

**Warrington Borough Council  
Community Services Directorate**

**SMOKE FREE PUBLIC PLACES: WARRINGTON  
BOROUGH COUNCIL ENFORCEMENT POLICY**

Date: March 2007

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**INTRODUCTION**

This paper outlines the proposals for Warrington Borough Council's enforcement approach to the Smoke Free provisions of the Health Act 2006.

The Health Act 2006 introduced a requirement for premises, places and vehicles to be smoke free. The provisions of the Act come into force on 1 July 2007 and apply to enclosed and substantially enclosed premises that are open to the public and to shared workplaces. The premises to which these requirements apply are defined by regulations made under the Act.

The health case for this legislation is clear: making enclosed workplaces and public places smokefree will provide protection from a range of serious medical conditions. This is because exposure to second-hand smoke, in the long term, increases the risk of a non-smoker developing lung cancer and heart disease by around 25%, and in the short term – after just 30 minutes the blood becomes stickier increasing the risk of blood clots and stroke (Lacors 2007 Implementation of Smoke Free Legislation in England p4).

Local Authorities have been designated enforcement authorities under the Health Act 2006, and in Warrington, the Smoke Free Regulations will be enforced by officers working in the Trading Standards / Food Safety / Health and Safety Unit in Community Services.

In March 2007 LACORS issued guidance for local council regulatory officers on the Implementation of Smokefree Legislation in England. It is considered important, that the approach to implementation, is consistent and employees and members of the public understand the requirements and feel protected and treated fairly. The LACORS guidance document will be used as a basis for our Enforcement Policy approach. This will be supplemented by appropriate and relevant local action specific to Warrington.

Warrington's smoke free enforcement policy will supplement the Unit's general "Enforcement Policy Summary" and should be read in conjunction with it. The principles and approach will be in accordance with the Enforcement Concordat on good enforcement practice, agreed between central government and the local

authority associations. The policy will be published on the Council's web site and will be available in leaflet form in the reception at Palmyra House.

Our aim is to protect the health of people at work and members of the public who may be exposed to second hand smoke and we will take all reasonable steps to assist business and individuals to comply with the law. The appropriate use of the enforcement powers of fixed penalty notices and prosecution is important however, both to secure compliance with the law and to ensure that those who have responsibilities under it, may be held accountable for failures to safeguard health from second-hand smoke.

## **RATIONALE**

The main objectives for delivering and enforcing smokefree legislation are to:

- Reduce the risks to health from exposure to second hand smoke
- Recognise a persons right to be protected from harm and enjoy smokefree air
- Increase the benefits of smokefree enclosed places and workplaces for people trying to give up smoking so they can succeed in an environment where social pressures to smoke are reduced
- Save thousands of lives over the next decade (and for the foreseeable future) by reducing both exposure to hazardous second-hand smoke and overall smoking rates.

It has been reported that across Scotland and the Republic of Ireland that levels of compliance with the legislation achieved within the first six months have been as high as 95%. Polls from both countries also indicate that the introduction of smokefree legislation has been both popular and successful.

These successes have been achieved largely as a result of the supportive work undertaken by councils and the national publicity campaigns prior to the implementation dates to inform the public and businesses about how the legislation will affect them.

## **LEGISLATION**

The legislation which prohibits smoking in enclosed workplaces and public places is Part 1 of the Health Act 2006. Schedules 1 and 2 to the Act contain the powers of authorised officers and the details of Fixed Penalty Notices (FPNs).

The specific requirements are contained in several separate sets of regulations:

- Smoke-free (Premises and Enforcement) Regulations 2006;

- Smoke-free (Exemptions and Vehicles) Regulations 2007;
- Smoke-free (Penalties and Discounted Amounts) Regulations 2007;
- Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007;
- Smoke-free (Signs) Regulations 2007;

### **Smokefree premises**

To determine whether a workplace or public place is required under the legislation to be smokefree, it must be:

- used as a place of work by more than one person (even if persons who work there do so at different times, or only intermittently); OR
- open to members of the public; and
- In either case it must be enclosed or substantially enclosed.

### **Places of work**

Premises that are places of work for more than one person will be required to be smokefree at all times in all enclosed and substantially enclosed parts, even if people work there at different times of the day, or only intermittently. A place of work used only by one person will also be required to be smokefree at all times if members of the public enter the premises, for example to receive goods or services.

### **Premises that are open to the public**

Premises that are open to the public will be required to be smokefree in all enclosed and substantially enclosed parts. Premises are open to the public if the public, or a section of the public, has access. It does not matter whether access is open to everyone, or if access is restricted to certain members of the public by way of invitation or payment – the premises will still be required to be smokefree.

### **Definition of ‘enclosed’ and ‘substantially enclosed’ premises**

Premises will be considered enclosed if they have a ceiling or roof and, except for doors, windows or passageways, are wholly enclosed, whether on a permanent or temporary basis.

