

Contents

Introduction	4
Background	4
How To Use This Pack	4
Assessment 1: Noise and Public Order	6
Assessment 2: Litter	9
Assessment 3: Outdoor structures	10
Assessment 4: Health and Safety	12
Fire Safety	13
Further Information And Assistance	14



Introduction

From 1st July 2007 virtually all indoor public places and work places in England will become smokefree. The shift to smoke freedom will affect all businesses in Plymouth, where managers and owners must, by law make sure that their customers do not smoke inside. You may want to help manage this change by increasing the use of the outdoor areas associated with your business.

This guide provides a process to help you. It will:

1. identify the major areas of concern for your particular business;
2. outline the actions to be taken;
3. describe legal requirements and advice from all of the relevant regulators.

Background

Smokefree legislation will create a more pleasant environment and reduce the effects of secondary tobacco smoke by requiring people to smoke outside. This increased use of outdoor areas presents a number of challenges that need to be managed if businesses are to successfully shift to smoke freedom. They include:

- Noise and public order
- Litter
- Outdoor structures
- Health and safety
- Fire safety

People in control of premises must plan and take action to minimise the potential from problems arising from the changed use of their premises.

This pack will help you to understand and comply with your responsibilities.



How to use this pack

What is this pack for?

Legislation that comes into force from July 1st 2007 makes virtually all indoor public places smokefree and introduces duties on members of the public and managers. It is inevitable that this will create a shift in use of many business premises to the outside. This pack will help you manage the change in your business to smoke freedom, by identifying and managing the impacts of an increased use of outdoor areas.

Who is it for?

This pack is for managers and owners responsible for the development and implementation of management controls associated with their businesses.

Who has produced it?

It has been developed by Plymouth City Council's Environmental Regulation Service with input from other relevant council services and Devon and Cornwall Constabulary, the Smoking Advice Service and Devon Fire and Rescue Service.

How will it benefit me and my business?

This pack will help you to write and implement a risk based management control system which, if consistently applied, will:

- Meet the requirements of legislation that applies to your business;
- Meet the requirements of your licence to sell alcohol;
- Demonstrate a responsible attitude to the behaviour of people on your premises;
- Allow the appropriate use of outdoor areas;
- Control the number and significance of complaints from local residents and other businesses in the vicinity;
- Save time and focus your action where it is needed;

How long will it take to complete this process?

This depends on the scale of your operation and the nature of the changes that are being considered. Each section of this document can be completed in less than one hour.

Is the completion of this document a legal requirement?

Following the advice in this guidance document is not in itself a legal requirement. Completing the risk assessment section and recording your specific management controls will help to plan the right controls and may relate to specific legal requirements.


What do I have to do by law?

This pack covers a number of different areas that involve related legal duties. These are described in each of the relevant sections.

How much does it cost?

Just your time; the pack is free and further information is available. Improvements that you may choose to introduce as a result of working through the pack may save you money in the longer term.

What do I need to do now?

 Describe the main areas of potential problem described above. They include background information and a summary of the law. Finally, you can fill in the tables to describe the methods you will use to control the problems relevant to your specific business.

Use of the outside area

Means potential problems that need preventing or controlling

A – Assess....

first of all, assess your business to highlight which of the potential problems need controlling, then . . .

B – Be clear....

about what you will do to reduce the significant risks that exist. You can also use the information provided to help you to . . .

C – Confirm....

your procedures against the requirements of the law . . .



Assessment 1: Noise and Public Order

Background:

People and music are the two main sources of noise associated with pubs, clubs and bars. However, increased numbers of customers outside and business will obviously increase potential of disturbance to neighbouring businesses and residents. If not properly controlled this could result in complaints from businesses or people who live in your local neighbourhood. There are three sources of potential noise and public order problems that you need to control:

- Amplified music
- Customers using outdoor areas of the premises building
- Customers gathering outside the business perimeter



The Law


Environmental Protection Act 1990

The local authority are required to investigate all noise complaints that they receive from the public. If they are satisfied that noise coming from a premises is a statutory nuisance (including from outdoor areas such as car parks and beer gardens), then the local authority must take action. This would normally take the form of a noise abatement notice, which, if breached could lead to a fine of up to £20,000 per offence. People affected by a statutory nuisance can also take private action.

