

**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.

**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 Councils 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.

Contact:  
Email:

Sheila Davison  
[sheila.davison@ashford.gov.uk](mailto:sheila.davison@ashford.gov.uk)



**ASHFORD**  
BOROUGH COUNCIL

**DRAFT**

**Smokefree Enforcement Policy**  
**Environmental Services**

[www.ashford.gov.uk](http://www.ashford.gov.uk)

**Smokefree Enforcement Policy**

**Ashford**  
best placed in Britain

# INDEX

1. Statement of Aims and Objectives
  2. Legislation and Guidance on which this Policy is Based
  3. Offences
  4. Defences
  5. Enforcement Principles
  6. Enforcement Strategy
  7. Inspections
  8. Complaint Investigation
  9. Formal Enforcement Action
  10. Advisory and Warning Letters
  11. Fixed Penalty Notices
  12. Prosecution - Institution of Legal Proceedings
  13. Authorisation of Officers
  14. Appeals and Complaints
- Appendix A - Smokefree - Good Practice Guide

## **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](http://www.smokefreeashford.co.uk)

Other useful publications:-

*"The Code for Crown Prosecutors"; HMSO ([www.cps.gov.uk](http://www.cps.gov.uk))*

*"Concordat on Good Enforcement" {2003 edition} ([www.cabinet-office.gov.uk](http://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](http://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.