



ASHFORD
BOROUGH COUNCIL

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LICENSING AND HEALTH AND SAFETY COMMITTEE

Notice of a meeting to be held in the Council Chamber,
Civic Centre, Tannery Lane, Ashford on MONDAY, the 16th JULY
2007 at 7.00 pm

The Members of the Committee are:

Cllr. Goddard (Chairman)
Cllr. Feacey (Vice-Chairman)
Cllrs. Mrs Bell, Mrs Blanford, Cowley, Ellison, Mrs Heaton, Kemp,
Mrs Laughton, Link, Mrs Martin, Naughton, Norris

A G E N D A

Page Nos.

1. **Apologies/Substitutes** – To receive Notification of Substitutes in accordance with Procedure Rule 1.2(iii)
2. **Declarations of Interest** – Declarations of Interest under the Code of Conduct adopted by the Council on the 24th May 2007 relating to items on this Agenda should be made here. The nature as well as the existence of any such interest must be declared
3. **Minutes** – To approve the Minutes of the Meeting of this Committee held on the 19th April 2007 (attached)

PART I – FOR DECISION

4. Statement of Principles for Unlicensed Family Entertainment Centres, Gaming Machine Permits and Prize Gaming Permits 1 - 12
5. Smokefree Enforcement Policy – Health Act 2006 13 - 27

PART II – INFORMATION ITEMS

NONE FOR THIS MEETING

JV/EB
6th July 2007

Queries concerning this agenda? Please contact Julia Vink 330305
julia.vink@ashford.gov.uk
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Website: <http://www.ashford.gov.uk>
Under 'Council Democracy' - 'Committees' – 'Full Committee List'



LICENSING AND HEALTH AND SAFETY COMMITTEE

MINUTES of a **MEETING** of the **LICENSING AND HEALTH AND SAFETY COMMITTEE** held in the Council Chamber, Civic Centre, Tannery Lane, Ashford on the **19TH APRIL 2007**

PRESENT: Cllr. Goddard (Chairman);
Cllr. Weller (Vice-Chairman);
Cllrs. Allcock, Claridge, Feacey, Heyes, Koowaree, Mrs Larkin, Link,
Mrs Martin, Wallace.

ALSO PRESENT: Environmental Health Manager (Commercial), Licensing Manager, Senior Member Services & Scrutiny Support Officer.

604 DECLARATIONS OF INTEREST

Councillor	Interest	Minute No.
Feacey	Code of Conduct – Personal but not Prejudicial – His company sub-contracted to taxi firms	608

605 MINUTES

Resolved:

That the Minutes of the meeting of the Licensing and Health and Safety Committee held on the 29th November 2006 be approved and confirmed as a correct record.

606 GAMBLING ACT 2005 – PREMISES LICENCE FEES

The Licensing Manager introduced his report which recommended the proposed fees for the premises licence fees for premises used for gambling for the financial year 2007/08. He explained that as opposed to the Licensing Act where fees were set nationally, the Department for Culture, Media & Sport (DCMS) had devolved power to each Licensing Authority to determine their own fees for premises licence applications under the Gambling Act 2005, subject to a maximum fee payable for each category of licence. The DCMS had asked Licensing Authorities to set fees that ensured full cost recovery but not income generation. The levels should represent fairness and value for money for the gambling industry. The Licensing Manager explained that there had been extensive consultation with Officers from Licensing, Legal and Member Services to examine the time it would take to carry out the various tasks associated with an application and to produce an hourly rate for staff. This had helped produce the recommended fees at Appendix A to the report building in, at a reasonable level, the risk of appeals and hearings occurring. The maximum levels identified by the DCMS that could be charged were shown in brackets after the recommended fees for Ashford. The fees were comparable to both Maidstone and Liverpool (the only other two Authorities who had published their fees at this time). Maximum fee levels had been set by the DCMS on the 21st February 2007, so the time available for consultation had been limited, however a letter had been sent out to the operators listed at Appendix B, and only one response had been received from a company who had no premises in the Borough. The Licensing Manager accepted that at this stage there was an element of estimation, but the proposals had received little objection from the trade and Officers supported this option as the fee levels were estimated to cover costs and were below the maximum limits set by the DCMS. The fees would have to be set on an annual basis so could be easily reviewed and a template had been produced which would assist the process in the future and produce an actual cost.

There was some discussion about financial risk and assessing the “best” and “worst” case scenarios. Members were concerned about the Council not being able to cover its costs. The Licensing Manager explained that there were approximately 10 bookmakers, three arcades and

a bingo hall in the Borough, but it was difficult to estimate the income because it depended on the number of fast-track (simple conversion) applications and non-fast-track ones (those seeking variations to their existing operating hours etc). He anticipated that the majority of premises would opt for a simple fast-track application but that the fees had been set on the basis of covering costs for whatever types of application were made. Additionally the fees could be reviewed anyway in a year's time and adjusted if they were too low or too high, so there was little or no risk regarding the setting of the fees. A separate code had been added to the budget for the Gambling Act so income and expenditure could be closely monitored. The area where there would always be risk was the possibility of appeals, but the fees could not be set on the basis that there may be a lot of appeals. The Environmental Health Manager (Commercial) explained that she was confident about the proposals and if there was a concern about risk, there should also be comfort in that the fact that the fees would be reviewed on an annual basis.

A Member asked if Councillors could be kept informed with Licensing and Gambling applications, in the same way that they were with Planning Applications, by way of regular e-mail lists. The Licensing Manager said that he would endeavour to produce something to send out to Committee Members as a trial and asked Members to give feedback on its usefulness.

Recommended:

That the fees for premises licence fees for premises used for gambling as given in Appendix A to the report be adopted.

