

# Guidance on Smoke-Free Compliance

**May 2023**



## Introduction

This guidance on smoke-free compliance has been written to primarily address smoke-free compliance issues found within shisha lounges in the Borough. Over time, several shisha lounges have been established which have struggled to consistently comply with smoke-free legal requirements. This guidance aims to support any business wishing to provide a smoking facility for members of the public in understanding their legal obligations and the Council's approach in smoke-free regulation and addressing non-compliance. Each premises will be considered individually; however this document is intended to provide clear guidance and support to help business owners understand what is likely to be permitted and what will not be accepted.

In addition to smoke-free requirements, this guidance also outlines other issues associated with smoking and shishas lounges, including compliance with the necessary warning signs on tobacco products to the public about risks to health, illegal sales of tobacco, underage, smuggled tobacco and counterfeit tobacco. Illicit tobacco damages legitimate business and makes tobacco more accessible to children. Tobacco smuggling is a serious organised crime and the proceeds made from it are used to fund further criminality, perpetuating the cycle of harm. This guidance will also touch on other areas of compliance, such as planning permission, statutory nuisance and health and safety.

## National Context

Several legislations on tobacco control and the provision of services for smoking cessation have been released by the English Department of Health.

"Advancing our health: prevention in the 2020s" set out the Government's ambition for a Smoke-free 2030. This document, published in 2019, pledged to find funding for tobacco control including through a 'polluter pays' mechanism; and to bring forward 'further proposals' to 'finish the job' and 'make smoking obsolete'.

The currently strategy for tackling tobacco in England is "Towards a Smoke-free generation: tobacco control plan for England 2017" (Department of Health, 2017). The goal is to establish a smoke-free generation by the time smoking prevalence reaches 5% or lower. To achieve this, the government outlines the following national goals that will help focus tobacco control efforts across the entire system:

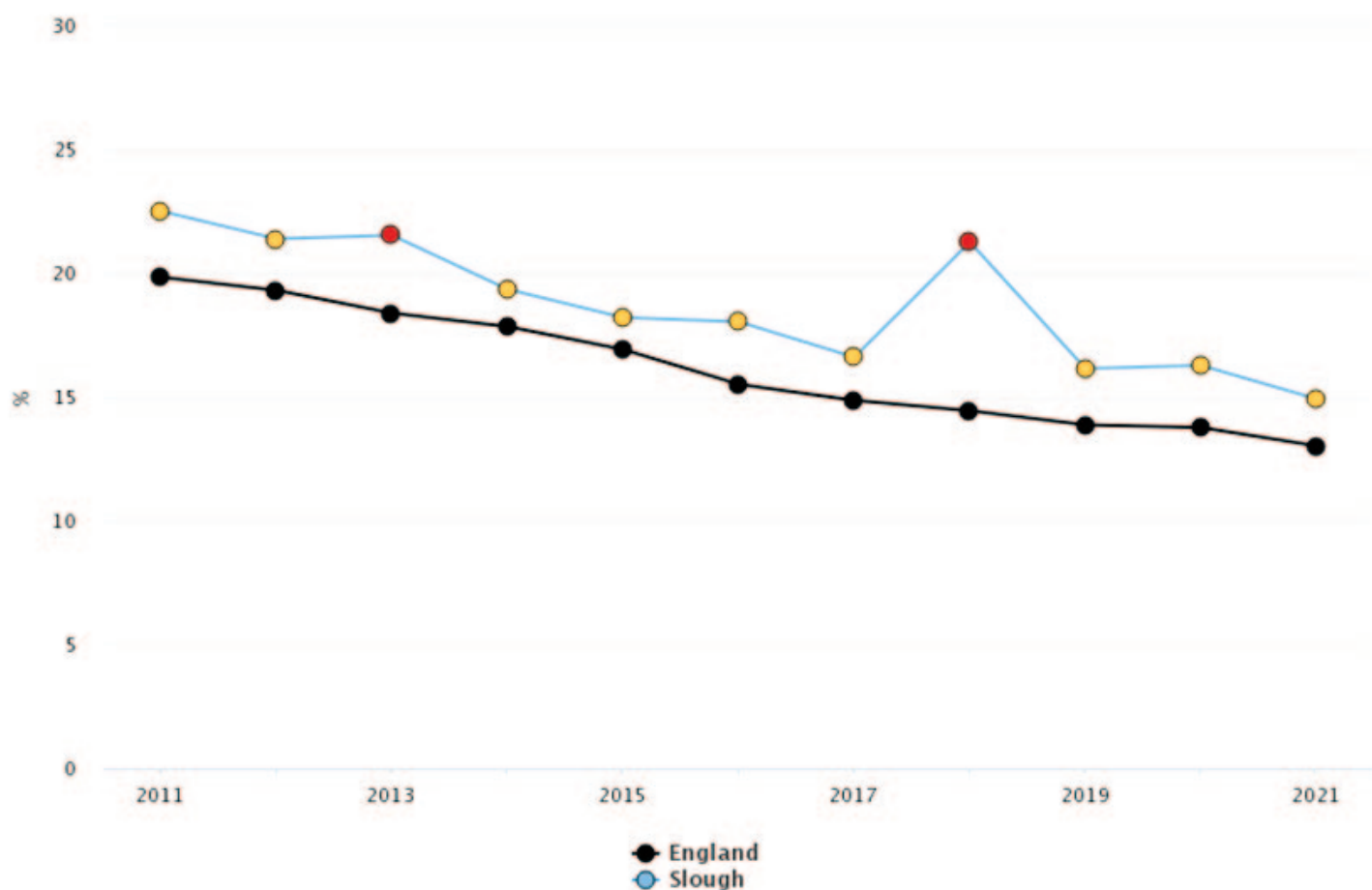
- Reduce the prevalence of 15 year olds who regularly smoke from 8% to 3% or less.
- Reduce smoking prevalence amongst adults in England from 15.5% to 12% or less.
- Reduce the inequality gap in smoking prevalence between those in routine and manual occupations and the general population.
- Reduce the prevalence of smoking in pregnancy from 10.7% to 6% or less.
- Improve data collected on smoking and mental health to help us to support people with mental health conditions to quit smoking.
- Make all mental health inpatient services sites smoke-free by 2018.
- Help people to quit smoking by permitting innovative technologies that minimise the risk of harm.
- Maximise the availability of safer alternatives to smoking.

