

# Implementation of smokefree legislation in England

Supplementary guidance for local authority regulatory officers on dealing with non-compliance in shisha bars



In offering and using this advice it must be clearly understood that:

- legislation may change over time and the advice given is based on the information available at the time the guidance was produced – it is not necessarily comprehensive and is subject to revision in the light of the further information;
- only the courts can interpret statutory legislation with any authority; and
- this advice is not intended to be definitive guidance nor a substitute for the relevant law and independent legal advice should be sought where appropriate.

The term 'shisha bar' includes premises such as lounges and cafes where waterpipes are offered, with or without food and beverages, and which are commonly known collectively as shisha bars.

'Waterpipe' is a generic term to cover the smoking of pipes including shisha, boory, goza, narghile, nargile, hookah and hubble bubble.

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# Introduction

This supplementary guidance has been developed by Local Government Regulation (LGR, formerly known as LACORS), the Chartered Institute of Environmental Health (CIEH) and the Trading Standards Institute (TSI). It is intended to be used in conjunction with the previous guidance on implementation of smokefree legislation published by LACORS: *Implementation of smokefree legislation in England: Guidance for local council regulatory officers – Second Edition, 2009* and *Implementation of smokefree legislation in England: Guidance for local council regulatory officers – Associated Issues, 2007*, the contents of both of which are current.

The purpose of the supplementary guidance is to support council regulatory officers in continuing to successfully implement the smokefree legislation which came into force in England on 1 July 2007.

Regulatory officers report that they are frequently encountering non-compliance by the operators of shisha bars. It is reported that in some cases this may be as a result of ignorance of the law or confusion about the legal requirements, however in a number of cases non-compliance has been observed to be intentional, deliberate and repeated. This supplementary guidance provides information to support effective investigation, inspection and enforcement measures. It also supports a consistent approach to the application of the legislation so that the operators of businesses providing for shisha smoking will consider that they are being treated fairly and both employees and members of the public are properly protected.

There is an intention to amend and update this guidance in the light of experience of implementation and the authors welcome both your comments and your suggestions for further clarification and future inclusions.

It also supports a consistent approach to the application of the legislation so that the operators of businesses providing for shisha smoking will consider that they are being treated fairly and both employees and members of the public are properly protected

## **Sarah Bull**

Local Government Regulation  
[sarah.bull@local.gov.uk](mailto:sarah.bull@local.gov.uk)

## **Ian Gray**

Chartered Institute of Environmental Health  
[i.gray@cieh.org](mailto:i.gray@cieh.org)

## **Jane MacGregor**

Local Government Regulation  
[jane.macgregor@local.gov.uk](mailto:jane.macgregor@local.gov.uk)

# 1 Health hazards associated with the use of waterpipes

Advice from the World Health Organization (WHO) states **'using a waterpipe to smoke tobacco poses a serious potential health hazard to smokers and others exposed to the 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'**.

The WHO therefore recommends **'waterpipes should be prohibited in public places consistent with bans on cigarette and other forms of tobacco smoking'** (2005).

According to the WHO, the science base surrounding the use of waterpipes supports the following conclusions (2005):

- Using a waterpipe to smoke tobacco poses a serious potential health hazard to smokers and others exposed to the smoke emitted.
- Using a waterpipe to smoke tobacco is not a safe alternative to cigarette smoking.
- A typical one-hour long waterpipe smoking session involves inhaling 100-200 times the volume of smoke inhaled with a single cigarette.
- Even after it has been passed through water, the smoke produced by a waterpipe contains high levels of toxic compounds including carbon monoxide, heavy metals and cancer-causing chemicals.
- Commonly used heat sources that are applied to burn the tobacco, such as wood cinders or charcoal, are likely to increase the health risks because when such fuels are combusted they produce their own toxicants, including high levels of carbon monoxide, metals and cancer-causing chemicals.
- Pregnant women and the foetus are particularly vulnerable when exposed either actively or involuntarily to the waterpipe smoke toxicants.
- Second-hand smoke from waterpipes is a mixture of tobacco smoke in addition to smoke from the fuel and therefore poses a serious risk for non-smokers.
- There is no proof that any device or accessory can make waterpipe smoking safer.
- Sharing a waterpipe mouthpiece poses a serious risk of transmission of communicable diseases, including tuberculosis and hepatitis.
- Waterpipe tobacco is often sweetened and flavoured, making it very appealing; the sweet smell and taste of the smoke may explain why some people, particularly young people who otherwise would not use tobacco, begin to use waterpipes.

**Appendix 1** contains a summary provided by the Chartered Institute of Environmental Health of the available scientific and medical evidence regarding the use of waterpipes.

## 2 Compliance goals

The purpose of this supplementary guidance is to support local authority regulatory officers in securing compliance with the smokefree legislation and in particular to support effective investigation, inspection and enforcement measures. However, the activities involved in the operation of shisha bars are additionally regulated by a variety of tobacco control measures, including those relating to product labelling, tobacco advertising and promotion, under age sales and liability for payment of tax and duty.

It is also the case that where businesses choose to operate outside of the law, as some shisha bar operators have, then other regulatory bodies and enforcement agencies may also need to be informed and involved in order that a comprehensive approach can be taken to ensure that activities are in all important respects safe and legally compliant.

The experience of local authority officers has been that in order to secure proper control of shisha bars which are intentionally, deliberately or repeatedly non-compliant it has been both appropriate and effective to consider such a comprehensive approach and to involve all those agencies with responsibilities in this area. It is also in the best interests of businesses themselves that they be made comprehensively aware of their responsibilities and liabilities, ideally from the outset. In most circumstances, it can then be anticipated that businesses will work willingly with local authority services and other regulators to achieve compliance with all relevant legal requirements.

However, where such willingness is not demonstrated and non-compliance continues then it is suggested that comprehensive compliance goals are set and that the local authority engages with partner organisations in order to develop and carry out coordinated enforcement measures.

The compliance goals should include:

- **compliance with smokefree legislation;**
- **management of health and safety for staff and public;**
- **prevention of underage purchase and use of tobacco;**
- **controlling advertising and promotion of tobacco products and supply of illicit, incorrectly labelled and non duty-paid tobacco;** and
- **education of staff/public about potential health effects of using waterpipes.**

## Compliance with smokefree legislation

### Application of the smokefree legislation to shisha bars

Smokefree legislation in England came into effect on 1 July 2007 and it has therefore been in place for more than three years. The Government has stated that there is no intention to review the legislation at the present time as it is seen to be serving its purpose. The virtual absence to date of legal challenges to the legislation is an indication that it is both effective and accepted.

The inclusion of premises that serve shisha is in keeping with the primary objective of the legislation, which is to reduce the risks to health from exposure to secondhand smoke in enclosed and substantially enclosed public places and workplaces. Organisations representing shisha bar operators were specifically included in the consultation on the proposed legislation which was considered carefully by Parliament before it received Royal Assent. The fact that the new law would include the smoking of shisha was debated specifically in the House of Lords (9 May 2006) and during this debate, the views of shisha bar owners were specifically considered.

The smokefree legislation is intended to be comprehensive and to apply to virtually all enclosed workplaces and public places in England. The effect on businesses that serve shisha is therefore not disproportionate. Shisha can still be smoked in places that are not enclosed or substantially enclosed and the effect is therefore no different to that of traditional pubs, 'Continental' cafes, private members clubs set up for the smoking of cigars and all other hospitality premises.

There have not been any legal challenges to the inclusion of shisha smoking within the smokefree legislation. However, an Appeal Tribunal was held to determine 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. The appeal was dismissed (Appeal number LON/2009/7071).

### Requirements in the Health Act 2006

Under Section 1(2) of the Act, smokefree legislation in England applies to the smoking of tobacco or anything which contains tobacco, and being in possession of lit tobacco or anything lit which contains tobacco, or being in possession of any other lit substance in a form in which it can be smoked. This includes waterpipes.