Premises are substantially enclosed if they have a ceiling or roof, but there are permanent openings in the walls, which are less than half of the total areas of walls, including other structures, which serve the purpose of walls and constitute the perimeter of premises.

Detailed definitions can be found in Appendix 1

### **Smokefree vehicles**

Section 5 of the Health Act 2006 provides power for regulations to require vehicles to be smokefree. A vehicle means every type of vehicle other than aircraft and ships and hovercrafts.

Regulation 11 of the Smoke-free (Exemptions and Vehicles) Regulations 2007 provides that an enclosed vehicle shall be smokefree if it is used:

- by members of the public or a section of the public, whether or not for reward or hire; or
- in the course of paid or voluntary work by more than one person, even if the persons who work there do so at different times or only intermittently.

If the vehicle has a roof, which can be removed, then the vehicle must be smokefree when it is wholly or partly covered by a roof. A vehicle does not need to be smoke free when its roof is completely stowed away so that it does not cover any part of a compartment in which persons may travel – when the vehicle is engaged in carrying persons. **Smokefree vehicles are required to be smokefree at all times.**

### **Vehicles not covered by the 2007 Regulations**

The Regulations do not apply to private vehicles, the definition for which can be found in Appendix 2. This provides that vehicles will not be required to be smokefree if they are used primarily for the private purposes of a person who:

- owns it, or
- has a right to use it which is not restricted to a particular journey (e.g. private leased cars).

### **Offences and penalties**

The Health Act and associated regulations create the following offence types:

- Smoking in a smoke free place
- Failure to display the required no-smoking signage
- Failure to prevent smoking in a smoke free place

The table in Appendix 2 summarises the three offences under the Health Act 2006, their maximum fines and their respective defences, as well as the offence of obstruction of officers. It also shows the amounts that will be applied as a fixed penalty for each of the offences as set out in the Smoke-free (Penalties and Discounted Amounts) Regulations 2007.

## **OVERALL ENFORCEMENT APPROACH**

Regulatory officers in Warrington already work closely with businesses to ensure that compliance is achieved with a wide range of legislative requirements for example in respect of food safety, occupational health and safety and Environmental Protection. It is proposed that the approach taken with smokefree legislation will be in the same manner as that usually adopted by the council, i.e. on a risk based approach.

Initially, the enforcement approach in Warrington will be advisory, supportive and non-confrontational in nature targeting businesses as opposed to individuals. It will primarily focus on developing compliance and education both before and for a period of time after the legislation comes into force. Subsequently, it will become apparent which businesses are making efforts to comply and which are not.

Where non-compliance is due to misunderstandings or a lack of diligence, then further information, advice and guidance will be provided. However, where it is evident that serious efforts are not being made to comply, or the attitude is un-co-operative or antagonistic, then a decision to take enforcement measures will be considered.

As it is likely that enforcement actions will attract publicity and public attention each decision on enforcement action will be properly considered and with clear justification. Where a person is determined to flout the law a robust response will be implemented.

Enforcement will be carried out by authorised officers who are trained and competent to carry out the functions contained within the legislation. Compliance with the legislative requirements will be achieved through a combination of reactive and proactive approaches. These approaches are outlined in detail below.

As with all council enforcement measures, all action taken will be fair, proportional and consistent and decided upon with reference to the Enforcement Concordat. In accordance with Enforcement Concordat principles therefore, a graduated approach to enforcement will be taken with the provision of advice and information as the first stage of the enforcement process.

## **INSPECTIONS**

Inspections carried out by regulatory officers will be either:

- Proactive, e.g. to advise businesses and to confirm compliance with the legislation
- Reactive, i.e. in response to a complaint

### **Proactive interventions**

- To advise businesses and to confirm compliance with the legislation. In addition to national campaigns by the government and other organisations, we will make advice and information freely available about how to comply with the law and liaison will be made with other Cheshire authorities to ensure a consistent approach. Further details are outlined under the heading 'national and local publicity campaign'.
- Proactive visits to high risk premises such as town centre pubs and clubs will be undertaken before the law comes in to force. This will be to assess preparedness, raise awareness, offer businesses the opportunity to discuss any potential concerns pertinent to the individual organisation and to offer appropriate guidance and support.
- Risk based inspections – A risk based inspection programme will be developed taking into account factors such as:
  - confidence in management;
  - history of compliance with the requirements of the smokefree legislation; and
  - number of complaints received from the National Smokefree Compliance Phone Line and other information sources.

Appendix 3 contains a list of anticipated programmed visits.

### **Reactive interventions**

Complaint investigation - we will respond to complaints about contraventions of smoke free legislation with a view to securing compliance with the legislation. Where contraventions of smoke free legislation are identified appropriate enforcement action will be taken. This is outlined below under the heading "enforcement options".