Various measures to achieve these targets were set out in the Plan and focused on four main themes (Prevention first, supporting smokers to quit, Eliminating variations in smoking rates, Effective enforcement).

## Local Context

In the UK, in 2021, 13.3% of people aged 18 years and over smoked cigarettes, which equates to around 6.6 million people in the population. In Slough the smoking prevalence in adults (18+) is 14.9%, higher than the South east region (11.9%) and England (13%). However, the prevalence of smoking has been steadily decreasing (Figure )

## Smoking Prevalence in adults (18+) – current smokers (APS) for Slough



**Smoking prevalence by ethnicity** All ethnic groups are affected by the health effects of tobacco use, however there are significant differences in how different ethnic groups use tobacco (ASH, 2019). Some ethnic minorities are substantially more likely to use smokeless tobacco (in particular, South Asian Britons) and shisha pipes (in particular, Middle Eastern and South Asian Britons) (ASH, 2019).

**Young People** In the UK, it is estimated that 207,000 children start smoking every year (Hopkinson et al., 2013). Many risk factors, such as parental and sibling smoking, the accessibility of obtaining cigarettes, smoking by friends and peers, socioeconomic position, exposure to tobacco marketing, and smoking representations in movies, television shows, and other media, are linked to the initiation of smoking (Leonardi-Bee et al., 2011).

Compared to children who do not smoke, those who smoke are two to six times more likely to experience coughing, increased phlegm, wheezing, and shortness of breath (Seddon, 2007). The legal age for the purchase of tobacco in England and Wales was raised from 16 to 18. Legislation by itself, however, is not sufficient to stop the selling of tobacco to children. Although enforcement and community regulations may help businesses comply, they may not have a significant impact on the prevalence of underage smoking (Stead and Lancaster, 2005). To be successful in limiting teenage tobacco use, a combination of approaches that address the issue holistically are required.

