

Shisha and the law in Scotland

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Shisha smoking produces second-hand smoke and is therefore covered by smoke-free legislation which prohibits this in enclosed spaces. Even shisha products which do **not** contain tobacco must comply with Scotland's smoke-free legislation because the law applies to any lit, smoked product. According to Part One, Section Four of the Smoking, Health and Social Care (Scotland) Act 2005¹ 'smoke' means 'smoke tobacco, any substance or mixture which includes it or any other substance or mixture; and a person is to be taken as smoking if the person is holding or otherwise in possession or control of lit tobacco, of any lit substance or mixture which includes tobacco or of any other lit substance or mixture which is in a form or in a receptacle in which it can be smoked'.

Shisha bars selling tobacco products must be on the Scottish Tobacco Retailers Register (www.tobaccoregisterscotland.org) and they must display signage stating that it is illegal to sell tobacco products to anyone under the age of 18. The signage must:

- be a minimum size of 230mm by 160mm;
- display the international "no smoking" symbol, consisting of a graphic representation of a burning cigarette enclosed in a red circle with a red bar across it, at least 85mm in diameter; and
- display the name of the person to whom a complaint may be made by any person who observes another person smoke in the no-smoking premises in question and state that a complaint may be so made.

There are serious consequences for retailers who do not comply. The Tobacco and Primary Medical Services (Scotland) Act 2010 gives powers to Trading Standard Officers to issue fixed penalty notices for offences, including selling tobacco to under 18s and not being on the Retailer Register. If a retailer is found to be in breach of tobacco sales legislation three times within a two year period, a Local Authority can apply to the

courts to have the retailer banned from selling tobacco. Those found to be selling tobacco illicitly by not being on the Register can be fined up to £20,000 and sent to prison for up to six months.

As with other tobacco products, retailers are not permitted to advertise shisha tobacco products within their premises except by using a single advert at the point of sale. When the 2010 Scottish Tobacco Act puts an end to the promotional display of tobacco brands in retail outlets (29th April 2013 for large retailers and 6th April 2015 for small retailers) the promotional display of tobacco-based shisha products will no longer be lawful. For more information see the Scottish Government's display ban guidance at: www.scotland.gov.uk/Resource/0041/00412868.pdf

UK duty

Shisha tobacco mix is liable for duty. An Appeal Tribunal dismissed an appeal against a decision by the Commissioners for Her Majesty's Revenue and Customs (HMRC) to classify tobacco mix used in waterpipes as liable for duty. The Tribunal found that colloquially the use of the product is called 'smoking'; that technically when used as intended it does produce smoke, and the user inhales this and is therefore properly to be said to be smoking (appeal number: LON/2009/7071).

It is the responsibility of all producers or importers of shisha products to ensure that they:

- have used packaging which carries code-marking whereby the place, date and time of manufacture of the product can be determined and can provide to the Secretary of State for Health a list of those code markings if required
- have provided a list of ingredients
- meet the labelling requirements for tobacco products
- only sell products which are UK duty paid. Flavoured smoking tobacco is classified in the Integrated UK Tariff where an excise duty and an import duty must be paid.

Herbal smoking products

Budget 2012 announced the UK Government's intention to change the tax

treatment of herbal smoking products in the UK. In this context, herbal smoking products are legally available products, designed for smoking, with the appearance of cigarettes or other smoking tobacco. However, they do not contain any tobacco. The intention is that these products will be treated in the same way as products which do contain tobacco. This means that herbal smoking products will become liable to tobacco products (excise) duty. This change will ensure that the Tobacco Products Duty Act 1979 fully reflects Directive 2011/64/EC. The legislation is intended to form part of the 2013 Finance Bill. The change will take effect on and after 1 January 2014. For more information see HM Revenue and Customs information on treatment of herbal smoking products at: www.hmrc.gov.uk/tiin/2012/tiin4755.htm

Compliance and enforcement for shisha bars

A shisha bar in Glasgow has become the first (December 2012) to be prosecuted in court for flouting Scotland's smoking ban² although this business and others in the city have already faced several fixed-penalty notices for breaching smoke-free legislation.