The Act prohibits smoking in enclosed and substantially enclosed parts of **virtually all premises that are open to the public or are used as a place of work by more than one person**. This clearly includes premises such as lounges and cafes where waterpipes are offered and which are commonly known collectively as shisha bars.

The requirements for shisha bars are no different to those for any other premises required by law to be smokefree and therefore the general advice contained in the Guidance for Regulatory Officers – Second Edition (Section 7) issued by LACORS in 2009 applies.

### **Essentially waterpipes can only be smoked outside in the open air, or where the requirements have been properly met for a structure to be non-substantially enclosed.**

Local authority officers may therefore want to pay particular attention to the signage requirements to ensure that the correct signage is properly displayed at every entrance to an enclosed or substantially enclosed part of the premises. Additional signage might also be recommended to specifically prohibit staff from lighting and extinguishing waterpipes in enclosed and substantially enclosed areas and to direct people smoking shisha pipes that they must

not take them into enclosed and substantially enclosed areas.

It has been repeatedly observed by local authority officers that some shisha bar operators are determined to 'push the limits' of the term substantially enclosed. The previous guidance on implementation of smokefree legislation published by LACORS contained the best available advice for determining the legality and suitability of substantially enclosed structures where smoking is permitted. In the absence of any case law it is not possible to add further to the advice already given. However, local authority officers are encouraged to use a commonsense approach and recognise that it is a matter for the courts to determine the reasonableness or otherwise of the requirements.

For example, where the open wall areas, included in the calculations for a non-substantially enclosed structure, are being obstructed either permanently or routinely by furniture or in any other manner – then at those times the structure may not comply and, if so, smoking in it will constitute an offence for which the person in control and the customers themselves can be liable. If the business operator has been warned of this eventuality and has not taken action to prevent such an occurrence then a conviction could result.

Similarly, where such a structure is constructed in such a manner as to make it practically impossible to make the necessary calculations, or the manner of the construction or the materials used cause the structure to vary to such an extent as to make calculations meaningless (as is the case where some tented constructions and awnings have been used and plants and shrubs have been utilised to form 'walls') then the local authority officer may be able to justify reaching a conclusion that the requirements for 'non-substantially enclosed' are not met.

### **Inadequately ventilating non-substantially enclosed structures**

Whether or not a structure in which shisha smoking is permitted meets the criteria for substantially enclosed, its location, where this is in close proximity to adjacent structures, can mean that the natural ventilation of the structure may be impeded causing smoke to build-up inside the structure.

The general duty of care under the Health and Safety at Work etc Act 1974 applies in relation to the construction and use of smoking shelters. The siting and construction of the shelter needs to be carried out so as to ensure an adequate level of natural ventilation which will remove and help to prevent the build up of secondhand smoke. However, in circumstances where the shelter is sited or constructed in a manner that secondhand smoke is not effectively removed and does build up, then the employer of staff who are expected to carry out work in the structure should be required to consider what needs to be done to minimise exposure of employees to secondhand smoke or to mitigate its effects upon the employee – for example:

- by limiting the number of people permitted to smoke at any one time; or
- by specifying periods during which smoking will not be permitted in order to provide access for staff to carry out essential activities.

### **Smoke infiltration**

The location of a structure in which shisha smoking is permitted where this is in close proximity to adjacent structures can give rise to smoke from the structure infiltrating into residential and or commercial properties. Secondhand smoke emitted from premises in such a manner could be considered to be prejudicial to health or a nuisance, as it has been considered in relation to very frequent barbeques at pubs.

Odour and smoke nuisance can be dealt with by use of Sections 79-81 of the Environmental Protection Act 1990. There is no fixed level which constitutes a nuisance, and in order for an odour to be classed as a statutory nuisance, it must be seriously affecting an individual's use or enjoyment of their property. To constitute a nuisance the odour must occur continuously for a period of time and be a frequent problem. It can therefore apply to smoking shelters adjacent to neighbours' dwellings or gardens.

### **Management of health and safety for staff and public**

There are a number of health and safety concerns generally associated with non-substantially enclosed structures provided for smoking, including:

- the use of ambient heating devices which are intrinsically unsafe, installed or located in an unsafe manner, and/or poorly secured;
- non-substantially enclosed structures erected to accommodate smokers and where the public congregate, being located close to chemical and/or gas cylinder storage;
- the intrinsic safety of some structures erected to accommodate smokers;
- floor construction materials and general state of repair may help facilitate slip, trip and fall accidents;
- safe access and egress to and from the smoking areas;
- poor lighting and/or outside areas becoming icy, wet, damp or covered in litter thereby increasing the risk of slips, trips and falls; and
- unsafe electrical systems provided for outdoor structures and heating equipment.

### **Identification of further health and safety concerns**

In relation to the provision of shisha smoking in business premises, a number of additional health and safety concerns arise:

- the use of naked flames, gas rings and barbeque apparatus to ignite charcoal or wood cinders;
- means and methods of preparation, storage, extinguishing and disposal of lit smoking materials;
- arrangements for and location of initial lighting of waterpipes, when carried out by an employee, in order to begin the smoking process for the customer, as well as periodically adjusting and refuelling of the smoking materials;
- procedures for 'blowing back' of the waterpipe in order to cool the apparatus and reduce the amount of smoke generation;
- accumulating amounts of smoke and carbon monoxide generated from the burning charcoal, the smouldering smoking materials and the secondhand smoke from users of waterpipes; and
- the practice for a shisha pipe to be shared between a number of people which raises the risk of transmitting infectious diseases and conditions through the sharing of mouthpieces. Such risks may include tuberculosis and Hepatitis C, colds, flu, oral herpes, and mouth and gum disease.

### **Health and Safety at Work etc Act 1974**

In order to properly determine the measures that should be required to be taken to manage such risks, the provisions of the Health and Safety at Work etc Act 1974, as amended, need to be considered.

Under Section 4 it is the duty of persons in control of work premises to ensure, so far as is reasonably practicable, that the premises and any equipment or

substance used there is safe and without risks to health.

In relation to businesses offering shisha smoking this duty of care might include:

- making the workplace safe;
- preventing risks to health;
- ensuring that plant and machinery is safe to use, and that safe working practices are set up and followed;
- telling the employee about any potential hazards arising from the work they do, chemicals and other substances used, and giving the employee information, instructions, training and supervision as needed;
- checking that the right work equipment is provided and is properly used and regularly maintained;
- preventing or controlling exposure to substances that may damage health;
- taking precautions against the risks caused by flammable or explosive hazards; and
- providing health supervision as needed.

### **The Management of Health and Safety at Work Regulations 1999**

These Regulations extend the implied duties contained within the Health and Safety at Work etc Act 1974 by requiring employers to make an assessment of the hazards within their workplace and make arrangements for minimising the risk to employees. The normal process of 'risk assessment' needs to be applied taking into account the extent, nature and duration of exposure as well as any pre-existing health concerns of particular employees.

The risk assessment should include specific consideration of:

- the extent to which staff working in shisha bars are being exposed to tobacco smoke in the course of their work and the possible effects on their health – exposure can arise both from the process of lighting the waterpipes (priming) and also from breathing in the secondhand smoke in the areas in which the shisha pipes are being smoked;
- safety issues concerned with the use of lit materials as well as fire hazards that may arise, the means of detecting fires, the provision of fire fighting apparatus and means of escape; and
- arrangements for the shisha pipes and hoses to be properly cleaned between each use and the provision of disposable mouth pieces for use by staff and individual customers.

### **Regulatory Reform (Fire Safety) Order 2005**

This Order reformed the law relating to fire safety in non-domestic premises by replacing fire certification under the Fire Precautions Act 1971 with a general duty to ensure, so far as is reasonably practicable, the safety of employees and a general duty, in relation to non-employees, to take such fire precautions as may reasonably be required in the circumstances to ensure that premises are safe and a duty to carry out a risk assessment.

