

SMOKING BAN ENFORCEMENT POLICY

Introduction

The Government's White Paper 'Choosing Health: Making Healthy Choices Easier' published in 2004 proposed action in second hand smoke and sets out a clear strategy to tackle smoking as well as to reduce the effects of smoking on others:

The Health Act 2006 Chapter 1 containing the smokefree legislation received Royal Assent in July 2006 and will come into force in England on 1st July 2007. This introduces a comprehensive ban on smoking in enclosed public places and workplaces. The legislation in England which affects controls on smoking in public places is comprised of:

- The Health Act 2006
- Smokefree (Premises and Enforcement) Regulations 2006
- Smokefree (Exemptions and Vehicles) Regulations 2007
- Smokefree (Penalties and Discounted Amounts) Regulations 2007
- Smokefree (Vehicle Operations and Penalty Notices) Regulations 2007
- Smokefree (Signs) Regulations 2007

Areas of Responsibility

The Commercial Team of Environment and Health has the lead enforcement responsibility for the Health Act 2006.

The Commercial Team along with the Health Promotion Team aim to protect the public's health and well being in particular due to exposure to second hand smoke in enclosed and substantially enclosed premises. This document outlines the area of work to be covered by the team and sets out our current approach to law enforcement. The approach is based upon the principles expressed by the enforcement concordat, which has been adopted by the Council and forms the basis of the Environment and Health's Enforcement Policy. Included in the term 'enforcement' are advisory visits, routine inspections and assisting with compliance as well as formal enforcement action.

Enforcing the Law

We aim to provide a quick and effective response to flagrant breaches of the above legislation. We will adopt a discriminating and equitable approach to any other failures to meet the requirements of the legislation. To achieve this aim enforcement of the commercial team follows these essential principles:

Openness
Helpfulness
Proportionality
Consistency

Targeting
Accountability

Openness

Openness means helping businesses to understand what we expect of them and what they should expect from ourselves.

It also means making clear why an officer intends to, or has taken enforcement action. This means distinguishing between statutory requirements and good practice. Individuals and organisations need to know what to expect from enforcing authorities and their procedures with regard to regulations. We will ensure that, wherever possible:

- When action is required (the reasons are clearly explained and confirmed in writing); suitable and reasonable time is allowed for the action and that clear distinction is made between good practice and what is legally required.
- General issues are discussed on what is required by law before enforcement action is taken.
- When action is required a written explanation of the reasons is provided, we will provide information and advice in plain language. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

Consistency

Businesses managing similar risks have a right to expect consistency from enforcement authorities be it in the advice tendered, the use of enforcement notices and or decisions to prosecute.

In practice, consistency is not a simple matter; officers are faced with many variables:

- The level of risk
- The effect of non compliance on others
- The attitude and competence of management
- Public opinion

The decision on enforcement is a matter of judgement and officers must exercise their discretion as individual circumstances dictate. Arrangements are in place to promote consistency, which includes liaison with the 14 authorities that comprise Hertfordshire and Bedfordshire.

Targeting

Officer's time is targeted primarily in those activities that give rise to greatest concern. Inspections will be either:

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

Initially programmed visits will be focused on premises

- Where it has previously been customary for people to assume that they can smoke
- Where managers may not realise the law applies to them.
- Where legislative proposals have been altered e.g. private member clubs
- Where it can be anticipated that the management of the premises may have difficulty in securing compliance
- Where management make use of exemptions for designated bedrooms and smoking rooms
- Which are open to a substantial number of people e.g. nightclubs
- Where there is an absence of pre-existing voluntary adopted controls on smoking or
- Where enforcement officers do not usually visit as part of their routine inspections

The development of a risk based approach for premises is likely to evolve as familiarisation with the new requirements improve, such a programme will include factors such as:

- Confidence in management
- History of compliance with the requirements of the smokefree legislation
- Number of complaints received from the National Smokefree Compliance phone line and other informed sources

NB In many cases it will be appropriate to incorporate both proactive and reactive inspections as part of other compliance work e.g. health and safety visits and food hygiene inspections.

Proportionality

This means relating enforcement action to the risks posed. Any action taken by officers to achieve compliance will be proportionate to the seriousness of any breach. The decision to prosecute is clearly defined in the Council's prosecution policy.

Accountability

We accept that we are accountable for the efficiency and effectiveness of our activities, while remaining independent in the decisions that we take. We welcome customer feedback and any constructive criticism on what or how we can improve.

We provide a well publicised, effective and timely complaints procedure easily accessible to businesses.