The source of such complaints may be the local authority's own complaints process, other enforcer's e.g. HSE or the National Smokefree Compliance Phone Line. All complaints will be investigated within a timeframe that meets the Council's standards for response times.

## **Approaches to inspections**

Regulatory officers will carry out visits in a number of different ways in relation to ascertaining compliance with the smokefree legislation. It will be a decision for the officers to choose the most appropriate course of action once all factors have been taken into account, i.e. which action will be likely to be the most effective and ensure the safety of the officer. Further explanatory information can be found in Appendix 4

There will be times when officers need to work collaboratively with the police to effectively enforce the legislation. Reference will be made to the Councils existing health and safety policy and procedures when considering the personal safety of the officers.

In enforcing the Health Act 2006, there will be circumstances where an authorisation is necessary and proportionate under the Regulation of Investigatory Powers Act 2000 (RIPA) and circumstances where it is not.

Appendix 5 contains some issues for consideration that will be taken into account relating to this.

## **ENFORCEMENT OPTIONS**

Where contraventions of smokefree legislation are identified appropriate enforcement action will be taken. Where a contravention is identified, in addition to taking enforcement action in accordance with this policy, the authorised officer will offer assistance to aid compliance in future.

Regulatory officers have the following enforcement options available to them:

- verbal warning;
- written warning;
- FPN or legal proceedings against an individual smoking in no-smoking premises (section 7(2) offence); and
- Fixed Penalty Notices (FPN's) or legal proceedings against an owner, occupier, manager or any other person in charge of no-smoking premises for failing to display no-smoking signage (section 6(5) offence);
- Legal proceedings against an owner, occupier, manager or any other person in charge of no-smoking premises for failing to prevent smoking in a smokefree place (section 8-(4) offence) – fixed penalty is not available for this offence.

There are no formal appeal provisions against the service of a FPN. However, Part 4 of the FPN, as set out in the Smoke-free (Vehicle Operators and Penalty

Notices) Regulations 2007, relates to the making of a request for a court hearing. Part 1 also allows for a named contact in the local authority to be identified to which the recipient can direct questions about the service of the FPN. The council will appoint an appropriate person to be able to deal with such cancellation of the FPN.

### **Fixed Penalty Notice Procedures**

The Fixed Penalty Notice will be in the form prescribed by the appropriate regulations. A person may request to be tried for the offence in Court instead of paying a fixed penalty.

For the offence of smoking in a smoke free place a fixed penalty of (£50) is prescribed by the regulations. If this penalty is paid, he will not be liable for conviction for the offence. A discounted amount of (£30) is payable if the fixed penalty is settled within 15 days.

For the offence of failing to display no smoking signage a fixed penalty of £200 is payable. If this penalty is paid, he will not be liable for conviction for the offence. A discounted amount of (£150) is payable if the fixed penalty is settled within 15 days.

Fixed Penalty Notices are only issued where there is adequate evidence to support a prosecution if a notice is not paid, and unpaid notices are followed up. Failure to pursue unpaid notices through the courts would discredit the use of fixed penalties in the locality, and would lead to declining rates of payment.

### **Prosecution procedures**

Prosecution will not be undertaken lightly and discretion will be exercised when deciding if this is the appropriate course of action. Other enforcement approaches may be more effective in securing the desired outcome, however, prosecution remains a cornerstone of enforcement and will be used where appropriate.

Prosecution without prior warning and recourse to other alternative sanction will be pursued where appropriate. For example, where there has been a blatant disregard for the law.

The purpose of prosecution is to punish the offender for wrong doing, prevent a recurrence, and act as a deterrent to others who have similar legal obligations.

The following factors will be considered when deciding whether to prosecute:

- The seriousness of the breach and the potential harm which may result.
- Was the breach and the events leading up to it foreseeable?

- Did the offender intend to commit the offence?
- What is the compliance history of the offender?
- What is the attitude of the offender?
- Will the prosecution have a salutary effect on others and encourage compliance with the law?
- What are the personal circumstances of the offender?

These factors are not exhaustive and reflect the range of issues, which will be considered when deciding if prosecution is the appropriate course of action.

### **Presumption to Prosecute**

The decision to prosecute will be taken having regard to the advice of the local authority's solicitor. There is a presumption to prosecute in the following circumstances:

- Where there has been a reckless disregard of the law, which has a potentially serious outcome.
- Where there has been a blatant disregard of the law, which has placed the offender at economic advantage over those who comply.
- Where there is a history of repeated breaches, either at the same site or at multiple sites, or a particular type of offence is prevalent at the site indicating significant management failings.
- Failure to comply with legal notices requiring remedial action.
- Where the contravention has caused particular public concern, e.g. an incident, which involves a member of the public or young person.
- Obstruction or assault on officers of the Department in the course of their duties.
- Impersonation of an officer to gain unlawful access to businesses or domestic premises.