607 GAMBLING ACT 2005 – DETERMINATION OF APPLICATIONS - DELEGATIONS

The Licensing Manager explained that the purpose of this report was to note the recommendations of the Selection & Constitutional Review Committee to Council, with regard to changes to the Terms of Reference of the Licensing and Health & Safety Committee and to note that the Licensing Sub-Committee was likely to consider premises applications under the Gambling Act in the coming year. Training would be arranged for the new Council in June 2007 and it was hoped that this would cover the Gambling Act, Licensing Act and other relevant matters.

The report advised that the Gambling Act 2005 (Proceedings of Licensing Committees and Sub-Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 had been made on the 27th January 2007 and had an effective date of the 30th April 2007. The Regulations provided for a range of procedural issues to govern preparations for hearings, the rights of parties at hearings and various administrative matters. The Regulations also made provision for the timing of determinations following a hearing. Now that these Regulations had been introduced, the Council had to add the determination of applications received to the Terms of Reference of the Licensing and Health & Safety Committee.

The Licensing Manager reported two minor amendments to Appendices 1 and 2 to the report. Matter (n) had been added to Appendix 1, namely that with regard to consideration of objections to a Temporary Use Notice and the decision whether to give a Counter-Notice, a hearing would be held if notices of objection had been given and not withdrawn (unless all parties agreed that a hearing was unnecessary). Appendix 2 had been revised to explain that an application for a Temporary Use Notice could be delegated to the Head of Environmental Services where no Notices of Objection had been given or where Notices of Objection had been withdrawn.

A Member asked about the selection of Members for the Sub-Committee meetings as it had been stated the Members would be selected at random but it appeared that some had made themselves more available for meetings than others. Should a rota be introduced? The Senior Member Services and Scrutiny Support Officer explained that when a hearing was set, all 13

Members of the Committee were contacted assessing availability in order to find three Members plus a Substitute to sit on that individual hearing. In reality it was often difficult to obtain enough Members so if four did reply positively, they were often the four who were selected and this may have led to an uneven distribution of hearings amongst the Members of the Committee. Group Leaders had been asked at the outset of the Licensing Act to ensure that they selected Members for the Licensing and Health & Safety Committee who were available for daytime meetings, and this point would be re-iterated to Groups after the 2007 elections.

Resolved:

That (i) the recommendations of the Selection & Constitutional Review Committee be noted.

(ii) Group Leaders be reminded of the importance of selecting Members for the Licensing and Health & Safety Committee who were available for daytime meetings.

608 ASHFORD BOROUGH COUNCIL TAXI POLICY – VERBAL UPDATE

The Licensing Manager explained that the licensing of taxis was a responsibility of individual Local Authorities and the Council had an abundance of individual policies relating to taxis which he wished to collaborate into one definitive Taxi Policy. It had taken six months to draw these all together and he considered that this demonstrated the need for a more co-ordinated and easy to understand document.

The process of pulling together all of the policies was nearly complete and the next stage in the process was to undertake a three month consultation exercise with the trade, interested groups and the public. Once the results of that consultation were back, a final Taxi Policy for the Council would be drafted and come to this Committee for consideration.

Members asked if there was a need for this work as if the Council just wanted to consolidate its existing policies, surely there was no need for consultation. The Licensing Manager explained that there would be changes as a result of consolidating the policies because a lot of the existing policies were now obsolete and there had also been a number of updates nationally that had an effect on the situation. This meant that there were enough alterations to justify consultation. Additionally there was a demand for such a policy from the taxi trade and there had been for some time, so there would be benefits to getting their input.

A Member asked if the new taxi policy would examine environmental issues. Canterbury City Council for example was actively encouraging the use of environmentally friendly vehicles by reducing fees. The Licensing Manager confirmed this was one of the objectives he wanted to put in to the consultation and he thanked the Member for drawing Canterbury's practice to his attention.

Resolved:

That the verbal update be noted.

609 LAST MEETING OF THE MUNICIPAL YEAR

The Chairman advised that this was last meeting of the Committee prior to the local elections and offered his thanks to all those who had played a part in the Committee over the last four years, in particular, those who were not standing for re-election including his Vice-Chairman Councillor Weller.

Agenda Item No: 4
Report To: LICENSING, HEALTH AND SAFETY COMMITTEE
Date: MONDAY 16TH JULY 2007
Report Title: STATEMENT OF PRINCIPLES FOR UNLICENSED FAMILY ENTERTAINMENT CENTRES, GAMING MACHINE PERMITS & PRIZE GAMING PERMITS – GAMBLING ACT 2005
Report Author: Head of Environmental Services



Summary:	The report recommends the proposed Statement of Principles for Unlicensed Family Entertainment Centres, Gaming Machine Permits and Prize Gaming Permits.
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Key Decision: NO

Affected Wards: Not applicable

Recommendations: That the Licensing, Health and Safety Committee recommends the adoption of a Statement of Principles for Unlicensed Family Entertainment Centres, Gaming Machine Permits and Prize Gaming Permits to the Full Council.

Policy Overview:

Financial Implications: None

Risk Assessment Yes

Other Material Implications: None

Exemption Clauses: Not applicable

Background Papers: None

Contacts: james.hann@ashford.gov.uk – Tel: 01233 330721

Report Title: STATEMENT OF PRINCIPLES FOR UNLICENSED FAMILY ENTERTAINMENT CENTRES, GAMING MACHINE PERMITS & PRIZE GAMING PERMITS – GAMBLING ACT 2005

Purpose of the Report

1. The report recommends the proposed Statement of Principles for Unlicensed Family Entertainment Centres, Gaming Machine Permits and Prize Gaming Permits.