Assessing Compliance

Guidance developed by LACORS (The Local Authority Co-ordinators of Regulatory Services) co-ordinates the regulatory services delivered by local government and has

provided guidance to support all Council regulatory officers to ensure they successfully implement the new smokefree legislation.

As with all legislation, there is always the opportunity for local interpretation and application according to local circumstances. However it is particularly important to ensure a consistent approach to implementation. Therefore the guidance has detailed the approach that enforcement officers should take in assessing compliance with legislation.

Enforcement officers will carry out an assessment to determine whether or not owners, occupiers, managers or any person in control of smokefree premises have complied with the legislation.

Compliance

Approaches to Inspections

- Official visit – the officer announces themselves on arrival, shows authorisation to the person in charge prior to carrying out an inspection.
- Covert visit – the officer assesses compliance by observation from within the premises and subsequently at the end of the surveillance announces themselves. Show their authorisation to the person in charge and if necessary carry out an inspection.

Covert visit and leave. Officers assess compliance by observation from the premises and then leaves without announcing themselves. The officer returns at an appropriate time when they announce themselves.

Signage

No smoking signs must be displayed in a prominent position at or near each entrance.

The minimum

- * A5 in area (210mm x 148mm)
- * displays the international no smoking sign 70mm in diameter
- * Carry the words that can be easy to read

'No smoking it is against the law to smoke on these premises'

NB. Signs are free from the Council Offices or downloaded at smokefreeengland.co.uk

Management Controls

It is recommended that those in control of smokefree premises:

- Remove all ashtrays and any other receptacles
- Develop a smokefree policy (preferably written)
- Develop a procedure for dealing with any people who smoke, preferably written

- Communicate with the policy and written procedure to staff
- Keep a written record of any incident where an individual smokes on the premises, together with the action taken
- For premises with exemptions, keep a written record of any rooms designated as rooms in which smoking will be permitted.

Smokefree Policy and Procedures

The procedures should include the following:

- Draw the person's attention to the "No Smoking" signs and inform them that he/she is committing an offence by smoking. Politely ask them to stop.
- 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 fixed penalty notice FPN as well as the person being in control of the premises being prosecuted and receiving a fine of £2,500
- Refuse the person service
- If they continue ask them to leave the premises
- If they refuse implement the normal procedures for anti social/illegal behaviour on the premises
- Maintain a written record of all such incidents, the action taken and outcomes

Compliance on Vehicles

Although the duties for smokefree vehicles are similar in wording to those smokefree premises the practical steps involved in achieving and assessing compliance are different. Enforcement officers will carry out an assessment to determine whether or not the relevant persons have taken "reasonable steps to prevent people smoking in the vehicle".

Taking Remedial Action

Environmental Health Officers have a history of working closely with businesses and promoting compliance with legislation, utilising tools such as education, advice advocacy and persuasion to convince people that compliance is the desirable course of action. Enforcement officers revert to formal enforcement only when it is warranted by the seriousness of the situation. In these instances, there will often have been previous dialogue with the accused, giving them every opportunity to comply with the law.

The initial approach should be a non confrontational one and the focus should be to raise awareness and understanding around the reasons for the introduction of the ban, and to ensure compliance with the new legislation.

The following options are available:

- Verbal warning
- Written warning

- Fixed Penalty Notice or legal proceedings against the owner, occupier or manager or other person in charge of the non smoking premises for failing to display no smoking signage

FPN or legal proceedings against an individual smoking in a no smoking premises.

Legal proceedings against an owner, occupier or manager or any other person in charge of a non smoking premises for failing to prevent smoking in a smokefree place.

The Council will follow the guidance and flow charts produced by LACORS which suggests a staged approach to prosecution or fixed penalty notices only after verbal and written warnings have been issued.

Initial enforcement activity should focus on the owner/proprietors as they are likely to have management and control of the premises.

If owners/proprietors self regulate their premises, then it is likely that individuals using the premises will comply.

The Council will only consider taking action against individuals in no smoking premises where the person in control or concerned with the management of these premises can demonstrate that they have taken reasonable steps against these individuals smoking on their premises and have documented policies and procedures to evidence this.

The Policy

Legal status of the policy.

This policy is intended to provide guidance for officers, businesses and members of the public. It does not affect the discretion of the Council or its inspectors to take legal proceedings where this is considered to be in the public interest.

This policy is available on the Council website www.stalbans.gov.uk or if you would like a paper copy please telephone: 01727 819444, email: environment@stalbands.gov.uk or post:

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