

Smoking Shelters

Be careful not to waste your money

In making your preparations for the introduction of the Smokefree provisions on 1 July 2007, it is advised that you are particularly careful with any plans for outdoor smoking shelters that could lead to significant wasted expenditure if it goes wrong. This guide aims to help you make the right choices, although it should not be relied upon as a definitive interpretation of the law. **Before making any final decision on a shelter you should seek independent advice from your own legal adviser.**

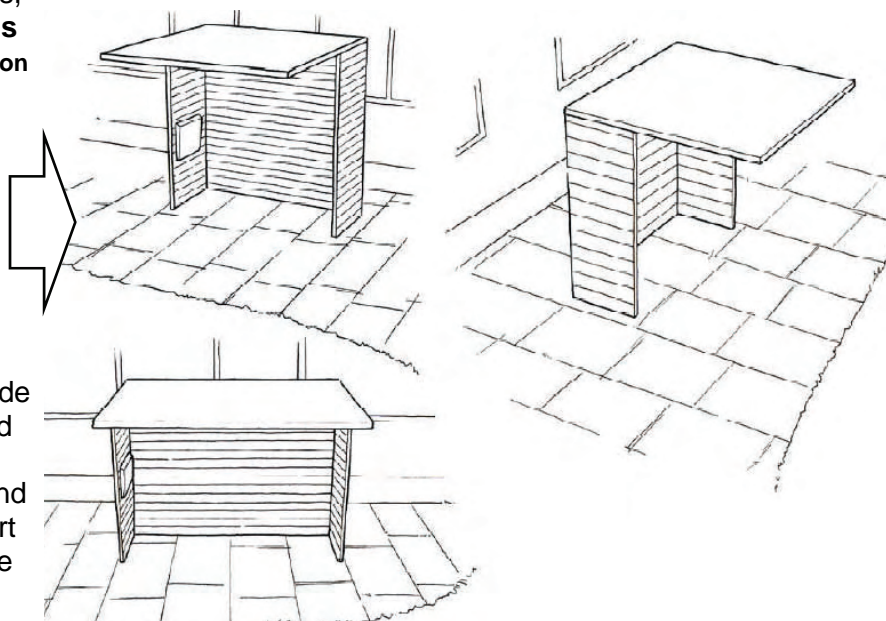
What counts as a smoking shelter?

There is no legal definition, *and you don't have to provide one*. It will be illegal to smoke or allow smoking in enclosed or substantially enclosed premises, therefore **a smoking shelter has to be less than 'substantially enclosed'**. (see definition at base of page 2)

This means that more than 50% of its sides must be permanently open.

The illustration to the right gives a good indication of what will be acceptable.

The location is also important, because building a structure like this with an open side too close to a wall or other obstruction could mean that it no longer complies. (the law refers to premises rather than structures, and an adjacent wall could be deemed to be part of the 'premises' of your shelter—see image below)



Some other shelter problems to avoid

- You will probably need planning permission* if you decide to build a structure - you need to plan for the time delay that this will introduce
- You can't provide temporary covers for any of the open parts—this stops them being counted as permanently open
- It needs to be gale proof
- Customers outside your premises may cause noise or other nuisance problems for neighbours, and this may trigger a review of your licence/certificate.
- You'll need to provide some form of bin for your customers' litter

* Planning Permission

Straightforward cases take up to 8 weeks from submitting a valid application.

If people object it may need to go to a committee hearing, which could add another 4 weeks.

If you have a business in Gateshead ring 0191 4333426 for pre-planning advice.

Alternatives to permanent structures

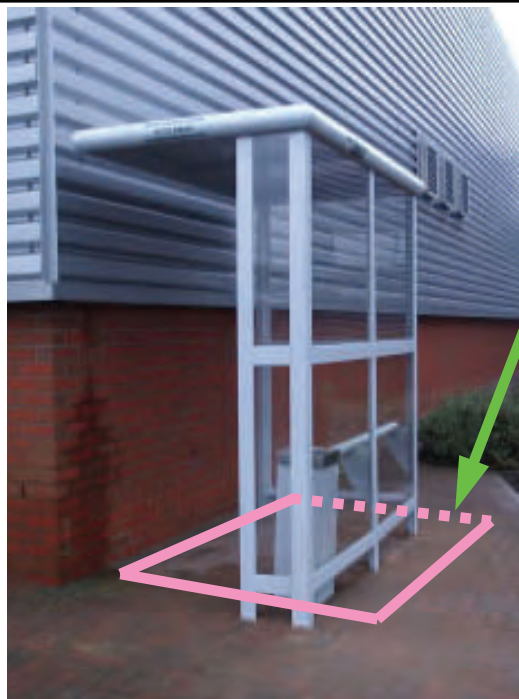
The following alternatives to permanent shelters have been used by businesses in Ireland and Scotland

- Awnings
- Umbrellas and Parasols
- Golf umbrellas for customers to borrow
- One Scottish pub has recently been loaning waterproof coats to customers, with "Stolen From The Buddies Bar" printed on the back



Pictures from http://www.morningadvertiser.co.uk/news_pictures.aspx

Don't spend money on anything 'substantially enclosed'



The shelter to the left falls into the category of substantially enclosed premises, and must therefore be smokefree, because:

- Only about 25-30% of the walls are open
- The perimeter of the 'premises' is clearly that bounded by the thick line at the base, it is **not** restricted to the area covered by the roof (see Regulation 2 (4) below)

A shelter constructed next to a building like this will be a costly mistake.

It is critical that you seek independent legal advice on compliance before spending money on an expensive shelter

Another common mistake made by some in Scotland and Ireland has been to cover an existing yard with an awning.

Because the yard has 4 walls and the awning provides a roof covering, even temporarily, the yard falls into the category of substantially enclosed premises even when the awning is withdrawn.

Substantially enclosed premises (Excerpt from The Smoke-free (Premises and Enforcement) Regulations 2006 - regulation 2)

2. (2) For the purposes of section 2 of the Act, premises are substantially enclosed if they have a ceiling or roof but there is—
- (a) an opening in the walls; or
 - (b) an aggregate area of openings in the walls, which is less than half of the area of the walls, including other structures that serve the purpose of walls and constitute the perimeter of the premises.
- (3) In determining the area of an opening or an aggregate area of openings for the purposes of paragraph (2), no account is to be taken of openings in which there are doors, windows or other fittings that can be opened or shut.
- (4) In this regulation "roof" includes any fixed or moveable structure or device which is capable of covering all or part of the premises as a roof, including, for example, a canvas awning.

Helpful websites

- <http://www.smokefreeengland.co.uk/>
- <http://www.morningadvertiser.co.uk/>
- <http://www.thepublican.com/>

The Final Word

This leaflet can only provide limited and basic advice to help you decide if you need a shelter, what form of shelter you want to provide, and where you might want to site it.

It is **your responsibility** to ensure that your shelter complies with the smokefree law before you build it