Issue to be Decided

2. Whether to approve the report in Appendix A.

Background

3. The issuing of permits under the provisions of the Gambling Act 2005 is a statutory function placed on the Licensing Authority by the Act. The Full Council has already agreed a Statement of Policy and Principals that sets out the Authority's intention with regard to the regulation of gambling within the Borough of Ashford. In adopting this policy the Council has to have regard to the licensing objectives set out in the Act:
 - a) Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
 - b) Ensuring that gambling is conducted in a fair and open way, and
 - c) Protecting children and other vulnerable persons from being harmed or exploited by gambling.
4. These licensing objectives must be considered when determining an application for a premises licence of any type under the Act.
5. When determining whether to issue a permit however the Licensing Authority may give consideration to the licensing objectives but is not required to by the Act.
6. Given that gaming machines may be considered to be the attractive to the young and vulnerable persons, the Committee may feel that considering the licensing objectives when determining such permit applications is essential to protect such persons.
7. The attached Statement of Principles for Unlicensed Family Entertainment Centres, Gaming Machine Permits and Prize Gaming Permits under the Gambling Act 2005 will reinforce the message that the Licensing Authority, whilst allowing lawful gambling to take place, will take firm enforcement action against those who breach the licensing objectives. It will also give advice and guidance to those who are lawfully and responsibly involved in the industry.
8. This Statement of Principles for Unlicensed Family Entertainment Centres, Gaming Machine Permits and Prize Gaming Permits is subordinate to the main Statement of Policy and Principals approved and adopted by the Full Council.
9. In adopting this subordinate policy the Licensing Committee is formally stating that it will consider the three licensing objectives when determining applications for unlicensed family entertainment centres, gaming machine permits and prize gaming permits.
10. The policy sets out advice and guidance to the gambling industry on the issues that this licensing authority believes to be important in regulating the industry.

Risk Assessment

11. Notwithstanding this policy each application for a permit must be considered on its individual merits.
12. As the licensing authority, when determining whether to issue a permit may give consideration to the licensing objectives but is not required to by the Act, there is a degree of ambiguity. Without clearly stating what issues the licensing authority will focus on when considering

applications, there may be some confusion to applicants and make justifying decisions more difficult.

Other Options Considered

13. To adopt a modified Statement of Principles for Unlicensed Family Entertainment Centres, Gaming Machine Permits and Prize Gaming Permits.
14. Not to adopt the Statement of Principles for Unlicensed Family Entertainment Centres, Gaming Machine Permits and Prize Gaming Permits and issues permits under the existing policy.

Consultation

15. No consultation is required under the Gambling Act 2005 in respect of this policy

Conclusion

16. Members are asked to recommend this subordinate policy to clearly state that it will consider the three licensing objectives when determining applications for unlicensed family entertainment centres, gaming machine permits and prize gaming permits.

Portfolio Holder's Views

17. The draft policy has been sent to the Portfolio Holder and his comments will be reported to the Committee in due course.

Contact: Email:	James Hann james.hann@ashford.gov.uk
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ASHFORD
BOROUGH COUNCIL

**Statement of Principles
for
Unlicensed Family Entertainment
Centres,
Gaming Machine Permits
&
Prize Gaming Permits**

Gambling Act 2005

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The Gambling Act 2005

The Gambling Act 2005 (the Act) reforms the law on all commercial gambling in the United Kingdom other than the National Lottery and spread betting.

Ashford Borough Council is the relevant licensing authority for the licensing of premises for gambling such as bookmakers, casinos and bingo halls as well as issuing various other gambling permits.

The Act requires the council, as the licensing authority, to aim to permit the use of premises for gambling in so far as the authority thinks it:

- In accordance with a relevant code of practice
- In accordance with any relevant guidance issued by the Gambling Commission
- Reasonably consistent with the licensing objectives and
- In accordance with the licensing authority policy issued under the Act.

The licensing objectives are:

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime
- Ensuring that gambling is conducted in a fair and open way
- Protecting children and other vulnerable persons from being harmed or exploited by gambling.

Purpose of this document

This document has been prepared to assist persons considering making an application for either an unlicensed family entertainment centre (UFEC) gaming machine permit or a prize gaming under the Gambling Act 2005.

Ashford Borough Council expects all applicants to work in partnership to promote the above objectives through clear and effective management of each gambling operation whether in respect of a permit or premises licence.

In respect of UFEC gaming machine permits it has been prepared in accordance with Paragraph 7 of Schedule 10 of the Act and in respect of prize gaming permits it has been prepared in accordance with paragraph 8 of Schedule 14 of the Act. The document should be read in conjunction with Ashford Borough Council Statement of Licensing Policy and Principles. – Gambling Act 2005.

The purpose of the document is to clarify measures that the council will expect applicants to demonstrate when applying for either of these permits so

the council can determine the suitability of the applicant and the premises for a permit.

Within this process the council will aim to grant the permit where the applicant is able to demonstrate that:

- They are a fit and proper person to hold the permit
- They have considered and are proposing suitable measures to promote the licensing objectives and they have a legal right to occupy the premises to which the permit is sought.

The measures suggested in this document should be read as guidance only and the council will be happy for applicants to suggest measures above and beyond those listed in the document and or to substitute measures as appropriate.

Unlicensed family entertainment centres

The term 'unlicensed family entertainment centre' is one defined in the Act and refers to a premises which provides category D gaming machines together with various other amusements such as computer games and "penny-pushers".

The premises is 'unlicensed' in that it does not require a premises licence but does require a permit to be able to provide its category D gaming machines. It should not be confused with a 'licensed family entertainment centre' that does require a premises licence because it contains both category C and D gaming machines.

Unlicensed family entertainment centres (UFECs) will be most commonly located at seaside resorts, in airports and at motorway service centres, and will cater for families, including unaccompanied children and young persons. The council will only grant a UFEC gaming machine permit where it is satisfied that the premises will be operated as a bona fide unlicensed family entertainment centre.

In line with the Act, while the council cannot attach conditions to this type of permit, the council can refuse applications if they are not satisfied that the issues raised in this "Statement of Principles" have been addressed through the application.

