

# The Health Act 2006 and the ban on smoking

November 2006

**Managers and users of workplaces and public spaces beware: the new legislation on smoking could be as costly as the habit itself!**

The Health Act 2006 covers many topics but of particular relevance to the world of commercial property are the provisions relating to a ban on smoking in enclosed public places, which is expected to come into force in summer 2007.

## Smoke-Free Premises

The Act provides that certain premises will be "smoke-free". These are premises which are "enclosed" or "substantially enclosed" and which are either:-

1. **open to the public** (whether by invitation or payment or not), but only whilst actually open to the public (unless they are also a workplace, in which case the Act would still apply); or
2. **a workplace**: which is:-
  - (i) a place where more than one person works (including voluntary workers) even if the workers are only there intermittently or at different times; or
  - (ii) any workplace where the general public might attend to seek goods or services from workers.

If only part of the premises is open to the public or used as a workplace, then the Act will only apply to that part.

In other words, the ban could affect most commercial premises from the leisure and retail sectors (such as pubs, nightclubs, cinemas, restaurants and shops) to workplaces (such as offices and factories).

## Exemptions

The Act contains powers for Regulations to be made to exempt premises or parts of premises from the requirement to be smoke-free for some or all of the day, for example in places where people may be living for a period of time such as hotels, care homes and prisons. This could lessen the burden on premises operators, but the Act specifically states that the smoke-free requirement *cannot* be lifted for establishments which have a "Premises Licence" for the sale of alcohol for consumption on the premises or a "Club Premises Certificate" under the Licensing Act 2003. Hence, pubs and clubs will have to be smoke-free in their public and workplace areas.

There is a possibility that future Regulations will provide for other exemptions. For example, there has been much debate suggesting that smoking should be allowed in private members' clubs or away from the bar area in pubs that do not serve food. However, this has not been reflected in the Act itself. Any future exemptions like this would have to be covered in Regulations which may be passed in England by the Secretary of State for Health, or in Wales by the National Assembly for Wales.

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## Penalties

Failure to ensure that these places remain smoke-free will break the law. The Act creates new criminal offences to enforce this, as follows:-

1. Smoking in a "smoke-free place" will leave the smoker facing a fixed penalty (currently proposed at £50) or a possible conviction and fine if the fixed penalty is not paid.
2. Occupiers and managers of smoke-free premises face two possible sanctions:-
  - (i) They have a duty to prevent smoking on the premises. Failure to do so could lead to a fine (currently proposed at up to £2,500). However, they have a defence if they took reasonable steps to prevent it or could not reasonably have known that a person was smoking there.
  - (ii) They also have a duty to put up no-smoking signs. Requirements as to the content, size, design, number, display, etc. of such signs are set out in draft Regulations, and if these are not complied with a fixed penalty would be payable. Again, if the fixed penalty is not paid within the time limit, there is the possibility of a conviction and fine.

## Current Situation

The government has recently carried out a consultation on the proposed Regulations which contain the details of the ban, and has announced that the smoking ban will take effect in England on 1 July 2007 and in Wales on 2 April 2007. Notable proposals in the consultation document are:-

1. hotel bedrooms, and designated rooms in places such as care homes, hospices, long-stay mental health units and adult prisons will be exempt from the requirement to be smoke-free provided their doors have mechanical closing devices and provided certain other conditions are met;
2. enforcement of the Act will be carried out by local councils; and
3. no-smoking signs of at least A5 size with the "no smoking" symbol and specified wording must be prominently displayed at each public entrance to smoke-free premises.

It is clear that anyone owning, occupying, managing or using workplaces or enclosed public places will be affected by the ban on smoking. For now, you need to be aware that it is going to come into force, and be ready to act appropriately when the provisions take effect.

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