Matters which may need to be addressed in the risk assessment include:

- non-substantially enclosed structures erected to accommodate smokers (e.g. rooftop patios) not having and/or preventing the means of escape to the safe assembly points located outside – structures that prohibit or inhibit safe channelling to the assembly points would also be a cause for concern;
- illicit smoking in concealed places (improperly extinguished smoking materials causing fires);
- the use of heating devices which are intrinsically unsafe, not properly maintained, incorrectly installed

or located in an unsafe manner, and which present fire safety and health and safety concerns; and

- LPG storage – apart from the fire risk they pose, LPG cylinders pose an asphyxiation risk; LPG vapour is denser than air and must not therefore be stored in cellars, basements or sunken locations.

Where any smoking related equipment, structure or procedure is considered unsafe or unsatisfactory, it is the remit of the Fire Authority to audit premises' risk assessments to ensure that these do not compromise means of escape and general fire safety. Suitable enforcement will result where any such issues cannot be resolved or effectively addressed through the Fire Risk Assessment.

Regulatory officers who have concerns about the fire safety implications of issues arising from the smokefree regulations should draw these to the attention of the duty holder, who is responsible for producing a fire risk assessment and contact the Fire Authority, but need to be aware that local authorities have no enforcement powers on this issue.

### **Prevention of underage purchase and use of tobacco**

It is an offence to sell any tobacco product to persons under the age of 18 years and a statutory sign displaying the statement **'It is illegal to sell tobacco products to anyone under the age of 18'** must be displayed at every premises at which tobacco is sold by retail.

Details of the legal requirements and the enforcement measures are set out in **Appendix 2**.

Tobacco is a constituent of the majority of products supplied for use in shisha establishments, or sold from their premises for personal use elsewhere and therefore these businesses must comply with these requirements.

Local authority officers have reported that people who appear to be younger than the age of 18 years are frequently seen in shisha bars and that the statutory signs are often not displayed.

### **Controlling advertising and promotion of tobacco products and supply of illicit, incorrectly labelled and non duty-paid tobacco**

As previously stated, tobacco is a constituent of the majority of products supplied for use in shisha establishments, or sold from their premises for personal use elsewhere. These products must therefore comply with tobacco products legislation which includes the following requirements:

- product identification code-markings;
- specified health warnings and pictures; and
- prohibited product descriptions.

**Currently, it is believed that only a small proportion of waterpipe tobacco is legitimately imported and correctly marked. Where such products do not comply then they cannot be sold or supplied legally and are liable to seizure by the appropriate agencies.**

Details of the legal requirements and the enforcement measures are set out in **Appendix 2**. This includes guidance on the application of these requirements where the shisha is sold 'loose' or made up to the requirements of the customer.

### **Liability for excise duty**

Shisha materials containing tobacco are liable for excise duty. Details of the legal requirements and the enforcement measures are set out in **Appendix 2**.

Any product offered for sale with the appropriate duty unpaid may be subject to seizure and/or further

action by HMRC. HMRC should be notified in accordance with the established protocols.<sup>1</sup>

It is stated above that, currently, it is believed that only a small proportion of waterpipe tobacco is legitimately imported and correctly marked and that where such products do not comply then they cannot be sold or supplied legally and are liable to seizure by the appropriate agencies.

**Therefore to operate in full compliance with the law, businesses need to ensure that they can provide evidence of the legitimacy of their supplies, or that they supply only tobacco-free shisha mixtures on which duty is not required to be paid.**

### Education of staff/public about risks of health effects of using waterpipes

In some communities in the UK, shisha smoking is an established communal activity where smoking takes place at home amongst family members and friends. However, increasingly shisha smoking is being provided commercially in shisha bars either for this specific purpose or alongside other associated activities of eating, drinking and entertainment. In some cases it is perceived as a safe and alcohol-free environment in which to meet and socialise for people whose culture or religion prohibits the use of alcohol.

It is reported that the increasing number of shisha establishments are particularly attractive to some young people seeking a new social experience and that advertising is being specifically directed towards them.

In Harrow the number of shisha bars is above the average for London boroughs. NHS Harrow commissioned a scoping study<sup>2</sup> to obtain a better understanding of who uses shisha, their usage

patterns and their understanding of shisha. The methodology was both quantitative and qualitative and included a survey questionnaire promoted online, fieldwork at shisha bars/cafes in the borough and facilitation of in-depth focus groups.

The findings of the survey indicate the following:

- the majority of shisha smokers smoke with friends, and their main reason is to socialise;
- the most common length of a shisha smoking session is two hours and some respondents smoke for three hours or more;
- 81 per cent usually smoke shisha at a bar or café and only 17 per cent smoke at their own home or at a friend's house;
- 37 per cent smoke shisha once/twice a week, followed by 25 per cent who smoke more than twice a week and 8.5 per cent who smoke shisha every day;
- 78 per cent of shisha smokers surveyed have not thought about quitting.

A particular concern which the survey highlighted is the gap in the knowledge of many shisha users of the health implications of smoking shisha. Almost a third of those surveyed thought there are no health risks associated with shisha smoking and nearly three-quarters thought cigarettes were more damaging to health. Indeed the general perception of the respondents was that smoking cigarettes is more damaging to health than smoking shisha. The reasons for this may be related to respondents' knowledge and awareness of cigarette health warnings, and the absence of these from many shisha products, and the mistaken belief that nicotine and other chemicals are present in cigarette smoke but are not present in shisha smoke.

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<sup>1</sup> HMRC and Trading Standards Joint Working Protocol Dealing with Tobacco Offences  
<http://www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=1F7257F&id=22140>

<sup>2</sup> NHS Harrow, *Shisha, smoking and young people research*, 2011

It is known that there are many misconceptions about the use of waterpipes as being less harmful than smoking traditional rolled tobacco products, or even that it is harmless. Although not based on fact, these misconceptions are widely believed and may be strongly defended. They include that shisha tobacco is less harmful than cigarette tobacco or that the water in the pipe renders the smoke 'safe'. In reality the shisha smoke contains carcinogens in similar levels to ordinary tobacco smoke but, as a consequence of the way the tobacco is burnt, the level of carbon monoxide is much higher. Carbon monoxide testing for shisha users has been offered as a practical demonstration of the effects on the body and has been known to persuade some shisha smokers to change their consumption.

Assistance can be requested from the local NHS Stop Smoking Services in informing smokers of hazards to health from smoking shisha and assisting them to quit smoking.

Some local authorities have implemented enforcement strategies which incorporate the provision of information and advice to the public on the health hazards associated with smoking shisha.

**Appendix 3** contains an example of a shisha enforcement strategy for the London Borough of Tower Hamlets Council, and **Appendix 4** contains examples of public information leaflets from both Leicester City Council and Tower Hamlets. Other local authorities such as Coventry City Council have conducted workshops to raise awareness of shisha use as described in **Appendix 5**.

## 3 Enforcement issues

This supplementary guidance continues to promote a supportive approach to compliance where education and support is offered to help individuals understand and abide by the law. However, in situations where individuals blatantly flout the law, then formal enforcement action by the local authority is entirely warranted and necessary in order to promote a consistent approach to maintain a level trading environment. There have already been a number of successful enforcement actions brought against the operators of premises where waterpipes have been in use in contravention of the law over the past three years.

### Identifying premises permitting shisha smoking

The majority of premises operating as shisha bars are openly advertising in the usual manner of business premises in order to attract customers. However, a number have been found to be operating without any apparent advertising or publicity, effectively underground, in an attempt to avoid the attention of the local authority and other regulatory agencies. However, the existence of such premises will often be known locally by word of mouth and reports of customers may be found on the social networking websites. Indeed some premises advertise their existence on social networking sites including details of their location, services, and opening times.

### Obtaining access

Officers have reported that the entry arrangements at some premises either seriously impede and delay, or are deliberately intended to prevent, local authority officers obtaining ready access. Such measures have included totally obscured and locked entry doors, door staff who refuse admission, CCTV observation of entry areas and approaches and entry phones with remotely controlled door locks.

Where entry has been prevented or the access arrangements provide grounds for officers to believe that they may be impeded, a letter can be sent or

delivered to the owners/managers of the premises informing them that any unreasonable delay in facilitating entry upon request will be considered as obstruction and may result in prosecution. It follows that where access is subsequently impeded then, whether or not prosecution is instituted, the letter can be used to support subsequent entry by warrant.