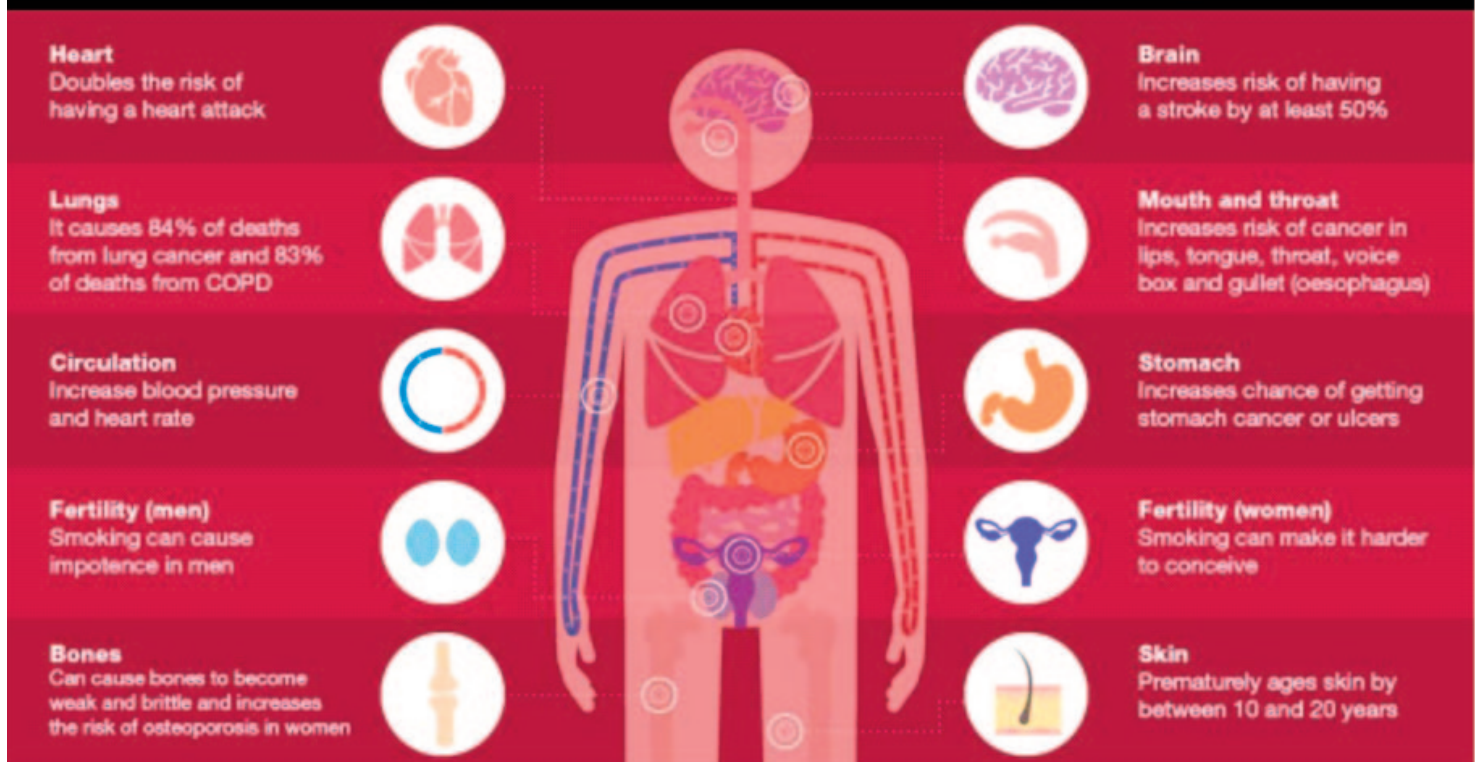
## Smoking in pregnancy

Smoking while pregnant can have major negative health effects. They include labour-related issues, a higher chance of miscarriage, premature birth, low birth weight, and sudden unexpected infant death (NHS Digital, 2018). Premature birth is a leading cause of death, disability, and disease among newborns (CDC, 2020). Cigarette smoking can limit the essential oxygen supply to the baby (NHS, 2023). Babies of pregnant smokers have a higher risk of sudden infant death syndrome (SIDS), often known as "cot death," as well as breathing, feeding, and health issues that are associated with being premature (NHS, 2023). Smoking during pregnancy also increases the risk of children developing several respiratory conditions, attention and hyperactivity difficulties, learning difficulties, problems of the ear, nose and throat, obesity, and diabetes (Royal College of Physicians, 2018; Kovess et al., 2015; Montgomery and Ekblom, 2002).

## Smoking related harm

Smoking is the most important cause of preventable ill health and premature mortality. Smoking harms nearly every organ of the body. Smoking is a major risk factor for lung cancer, respiratory disease such as chronic obstructive pulmonary disease (COPD) and cardiovascular disease, as well as many cancers in other organs including lip, mouth, throat, bladder, kidney, stomach, liver and cervix (Office for Health Improvement and Disparities, 2022). Smoking can also reduce fertility, increase the chance of developing type 2 diabetes, and contribute to decreased bone mineral density (increased risk of osteoporosis, bone fractures, back pain and degenerative disc disease) (Healthline, 2023).