### **Evidential Matters**

When deciding whether to initiate proceedings, officers will have regard to the Crown Prosecution Service's guidance in their Code for Crown Prosecutors, in terms of the tests of evidence and public interest. All evidence will be collected in accordance with the Police and Criminal Evidence Act and associated codes. Only when there is sufficient admissible and reliable evidence of the offence, and therefore a realistic prospect of conviction, will a case go forward. Cases that fail the evidential test will not proceed. Cases will not, however, be abandoned because they are difficult, or conviction is not a complete certainty.

## **Public Interest Factors**

Enforcement officers will also have to satisfy themselves that a prosecution is in the public interest. Issues relating to the seriousness of the breach and the circumstances of the offender fall into this category.

## **SHARED REGULATORY FUNCTIONS**

In relation to the Health Act 2006 there will be occasions when a transfer of enforcement cases between local authorities in Cheshire or other neighbouring authorities will be required.

When such situations arise, officers will liaise with their counterparts throughout the investigation to ensure effective co-ordination and co-operation in gathering and sharing information. Inconsistencies of approach will be avoided, and where proceedings are to be instituted, this will be undertaken by the most appropriate enforcing authority and the most appropriate officers.

Within a single local authority, regulators investigating complaints and carrying out inspections under this legislation may be located across service and departments. They will work together across departments and services as appropriate. When involved with cases where there is an overlap of responsibilities adequate liaison will be maintained and where necessary consideration will be given to ways of co-operating in the investigation and co-ordinating the outcome.

Reference will also be made to the enforcement protocol that is currently in the process of being drawn up by LACORS, outlining the commitments between a variety of agencies and regulators in respect of the legislation and these will be:

- To inform businesses about the new legislation
- To pass on intelligence to the council
- To alert the council to potential and actual breaches of the legislation

Information and intelligence received from other regulatory bodies including HSE will be treated in the same way as that arising from the National Smokefree Compliance Line.

## **AUTHORISED OFFICERS**

Enforcement will be carried out by authorised officers who are trained and competent to carry out the functions contained within the legislation. Existing officers, who are experienced in carrying out enforcement duties in relation to workplaces and businesses such as Environmental Health Officers and Trading Standards Officers, will be incorporating this work into their other inspection activities. We use the Government funding to employ experienced enforcement staff on short-term and flexible basis to address particular issues or businesses etc identified from complaints or other forms of intelligence

In addition, in the period leading up to the implementation of the legislation on 1 July 2007, there will many existing council staff that can provide information and advice and who will not need to be authorised in respect of enforcement activities.

## **ASSESSMENT OF COMPLIANCE**

Businesses will be receiving an information pack and signage from Smokefree England on the requirements of the legislation and the actions they need to take to comply. Further information can be found at:

[www.smokefreeengland.co.uk](http://www.smokefreeengland.co.uk)

**A business is considered to be complying with the legislation if smoking is not taking place in enclosed or substantially enclosed workplaces or public places and the required signage is properly displayed.**

Enforcement officers will carry out assessments to determine whether or not owners, occupiers, managers or any person in control of no-smoking premises are making reasonable efforts:

- to prohibit people from smoking on their premises,
- to prevent them from doing so, and
- to detect when breaches have occurred.

These efforts will include a combination of compliance with specific legal requirements and activities that represent good practice.

Further issues for officers to assess can be found in Appendix 6

## **COMPLAINT PROTOCOL**

All complaints will be assessed by an enforcement officer and action taken appropriate to the nature of the complaint.

All complaints will be investigated within a timeframe that meets the Council's standards for response times.

## **OPERATIONAL PROCEDURES AND DATA COLLECTION**

Many indirect issues arise from the implementation of the smokefree legislation that will involve inputs from, and co-ordination between, several council service areas. These issues include noise pollution, planning and building control, licensing provisions and management of the street scene. Warrington Borough Council will demonstrate a corporate approach from all council services so as to ensure that messages to businesses and the public are comprehensive and consistent.

### **Staffing arrangements**

Council staff with regulatory responsibilities for securing compliance with the smokefree legislation will be provided with the correct authorisation and a valid means of identifying themselves.

Smokefree legislation also applies to a wide range of vehicles and there may be a need to work with other agencies to obtain information about the numbers and types of vehicles and fleet operations in the local area. For example, information about the vehicles operated by haulage companies, minicabs taxi firms and other public transport systems, especially where the registered office is based locally.

### **Recording and reporting on activities**

The activity of the council in relation to securing compliance with the smokefree legislation will be properly recorded.

Data will be used by the Department of Health to provide assurance about the work of the enforcing authorities and the level of compliance as a way of understanding the success of the new law. The data will be proactively used for communication reasons on the work of enforcing authorities and the level of compliance.