In all cases where entry is repeatedly delayed or denied then multiple prosecutions for the offence of obstruction might be justified and can result in substantial penalties.

Officers are reminded that their powers of entry for securing compliance with smokefree legislation are comprehensive and any unreasonable delay in permitting entry as well as any physical obstruction can provide grounds for an application for a warrant for entry, if need be by force and with police assistance.

### Establishing ownership and identifying person in control

It is vital for officers to establish the identity and personal details of the 'person who controls or is concerned in the management of the smoke-free premises'. Failure to establish this may mean that it will not be possible to institute subsequent proceedings effectively.

If necessary, information and intelligence gathering about the ownership and occupation of the premises, as well as the operation and management of the business, should be undertaken in advance of an inspection. Obtaining details of the business ratepayer may be useful, however the persons paying the business rates may not in fact be 'controlling' the business. In premises which are licensed by the local authority under the Licensing Act 2003, the Designated Premises Supervisor could be held to be in control.

Practical observations and questioning may help to identify who holds the keys to secure the premises and who has responsibility for the cash on the premises.

Where an inspection has to be undertaken without clear information about the identity of the ownership and management of the premises and business, and where it proves difficult to establish and confirm the identity of the person in control at the time of the inspection, then consideration needs to be given to requesting police assistance. Where police are present they may also be requested to assist in establishing the identity of any persons who are smoking in contravention of the smokefree legislation.

### Expediting legal proceedings

In the knowledge that their officers may encounter problems of access and identification of the person in control as described above, some local authorities have put arrangements in place to expedite as far as possible the recording and reporting of offences for subsequent legal process.

### Use of injunctions

Injunctions have been granted where there have been prosecutions previously taken for repeated offences.

### Specialist tobacconist – requirements for claiming exemption

There have been several attempts by operators of shisha bars to claim the exemption permitted for ‘specialist tobacconists’ which do not need to be smokefree for the time they are used for persons sampling cigars and pipe tobacco.

The requirements for claiming the exemption as a specialist tobacconist are very specific and this activity constitutes an entirely different and separate trading activity from that associated with the operation of a shisha bar – which is essentially no different to any of the other business activities associated with the food, beverage and hospitality sector.

**Appendix 6** contains an explanation of the standards as they relate to shisha bars, and advice on particular premises needs to be obtained from the local trading

standards service. To date, no shisha bar has been identified as a specialist tobacconist and it is considered highly unlikely that any will be able to do so.

### Use of ‘smokeless’ waterpipes

A number of products are being promoted as ‘smokeless’ waterpipes.

Some of these are entirely incorrect claims since the manufacturers have simply made adjustments to the method of placing the burning charcoal above the shisha mixture. This has only a marginal effect on the smouldering and production of smoke and clearly any smoking apparatus which involves burning or smouldering and generates smoke in any quantity cannot be considered as ‘smokeless’ and its use will correctly be included within the legal definition of smoking. In most cases a simple demonstration of the operation of such apparatus will clarify the position.

Other manufacturers have entirely replaced the shisha mixture with a capsule which may or may not contain nicotine or other chemicals obtained from or associated with tobacco, and which operates in a similar manner to the ‘electronic cigarette’. In the case of these ‘electronic shisha’ products no ignition takes place, only an arrangement for heating using batteries or a mains electricity supply connection in order to vaporise the contents of the capsule. In these circumstances, under normal operation, smoke will not be generated and the claim that the apparatus, when operated correctly, is smokeless may be justified. In those circumstances their use would not be prohibited under the smokefree legislation.

However, there are serious concerns reported about the safety of all electronic smoking devices, some details of which are provided in **Appendix 7**.

Where officers become aware that electronic shisha apparatus is being used or promoted and they need to seek advice, they are advised to take details of the type of device and contact the Home Authority for the manufacturer/importer.

# 4 Working with partner organisations

The variety of regulatory concerns that have been raised in relation to the operation of shisha bars means that consideration needs to be given to involving and working with a variety of regulatory officers and organisations.

In addition, officers may be willing to provide information and evidence following their own visits for other purposes, especially when they are made aware that a simple statement from them may be all that is needed for an offence to be investigated and enforcement action taken.

## Trading Standards Service

The relevant regulatory activities carried out by Trading Standards Officers are set out in **Appendix 2**.

## Environmental Health Service

Officers from the food safety team and the health and safety teams and also officers responsible for noise and pollution control measures where these may be concerns.

## Building Control and Planning Officers

The construction and use of the premises and any external structures erected to accommodate shisha smoking.

## Police Service

The assistance of police officers can be invaluable and even essential at times. They may attend with head cameras to assist with confirming identification and recording evidence.

## Licensing Service

Licensing is required for a variety of activities which may be taking place at premises which are also serving shisha e.g. sale of alcohol, entertainment (live music, dancing etc), late night refreshment, gambling, etc.

## Fire Service

The arrangements for fire prevention, fire fighting and evacuation.

## Revenue and Customs/UKBA

Local inland detection teams of HMRC may be able to seize products on which duty has not been paid, as can Trading Standards Officers. Details may be found in the protocol of joint working arrangement.

## Education Welfare and Child Protection

Where it is suspected that underage and truant school age children are visiting shisha bars, or that young people are inappropriately being accommodated in shisha bars and may be placing themselves at risk, then contact should be made with Educational Welfare Officers and Child Protection Officers.

# Appendix 1 The health hazards associated with the use of waterpipes

## Statement from the Chartered Institute of Environmental Health

The following is based upon careful consideration of the available scientific and medical evidence regarding the use of waterpipes. According to World Health Organization (WHO) advice, **'using a waterpipe to smoke tobacco poses a serious potential health hazard to smokers and others exposed to the 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'**.

The WHO therefore recommends **'waterpipes should be prohibited in public places consistent with bans on cigarette and other forms of tobacco smoking'** (2005).

Researchers suggest that smoke from waterpipes **'likely contains an abundance of several of the chemicals thought to be causal factors in the elevated incidence of cancer, cardiovascular disease and addition in cigarette smokers'** (Shihadeh and Saleh 2004) and that **'existing evidence on waterpipe smoking shows that it carries many of the same health risks and has been linked to many of the same diseases caused by cigarette smoking'** (American Lung Association 2007).

Waterpipe use may increase exposure to carcinogens by smokers and those exposed to secondhand smoke from waterpipe smoking because smokers use a waterpipe over a much longer period, often 40 to 45 minutes, rather than the five to 10 minutes it takes to smoke a cigarette. Due to the longer, more sustained period of inhalation and exposure, a waterpipe smoker may inhale as much smoke as consuming 100 or more cigarettes during a single session (WHO 2005).

Other research highlights the hazards associated with exposure to the secondhand smoke produced by waterpipe smoking. A study by Maziak *et al* suggests that the health effects of exposure to secondhand

smoke from waterpipes are **'likely to include many of those that result from exposure to cigarette smoke'**, and that the **'higher content of heavy metals in waterpipe smoke compared to cigarettes may also have adverse health effects on exposed non-smokers'** (2004). Research by Nuwayhid *et al* found that people exposed to secondhand smoke from waterpipe smoking are at risk for the same kinds of diseases as are caused by cigarette smoking, including cancer, heart disease, respiratory disease and adverse effects during pregnancy (1998).

An additional factor to the secondhand smoke hazard created by the smoking of waterpipes is that commonly used heat sources that are applied to burn tobacco, such as wood cinders or charcoal, are likely to add to the toxic smoke from waterpipe use because when burned on their own these heat sources release high levels of potentially dangerous chemicals, including carbon monoxide and heavy metals (American Lung Association 2007). Carbon monoxide is considered to be a major causative agent in cardiovascular disease (Shihadeh and Saleh 2004).