Applicants only need to address the "Statement of Principles" when making their initial applications and not at renewal time. (Permits are granted for a period of ten years.)

Prize gaming permits

Section 288 defines gaming as prize gaming if the nature and size of the prize is not determined by the number of people playing or the amount paid for or raised by the gaming. The prizes will be determined by the operator before play commences. Prize gaming can often be seen at seaside resorts in amusement arcades where bingo is offered and the prizes are displayed.

A prize gaming permit is a permit issued by the council to authorise the provision of facilities for gaming with prizes on specified premises.

Applicants should be aware of the conditions in the Gambling Act 2005 by which prize gaming permits holders must comply. The conditions in the Act are:

- The limits on participation fees, as set out in regulations, must be complied with
- All chances to participate in the gaming must be allocated on the premises on which the gaming is taking place and on one day; the game must be played and completed on the day the chances are allocated; and the result of the game must be made public in the premises on the day that it is played
- The prize for which the game is played must not exceed the amount set out in regulations (if a money prize), or the prescribed value (if non-monetary prize) and participation in the gaming must not entitle the player to take part in any other gambling

In line with the Act, while the council cannot attach conditions to this type of permit, the council can refuse applications if they are not satisfied that the issues raised in this “Statement of Principles” have been addressed through the application.

Applicants only need to address the “Statement of Principles” when making their initial applications and not at renewal time. Permits are granted for a period of ten years.

Supporting documents

The council will require the following supporting documents to be served with all UFEC gaming machine permit and prize gaming permit applications:

- Proof of age (a certified copy or sight of an original birth certificate, driving licence, or passport – all applicants for these permits must be aged 18 or over)
- Proof that the applicant has the right to occupy the premises. Acceptable evidence would be a copy of any lease, a copy of the property’s deeds or a similar document

- An enhanced criminal record certificate. (this should be no greater than one month old.) This will be used to check that the applicant has no relevant convictions (those that are set out in Schedule 7 of the Act.)

In the case of applications for a UFEC gaming machine permit evidence that the machines to be provided are or were supplied by a legitimate gambling operator who holds a valid gaming machine technical operating licence issued by the Gambling Commission a plan of the premises to which the permit is sought showing the following items:

- The boundary of the building with any external or internal walls, entrances and exits to the building and any internal doorways where any category D gaming machines are positioned and the particular type of machines to be provided (e.g. Slot machines, penny falls, cranes)
- The location where any prize gaming will take place (including any seating and tables) and the area where any prizes will be displayed
- The positioning and types of any other amusement machines on the premises
- The location of any fixed or semi-fixed counters, booths or offices on the premises whereby staff monitor the customer floor area the location of any ATM/cash machines or change machines the location of any fixed or temporary structures such as columns or pillars
- The location and height of any stages in the premises; any steps, stairs, elevators, balconies or lifts in the premises
- The location of any public toilets in the building.

(The plan should be drawn to a scale with a key showing the items mentioned above)

Child protection issues

The council will expect the applicant to show that there are policies and procedures in place to protect children from harm. Harm in this context is not limited to harm from gambling but includes wider child protection considerations.

The council will assess these policies and procedures on their merits, and they should (depending on the particular permit being applied for) include appropriate measures/training for staff as regards the following:

- Maintain contact details for any local schools and or the education authority so that any truant children can be reported
- Employ policies to address the problems associated with truant children who may attempt to gain access to the premises and gamble when they should be at school.

- Employ policies to address any problems that may arise during seasonal periods where children may frequent the premises in greater numbers, such as half terms and summer holidays
- Maintain information at the premises of the term times of any local schools in the vicinity of the premises and also consider policies to ensure sufficient staffing levels during these times
- Display posters displaying the 'Child Line' phone number in discreet locations on the premises e.g. toilets
- Maintain an incident register of any problems that arise on the premises related to children such as children gambling excessively, truant children, children being unruly or young unaccompanied children entering the premises. (The register should be used to detect any trends which require attention by the management of the premises.)
- Ensure all young children are accompanied by a responsible adult
- Maintain policies to deal with any young children who enter the premises unaccompanied
- Enhanced criminal records checks for all staff who will be working closely with children

NB: Any supporting evidence of the above measures e.g. Training manuals or other similar documents/written statements should be attached to the application.

Protection of vulnerable persons.

The council will expect the applicant to show that there are policies and procedures in place to protect vulnerable persons.

The council will assess these policies and procedures on their merits; however they may (depending on the particular permit being applied for) include appropriate measures / training for staff as regards the following:

- Display Gamcare helpline stickers on all gaming machines
- Display Gamcare posters in prominent locations on the premises
- Training for staff members which focuses on building an employee's ability to maintain a sense of awareness of how much (e.g. how long) customers are gambling, as part of measures to detect persons who may be vulnerable
- Consider appropriate positioning of ATM and change machines (including the display of Gamcare stickers on any such machines)

NB: Any supporting evidence of the above measures e.g. Training manuals or other similar documents/written statements should be attached to the application.

Other miscellaneous issues

The applicant should also be mindful of the following possible control measures (depending on the particular permit being applied for) to minimise crime and disorder and the possibility of public nuisance as follows:

- Maintain an effective CCTV system to monitor the interior and exterior of the premises
- Keep the interior and exterior of the premises clean and tidy
- Ensure the external lighting is suitably positioned and operated so as not to cause nuisance to neighbouring and adjoining premises
- Consider the design and layout of the outside of the premises to deter the congregation of children and youths.
- Restrict normal opening hours to 8.45am to midnight daily.
- Not permit any person who is drunk and disorderly or under the influence of drugs, to enter or remain on the premises.
- Take such steps as are reasonably practicable to eliminate the escape of noise from the premises.
- Ensure, where possible the external doors to the premises remain closed, except when in use, by fitting them with a device for automatic closure or by similar means.
- Ensure that the premises are under the supervision of at least one responsible, adequately trained person at all times the premises are open

NB: Any supporting evidence of the above measures e.g. Training manuals or other similar documents/written statements should be attached to the application.

