoke free prisons will reflect an operational assessment of risk, which will include an assessment of potentially adverse impact on prisoner behaviour and how this risk can be minimised and effectively managed. This assessment is ongoing and the risks are being carefully considered to ensure effective plans and support are in place before introducing smoke free prisons. The work by NOMS on moving to a smoke free prison estate will continue to be informed by the UK Centre for Tobacco Control Studies in Nottingham University; by further assessments of air quality in prisons; and by the work with Public Health England and expertise from the New Zealand prison service which has introduced smoke free prisons.³²

More recently, on 2 February 2015, it seems like the Government has decided to move forward with the plans although no date had been set at the time of writing:

Dr Matthew Offord: To ask the Secretary of State for Justice, what discussions his Department has had with the Prison Officers Association on the proposal to ban cigarette smoking on the prison estate.

Andrew Selous: The National Offender Management Service (NOMS) provides regular updates to the Prison Officers Association and other staff associations on plans to implement a smoke free policy in prisons as part of the agreed Whitley council arrangements. POA officials have also met separately with NOMS officials to discuss the plans and these meetings will continue.³³

Dr Matthew Offord: To ask the Secretary of State for Justice, when he plans to resume the pilot arrangements for banning cigarette smoking on the prison estate.

Andrew Selous: The National Offender Management Service (NOMS) has confirmed its intention to move to a smoke free policy for prisons. No date has yet been confirmed for implementation of a smoke free policy.³⁴

On 5 March 2015, a High Court ruling confirmed that communal areas in prisons are smoke-free premises, despite a widespread lack of enforcement.³⁵

5.2 Smoke-free public parks and public squares

As far as non-enclosed areas are concerned, the types of places covered Section 4 of Part One of the *Health Act* may include: sports stadia, public parks, bus stops, public entrances

³² Written answers, [HC Deb 28 April 2014, c619W](#)

³³ [Written question 221970](#), Prisons: Smoking, 2 February 2015

³⁴ [Written question 222013](#), Prisons: Smoking, 2 February 2015

³⁵ [BBC News, Prison staff and inmates face possible prosecution under smoking ban laws](#), 5 March 2015

and exits to buildings, and grandstand areas. Many of these – such as bus stops and entrances to buildings – have been discussed already and have been referred to in previous sections. The most recent debate seems to concern public parks.

On 15 October 2014, the London Health Commission published its [Better Health for London](#) report to the Mayor of London, Boris Johnson. Their ambition is to have the lowest smoking rates of any city above five million inhabitants, and one of the key changes they recommend is to have smoke-free parks:

“Just as smokers’ lungs are polluted, the lungs of our city – our parks and green spaces – are polluted by smoking. London should lead the way for Britain, and the Mayor should lead the way for London by acting to make our public spaces smoke free. Our parks and green spaces account for nearly 40% of the capital, the equivalent of 20,000 football pitches; imagine that space completely smoke free. The Mayor should use his byelaw powers to make Trafalgar Square and Parliament Square smoke free. It would send a powerful message for the iconic centre of our city and the political heart of our country to become smoke free. What better way to show our city’s ambition to be the healthiest major global city? Local councils and the City of London Corporation should use their byelaw powers to make local parks smoke free. The Mayor should direct the Board of the Royal Parks – whom he appoints – to make all of the parks and open spaces that they manage smoke free. A smoke free London will be better for us all; a better example for children; fewer opportunities for smokers to smoke; less litter; greener and more pleasant places for us to come together for better health.”³⁶

These recommendations were then discussed in a short debate in the House of Lords on 15 January 2015:

GC290

Lord Darzi of Denham (Lab): (...) Making parks smoke-free will not only help smokers to make better choices by reducing the opportunities to smoke, it will help children to make the right choice to never start smoking. Yet this is more serious than childish debate. The question of making parks smoke-free exists precisely at the boundaries of the proper role of the state. I understand and I acknowledge that different people will hold different beliefs. Our parks are public. They are shared spaces that we should enjoy together. We already accept some limitations on our actions within them. There are restrictions on letting dogs foul, dropping litter or consuming alcohol. I believe that our parks should be spaces that promote healthy behaviour, such as exercise. (...) I have no doubt that parks will become smoke-free by the end of this decade. Thirty years ago, it would have been unthinkable that pubs and restaurants would be smoke-free. Today, it is unthinkable that we would ever return to smoking indoors. The 2007 smoking ban was a major achievement of the previous Government and the present Government have continued the good work with new measures to control advertising at the point of sale and to stop smoking in cars with children. (...) As part of the work of the commission, we examined cities around the world that have made progress in the fight against smoking. New York City has famously led the way. Noble Lords who have visited New York recently will know that Central Park and all the city’s parks are smoke-free. Today, significantly fewer New Yorkers smoke than Londoners. The lesson of two decades of pioneering tobacco control in New York is that the fight must be sustained with new measures and initiatives. When it is not, smoking rates creep back up again. (...)

³⁶ London Health Commission, [“Better Health for London”](#), October 2014, p.5

GC291- GC292

Lord Naseby (Con): To my mind the question is: will the banning of smoking in parks and green spaces actually result in a reduction in smoking or not? What effect would it have on London's tourism? On the front page of today's Evening Standard the figures are pretty stark. Tourism is vital to the success of London. A record £3.56 billion is spent by tourists over the three-month summer period and £8.9 billion over nine months, with tourism up by 6.6%. I suggest that what tourists like to do is go to the park, have a break, maybe have a drink because they usually have a backpack with them, and have a smoke. If that smoking is not going to undermine our smoking policy, tourists will not be allowed to smoke in green parks and that will put them off. (...) There are some things that can positively be done. I used to be the leader of the London Borough of Islington. There are things that local government can do. A number of local authorities are doing some very good work, putting money into the provision of publicity targeted at encouraging people to cease smoking. If we could spend money on that, I am willing to bet that would be far more effective than banning smoking in parks. (...)

GC296

Baroness Finlay of Llandaff (CB): I question the assertion from the noble Lord, Lord Naseby, as regards New York, because I have not seen any evidence that the tourist industry there has suffered at all. In fact, anecdotally, I have heard people say it is welcome that in Central Park there is smoke-free and a sporting open area.”³⁷

In February 2015, two squares in Bristol – the Millennium Square and Anchor Square – became the UK's first major outdoor spaces to become smoking-free zones in a scheme supported by the city council.

“No formal, enforceable ban will be imposed but 11 signs dotted around the squares will ask smokers not to light up and thank people for helping “keep Bristol smoke-free, healthy and clean”. (...) Kate Knight, deputy director of the group, which is commissioned by 15 public health teams across the region, said the scheme would be “self-policing”. She said the signs were designed to be polite but persuasive.”³⁸

On 25 of February 2015, a debate on the topic was published in the [British Medical Journal](#). Former Labour Health Minister Lord Darzi and Dr. Oliver Keown, both from the Institute of Global Health Innovation at Imperial College, London, argued for a ban in outdoor spaces, while Professor Simon Chapman from the School of Public Health in Sydney, Australia, argued against it.³⁹

³⁷ HL Question for short debate: London Health Commission, Smoking. 15 January 2015, [GC290-GC296](#)

³⁸ *The Guardian*, “[Bristol squares aim to stub out cigarettes with voluntary outdoor smoking ban](#)”, 2 February 2015

³⁹ *British Medical Journal*, Head To Head: “[Is a smoking ban in UK parks and outdoor spaces a good idea?](#)”, 25 February 2015. BMJ 2015;350:h958