Research also points to misconceptions regarding the health impact of the use of waterpipes. According to Knishkowsky and Amitai, despite the evidence that waterpipe smoking has health risks at least similar to cigarette smoking, the general perception is exactly the opposite. Waterpipe tobacco smokers generally believe that it is less harmful than cigarette smoking (2005). There is also a misconception that waterpipes are less harmful because smoke passes through water within the pipe. Research published by Hadidi and Mohammed in the Saudi Medical Journal found that **'the inability of water to trap significant amounts of chemical substances present in tobacco and the danger which might result from the combustion of additives like glycerin, honey and other flavours could be a very important factor to extrapolate the damage resulting from hubble-bubble smoking'** (2004).

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# Appendix 2 Shisha tobacco products – a guide to the legislation

## Introduction

At the commencement of any investigation or the offer of advice involving a shisha tobacco product, it is vital that the product is correctly identified as this will determine which regulations apply.

The Niche Tobacco Product Directory<sup>3</sup> will assist in identifying the more common brands of shisha tobacco. It is important to recognise that shisha is a smoked product. In the majority of cases, the product as supplied will contain (amongst other things) tobacco; however it is known that there are also varieties of herbal shisha available that do not contain tobacco. In order to determine whether a specific product contains tobacco (and thus falls within the definition of a 'tobacco product') it may be necessary for it to be tested by an accredited test facility to confirm the presence of tobacco.

Once established as a tobacco containing product, the relevant aspects of existing tobacco control legislation will apply in a broadly similar way as the legislation applies to familiar tobacco products such as cigarettes.

## Product labelling etc

### Primary legislation

Consumer Protection Act 1987 (CPA)<sup>4</sup>

### Secondary legislation

The Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002<sup>5</sup>

The Tobacco Products (Manufacture, Presentation and Sale) (Safety) Amendment Regulations 2007<sup>6</sup>

### Guidance

LACORS guidance on picture warnings for tobacco products<sup>7</sup>

### Definitions

Tobacco product means: a product consisting wholly or partly of tobacco whether genetically modified or not and intended to be smoked, sniffed, sucked or chewed.

This means that shisha products are included in this definition alongside cigarettes, cigars, pipe tobacco and smokeless tobacco products.

### Warnings on shisha products

Packets of shisha should carry on 30 per cent of the most visible surface (the front) one of the following two statements:

- 'Smoking kills'; or
- 'Smoking seriously harms you and others around you'.

In addition to one of these two statements, one of the 14 picture warnings contained in the amended regulations of 2007 must be given on the other most

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<sup>3</sup> [www.ntpd.lacors.gov.uk](http://www.ntpd.lacors.gov.uk)

<sup>4</sup> Consumer Protection Act 1987 (CPA) [www.legislation.gov.uk/ukpga/1987/43](http://www.legislation.gov.uk/ukpga/1987/43)

<sup>5</sup> The Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002  
[www.legislation.gov.uk/uksi/2002/3041/contents/made](http://www.legislation.gov.uk/uksi/2002/3041/contents/made)

<sup>6</sup> The Tobacco Products (Manufacture, Presentation and Sale) (Safety) Amendment Regulations 2007  
<http://www.legislation.gov.uk/uksi/2007/2473/contents/made>

<sup>7</sup> LG Regulation guidance on picture warnings for tobacco products  
<http://www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=5D7CFAD&id=20120>

visible surface. This is the same requirement that is placed for example on the manufacturers of cigarettes.

### **Product identification markings**

A manufacturer or UK importer of shisha products for supply must ensure that the packaging carries code-marking whereby the place date and time of manufacture of the product can be determined and shall provide to the Secretary of State for Health a list of those code markings if required.

### **Product descriptions**

Shisha products must not be supplied with any name, brand name, text trademark, picture or any other representation that the particular product is less harmful to health than any other tobacco product.

An example would be the use of the term 'light' or 'mild' previously associated with certain cigarette brands; this was prohibited by this regulation as the inference was that such products were less harmful to health than other products.

### **Loose sales of shisha**

Shisha may be available to consumers 'in a non pre-packed form', normally made to the requirements of the user prior to use for example at a shisha lounge, cafe or bar. The various ingredients that make up the shisha are likely to have been removed from their original containers and decanted into other receptacles for example the bowl of a shisha pipe; this presents a challenge when considering the requirements for warnings to be given to the purchaser.

The shisha is ultimately supplied to the customer usually in a bowl of a shisha pipe which arguably becomes a 'packet' within which it is presented for retail supply. The definition within the regulations for a packet is given as:

**“Packet”, in relation to a tobacco product, means any box, package, container, wrapping or other receptacle which contains the product, and in which the product is, or is intended to be, presented for retail supply.’**

From a practical perspective, it is unlikely that supplier of the shisha will comply with the labelling requirement of the bowl as a packet. This could however be readily overcome with the provision of a notice to the consumer at the time of the supply of the shisha giving the appropriate warnings as outlined above.

### **Provision of other information**

Manufacturers or UK importers of a shisha product must provide before 1 October in each year, to the Secretary of State (for each tobacco product they produce by brand name) a list of all ingredients by quantity, their function and toxicological data in isolation and in combination with all the other ingredients. This should refer to their effects on health and any addictive effects and should be provided annually.

This requirement can only be met by providing analytical data from a recognised and accredited source. Enforcement agencies are advised to consult with the Department of Health regarding the provision of this information by the importer or supplier of any shisha product.

### **Offences and actions**

Shisha products that do not carry the correct warning securely affixed, or that are not correctly code-marked breach the provisions of these regulations. Enforcement action may be taken under the Consumer Protection Act 1987; see Part IV of the Act.

## Tobacco advertising and point of sale requirements

### Primary legislation

Tobacco Advertising and Promotion Act 2002<sup>8</sup>

### Secondary legislation

Tobacco Advertising and Promotion (Point of Sale) Regulations 2004<sup>9</sup>

### Guidance

LACORS guidance on Point of Sale Advertising<sup>10</sup>

The advertising of tobacco products is restricted to a single A5 size sign at the point of sale. It does not matter how many different brands of tobacco product are available for sale, only one A5 sign is permitted. Whilst it might be unusual to see advertisements for shisha products, it is worth noting that the restrictions placed on tobacco advertising and the possible future restrictions on the display of tobacco products apply equally to shisha products.

The permitted advert must be two-dimensional and may be one single advert or several, provided that the total area does not exceed A5 in size and can include the name, emblem or any other feature of the tobacco product, the price and size of a packet. The advert must include the warning:

- **‘Smoking kills’** or **‘Smoking seriously harms you and others around you’**; and
- **‘NHS Smoking Helpline 0800 1690169’**.

Posters in shop windows, sandwich boards outside premises, awnings that carry a shisha brand or logo that advertise tobacco products are all prohibited.

## Underage sales

### Primary legislation

Children and Young Persons Act 1933 (as amended)<sup>11</sup>

Children and Young Persons (Protection from Tobacco) Act 1991 (as amended)<sup>12</sup>

Criminal Justice and Immigration Act 2008<sup>13</sup>

### Secondary legislation

Protection from Tobacco (Display of Warning Statements) Regulations 1992<sup>14</sup>

### Guidance

LACORS guidance on enhanced retailer sanctions<sup>15</sup>

### Selling to a young person

It is an offence to sell **any** tobacco product – including shisha products – to persons under the age of 18 years. It is a defence for a person charged with the offence to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Selling a shisha product to an underage person carries a maximum penalty of £2,500.

Note: The definition of tobacco product for the purposes of the 1933 Act includes: any product containing tobacco and intended for oral or nasal use and smoking mixtures intended as a substitute for tobacco, and the expression ‘cigarettes’ includes cut tobacco rolled up in paper, tobacco leaf, or other material in such form as to be capable of immediate use for smoking.