## How smoking harms the body



The World Health Organisation (WHO) states using a waterpipe to smoke tobacco poses a serious potential health hazard to smokers and others exposed to second hand smoke emitted', and 'secondhand smoke from waterpipes is a mixture of tobacco smoke in addition to smoke from the fuel, and therefore poses a serious health risk for non-smokers. According to the WHO, a typical one hour long water pipe session involved inhaling 100-200 times the volume of smoke inhaled from a single cigarette. Even after the smoke has passed through the water, it still contains high levels of toxic compounds, including carbon monoxide, heavy metal and cancer causing chemicals.

Slough Borough Council, is committed to reducing smoking in the borough. This priority links to overall ambition of Slough's Joint Health and Wellbeing Strategy which aims to improve health of our communities and reduce health inequalities in the borough. The Council is working as per the national Tobacco Control Plan, to help prevent people starting smoking, help users to quit, reduce the harm of second hand smoke and undertake effective enforcement and legislation.

Where premises do offer shisha or a smoking facility, we will work with that business to ensure they have guidance and support to ensure they operate safely and are compliant with requirements.

## Legal Requirements

The purpose of this guidance is to support businesses offering shisha or a smoking facility to ensure they are compliant with all legal obligations, and to also advise businesses on the council's approach to regulation in this area. Each premises will be considered individually; however the information below on legal requirements is intended to provide guidance to help business owners understand what is likely to be compliant and permitted and what will. The following is a summary of key legislation:

**Health Act 2006:** The Act prohibits smoking in enclosed or substantially enclosed public places and workplaces, and relates to any smoking product, not just tobacco or cigarettes. There is no exemption for shisha. The operators, managers and smokers at these premises can all face prosecution if smoking is found within smoke-free premises. Essentially shisha can only be smoked outside in the open air, or where the structure is not substantially enclosed. Advice on substantially enclosed is given below.

## Enclosed and Substantially Enclosed

In order for smoking to be permitted within a premises or structure, it must be open or not substantially enclosed.

### Enclosed

Premises will be considered enclosed if they have a ceiling or roof, and except for doors, windows or passageways are wholly enclosed, whether on a permanent or temporary basis. This includes tents and marquees as well as solid structures.

Examples of enclosed premises:



### Substantially enclosed

A premises with a ceiling or roof will be considered 'substantially enclosed' if there are openings in the walls which have an area that is less than half of the total areas of the walls, including other structures which serve the purposes of walls and constitute the perimeter of the premises. This is often referred to as the 50% Rule. Doors, windows or other fittings that can be opened or shut must always be counted as part of the enclosed area. Side panels which can be attached to a marquee or similar, whether attached or not, must be included.

Where a structure is constructed by materials which makes it practically impossible to make the necessary calculations, such as a trellis, then we may reach the conclusion that the premises is substantially enclosed.

Examples of substantially enclosed premises:



## 1 Metre Gap

Businesses must ensure that the 'open sides' of their smoking area or shelter are not too close to neighboring or adjacent structures. We advise smoking areas or shelters to be at least 1 meter away from any materials or structure that would act to enclose these sides, i.e., walls, trellis, furniture, etc. If such materials are too close to the open side, then they may prevent smoke escaping from the shelter and lead to it becoming an enclosed area. When assessing compliance, we will consider other structures which are within 1 meter of a smoking area or shelter, as serving the purpose of walls, and constitute towards the perimeter of the premises.



A smoking area shelter can be used for smoking when at least 50% of the area of the perimeter walls are open on a permanent basis and unobstructed by any nearby walls or other materials, up to a distance of 1 meter. Please note every smoking area or shelter will be assessed individually, and whilst 1 meter is usually sufficient, in some cases, we may advise a gap larger than 1 meter is necessary. Therefore, we strongly recommend that before you construct a smoking area or make changes to your current smoking area, that you contact the council for advice and support. Please note that any premises without a roof or ceiling can be used for smoking.