Applicants may obtain an enhanced Criminal Records Bureau disclosure on application to Disclosure Scotland on 0870 609 6006 or online at www.disclosurescotland.co.uk

Authority's Details

Applications should be submitted to:

Ashford Borough Council, Licensing Authority, Civic Centre, Tannery Lane, Ashford, Kent TN23 1PL.

Cheques should be made payable to:

Ashford Borough Council.

Agenda Item No: 5
Report To: LICENSING & HEALTH AND SAFETY COMMITTEE
Date: 16 JULY 2007
Report Title: Smokefree Enforcement Policy – Health Act 2006
Report Author: Sheila Davison



Summary:	This report seeks Member approval of a Smokefree Enforcement Policy. The policy is designed to ensure clarity and consistency when enforcing the provisions of the Health Act 2006. The policy is provided at Appendix A.
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Key Decision: NO

Affected Wards: All wards

Recommendations: **The Committee is asked to approve the policy for the enforcement of Smokefree legislation.**

Policy Overview: The report relates to core statutory functions of the Council.

Financial Implications: The Authority has been awarded by the Department of Health a grant of £9,421 for 2006/07 and £46,561 for 2007/08 to undertake enforcement and education work relevant to the Smokefree provisions.

Risk Assessment Failure by the Council to comply with the statutory requirements of the Health Act 2006 and to take an appropriate enforcement approach in accordance with this legislation could result in legal action against the Council or judicial review.

Other Material Implications: None

Background Papers: None

Contact: sheila.davison@ashford.gov.uk – Tel:01233 330224

Report Title: Smokefree Enforcement Policy – Health Act 2006

Purpose of the Report

1. This report seeks Member approval of a Smokefree Enforcement Policy. The policy is designed to ensure clarity and consistency when enforcing the provisions of the Health Act 2006.

Issue to be Decided

2. The Committee is asked to approve the policy (as provided at Appendix A) for the enforcement of Smokefree legislation.

Background

3. The Health Act 2006 introduced legislation to protect employees and the public from the effects of second-hand smoke. The Government's objectives for delivering smoke free legislation are to reduce risks to health from exposure to second-hand smoke, recognise a person's right to be protected from harm and enjoy smoke free air, increase the benefits of smoke free enclosed spaces and workplaces for those trying to give up smoking and to save lives by reducing exposure to second-hand smoke and overall smoking rates.
4. The regulations made under the Health Act 2006 require smoke free environments in virtually all workplaces, work vehicles and public transport in England. The legislation came into force at 6.00 am on 1 July 2007.
5. The legislation covers all premises which are wholly or substantially enclosed and used as a place of work by more than one person such as factories, pubs, offices and restaurants. It also covers vehicles, which are used for work purposes by more than one person at any time such as company cars and taxis. The legislation also requires no-smoking signs to be displayed at every public entrance to a Smokefree premises.
6. The regulations set out three basic offences these are: -
 - Failure to display a smoke free sign
 - Smoking in a Smokefree place
 - Allowing smoking in a smoke free place
7. The Environmental Health Service is responsible for enforcing the legislation in around 3,000 premises within the Borough. This includes a number of premises (and vehicles) that the Council has not until now had any enforcement responsibility over.
8. The Government are encouraging an educative approach during the early stages of implementing the Smokefree provision.

The Enforcement Policy

9. The policy sets out the Council's aim to seek to protect people working in or visiting enclosed public spaces from exposure to second-hand smoke. It makes clear the Council's intention to discharge its duties to enforce the provisions of Part 1 of the Health Act 2006 and regulations made thereunder in accordance with the Smokefree Enforcement Policy.
10. The policy makes clear that the Council will adopt an educational and advisory role to facilitate our health protection aims. It does however acknowledge that where necessary enforcement action such as the service of fixed penalty notices and prosecutions will be used to ensure compliance with the law.
11. The policy is supplemented by a 'Smokefree – Good Practice Guide' which is recommended by the Council to businesses and other relevant organisations.

12. As well as setting out the legislation and guidance on which the policy is based, the policy also identifies the key enforcement principles. These are as follows:
 - a) Proportionality - this means ensuring that the level of enforcement is proportionate to the risk, and the seriousness of any breach of the law.
 - b) Consistency - this relates to enforcement practice within this local authority, and also between this authority and other local authorities.
 - c) Targeting - this means ensuring enforcement activities, such as inspections and investigations, are focused on activities giving rise to the greatest risk to health.
 - d) Transparency - this is the extent to which duty holders and the public are clear about what is expected of them and what they can expect from the enforcing authority in terms of advice and enforcement action. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.
 - e) Accountability - this means that enforcing authorities must have policies and standards against which they can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.
13. Another important section of the policy highlights our desire to provide guidance and advice to new businesses and new employers in order to support them during planning and diversification stages of their ventures.
14. Our approach to inspections is made clear and guidance is provided as to when covert (undercover) surveillance will be undertaken. The policy also indicates how complaints will be handled how investigations will be prioritised and how complaints will be referred to other enforcement agencies.
15. An important part of the policy is the Council's undertaking to act in accordance with the DTI Enforcement Concordat. The Concordat articulates the Principles of Good Enforcement that help businesses to comply with regulations, and help enforcers to achieve higher levels of voluntary compliance. The principles outlined above reflect the Concordat Principles. Full details can be found at <http://www.dti.gov.uk/files/file10150.pdf>.
16. The policy identifies when informal enforcement action will be taken and when it will be appropriate to use fixed penalty notices i.e. an offence has been identified and informal advice or an advisory letter has already been issued an ignored, or where there appears to have been blatant or systematic non compliance with the law. Guidance on when legal proceedings i.e. prosecutions, will be taken is provided.
17. Authorisation arrangements are identified within the policy. A recent report to the Selection and Constitutional Review Committee (minute 111/07/07 refers) delegated responsibilities under the Health Act 2006 and revised the terms of reference of this Committee. This policy acts on those delegations and details authorised officer appointments to carry out a range of specific enforcement activities. For example the service of fixed penalty notices is restricted to specified officers and the decision to undertake covert surveillance is limited to the Head of Environmental Services.
18. Finally the policy covers appeal provisions, how people can complain if they are unhappy about how we enforce the Smokefree provisions, how the policy will be monitored and provides details of where people can get further guidance on this subject.

