



Smoking Shelters and Property Law

In addition to making sure your shelter meets the requirements for exemption under the Smoke-Free (Premises & Enforcement) Regulations 2006 you must also comply with a range of property laws. Chartered Surveyors and acknowledged licensing experts *LGS.uk* highlight some of the key areas to address.

Planning Permission

Planning Permission is needed to build or extend premises or to change from one “use class” to another as in planning terms this would all be classed as “development”. The erection of a permanent smoking shelter would be classed as development and therefore you must apply to the local planning authority. The application must include:

- Application forms
- 1:1250 Ordnance Survey location map
- Plans and relevant information
- Any relevant certificates
- Fee

In addition if a building is “listed” then “Listed Building Consent” will also be required. Old buildings (pre 1840) or buildings of particular architectural or historic value may be listed and categorised into one of three grades (Grade I, Grade II* or Grade II).

Licensing Act 2003

Depending on the nature of your licence and the location of the shelter you may need to take action under the Licensing Act. As the smoking shelter is a fixed structure some Licensing Authorities will require amendment of the approved plans, which form part of the licence. This may mean simply advising the Licensing Authority of the location (with an amended plan) or submitting a S34 application to vary conditions on your licence. Conditions that may cause problems include:

- Restricted times on use of outside areas
- No admission (re-admission) after certain times
- Conditions relating to outside noise

Construction (Design & Management) Regulations 2007

From the 6 April 2007 new Health & Safety laws place duties on clients, designers and contractors to ensure the safety of “construction work” including the erection of a smoking shelter. As a client you must:

- Check the competence of those you employ
- Ensure suitable management arrangements are in place
- Allow sufficient time & resources for the project
- Provide “pre-construction” information



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Building Regulations

The Building Regulations provide a minimum standard for new and altered buildings with the law defining "building work" as including the erection/extension of a building and the installation/extension of a service or fitting (including temporary work). Schedule 1 would exempt shelters "constructed substantially of non-combustible material" where the floor area does not exceed 30m² (any glazing must meet the requirements of Part N).

Fire Safety

The Reform (Fire Safety) Order 2005 changes all fire safety legislation for non-domestic premises. From the 10 October 2006 employers or owners of premises must manage fire risks and emergencies. All businesses including self-employed and the voluntary sector are affected.

There is a duty on every employer to complete the five actions below and establish who is responsible for fire safety, nominating them as a 'Responsible Person' (RP):

- Assess the fire risk in the workplace
- Check that fires can be detected and people can be warned
- Check that there is a safe means of escape
- Provide and maintain fire fighting equipment
- Instruct their employees on what to do in event of a fire

The provision of the shelter must be included in your assessment.

Access for Disabled

The DDA was passed in 1995 to prevent discrimination against disabled people, in much the same way as preventing discrimination on the grounds of race or gender. From 1st October 2004 licensees should have done their best to remove unnecessary physical barriers. Some existing buildings may be very difficult and in some cases almost impossible to alter. On the other hand, sometimes a small adjustment can make a big difference.

Information from the Department for Work and Pensions suggest that 4 out of 10 pubs are unaware of their legal responsibility under the DDA. The survey found that only 23% had made any alterations to their building to comply with the DDA.

The DDA is civil law and therefore it is for the disabled person to start an action ie someone faced with an unnecessary barrier can take the building owner to Court. In blatant cases the Disability Rights Commission are likely to take up the cause after conciliation. Licensees have a defence if they can show that they have taken all reasonable steps to remove these barriers. The provision of and access to the shelter must meet the requirements of the DDA.

Party Wall Act

In 1996 the Government introduced the Party Wall Act in an attempt to reduce disputes with neighbours over building work on the boundary. The law requires that anyone carrying out building work close to the boundary must notify the adjoining owner two months before with the following information:

- Name and address and address of building to be worked on
- A full description of work and proposed start date

For one to one advice call Ian Webster at LGS.uk



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