Licensing Act 2003

Businesses must implement proper procedures to prevent a public nuisance; if procedures are not in place and noise and public order problems result, then the local authority can take action to review the premises' licence. The review will allow statutory consultees and other interested parties, to request that specific conditions are placed upon the licence, or that the right to legally hold a specific event be removed. All parties concerned will be able to put their case before the review committee, who will consider what action should be taken. Noise coming directly from a premise or from the vicinity of a premise can be considered. This means that noise caused by patrons is therefore a responsibility of the management of a business, particularly if they are directly linked to the premises (for example if they are smoking or drinking outside).

If a condition of a licence is breached, then legal action can be taken against the licence holder. Upon conviction they will be liable to a fine of up to £20,000 per offence.

 **You can find out more about your responsibilities to prevent noise and public order from the Public Protection Service, they can be contacted on 304141**

Use your knowledge of your business, the surrounding area and your staff and customers to complete the following (tick or complete the response that applies for your business):

1. Location of outdoor area

- Residential properties within 50m of outside area (high risk)
- Residential properties between 50 and 100m of outside area (medium risk)
- No residential property within 100m of outside area (low risk)
- The premises currently includes an outside beer garden (medium risk)
- The premises currently includes an undeveloped outdoor area (high risk)
- The boundary of the building is public land (i.e. the entrance and exit doors open straight onto the pavement) or an awning overhangs the public highway (high risk)

2. Time of use:

- 10pm – 9am (high risk)
- 6pm – 10pm (medium risk)
- 9am – 6pm (low risk)

3. Activity outside

Maximum number of people likely to be outside to smoke at any one time

Use of area:

- alcohol consumption (high risk)
- music audible at perimeter of outside area (high risk)
- staff break (medium risk)
- non alcoholic refreshments (medium risk)
- other:

Problem identified	Why?	How is it controlled?
1: Music causing disturbance to neighbours.	Use of outdoor areas may increase noise levels of music emanating either from the main building or the outdoor area itself.	<input type="checkbox"/> Doors and windows of main building remain closed during opening hours <input type="checkbox"/> Additional music not permitted in outdoor structure <input type="checkbox"/> Music not audible at perimeter of outside area <input type="checkbox"/> Control times of broadcast of amplified music to: <div style="border: 1px solid black; height: 30px; width: 100%;"></div> <input type="checkbox"/> Time of use of outside area restricted to: <div style="border: 1px solid black; height: 30px; width: 100%;"></div> <input type="checkbox"/> Use of a lobby at entrances and exits of main building
2: Customers or staff congregating outside the building but within the business perimeter.	Customers / staff gathering outside will increase the noise level from the premises, which may cause disturbance to people living or working in the local neighbourhood.	<input type="checkbox"/> Number of people using beer garden / outside area limited to: <div style="border: 1px solid black; width: 100px; height: 20px; display: inline-block;"></div> <input type="checkbox"/> Marking out the area available outside for customers to use. Description of boundaries of the area: <div style="border: 1px solid black; height: 50px; width: 100%;"></div> <input type="checkbox"/> Supervision of outdoor areas within the boundary of the premises <input type="checkbox"/> Regular boundary inspections carried out by: <div style="border: 1px solid black; height: 30px; width: 100%;"></div> <input type="checkbox"/> Restrict times when the beer garden / outside area is available for use to: <div style="border: 1px solid black; height: 30px; width: 100%;"></div> <input type="checkbox"/> Use of signs requesting consideration for neighbours and local residents.
3. Groups of customers or staff gathering outside the business premises.	The behaviour of groups of people outside the building may lead to problems of noise and public order.	<input type="checkbox"/> Supervision of land adjacent to the premises by (person): <div style="border: 1px solid black; height: 30px; width: 100%;"></div> <input type="checkbox"/> No alcohol or glasses allowed outside the perimeter of the business <input type="checkbox"/> Use of CCTV with cameras positioned: <div style="border: 1px solid black; width: 100px; height: 20px; display: inline-block;"></div>
<i>N.b. If you are considering making any significant changes to the way your business is run you may need to make changes to this part of your licence conditions/ operating schedule</i>		

Assessment 2: Litter

Background

Cigarette butts and packets dropped on any open space are legally defined as litter. An increase in customers or staff outside will increase the risks of smoking related litter in the area adjacent to your premises.