Other Options Considered

19. Not applicable.

Consultation

20. There has been no specific consultation in advance of developing this policy. It is however based on best practice and its success will be monitored over time. The policy will be made available on the Council's website.

Implications Assessment

Legal, Financial & Staffing

21. The policy is based on LACORS guidance. Its aim is to encourage a consistent approach to businesses and to enforcement. Development of the policy is specifically aimed at reducing the risk of legal challenge following enforcement of the Smokefree provisions. In terms of finance, the Authority has been awarded by the Department of Health a grant of £9,421 for 2006/07 and £46,561 for 2007/08 to undertake enforcement and education work relevant to the Smokefree provisions. No additional funding or staffing requests are made in connection with this report.

Portfolio Holder's Views

22. The Portfolio Holder supports the Policy for the Enforcement of Smokefree Legislation.

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Smokefree Enforcement Policy
Environmental Services

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1. Statement of Aims and Objectives

It is this Council's policy, as the relevant enforcing authority, to seek to protect people working in or visiting enclosed public spaces from exposure to secondhand smoke.

The Council will discharge its duty to enforce the provisions of Part 1 of the Health Act 2006 and regulations made thereunder in accordance with this policy statement. This policy will come into effect on the 1st July 2007 and will be reviewed annually or at such time as deemed appropriate by the Head of Environmental Health.

Where possible, the Council will adopt an educational and advisory role to facilitate these objectives and where necessary, enforcement action such as fixed penalty notices and the institution of legal proceedings will be used to ensure compliance with the law.

This policy is supplemented by a 'Smokefree – Good Practice Guide' (see Appendix A) which the Council recommends businesses and organisations have regard to.

2 Relevant Legislation and Guidance on which this Policy is Based

Health Act 2006 - Part 1

The Smoke-free (Premises and Enforcement) Regulations 2006

The Smoke-free (Signs) Regulations 2007

The Smoke-free (General Provisions) Regulations 2007

The Smoke-free (Exemptions and Vehicles) Regulations 2007

The Smoke-free (Penalties and Discounted Amounts) Regulations 2007

Department of Health (DOH) guidance

Guidance issued by the Local Authorities Coordinators of Regulatory Services (LACORS)

3. Offences

It is an offence for:-

- A person who controls or manages smoke-free premises, to fail to cause a person smoking there to stop smoking;
- A person to smoke in a smoke-free place;
- A person who occupies the manages smoke-free premises to fail to ensure that no-smoking signs are displayed in accordance with the Regulations;
- Any person to intentionally obstruct an authorised officer in the exercise of his functions under the Act;
- Any person, without reasonable cause, to fail to give an authorised officer any facilities, assistance or information he reasonably requires.

4. Defences

It is a defence for a person charged with smoking in a smoke-free place to show that he did not know, and could not reasonably have been expected to know, that it was a smoke-free place.

It is a defence for a person charged with failing to stop a person smoking in a smokefree place to show that:-

- (i) he/she took all reasonable steps to cause the person in question to stop smoking, or

- (ii) he/she did not know, and could not reasonably have been expected to know, that the person was smoking, or
- (iii) on other grounds it was reasonable for him/her not to comply with the duty.

5. Enforcement Principles

The Council will enforce the law through the principles of:-

- (i) Proportionality - this means ensuring that the level of enforcement is proportionate to the risk, and the seriousness of any breach of the law.
- (ii) Consistency - this relates to enforcement practice within this local authority, and also between this authority and other local authorities.
- (iii) Targeting - this means ensuring enforcement activities, such as inspections and investigations, are focused on activities giving rise to the greatest risk to health.
- (iv) Transparency - this is the extent to which duty holders and the public are clear about what is expected of them and what they can expect from the enforcing authority in terms of advice and enforcement action. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.
- (v) Accountability - this means that enforcing authorities must have policies and standards against which they can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.

6. Enforcement Strategy

The Council will:-

- (i) Undertake a priority based pro-active inspection programme.
- (ii) Investigate complaints in accordance with the procedure detailed in Section 8.
- (iii) Seek to provide guidance and advice to persons in control of enclosed public places, their representatives, the public and other duty holders as to the requirements regarding enclosed public places.
- (iv) Strive to achieve consistency in enforcement standards through staff training, quality procedures and active participation in all liaison arrangements with other local authorities.
- (v) Provide guidance and advice to new businesses and new employers during the planning/diversification stages of their ventures.

7. Inspections

Enforcement activities will involve different approaches depending on the circumstances:-

- (i) Announced/Unannounced inspections and advisory visits – authorised officers will make announced and unannounced inspections of businesses/organisations – they will make themselves known to the person in charge on entering the premises, and show appropriate identification.

- (ii) Covert (undercover) surveillance – this will be reserved where the Council have good reason to suspect that there are serious breaches of the legislation and/or there is a history of non co-operation and disregard for the law and evidence of the offence cannot be obtained in any other way.