Local Government Regulation (formerly LACORS), the Chartered Institute of Environmental Health and the Trading Standards Institute have jointly produced a guidance document which, although it is supplementary to the English rather than Scottish smoke-free legislation, contains useful information on compliance and enforcement issues. 'Supplementary guidance for local authority regulatory officers on dealing with non-compliance in shisha bars' is available to download from: www.cieh.org/uploadedFiles/Core/Policy/Public_health/Smokefree_work_places_and_public_places/Smokefree_Shisha_bars_guidance%281%29.pdf

Tower Hamlets Public Health in London has forged a multi-team approach with Trading Standards, Police Joint Enforcement Team and other regulatory officers from the council. Visits, led by the Smoke-free team, are made to shisha premises every two weeks to check for compliance and because premises change frequently the approach has to be persistent and regular³.

Trading Standards departments have responsibility for enforcement of legislation relating to shisha products containing tobacco which are sold pre-packaged from retailers or within shisha establishments ready-prepared for smoking on the premises. Environmental Health departments in Scotland have responsibility for ensuring that the shisha bars are not

flouting the laws on second-hand smoke by allowing shisha use in enclosed areas, regardless of whether the shisha mix contains tobacco or not.

Underground shisha bars

Reports^{4 5} suggest that legitimate shisha bars are losing business to an 'underground' trade. New shisha smoking bars advertise themselves via social media such as Twitter or Facebook and customers gain entry by pressing a buzzer by the locked door or making a call from outside on their mobile phone. Underground shisha bars have little incentive to comply with smoke-free legislation or try to avoid underage sales. Locked doors, unregistered premises, shisha smoking in confined spaces, and operating outwith the knowledge of the fire department and building control services compound the risks.

Further information

The British Heart Foundation have produced a booklet called 'Smoking, shisha and chewing tobacco - How to stop' (also available in Urdu, Hindi, Gujarati, Punjabi and Bengali) which explains the health risk of smoking, cigarettes, pipe tobacco or shisha and chewing tobacco and gives advice on how to stop. It is available to download from:

www.bhf.org.uk/publications/view-publication.aspx?ps=1001327

Key health messages for shisha users

- one shisha session lasting approximately 45 minutes may be roughly equivalent to smoking 10 cigarettes
- use of any product containing tobacco is harmful to health
- use of any product containing tobacco carries the risk of addiction
- waterpipe smoking more than doubles the risk of lung cancer, respiratory illness and low birth weight, negatively affects lung function and is likely to be a cause of chronic obstructive pulmonary disease (COPD)
- waterpipe products, even the tobacco-free herbal varieties, are not a healthy alternative to smoking cigarettes
- shisha smoking (including lit, smoked non-tobacco shisha) may result in exposure to harmful levels of hazardous substances.

For more information about tobacco control visit: www.ashscotland.org.uk

For support to stop using tobacco products visit:
www.canstopsmoking.com/

References

¹ Smoking, Health and Social Care (Scotland) Act 2005, Part One, Section Four.

www.legislation.gov.uk/asp/2005/13/section/4

² Leask D. Hookah war hots up as bar receives smoking ban fine. Evening Times, 3

December 2012. www.eveningtimes.co.uk/news/hookah-war-hots-up-as-bar-receives-smoking-ban-fine-108774n.19561378

³ Tackling shisha use: a local response. NHS Tower Hamlets 2010.

www.towerhamlets.nhs.uk/about-us/research/research-publications/?entryid4=31326&p=4

⁴ 'Shisha shut-down: elders object to pipe puffing' Deadline News, 26 February 2012

www.deadlinenews.co.uk/2012/02/26/shisha-shut-down-elders-object-to-pipe-puffing/

⁵ Sturdey S. Shisha clampdown: Concerns raised over fire and health risks. BBC Health

News, 14 March 2012. www.bbc.co.uk/news/health-17361047



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