

COLLAS DAY | DISPUTE RESOLUTION

Review of Guernsey smoking legislation

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You may have noticed that Guernsey has gone smoke-free; or at least since 2006, has certainly taken a very large step in that direction. This review of the legislation concentrates on the position with regard to construction sites.

On 2 July 2006 new legislation came into force, which meant that all enclosed public spaces and workplaces had to become smoke-free (subject to certain exceptions).

Prior to the ban, existing Health and Safety Laws did not expressly prohibit smoking at work, although there was a requirement for employers to do what was reasonable and practical to ensure the health, safety and welfare of their staff.

Construction sites are caught by the Guernsey legislation.

Key Points

A smoking ban is now in force in all “enclosed” public places and workplaces in Guernsey. “Enclosed” premises are easy to spot - they have a ceiling or a roof, and have walls or similar structures for more than 50% of their perimeter.

Given that a building site is in a constant state of flux, there may be occasions when the premises alternate between being “enclosed” and open in different phases of the project (i.e. demolition, ground works, construction, installation of services). In the circumstances, there might be an argument that the smoking regulations would not apply at certain points in a project when the workplace is neither “enclosed” nor substantially enclosed.

Rather than grappling with these issues, it would probably be easier - as a matter of management - to have a rule applied across all stages of the project.

Offences

A person who contravenes the prohibition and smokes in any enclosed public place or workplace is guilty of an offence and liable to a fine in the amount of £2,000.00.

The occupier, manager and any other person for the time being in charge of the enclosed public place shall also be guilty of an offence and liable to the same fine.

With particular regard to the workplace, the employer concerned shall also be guilty of an offence in the event of a contravention of the prohibition, and liable to the same fine.

Where any such offence is committed by a body corporate (e.g. the employer, occupier, manager) and is committed with the consent of or is attributable to any neglect on the part of any director, manager, or other similar officer, that person shall also be guilty of the offence and liable to the same fine.

Therefore it is the duty of any person who controls or is concerned in the management of smoke-free premises to cause a person to stop smoking. In theory, there may be many duty holders, for example, the employer, the main contractor, the construction manager, the architect, the landlord or the tenant.

In proceedings for an offence, it shall be a defence for an employer, occupier etc to prove that he or it took all reasonable practical measures to ensure compliance with the provisions of the legislation, e.g. publication/display of signage notifying employees etc of the prohibition.

There is no legal obligation to provide facilities for smokers. If employers want to provide a smoking shelter for employees, then they need to ensure that this is not caught by the rules for “enclosed” places, i.e. 50% or more of the structure must be unwallled.

Enclosed vehicles and enclosed parts of vehicles must be smoke free

if they are used in the course of paid work by more than one person - even if those persons use the vehicle at different times, or only intermittently. Company pool cars; vans; and the cabs of JCBs, ready mix concrete trucks, and tower cranes will all fall within the rules and must remain smoke free. Responsibility will rest with the driver and any person with management responsibilities for the vehicle.

Best Practice

In order to comply with the legislation, enact on the basis that rules apply to all areas on a building site that will at any time be “enclosed”. Contractors/employers may wish to consider providing a smoking shelter on building sites, but this is not obligatory and any structure must not be “enclosed”. All duty holders should take enough action to show that they have taken “reasonable steps” to comply with the legislation and ensure compliance on the part of employees etc.

For further information please contact:

Christian Hay
 t: +44 (0)1481 734275
 e: christian.hay@collasday.com



▶ **collas day** PO Box 140, Manor Place,
 St Peter Port, Guernsey GY1 4EW
 ▶ t: +44 (0)1481 723191 f: +44 (0)1481 711880
 e: inbox@collasday.com ▶ w: collasday.com