The Law

Environmental Protection Act 1990

Managers of premises should ensure that litter from their premises and users of their premises is controlled. Persistent litter problems will be investigated by officers of the council and may result in service of a Street Litter Notice; this will require the provision of a bin along with reasonable steps to ensure that land next to the premises is kept clear of litter. Failure to comply with this notice is an offence and will result in a fixed penalty notice being served on the owner or premises license holder. In addition, dropping litter on any open space is an offence. Any person who is seen to drop smoking related litter by an authorised officer of Plymouth City Council will be issued with a fixed penalty notice.

 You can find out more about these duties from the Public Protection Service, they can be contacted on (01752) 304141

Problem	Why?	How is it controlled?
1. Customers or staff throwing or dropping litter onto your land or the public highway.	Accumulations of litter will reduce the appearance of the local area and may attract rodents with associated health hazards.	<ul style="list-style-type: none"><input type="checkbox"/> The provision of fixed or portable outdoor ashtrays or bins that:<input type="checkbox"/> are positioned either next to entrances or at any location where smokers are likely to congregate to smoke;<input type="checkbox"/> do not interfere with the activities of other legitimate users of the pavement or highway;<input type="checkbox"/> within the a conservation area or on a listed building use the design approved by Plymouth City Council.<input type="checkbox"/> regular sweeps and litter pick at intervals of <div style="border: 1px solid black; height: 40px; width: 100%; margin-top: 5px;"></div><input type="checkbox"/> Supervision by management

Assessment 3: Outdoor structures

Background

An outdoor structure may be desirable to provide shelter for smokers, but it might also have an impact on the local area and neighbouring properties. You will need to consider the design of the structure if you intend customers or staff to use the sheltered area for smoking.

The Law

Planning Act

Most outdoor structures will require an application for planning permission. In addition a number of other consents may be relevant:

- Listed Building Consent
- Conservation Area Consent
- Advertisement consent, if you plan to include additional advertising at your premises.

The Development Consents Unit can advise you further on all of these matters, you can contact them on: (01752) 304366

Where planning permission or a consent is required, managers must ensure that works are carried out in accordance with approved plans, and any conditions attached to a grant of planning permission must be complied with.

Highways Act 1980 Section 177

A proposed structure that may have an impact on the public highway will need Highway Authority approval.

The Development Consents (Transport) team can advise you further on this, you can contact them on: (01752) 307711.

Disability Discrimination Act 1995

Under the DDA people with disabilities should not be discriminated against and therefore have a right to equal access to any facilities provided by the business. This includes outdoor structures. People with disabilities may have hearing, sight, mobility impairments or may be wheelchair users.

Access consultants at the Council can advise you further about what you need to consider. They can be reached at: (01752) 304577.

Health Act 2006 – Smokefree (Premises and Enforcement) Regulations 2007

These regulations make it illegal to smoke or allow smoking in enclosed and substantially enclosed places. Therefore, a smoking shelter has to be permanently open to the outdoor air. This means that more than 50% of its sides must be permanently open if it has a roof. This applies whether the shelter structure is permanent or temporary. Spaces for doors and windows cannot be counted towards the 50% that is open. A roof includes any fixed or moveable structures, such as canvas awnings. Tents, marquees or similar will also be classed as enclosed premises.

The Public Protection Service can advise you further and you can contact them on (01752) 304141.