## NATIONAL AND LOCAL PUBLICITY CAMPAIGN

A national awareness media campaign commenced in January 2007 and a national help line and information website has already gone live. Work has already commenced in Warrington to put in place the necessary support to ensure that businesses are aware of the legislation and their obligations. A Warrington Workplace Audit commenced in October 2006 and all businesses in Warrington have been contacted with a request for information about their smoke free status. A Warrington Smoke Free Policy Pack is available for businesses to guide them in developing policy in their workplace. Other activity includes:

- Leaflets explaining the legislation have been produced and are available for both the public and local businesses.
- A Frequently Asked Questions (FAQ's) web page for businesses and the public on the new Smoke Free Law is now live on the Council website
- A Local Implementation Team has been developed with input from a range of interested parties, including the Police, Fire Service, Local Authority Licensing Team, Planning and Transport. The team considers the implications of the legislation and how they will be addressed locally.
- A sub group looking at associated issues concerning pavement café licence requests and outside drinking and smoking areas is also meeting regularly
- A local publicity campaign linked to the national campaign is planned for the run up to the implementation date in 2007 consisting of:
  - proactive visits to town centre pubs and clubs assessing preparedness have already commenced.
  - smokefree issues are regularly included on the agenda at the weekly pubwatch meetings that take place across the borough
  - smoking shelter information leaflets have been produced and are available to businesses
  - smokefree publicity on billboards throughout the town
  - smokefree publicity on the selected buses
  - smokefree publicity on radio wire fm
  - staged press releases in the local press including case studies
  - smokefree award scheme promoted at the recent food award launch
  - schools smokefree poster competition prize giving event at the town hall
- A Smoke Free Award for businesses is in operation.
- A Silver and Gold Smoke Free Award for Schools has been developed and is in operation.

- Leaflets and information packs have been mailed out to 1,800 catering premises, 55 private membership clubs and all the off-licences across the town.
- Smokefree information and guidance has been included in the newsletter and mailed out to 650 licensed taxi drivers and transport operators.
- The Tobacco Control Project Officer and the enforcement staff in Trading Standards, Food and Health and Safety provide ongoing support and advice to businesses before and after the regulations come into force.

The Health Act 2006 has clarified the offences in relation to tobacco smoke, both in the workplace and enclosed public places. In order to facilitate compliance with the legislation a National Compliance Line will operate after the new law comes into force. This will be charged at local rate and allow the public to report anyone smoking in enclosed public places.

The National Compliance Line:

- Empowers the public, employees and others
- Ensures that proprietors are aware of their customers/employees desire to see the law implemented
- Enables the effective targeting of enforcement action by highlighting non-compliance.

The telephone number will be advertised before the law is introduced, and the Service will investigate all complaints.

## **CONCLUSION**

This document outlines the main focus of our enforcement approach and gives guidance to regulatory officers involved in this important area of public health enforcement. It aims to protect the health of people at work and members of the public who may be exposed to second hand smoke and we will take all reasonable steps to assist businesses and individuals to comply with the law. The underlying principles of zero tolerance towards businesses not individuals, focussing on compliance building will be the key to successful implementation of the law.

# APPENDICES

## Appendix 1

### Definition of 'enclosed' and 'substantially enclosed' premises

Premises will be considered to be enclosed if they have a ceiling or roof and, except for doors, windows or passageways, are wholly enclosed, whether on a permanent or temporary basis.

Premises are substantially enclosed if they have a ceiling or roof, but there are permanent openings in the walls, which are less than half of the total areas of walls, including other structures, which serve the purpose of walls and constitute the perimeter of premises. When determining the area of an opening, no account can be taken of openings in which doors, windows or other fittings that can be open or shut. This is known as the 50 per cent rule.

A roof includes any fixed or movable structures, such as canvas awnings. Tents, marquees or similar will also be classified as enclosed premises if they fall within the definition.

## Appendix 2

### Offences and Penalties

Offence under the Health Act 2006	Defence under the Health Act 2006	FPN if paid in 15 days	FPN if paid in 29 days	Max. court awarded fine if found guilty
<b>Section 6(5)</b> Failure to display no-smoking sign in a smokefree premise or vehicle (occupier or manager)	<b>Section 6(6)</b> It is a defence for the person charged to show that they did not know – and could not have reasonably been expected to know that the premises were smokefree <b>or</b> that they did not know and could not have reasonably have been expected to know that no-smoking signs complying with the requirements were not being displayed in accordance with the requirements <b>or</b> that on other grounds it was reasonable for them not to comply with this duty.	<b>£150</b>	<b>£200</b>	Level 3 on standard scale – currently up to <b>£1000</b>
<b>Section 7(2)</b> Person who smokes in a smokefree place or vehicle (any person smoking)	<b>Section 7(4)</b> It is a defence for the person charged to show that they did not know – and could not reasonably have been expected to know that it was a smokefree place	<b>£30</b>	<b>£50</b>	Level 1 on standard scale – currently up to <b>£200</b>
<b>Section 8(4)</b> Person having management or control of smokefree premises or vehicle fails to stop a	<b>Section 8(5)</b> It is a defence that they took reasonable steps – to cause the person in question to stop smoking or that they did not know and could not reasonably have been expected to know that the person in question was smoking or that on other grounds it was reasonable for them not to comply with the	Not applicable	Not applicable	Level 4 on standard scale – currently up to <b>£2500</b>