In such instances authorised officers may observe premises to gather evidence of non-compliance with the law, the business or person in charge of the premises. Visits may arise from a planned inspection programme, complaints or other intelligence. Any directed covert surveillance will be strictly in accordance with the Regulation of Investigatory Powers Act 2000 (RIPA), with authorisation (if required) being obtained prior to any such covert surveillance being undertaken.

- (iii) Vehicles –authorised officers have no powers to stop a vehicle. Inspection of work vehicles or public service vehicles will normally be carried out at the operator's depot or garage.

8. Complaint Investigation

The identity of complainants will not be revealed during an investigation of any complaint.

The response to complaints received about non-compliance with the legislation will be prioritised taking into account the following factors:-

- The number of complaints received about a particular premises.
- The number of people likely to be affected if the complaint is about smoking in smoke-free premises.
- Whether the alleged offender has been previously warned regarding non compliance.

If the investigation of a complaint reveals non-compliance with the law, officers will select the most appropriate enforcement response, taking into account the enforcement principles described in Section 5 of this policy.

Complainants will be advised of the outcome of investigations.

If officers feel that no action is required, or the complaint is not justified, then complainants will be advised accordingly.

If preliminary investigations reveal that the complaint is not within the scope or remit of the authority, then the complaint will be referred to the appropriate enforcement agency and the complainant advised of this action.

9. Enforcement Action

The Council will act in accordance with the Enforcement Concordat. This commits the Council to be open, helpful and fair, and careful to ensure that any action we take in applying the law to secure compliance will be proportionate to the risks.

In deciding upon the appropriate action, authorised officers will have due regard to this enforcement policy and follow the principles of good enforcement.

The Principles of Good Enforcement are:-

- standards - setting clear standards for the level of service and performance,
- helpfulness - providing clear advice at all times,
- proportionality - in the applying the law and in securing compliance,

- consistency - being consistent in our approach at all times,
- transparency - being open about how we operate and what we expect from those we regulate,
- targeting – targeting our enforcement action to where it is most needed,
- complaints procedure – a clear, easy to understand and simple complaints procedure in the interests of consumers.

10. Informal Action - Verbal Advice and Advisory Letters

Informal action includes giving verbal and written advice and support. Where advice is given and corrective action is necessary we will clearly distinguish exactly what needs to be done to comply with the law, including any best practice recommendations, and specify a timescale for the remedial action to be completed.

In most situations before formal action is considered or taken, we will provide duty holders an opportunity to discuss matters with us to resolve any points of difference or misunderstanding.

It is our aim to resolve any situation informally unless:-

- the act or omission is serious enough to warrant formal action,
- from past history it is considered unlikely that informal action will achieve compliance,
- there is no confidence in the operator's management, willingness or ability,
- there is no willingness of the person to stop smoking in the smokefree area,
- the likely consequences of non-compliance pose a significant risk to health.

11. Fixed Penalty Notices

A Fixed Penalty Notice may be issued when an offence has been identified and informal advice or an advisory letter has already been issued and ignored, or where there appears to have been blatant or systematic non compliance with the law.

A Fixed Penalty Notice may be issued at the time, if the authorising officer has reason to believe that a person is committing an offence or has committed an offence or, if appropriate, at a later date.

A Fixed Penalty Notice will:-

- identify the alleged offence to which it relates and give reasonable particulars of the circumstances alleged to constitute that offence.
- state the amount of the penalty and the period within which it may be paid.
- state the discounted amount and the period within which it may be paid.
- state to whom and the address at which payment may be made (this must be the local council for the area where the alleged offence was committed, or a person acting on behalf of the council).
- state the method or methods by which payment may be made.
- state to whom and the address at which any representations relating to the notice may be made.
- state the consequences of not making a payment within the period for payment.

12. Prosecution - Institution of Legal Proceedings

The decision to prosecute is a serious step. Fair and effective prosecution is essential to the maintenance of law and order. In deciding whether or not to institute legal proceedings the following factors will be taken into consideration:-

- whether there has been a blatant or systematic disregard for the law, particularly where the economic advantages of breaking the law are substantial and the law abiding are placed at a disadvantage to those who disregard it;
- the general record and approach of the offender, including previous offences there or at other branches of a multiple concern;
- whether a fixed penalty notice has been paid within the appropriate time period;
- whether it is in the public interest to prosecute*
- whether the evidence available provides a realistic prospect of conviction;
- whether an authorised officer has been obstructed in the lawful course of their duties;
- whether or not the offender has taken all necessary steps to prevent a recurrence of the problem;
- the ability of any important witnesses and their willingness to co-operate.

* The Council will have regard to the Code for Crown Prosecutors, issued by the Crown Prosecution Service (CPS), which provides guidance which public interest factors should be considered before pursuing a prosecution.

13. Authorisation of Officers

When carrying out Smokefree duties, authorised officers appointed under the Health Act 2006 will produce their authorisation on request. The delegation of powers to officers is under the approval of the Divisional Environmental Health Officer (Commercial). The following table outlines the degree of authority afforded to the various officers within the authority:-

Task	Scope of authorisation	Comments/Conditions
Power of entry to premises and vehicles.	Specified Officers eg Environmental Health Officers/Scientific Officers/Technical Officers/Neighbourhood and Environmental Protection Officers.	
Power to require reasonable facilities, assistance and information.	Specified Officers eg Environmental Health Officers/Scientific Officers/Technical Officers/Neighbourhood and Environmental Protection Officers.	