Problem	Why?	How is it controlled?
1. Impact of the structure on the local area	It may have a negative impact on the character and appearance of the street, the main building, neighbouring and surrounding properties, It may obstruct the highway / pavement	<input type="checkbox"/> Submit proposals/ plans to determine if planning permission required <input type="checkbox"/> Planning permission is required where structure involves: <input type="checkbox"/> A material effect on the external appearance of the building <input type="checkbox"/> Building works <input type="checkbox"/> Construction carried out in line with approved plans <input type="checkbox"/> Conditions complied with
2. Safety of the construction	Materials and construction methods may not produce a safe structure	<input type="checkbox"/> Submit proposals to determine if building regulations approval required <input type="checkbox"/> Does the proposed development relate to means of escape etc <input type="checkbox"/> Development meets relevant building regulations
3. Customers and staff inside an enclosed or substantially enclosed building	Health effects from breathing in secondary tobacco smoke	<input type="checkbox"/> Proposals involve the construction of an enclosed or substantially enclosed structure: <input type="checkbox"/> Roof or temporary covering <input type="checkbox"/> Wall construction is more than half of the total wall area. <input type="checkbox"/> Outdoor structure is sited to avoid infiltration of cigarette smoke into inside areas <input type="checkbox"/> Smokefree passageway into building
4. Structure overhangs the public highway	It may give rise to issues of public safety	<input type="checkbox"/> Permission from Highways department required
5. Access	Ability of all customers / staff to enter the structure	<input type="checkbox"/> Level access between shelter and main premises <input type="checkbox"/> Signage <input type="checkbox"/> Provision of seats and colour contrast

Assessment 4: Health and Safety

Background Information

New working arrangements may either change the risks from current hazards or create new hazards that need to be assessed for risk level.

The Law

Health and Safety at Work etc Act 1974

Managers and owners have a duty to ensure they protect the health and safety of their staff and customers. This requires a business to produce a health and safety policy and carry out a risk assessment. Both of these processes need to take account of any significant change to the business, such as the arrangements in place to control the shift outside that have been identified in other sections.

Problem	Why?	How is it controlled?
Building structures	May be unsafe	<input type="checkbox"/> Ensure Building regs approval. <input type="checkbox"/> Fastened / securely fixed in high winds
Heaters	Unsafe – fall over and cause burns	<input type="checkbox"/> Stable and properly fixed and maintained
Floors, access and egress	Slip and Trip hazards	<input type="checkbox"/> Kept free from obstructions, cleaned and maintained
Lighting	Unsafe	<input type="checkbox"/> Adequate lighting to and from outside area <input type="checkbox"/> Light not directed into neighbouring properties <input type="checkbox"/> Well maintained
Electrical systems	Unsafe	<input type="checkbox"/> Electrical system installed to current British Standard by competent person and maintained
Violence to staff	Increased risk of assault on staff due to greater crowd control function	<input type="checkbox"/> Training needs assessment of staff <input type="checkbox"/> CCTV to outside area

Fire Safety

As of October 2006 the Regulatory Reform (Fire Safety) Order 2005 came into force with the main emphasis of the change being self-regulation.

Under the Fire Safety order the “responsible person” for each premises is required to carry out a fire risk assessment and take steps to reduce or remove the risk. The risk assessment will need to take into consideration the effect a fire may have on anyone in or around the premises and it will need to be reviewed regularly to take account of any changes that may increase the risk or affect the fire safety measures. The Fire Authority would expect that designated areas or facilities for staff and customers to smoke have been identified within the premises risk assessment and appropriate measures implemented.

The Fire & Rescue Authority will, when necessary, inspect premises and undertake audits of fire risk assessments to enforce the requirements of the Regulatory Reform Order.

Information on how to carry out a risk assessment has been published by HM Government in the form of a series of Fire Safety Risk Assessment Guides for different uses of premises. They are available for free download at www.communities.gov.uk or can be purchased at bookshops.

Further information and assistance

Plymouth City Council

Public Protection Service: (01752) 304141

Advice on the new smokefree regulations, noise and litter issues associated with your premises.

www.plymouth.gov.uk/smokefreedom

Email: smokefreedom@plymouth.gov.uk

Planning and Regeneration Service, Development Consents: (01752) 304366

Find out if your proposed development needs planning permission

www.plymouth.gov.uk/planning

Building Control: (01752) 304343

Find out if your proposed development needs Building Regulations Approval

www.plymouth.gov.uk/buildingcontrol

Devon and Cornwall Constabulary: (01752) 720464

Advice about preventing public order problems linked to your licence

NHS Smoking Advice Service 0845 155 80 80

Our service can help inform, advise and give free guidance on the smokefree legislation and how to write a smokefree policy. We can also support staff by running free quit smoking groups.

Smoking Advice Service

Nuffield Clinic

Lipson Road

Plymouth

PL4 8NQ