Offence under the Health Act 2006	Defence under the Health Act 2006	FPN if paid in 15 days	FPN if paid in 29 days	Max. court awarded fine if found guilty
person from smoking there (manager or person in control)	duty.			
<b>Section 11</b> Any person who intentionally obstructs an authorised officer or who fails to give assistance when requested to do so or who gives false or misleading information		Not applicable	Not applicable	Level 3 on standard scale – currently up to <b>£1000</b>

## Fixed penalty notice guide

Schedule 1 to the 2006 Health Act sets out the Fixed Penalty Notice scheme that applies to the Act. A Fixed Penalty Notice is a notice offering a person the opportunity to discharge any liability to conviction for the offence by payment of a fixed penalty.

As set out in the Smokefree (Vehicle Operators and Penalty Notices) Regulations 2007, a Fixed Penalty Notice must:

- identify the offence to which it relates and give reasonable particulars of the circumstances alleged to constitute that offence;
- state the name and address of the enforcement authority on whose behalf the officer was acting when the notice was issued;
- 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 the consequences of not making a payment within the period for payment;
- state the person 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; and
- state the person to whom and the address at which any representations relating to the notice may be made. The arrangements required under these regulations is included below.

Officers will need to ensure that a notice has been properly served. This may require serving immediately on the spot, or if a person is seen smoking in their work vehicle, the officer may have to contact the company to find out who was driving – this will then require the company to pass over the information. Officers in Scotland have used a fax system to request the information. Where that information is not provided then notices have been served on the individual care of the company's address. If a notice is sent recorded delivery, again the officer must keep a record of this.

There is no fixed time in which officers must serve the notice but to avoid any allegation of abuse of process, it is recommended that any notice is served within a reasonable time period and any delay will need to be justified. Officers will also need to be aware that the statutory limitation of six months will still apply for undertaking summary proceedings. The six months begins from when the offence occurred not from when the notice is served.

## **Payment periods**

The full amount of the fixed penalty as stipulated in the notice will be payable and must be paid within 29 days beginning with the day on which the notice is given.

However, a discounted amount is payable instead of the full amount if payment is made before the end of the period of 15 days beginning with the day on which the notice is given (if the last day does not fall on a working day, the period for payment of the discounted amount is extended until the next working day).

## **Failure to pay a Fixed Penalty Notice**

If a person on whom a notice has been issued fails to pay the amount set out at the end of the 29-day period then the council may institute legal proceedings for the offence to which the penalty notice relates.

## **Requesting a court hearing**

Where a person has received a FPN they can give notice in writing to the council requesting a Court hearing in respect of the offence for which they have received the notice. Legal proceedings may then be brought against them before the end of the penalty payment period. If the person changes their mind and then pays the discounted or penalty amount, then the proceedings may not be continued.

## **Withdrawal of notices**

There is no right of appeal against the service of a notice but the person on whom the notice is served may ask questions or put forward information that they feel, relevant to the issue of the notice. Should such information suggest that for example a notice has been incorrectly issued then the council may give notice in writing to the person and withdraw the FPN. If any monies have already been paid, these must be repaid.

Template notices are provided in the Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007.

## **Appendix 3**

### **List of anticipated proactive visits.**

- Where it has previously been customary for people to assume that they can smoke;
- Where the managers may not realise the law applies to them (possibly SMEs);
- Where the legislative proposals have been altered during the parliamentary process (e.g. in relation to private members' clubs);
- Where it can be anticipated that the management of the premises may have difficulty in securing compliance;
- Where it is likely that the management will wish to make use of the exemption provisions for designated bedrooms and designated smoking rooms;
- Which are open to substantial numbers of people;
- Where there is an absence of pre-existing voluntarily adopted controls on smoking; or
- Where regulatory officers do not usually visit as part of their routine inspections under other legislation.

## **Appendix 4**

### **Approaches to inspections**

- Official visit Officer announces themselves upon arrival and shows their authorization in writing to the person in charge of the premises, prior to carrying out an inspection of the premises to assess compliance.
- Covert visit Officer assesses compliance by observation from within the premises, and subsequently at the end of the period of surveillance they announce themselves and show their authorization in writing to the person in charge of the premises and, if necessary, carry out an inspection of the premises.
- Covert visit and leave Officer assesses compliance by observation from within the premises and then leaves without announcing themselves. Officer returns at an appropriate time when they announce themselves and discuss their findings with the person in charge of the premises and, if necessary, carry out an inspection of the premises.