Task	Scope of authorisation	Comments/Conditions
Service of advisory and warning letters.	Specified Officers eg Environmental Health Officers/Scientific Officers/Technical Officers/Neighbourhood and Environmental Protection Officers.	
Service of Fixed Penalty Notices.	Specified authorised Officers eg Lead Officer for Health and Safety/Neighbourhood and Environmental Protection Officers.	
Preparing prosecution report.	Specified authorised Officers eg Lead Officer for Health and Safety/Neighbourhood and Environmental Protection Officers.	Reports to be checked by the Divisional Environmental Health Officer (Commercial) before referral to the Head of Legal and Democratic Services.
Decision to prosecute.	Divisional Environmental Health Officer.	In agreement with the Head of Legal and Democratic Services.
Authorisation for Covert surveillance.	Environmental Services Manager.	
Carrying out covert surveillance.	Environmental Services Manager.	

14. Appeals

Recipients of fixed penalty notices have the right to request a hearing. The procedure will be clearly explained to the recipient in the notes contained within the Notice, but the request for the hearing must be made in writing and before the payment period for the penalty expires.

The Magistrates Court will be notified on receipt of a request for a hearing.

15. Complaints

How to complain if you are unhappy with our service: If you are dissatisfied with the service you receive please let us know. We are committed to providing quality services and your suggestions and criticisms about any aspect of our service will help us to do this. We will deal with any complaint you have in strict confidence.

What we will do: Wherever possible we will attempt to resolve your complaint informally through the case officer or Principal Environmental Health Officer (Commercial). If we cannot do this, we aim to respond in writing to you within 10 working days of receiving your complaint. We will also keep you regularly updated of progress until your complaint is resolved.

If you are still not happy: If you are still unhappy with the outcome, please tell us and we will make sure your complaint is brought to the attention of the management who will arrange for the case to be reviewed. Our Corporate Complaints procedure is available on request. Alternatively, you can discuss your complaint with your local Ward Councillor, or Member of Parliament.

The Local Government Ombudsman: If you are still unhappy with the service you have received you may like to ask the Local Government Ombudsman to help. The Ombudsman is independent and impartial and the service is free of charge and will normally expect you to have used the Council's corporate complaints procedure before making a complaint to him.

16. How to Contact Us

By telephone: You should call the telephone number given to you on any correspondence we send you, or you can contact:-

David Edwards, Senior Environmental Health Officer
Tel. 01233 330517, Fax 01233 330469

In person: Ashford Borough Council, Civic Centre, Tannery Lane, Ashford, Kent, TN23 1PL

In writing: Environmental Health, Ashford Borough Council, Civic Centre, Tannery Lane, Ashford, Kent, TN23 1PL

By e-mail: envhealth@ashford.gov.uk

17. Monitoring the Policy

It is essential that in setting a policy for officers to follow, it should be followed. To ensure this, cases will be monitored by the Divisional Environmental Health Officer.

Variations or deviations from the policy will be reported to the Head of Environmental Services.

The Council produces an annual Local Performance Plan reporting on the Council's performance in achieving Best Value targets. These performance targets include a Best Value Performance Indicator (BVPI 166), which specifically refers to monitoring of the Service's enforcement policy.

This policy has been assessed against the Enforcement Concordat checklist.

18. Further Information and Related Documents.

Further copies of this policy are available from us free of charge or it can be downloaded from our website. or www.smokefreeashford.co.uk

Other useful publications:-

"The Code for Crown Prosecutors"; HMSO (www.cps.gov.uk)

"Concordat on Good Enforcement" {2003 edition} (www.cabinet-office.gov.uk)

DETR "Guidance on BVPI 166 - Score checklist of enforcement best practice for Environmental Health"

While every effort has been made to ensure the accuracy of the references listed above their future availability cannot be guaranteed. July 2007

Appendix A – ‘Smokefree - Good Practice Guide’

A. Ashtrays & Purpose-Built Cigarette Bins

It may be helpful to site these at door entry points to allow customers the facility of extinguishing their cigarettes safely.

B. Management Controls

It is recommended that those in control of smoke-free premises:-

- (i) Develop a smoke-free policy, (preferably written).
- (ii) Develop a procedure for dealing with any people who smoke (preferably written).
- (iii) Communicate to staff in both the policy and written procedure.
- (iv) Keep a written record of any incident (and outcome) where a responsible member of staff confronts an individual for smoking on the premises.

C. Smoke-free policy and procedures

It is strongly recommended that owners/managers of businesses/organisations establish and implement written policy and procedures to demonstrate their compliance with the law.

Businesses/organisations may wish to adopt/incorporate the following in their policies and operating procedures. These can be directed at staff who may wish to smoke and for use of staff dealing with customers/visitors who fail to abide with the smokefree laws:-

- Draw the person’s attention to the “No Smoking” signs in the area and inform them that he/she is committing an offence by smoking and may result in a fixed penalty fine for them of £50. Politely ask them to stop smoking. It is important to stress at no time are staff expected to place themselves in confrontational situations.
- Direct them to the nearest place where they are able to smoke legally.
- Advise the person smoking that their actions could result in the person in control of the premises receiving a Fixed Penalty Notice or being prosecuted and receiving a fine of £2,500.
- Refuse the person service.
- If the person continues to smoke, ask them to leave the premises.
- If he/she refuses, implement normal procedures for anti-social/illegal behaviour on the premises.
- Maintain a written record of all such incidents and outcomes.
- If physical violence is threatened by the person smoking, notify and/or seek assistance from the Police.
- The policy should identify members of management and/or staff who have responsibility for its implementation and review.

Further guidance on developing a smoke-free policy is available at www.smokefreeengland.co.uk or by calling Smokefree England information line on Tel. (0800)1691697.

D. Staff

Employers and managers of smoke-free premises should ensure that all staff, including new members of staff, are aware of the Smokefree laws and the Smokefree policy and procedures for that business/organisation. All staff working in smoke-free premises should be aware of which member of staff or management present is the responsible person for dealing with any persons smoking.

E. Record of incidents

In order to assist any future defence that a person took “reasonable steps to cause the person in question to stop smoking”, each business/organisation should keep a documented record of all incidents.