## The 50% Calculation

Businesses must calculate what percentage of the area of the walls of the smoking shelter/area is 'open' and what percentage is 'enclosed' to be sure it complies with the smoke-free legislation. The calculation is as follows:

1. Calculate the total area of the walls, including 'permanent openings', of the perimeter (P) of the smoking area that falls beneath the roof/ceiling. Do not include the roof or floor.
2. Calculate the area of all the enclosed (E) parts of the perimeter. This could be walls or other structures that serve the purpose of walls. Include the area of all doors and windows as these are always counted as enclosed parts. Side panels which can be attached to a marquee or similar, whether attached or not, must be included. This calculation will be part of the enclosed area of your smoking area/shelter.
3. Divide the enclosed area (E) by the total perimeter area (P) and times by 100:

$$\frac{E}{P} \times 100 = \% \text{ Enclosed}$$

If your smoking area/shelter is more than 50% enclosed, then it does not comply with Smoke-free legislation and cannot be used for smoking.

## Other Legal Requirements

### Children and Young persons

It is illegal to supply shisha tobacco to anyone under the age of 18, and businesses are expected to take reasonable precautions to prevent sales and show appropriate due diligence to avoid selling to persons under the age of 18. It also requires the display of a mandatory A3 notice regarding the illegality of selling to under 18's.

**Contact:**

**Slough Borough Council - Trading Standards Team**

[www.slough.gov.uk/business/trading-standards/business-advice.aspx](http://www.slough.gov.uk/business/trading-standards/business-advice.aspx)

**Tel: 01753 875255**

**Email: [licensing@slough.gov.uk](mailto:licensing@slough.gov.uk)**

### Health Warnings and Labelling

It is illegal to sell tobacco products which do not carry health warnings. Health warnings (writing and pictorial) must also be displayed on the shisha pipes. Any tobacco products or "container packs" (shisha pipes) which do not carry these warnings may be confiscated.

**Contact:**

**Slough Borough Council - Trading Standards Team**

[www.slough.gov.uk/business/trading-standards/business-advice.aspx](http://www.slough.gov.uk/business/trading-standards/business-advice.aspx)

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### Tobacco Advertising and Promotion

Advertising of tobacco shisha such as on display boards and the public display of tobacco shisha products is prohibited. Shisha tobacco price lists must

- (i) be headed 'Tobacco Products Price List',
- (ii) not include the prices of other products,
- (iii) be restricted in size to a maximum of 7mm lettering.
- (iv) not exceed 1250 square cm in size
- (v) not have a border or frame.

Other restrictions apply. Please enquire for more details

**Contact:**

**Slough Borough Council - Trading Standards Team**

[www.slough.gov.uk/business/trading-standards/business-advice.aspx](http://www.slough.gov.uk/business/trading-standards/business-advice.aspx)

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## Business Ownership and Company Details

Under the Companies Act 2006, The Company Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015 Every business must display details of ownership in a prominent place, so that customers can easily see who owns the business. Failure to do so is an offence under the above legislation.

**Contact:**

**Slough Borough Council - Trading Standards Team**

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### Excise duty

The duty is the amount of tax that is due to be paid on the importation of a tobacco product to the UK. HMRC are the main enforcement authority with regard to non-duty paid products although Trading Standards services have a delegated authority to act on their behalf. Shisha tobacco and herbal shisha molasses (tobacco free) are subject to excise duty. A criminal conviction for the evasion of duty and VAT could lead to a sentence of up to 7 years imprisonment. Illegal products will be liable to seizure.

**Contact:**

**HM Revenue and Customs helpline: Tel: 0845 010 9000**

### Health and Safety

Shisha businesses need to be aware of and use appropriate control measures in respect of the hazards to their employees associated with secondhand smoke as well as an adequate through flow of air to avoid the build-up of carbon dioxide where any combustion products are used (coals). Consideration must also be given to the risks of infection (from shared pipes); the safety of smoke structures erected to accommodate smokers; unsafe electrical systems provided for outdoor use. All businesses must comply with health and safety laws which require premises and equipment to be safe and without risk. Safe working practices must be established and followed, potential hazards identified, and employees provided with suitable information, instructions and training. It is a legal requirement to protect employees from harmful shisha smoke.

**Contact:**

**Slough Borough Council - Food & Safety Team**

**Email: [foodandsafety@slough.gov.uk](mailto:foodandsafety@slough.gov.uk)**

**Tel: 01753 875255**



## Food Hygiene

Many businesses will also supply food and drink on the premises and must have controls in place regarding food safety and hygiene. If your business provides any food or drinks, you are legally obliged to register with the Food Safety Team. If you are taking over an existing business, you must register the premises under the new ownership.