## **Appendix 5**

### **Regulation of Investigatory Powers Act 2000 (RIPA)**

Article 8 of the Human Rights Act.

Before an authority considers RIPA they should first consider whether someone monitoring smoking within licensed premises could be an invasion of a person's Article 8 rights (i.e. the right to respect for private and family life under the Human Rights Act). Warrington Borough Council believes such surveillance should not be an invasion of these Article 8 rights as it is in accordance with the law and necessary for the protection of the public health.

- Intrusive surveillance Warrington Borough Council considers that covert surveillance within smokefree premises would not be intrusive surveillance within Part II of RIPA as it is not taking place in residential premises.
- Directed surveillance Warrington Borough Council believes information given in a smokefree place will generally not be private information as such information is given in a public place. Therefore, surveillance would not generally require directed surveillance authorisation within Part II of RIPA.
- Covert Human Intelligence Source (CHIS) Warrington Borough Council believes that it is very unlikely for an officer to establish or maintain a personal relationship to obtain information. If such a relationship was established or maintained an officer could be a covert human intelligence source (CHIS) and would require authorisation under RIPA.

## **Appendix 6**

### **Compliance issues for officers to assess**

#### **1.) Signage for premises**

All premises that are required by law to be smokefree will also be required to display the prescribed no-smoking signs at each entrance for use by people. The detailed requirements are set out in the Smoke-free (Signs) Regulations 2007.

Signage must be displayed in a prominent position and meet the following minimum requirements:

- be a minimum of A5 in area (210mm x 148mm);
- display the international non-smoking symbol at least 70mm in diameter;
- carry the following words in characters that can be easily read – ‘No smoking. It is against the law to smoke in these premises.’

Substitute words can be used for ‘these premises’ provided that they refer to the name and type of the particular premises to which the sign relates e.g. ‘this hotel’. Businesses can also display their own design of no-smoking signs provided that the minimum requirements are met.

There are some situations where a smaller sign may be displayed as an alternative to the A5-sized sign described above. A sign that consists only of the international no-smoking symbol in red and black with a minimum diameter of 70mm can be displayed at entrances to smokefree premises where:

- they are located within other smokefree premises that carry the A5-sized sign at entrances, e.g. a bar within a train station, or a shop within an indoor shopping mall; or
- they are only for use by members of staff, provided that the A5-sized sign is displayed on at least one entrance to the premises. The above descriptions are the minimum requirements for no-smoking signs in smokefree premises. Businesses are free to keep any pre-existing no-smoking signs in place where these are additional to the minimum requirements and to provide as much additional signage in whatever format and language they consider appropriate to inform people and support compliance. For example further signs may be appropriate in toilets.

#### **2.) Signage for vehicles**

All vehicles that are legally required to be smokefree will also be required to display no-smoking signs in each enclosed compartment of the vehicle in which

people can be carried. The detailed requirements are set out in the Smoke-free (Signs) Regulations 2007.

The operator of the smokefree vehicle shall be under duty to make sure that at least one no-smoking sign is displayed in a prominent position in each compartment of the vehicle. A compartment includes:

- any compartment used by the driver
- any compartment for use by the persons who are conveyed
- that which is wholly or partly covered by a roof (Vehicles with convertible roofs are not exempt and must still display the signage).

As a minimum, the no-smoking signs must include the international no-smoking symbol (a black cigarette with a red circle, with a red bar across it) with a minimum diameter of 70mm.

Most public transport is already smokefree and the replacement of pre-existing no-smoking signs is considered unnecessary, as long as the basic no-smoking sign requirements are met.

There is also no wish to create conflict with the current requirements for no-smoking signs in the Republic of Ireland and Scotland or those that will be incorporated in Wales and Northern Ireland or elsewhere in the British Isles. Signs that comply with the Scottish, Northern Irish and Welsh requirements would automatically comply in England.

### **Management controls**

It is recommended those persons in control of smokefree premises:

- develop a smokefree policy (preferably in writing in consultation with employees);
- adopt procedures (again, preferably in writing) for dealing with any people who smoke or attempt to smoke within the premises;
- train staff in both the smokefree policy and the written procedures and their roles and responsibilities for implementation;
- keep a written record of any incident where an individual smokes on the premises in contravention of the legislation, together with the action taken by any members of staff and the outcome; and
- for premises with exemptions, keep a written record of any rooms designated as rooms in which smoking will be permitted in accordance with the legal requirements.