Further penalties which could impact on non-compliant businesses have been added under

<sup>8</sup> Tobacco Advertising and Promotion Act 2002 [www.legislation.gov.uk/ukpga/2002/36/contents](http://www.legislation.gov.uk/ukpga/2002/36/contents)

<sup>9</sup> Tobacco Advertising and Promotion (Point of Sale) Regulations 2004 [www.opsi.gov.uk/si/si2004/uksi\\_20040765\\_en.pdf](http://www.opsi.gov.uk/si/si2004/uksi_20040765_en.pdf)

<sup>10</sup> LG Regulation guidance on point of sale advertising

<http://www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=5D7CFAD&id=5508>

<sup>11</sup> Children and Young Persons Act 1933 (as amended) [www.legislation.gov.uk/ukpga/Geo5/23-24/12](http://www.legislation.gov.uk/ukpga/Geo5/23-24/12)

<sup>12</sup> Children and Young Persons (Protection from Tobacco) Act 1991 (as amended) [www.legislation.gov.uk/ukpga/1991/23/contents](http://www.legislation.gov.uk/ukpga/1991/23/contents)

<sup>13</sup> Criminal Justice and Immigration Act 2008 [www.legislation.gov.uk/ukpga/2008/4/contents#pt11-pb3](http://www.legislation.gov.uk/ukpga/2008/4/contents#pt11-pb3)

<sup>14</sup> Protection from Tobacco (Display of Warning Statements) Regulations 1992 [www.legislation.gov.uk/uksi/1992/3228/contents/made](http://www.legislation.gov.uk/uksi/1992/3228/contents/made)

<sup>15</sup> LG Regulation guidance on enhanced retailer sanctions

<http://www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=5D7CFAD&id=21025>

Section 143 of the Criminal Justice and Immigration Act 2008. Evidence of three illegal sales made within a two year period, one of which results in a prosecution permits the local council to make an application to the magistrates' court for restricted premises and/or restricted sales order. The effect of these orders is to:

- prohibit premises from selling any tobacco products and cigarette papers for up to 12 months (Restricted Premises Order); and
- prevent named persons from being involved in businesses selling tobacco and cigarette papers for up to 12 months from **any** location (Restricted Sale Order).

### Statutory notice

An A3 size notice with characters of at least 36mm high displaying the following statement '**It is illegal to sell tobacco products to anyone under the age of 18**' must be displayed at every premise at which tobacco is sold by retail. Ideally this notice will be displayed in close proximity to the tobacco products themselves.

## Tax and duty

### Primary legislation

Tobacco Products Duty Act 1979<sup>16</sup>

### Guidance

HMRC guidance on niche tobacco products<sup>17</sup>

Shisha is liable for excise duty and is classified in the Integrated UK Tariff under 2403101000 where the excise duty is £79.26 per kilo (correct as of 24 March 2010) regardless of the proportion of tobacco in the content and import duty of 74.9 per cent on the Carriage Insurance and Freight value.

Purely to cover excise duty, correctly declared shisha product must as a minimum therefore cost the amounts listed below:

<b>50gm pack</b>	<b>£3.96</b>
<b>100gm pack</b>	<b>£7.92</b>
<b>150gm pack</b>	<b>£11.88</b>
<b>175gm pack</b>	<b>£13.47</b>
<b>250gm pack</b>	<b>£19.81</b>
<b>500gm pack</b>	<b>£39.63</b>
<b>1kg pack</b>	<b>£79.26</b>

It is likely that any product available for less than this amount has not been correctly declared, with the appropriate duty being unpaid. The product may be subject to seizure and/or further action by HMRC. HMRC should be notified in accordance with existing protocols.

**Currently it is believed that only a small proportion of waterpipe tobacco (shish) is legitimately imported and correctly marked. Therefore to operate in full compliance with the law businesses need to ensure that they can provide evidence of the legitimacy of their supplies, or that they supply only tobacco-free shisha mixtures on which duty is not required to be paid.**

<sup>16</sup> Tobacco Products Duty Act 1979 [www.legislation.gov.uk/ukpga/1979/7](http://www.legislation.gov.uk/ukpga/1979/7)

<sup>17</sup> HMRC guidance on tax and duty for niche products [http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?\\_nfpb=true&\\_pageLabel=pageExcise\\_ShowContent&id=HMCE\\_CL\\_000268&propertyType=document](http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageExcise_ShowContent&id=HMCE_CL_000268&propertyType=document)

## Appendix 3 Example of shisha enforcement strategy, London Borough of Tower Hamlets

The high prevalence of tobacco use in Tower Hamlets has been identified as a public health issue to be jointly dealt with in partnership through the overarching agenda of the Tobacco Control Strategy for Tower Hamlets and its Tobacco Control Alliance.

A shisha information leaflet was produced with the PCT for use in the shisha awareness campaign that has been running since September 2009. All officers of the Environmental Health Commercial Services (EHCS) team are engaged in distributing these leaflets to businesses during their visits. This is contributing greatly to an increased awareness of the health and legal implications of shisha use in Tower Hamlets.

Enforcement of smokefree compliance on shisha premises in Tower Hamlets is approached as a health and wellbeing objective.

The shisha campaign was initiated in the first quarter of 2009 to formally deal with shisha use in the borough as part of the joint Council/PCT Tobacco Control Strategy 2008/2011 by the Tobacco Control Alliance for the London Borough of Tower Hamlets.

The shisha campaign includes planned enforcement visits to premises suspected of selling shisha and is led by the Smokefree Team.

The Smokefree Team under Environmental Health Commercial Services is funded by the PCT to carry out the enforcement of the smokefree legislation and promote the health and well being agenda. The Smokefree team is therefore involved in the dual role of enforcement and public health including aspects of health promotion, and interventions.

The shisha campaign visits are planned based on accurate intelligence confirming the existence of premises operating shisha lounges. The database is regularly updated and night visits are carried out on suspected active premises. Prior to identifying a shisha premises a visit is carried out to the premises to confirm if shisha is being smoked there and if the place used is deemed enclosed or substantially

enclosed and should therefore be smokefree. If this is confirmed, a written warning is sent to the owners of the business reminding them it is prohibited to smoke or allow smoking to take place in a smokefree place. The instruction is for such activities to cease immediately.

The business is then put on the shisha database to be visited and if a visit is carried out and it is still not compliant the owners of the business will be prosecuted. The details of individuals smoking at shisha premises during a shisha initiative visit are sent a written warning for the offence of smoking in a smokefree place. This has had a remarkable impact in the community by widening the scope of the campaign to the parents and guardians of those engaged in the use of the product who are mostly young people.

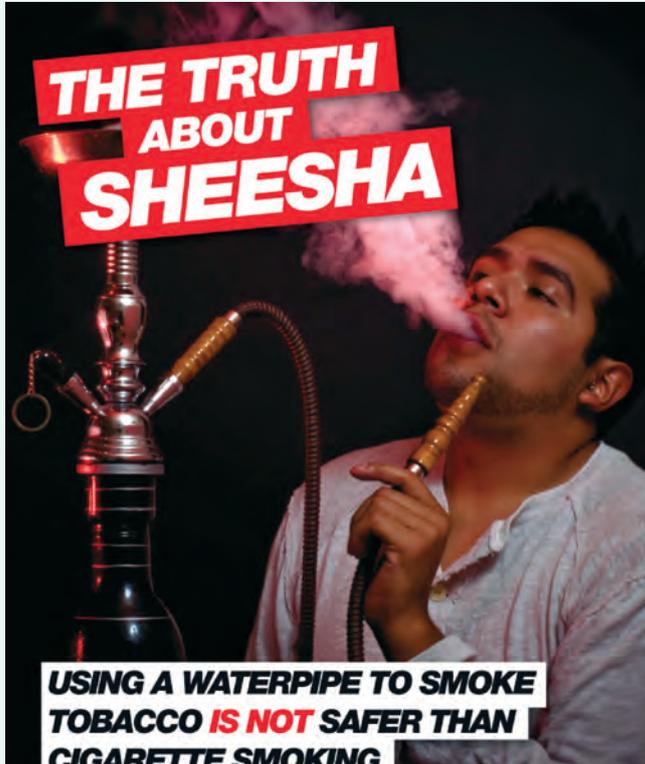
The visits are carried out with Trading Standards and the Police Joint Enforcement Team [JET] as well as other regulatory officers of the Council from Planning, Noise, Food, Community Safety, Licensing and Health & Safety as well as the Fire Brigade. A visit is scheduled every two weeks and usually from 7pm when these premises operate. The challenge remains the ease of change of use of premises from what its initial permit allows into a shisha place or adding a shisha place to an existing business. To deal with this a joint enforcement approach is applied. Though the campaign is led by Smokefree officers, each premises visited is collectively enforced simultaneously.