**Contact:**

**Slough Borough Council - Food & Safety Team**

**Email: [foodandsafety@slough.gov.uk](mailto:foodandsafety@slough.gov.uk)**

**Tel: 01753 875255**

## Fire Safety

Shisha businesses need to be aware of and use appropriate control measures in respect of the hazards fire, and sources of ignition (from burning charcoal and heating devices) and suitable means of escape in case of a fire.

The owner of the business must make sure that a written Fire Risk Assessment is undertaken. There must be means of tackling a fire and staff must be trained to deal with any fire emergency. There must be an adequate means of raising the alarm in the event of fire. All furnishings' drapes and furniture need to meet the fire safety standards.

**Contact:**

**Fire Brigade - Royal Berkshire Fire & Rescue**

**Email: [sloughfiresafety@rbfs.co.uk](mailto:sloughfiresafety@rbfs.co.uk)**

## Planning

All shisha lounges require formal planning approval. Shisha businesses need to have an external area for their customers to smoke to remain legal. These structures may require planning consent before being built and require permission before use, they may also raise issues for building control. If you are thinking about changing the use of a building; making physical changes to the building or erecting a smoking shelter, then you are likely to need planning permission. If you are erecting any new structure or changing existing buildings, then you may also be required to make a Building Regulations Application.

**Contact:**

**Slough Borough Council Planning Department**

**[www.slough.gov.uk/planning-and-building-control](http://www.slough.gov.uk/planning-and-building-control)**

## Noise Nuisance

In operating a shisha lounge there may be noise nuisance issues, as the most popular times for customers may well be from the early evening onwards. Premises must not cause a statutory noise nuisance to neighboring premises. Loud music, people talking or singing loudly may be classed as a 'Statutory Nuisance' at any time of the day or night.

**Contact:**

**Slough Borough Council - Environment & Protection Team**

**[www.slough.gov.uk/pests-pollution-and-food-hygiene/noise-complaints.aspx](http://www.slough.gov.uk/pests-pollution-and-food-hygiene/noise-complaints.aspx)**

## Licensing Act 2003

Premises selling hot food and drink in the evenings or providing any entertainment, such as music, may require a license. Where premises sell alcohol, they will also need a license. Any issues in complying with license conditions and breaches of these, could lead to the license being revoked and enforcement taken. There may also be weight and measures issues with regard to the sale of alcohol and notices displayed.

**Contact:**

**Slough Borough Council - Licensing Team**

**[www.slough.gov.uk/contact-us/contact-licensing.aspx](http://www.slough.gov.uk/contact-us/contact-licensing.aspx)**

**Email: [Licensing@slough.gov.uk](mailto:Licensing@slough.gov.uk)**

## Our Enforcement Approach

Slough Borough Council has an Enforcement Policy for regulatory and enforcement services which is available on our website, and regulation will be in line with this enforcement policy.

Enforcement will be consistent and any new premises that become known by the authority will be directed to this guidance document. It will be the responsibility of the business to familiarise themselves with the regulations that govern smoking including the use of shisha. We will offer advice and provide initial support for businesses to comply.

This guidance aims to support business wishing to provide a smoking facility with an understanding their legal obligations and the Council's approach in smoke-free regulation. Each premises will be considered individually.

We will undertake unannounced compliance checks on shisha premises and premises offering a smoking facility. Where breach of smoke-free legislation is witnessed, a formal written warning outlining the offence and the date that the offence was witnessed will be issued.

On-going non-compliance will not be permitted and where advice and written warnings have been given, but there continues to be non-compliance formal action will be considered, this may involve shisha pipes being taken by way of seizure, simple caution or prosecution.

Should an offence or relevant information come to light during investigations at any shisha premises or retailer then this will be shared with the relevant body or enforcement agency.

When we inspect shisha premises, we will consider inviting appropriate partner organisations to attend inspections and enforcements at shisha premises, such as other Council departments, Thames Valley Policy and other government agencies.

Where appropriate, the local community should be informed of the work carried out in regard to shisha premises, and the on-going commitment of the authority to the protection of the residents and visitors to the borough. Slough Borough Council will use news outlets and social media to publicise its action.

The council is committed to reducing the impact of tobacco smoking and shisha on its residents. This guidance document sets our approach to smoke-free compliance. That approach is in a calculated and joined up way utilising all available legislative tools available to us. Where appropriate, we will not hesitate to enforce these operations and limit the impact of tobacco and other smoking products.

If you require further information or support, please contact the Food and Safety Team on [foodandsafety@slough.gov.uk](mailto:foodandsafety@slough.gov.uk)



## Guidance on Smoke-Free Compliance - May 2023