### 3.) Smokefree policy and procedures

People who are in charge of smokefree premises have legal responsibilities to prevent people from smoking in their premises. It is strongly recommended that owners and managers establish and implement a written policy and procedures to demonstrate their compliance with the law. A sample smokefree policy is included in the Department of Health's guide on the new law that has been sent to all business, and can also be downloaded at [smokefreeengland.co.uk](http://smokefreeengland.co.uk) This can be adapted by businesses and organisations for their individual use.

The procedures for dealing with an individual smoking within smokefree premises should include the following actions:

- Draw the attention of the person to the no-smoking signs in the area and inform them that they are committing an offence by smoking.
- Politely ask them to stop smoking and offer them a safe method of extinguishing their smoking materials. Alternatively direct them to the nearest place where they are able to smoke legally.
- Advise the person smoking that their actions could result in them receiving a FPN as well as the person in control of the premises being prosecuted and receiving a fine of up to £2,500.

If they refuse, implement the normal procedures for dealing with anti-social behaviour or unlawful activities on the premises.

- Maintain a written record of all such incidents, the action taken and outcomes.
- If physical violence is threatened by the person smoking, notify and/or seek assistance from the police.

Employers are to be encouraged to develop a smokefree policy in collaboration with staff and their representatives.

The policy should identify the role of all members of management and staff who have responsibility for its implementation and review.

All staff working in no-smoking premises should be aware of which member of staff or management present is the responsible person for dealing with any persons smoking. In order to assist any future defence of "due diligence", each premises should keep a documented record of any incidents.

Businesses should be encouraged to contact the Environmental Health section after any incident.

Owners, occupiers, managers or other persons in charge should only be reported to the Procurator Fiscal after repeated failure to comply with the legislation. Again, this should be reserved for serious or persistent contraventions, and an

educational and non-confrontational approach should be used whenever possible.

#### **4.) Staff training**

Employers and managers should ensure that all staff, including new members of staff, are trained in relation to the smokefree policy.

The training for staff should include:

- awareness of their responsibilities in dealing with any persons smoking and those of other members of staff and managers;
- challenging assertively; and
- safeguarding personal safety.

Good practice would include reinforcing the policy on an ongoing basis as well as keeping a record of which members of staff have received this training, when they received it and what it included.

#### **5.) Recording incidents**

Where an incident of smoking has been reported to the regulatory officer it will be important to be able to demonstrate that appropriate action was taken at the time. For that purpose a documented record should be kept on the premises stating:

- date and time of incident;
- where person was smoking;
- action taken by staff (including name of staff member); outcome; and
- name (if known) and description of person who was smoking.

Businesses should be encouraged to contact their local council after any incident to inform them of the occurrence.

#### **6.) Ashtrays and receptacles for smoking-related litter**

Ashtrays and other such receptacles should not normally be present inside smokefree premises except in designated bedrooms and designated smoking rooms where these are permitted in premises with exemptions. However:

- it may be appropriate for a suitable receptacle to be kept behind a reception desk, serving counter or bar in order to safely extinguish any lit smoking materials that are discovered; and

- external bins and ashtrays may need to be brought into premises when they are closed for business.

In some circumstances it will be advisable to provide suitable receptacles where smoking is permitted outdoors and in areas that are not substantially enclosed in order to minimise smoking-related litter.

Where this is the case, then it should be borne in mind that the siting of receptacles may well determine where people smoke and therefore careful siting may avoid obstructions of footways and the drift of secondhand smoke into nearby buildings.

There may be planning considerations if receptacles are to be attached to external building walls, especially on listed buildings.

## **7.) Public sector premises**

Councils will be expected to make their own arrangements to ensure compliance by their staff, members of the public and contractors whilst on their premises and working on their behalf.

To that end the council should make a robust statement that compliance with the smokefree legislation is a strict requirement of all those acting on its behalf and that there may be consequences for people who breach the law:

- regulatory officers can issue other local council officers with FPNs in respect of smoking offences on council premises or elsewhere;
- councillors who smoke in breach of the law can be reported to the Standards Board for England; and
- contractors can incur penalties for default and even termination or non-renewal of contracts.

It is considered that all of the above are effective measures and in addition, the council would expect that all of its staff will comply with the law whilst at work. Failure to comply with the law could possibly bring the council into disrepute and could also be dealt with under the council's normal disciplinary procedures and incur the appropriate sanctions.

## **8.) Exemptions**

There are very few exemptions permitted by the smokefree legislation and they are limited to specified areas in certain categories of premises, including:

- private dwellings;
- sleeping accommodation for guests and club members;
- other residential accommodation;

- performers;
- specialist tobacconists;
- offshore installations;
- research and testing facilities; and
- a time limited temporary exemption for mental health units (then required to be smokefree from 1 July 2008)

Definitions of what these exemptions mean are set out in the Smoke-free (Exemptions and Vehicles) Regulations 2007. In all cases there are particular conditions that must be met and regulatory officers will need to be aware of these and assess compliance with these when deciding whether an exemption has been properly implemented.