During the visits, compliance with the Health Act 2006 is enforced by the Smokefree officers primarily to determine if smoking of shisha was taking place in an enclosed or substantially enclosed place. This visit is usually after a written warning has been sent to the person responsible for the premises. Any area of non-compliance particularly in regards to failure to prevent smoking in a smokefree place will result in a prosecution. Anyone smoking is issued a written warning, the focus being to maintain the prevention of exposure to second hand smoke by ensuring smoking does not take place in smokefree premises.

Trading Standards enforce the Consumer Protection Act 1987 with regard to the products at the premises. Tobacco products which are not compliant with requirements for products sold in the UK are also seized. The planning team have taken an active role in ensuring that changes to use of premises are compliant wherever applicable and the Fire Brigade have in some instances reviewed the fire risk assessment report of premises due to change of use.

This campaign started in 2009 when the registry of known shisha places contained 32 premises. As at August 2010 this had been reduced to six premises. Over 80 per cent of the premises had stopped providing shisha and the remaining 20 per cent had pending enforcement actions including prosecutions. A steady, consistent smokefree enforcement campaign in combination with other enforcement agencies has been a contributory reason for the effectiveness of the campaign and the impact created. Potential shisha operators have moved out of the borough. Tower Hamlets officers have supported other boroughs that sought their help in this area.

# Appendix 4 Examples of public education leaflets



**THE TRUTH  
ABOUT  
SHEESHA**

**USING A WATERPIPE TO SMOKE  
TOBACCO IS NOT SAFER THAN  
CIGARETTE SMOKING**

For more information call **STOP!** on 0116 295 4141

**STOP!**  
HELPING LEICESTER STOP SMOKING

Leicester City Council

Leiceste

- In a sheesha session lasting 60 minutes, a smoker can inhale as much smoke as a cigarette smoker would inhale from **100-200 cigarettes**
- Even after it has passed through water, the smoke produced contains high levels of toxic compounds including **carbon monoxide, heavy metals and cancer-causing chemicals**
- Many of these chemicals are known to cause **mouth and lung cancers, heart disease, respiratory and other diseases.**
- Second-hand smoke from sheesha is a mixture of tobacco smoke in addition to smoke from the fuel and also **poses a serious risk for non-smokers**
- **Pregnant women and the foetus are particularly vulnerable** when exposed to sheesha smoke toxicants
- **Sharing the mouthpiece poses a serious risk of transmission of communicable diseases including tuberculosis and hepatitis**

Source: World Health Organisation, TobReg, "Waterpipe Tobacco Smoking: Health Effects, research Needs and Recommended Actions by Regulators."

For more information call **STOP!** on 0116 295 4141

**STOP!**  
HELPING LEICESTER STOP SMOKING



**NHS**  
Leicester City

It is illegal to smoke sheesha in an enclosed smokefree workplace or public place and you could be issued with a £50 fixed penalty notice.



## Shisha the facts



1. Using a shisha pipe is just as harmful as smoking cigarettes, as it has tobacco in it.
2. Smoking shisha harms others by producing second hand smoke.
3. The flavouring and sweeteners only disguise the harmful ingredients in tobacco.
4. Sharing a waterpipe mouthpiece can spread infectious diseases.
5. It is against the law to smoke in enclosed places and you can be fined.
6. For more information about giving up smoking, visit the website below or call the health hotline on 020 7364 5016



[www.towerhamlets.nhs.uk/smokefree](http://www.towerhamlets.nhs.uk/smokefree)



### What does the law say?

The Health Act 2006 requires that virtually all enclosed public places, workplaces and vehicles used by the public and work vehicles must be Smokefree. It was introduced to protect all people from the effects of second hand smoke.

### What sort of smoking does the law cover?

The Smokefree law covers the smoking of tobacco or anything that contains tobacco, or smoking of any other substance. This means that anything that is smoked is covered by the Smokefree law, including manufactured and hand-rolled cigarettes, pipes, cigars, herbal cigarettes and water pipes (including shisha, hookah and hubble-bubble pipes).

### How is the law enforced in Tower Hamlets?

The councils' Smokefree officers enforce the law and will provide advice on Smokefree matters. Anyone who does not comply with the Smokefree law will be committing a criminal offence. The Smokefree team can be contacted on 020 7364 5008.

### What are the offences?

- Failure to display minimum no smoking signs: up to £1000 if prosecuted and convicted by a court or £200 fixed penalty notice on whoever manages or occupies the smokefree premises.
- Smoking in a no-smoking place: up to £200 if prosecuted and convicted or a penalty notice of £50 on the person smoking.
- Failing to prevent smoking in a Smokefree place: up to £2500 maximum fine on whoever manages or occupies the Smokefree premises if prosecuted and convicted by a court.

### Support for Tower Hamlets residents who want to stop smoking

Anyone living or working in Tower Hamlets can access the network of trained tobacco control advisors for support or treatment. These services are provided free through pharmacies, GP practices and many local community organisations.

For details on your nearest advisor, call the local health hotline on 020 7364 5016.

# Appendix 5 Example of workshop to raise awareness of shisha use, Coventry City Council

## Campaigners highlight the dangers of smoking shisha

Health experts, smokefree campaigners and partners from a wide range of public sector organisations in Coventry held a workshop to highlight the risks associated with shisha.

The workshop came amid concerns that local people are unaware that smoking shisha is as harmful as smoking cigarettes.

Shisha is predominantly a fruit-scented tobacco which is smoked through an ornate waterpipe, also known as 'hookah' or 'hubble bubble'. Shisha bars – which are typically decked out with low stools and soft cushions to create an inviting atmosphere – originated in the Middle East but are now becoming increasingly popular across the UK.

Evidence has shown that a typical hour-long shisha session involves inhaling 100 to 200 times the volume of smoke inhaled when smoking a cigarette. Furthermore, because shisha nearly always contains tobacco, those who use it are increasing their chances of developing life threatening conditions such as heart disease, lung cancer and strokes.

Even smoking 'tobacco free' shisha is not safe because users are still at risk from breathing in dangerous levels of carbon monoxide as well as passing on infections through the use of shared mouthpieces.

Shisha smoking also falls within the smokefree law and no bar or restaurant in the city should be allowing it to be smoked within an enclosed public place.

Hilary Waring, from the Tobacco Control Collaborating Centre, who led the workshop said: "Shisha smoking is on the rise right across the country and many people are totally unaware of the risks.

"The bubbling water does not filter out the toxins; it is not a safer alternative to smoking; it can lead to a nicotine addiction and it can cause serious harm to your health."

Cllr Joe Clifford, Chair of Coventry's Smokefree Alliance, added: "While most people understand the dangers associated with smoking cigarettes, many local residents are not aware of harm linked to shisha.

"The Smokefree Alliance is determined to tackle this issue and we will be working closely with a variety of partners across the city to develop a high profile awareness campaign."

Anyone wanting free support to quit smoking can call 0800 051 1310 or visit [www.coventry.nhs.uk](http://www.coventry.nhs.uk)

Stop smoking support services across Coventry form part of the Coventry Health Improvement Programme (CHIP) – a partnership programme between NHS Coventry and Coventry City Council to improve health, and reduce the health inequalities across Coventry. To find out more about CHIP visit [www.coventry.gov.uk](http://www.coventry.gov.uk)

**Source** *Insight: Coventry City Council's Magazine for employees*

# Appendix 6 Requirements for specialist tobacconists

Businesses should be warned against thinking that premises used for smoking shisha could be considered appropriate for designation as a specialist tobacconist.

No shisha smoking premises have been recognised as specialist tobacconists because the activity of smoking shisha is entirely different from the practice of sampling cigar or conventional pipe tobacco. Sampling of a small quantity of a tobacco product is not the same as sitting in a shisha bar and spending 15 or more minutes smoking shisha.

Specialist tobacconists are defined in Section 6(2) of the Tobacco Advertising and Promotion Act 2003. They are shops. These shops are small in number and are businesses where over half their sales come from cigars, pipe tobacco and related specialist tobacconists materials.

The Smokefree (Exemptions and Vehicles) Regulations 2007 set out that the shop of a specialist tobacconist (that meets the requirements of the Tobacco Advertising and Promotion Act) is exempt from smokefree legislation during the time people are sampling cigars or pipe tobacco (including waterpipe tobacco), provided that it also meets the conditions required within Regulation 7 of the Smokefree (Exemptions and Vehicles) Regulations 2007.

The exemption is only for the sampling of cigars and pipe tobacco and not for cigarettes or rolled tobacco. The exemption does not allow for a shisha bar to be declared a specialist tobacconist. Shisha bars provide for the smoking (consumption) of shisha they are not in the business of testing or sampling of a small token example of the product.

'Sampling' is defined in dictionaries as **'taking a small separated part of something illustrating the qualities of the mass'**. Time-wise, sampling is also generally understood as a brief activity, not an extended trial over a period of time. It follows that a customer spending a lengthy period of time smoking

shisha mean that they are actually 'consuming' the product.

See also *Implementation of smokefree legislation in England: Guidance for council regulatory officers – Second Edition*, Appendix 4, issued by LACORS in 2009.

# Appendix 7 Safety of electronic smoking devices

Local Government Regulation (LGR), the Chartered Institute of Environmental Health (CIEH) and the Trading Standards Institute (TSI) have previously made representations to the Government and warned the public that they are using electronic cigarettes at their own risk, because there are currently no standards for these products and their effect on health is unknown. The same advice will apply in relation to shisha pipes which operate similarly. These electronic smoking devices use replaceable cartridges which release nicotine, but there are no specific standards for these products or for the chemicals they release, whereas the approved nicotine replacement products provided by doctors and pharmacists, such as gums and nose sprays, have been tested through clinical trials.

There is also concern that the public may be misled by claims that electronic smoking devices are 'healthier' than normal cigarettes, or that they have therapeutic properties and can help people to give-up smoking. The law requires that any such health claims have to be substantiated through rigorous testing and examination. A medicinal product (medicine) is broadly speaking a substance that either claims to, or has the actual function of, treating or preventing disease in human beings or animals. Further information on the definition of a medicinal product is available in MHRA Guidance Note No. 8 (A Guide to what is a Medicinal Product).

## Legal position

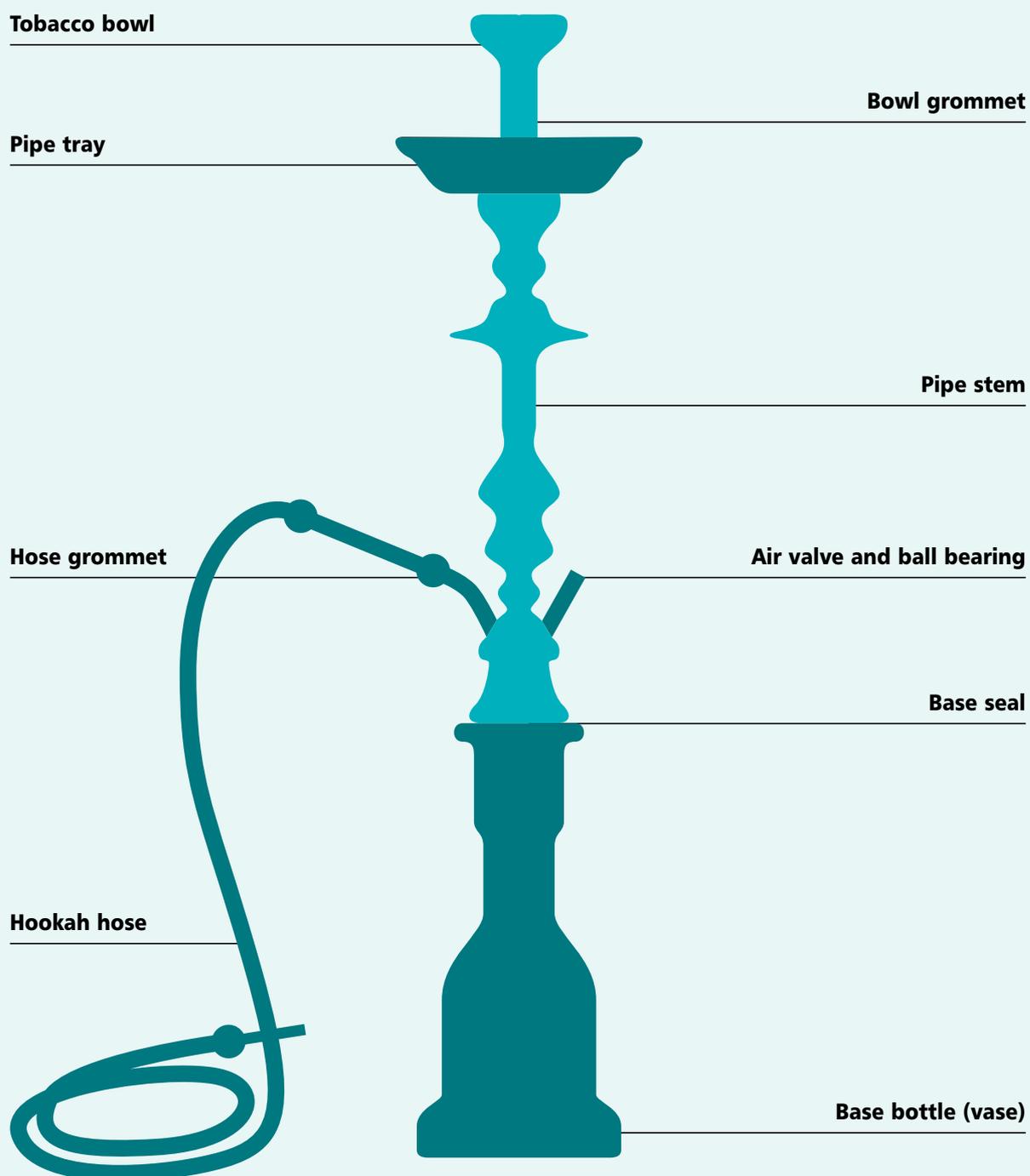
The General Product Safety Regulations 2005 contain the general duty placed on producers and distributors to place on the market only products that are safe in normal or reasonably foreseeable use. These are principally enforced by local authorities.

The Trade Descriptions Act 1968 and supporting Regulations, in particular the Control of Misleading Advertisements Regulations 1988, regulate consumer advertising generally, including the advertising of medicines. This legislation is administered by the Office of Fair Trading and the Advertising Standards Authority.

The Medicines and Healthcare Products Regulatory Agency (MHRA) is the government agency responsible for ensuring that medicines and medical devices work, and are acceptably safe. The MHRA has carried out a consultation on proposals for the regulation of Nicotine Containing Products (NCPs) which would bring all NCPs – with the exception of tobacco and tobacco products – within the medicines licensing regime. This would require all currently unlicensed NCPs on the market, such as electronic cigarettes containing nicotine and nicotine gels, to apply to the MHRA for a Medicines Marketing Authorisation. Submissions on behalf of LGR, CIEH and TSI have been submitted and the proposals from the MHRA are awaited.

Where officers become aware that electronic shisha apparatus is being used or promoted and they need to seek advice, they are advised to take details of the type of device and contact the Home Authority for the manufacturer/importer.

## Appendix 8 Illustration of components of a shisha pipe





Local Government Regulation  
Local Government House  
Smith Square  
London SW1P 3HZ

Enquiries **020 7665 3000**  
Fax **020 7665 3030**  
Email **info@local.gov.uk**