

SUBJECT:	IMPLEMENTATION OF SMOKE FREE LEGISLATION IN SOUTHAMPTON.
DECISION-MAKER:	LICENSING (GENERAL) SUB-COMMITTEE
DATE OF DECISION:	4 TH JULY 2007
REPORT VERSION No:	1

FORWARD PLAN No:**KEY DECISION?** No**STATEMENT OF CONFIDENTIALITY**

NOT APPLICABLE

WARDS/COMMUNITIES AFFECTED:

ALL

SUMMARY

Regulations made under the Health Act 2006 which came into force on 1st July 2007, prohibit smoking in all enclosed public premises and workplaces, with some limited exemptions. The Council is required to enforce these regulations and this report seeks the necessary delegated powers and approval of the proposed approach to enforcement. The matter was initially considered by Cabinet on 18th June 2007 who recommended that the Licensing (General) Sub Committee proceed as below. Following very recent secondary legislation the terms of reference of the Licensing (General) Sub Committee to administer all matters relating to smoke free legislation will be considered by Council on 16th July 2007 with a recommendation that all matters come under the remit of this committee

RECOMMENDATIONS:

- (i) that subject to the terms of reference being amended by Council on 16th July 2007 authority be delegated to the Head of Environmental Health & Consumer Protection to authorise officers to enforce the smoke free legislation under Part 1 of the Health Act 2006 and associated Regulations and Guidance.
- (ii) To approve the approach to enforcement outlined in this report.

REASONS FOR REPORT RECOMMENDATIONS

To enable the proper implementation and enforcement of Smoke Free legislation in Southampton.

BACKGROUND

1. A Government White Paper "Smoking Kills" published in 1998, highlighted the fact that 120,000 people die in the UK each year as a result of smoking at a cost to the NHS of £1.7 billion. A further White Paper "Choosing Health" which followed in November 2004, concluded that there was an increasing public demand for action on smoking. In February 2006, MPs voted to support legislation which prohibited smoking in public places in England. The Health Act 2006 which followed, made provision to prohibit smoking in all

enclosed workplaces and public places, with a few limited exemptions.

2. There has been a growing intolerance to second hand smoke and recent studies have shown the extent of the risks to non-smokers as a result of passive smoking. In particular, there is an increased risk of coronary heart disease, lung cancer and stroke, as well as the exacerbation of conditions such as asthma. It is estimated that there are 11,000 deaths in the UK each year from general exposure to second hand smoke.

CONSULTATION

3.
 - A paper taken in January 2007 to Environment and Transport Portfolio Member Briefing was also circulated to the Environment and Transport Standing Scrutiny Panel and presented at the Council's Policy Coordinators Group.
 - A briefing paper produced in conjunction with Communities, Health and Care Directorate and the PCT, was taken to the Public Health Scrutiny Panel and Health and Wellbeing Partnership meetings in February 07.
 - A seminar was provided for businesses in March 07 and a number of other presentations have been made to local specialist business groups.
 - PCT, NHS and other Partners have been consulted through the Smoke Free Southampton Task Group meetings.
 - Internal consultation has included the City Council's Democratic, Legal, Finance, Property Services, Public and Private Sector Housing, City Patrol, Licensing and Open Spaces departments.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

4. The approach to the implementation and enforcement of the Smoke Free legislation outlined in this report is recommended by the Department of Health and endorsed by LACORS. No alternative options were therefore considered.

DETAIL

Legislation

5. The Health Act 2006 which received Royal Assent on 19th July 2006 made provision for the prohibition of smoking in public and workplaces and amendment of the minimum age for the sale of tobacco from 16 to 18 years.
6. Regulations which came into effect on 1st July 2007 provide the specific detail about how smoke free legislation will be implemented.
7. Smoking will be prohibited in all enclosed premises. Premises will be considered to be enclosed if they have a ceiling or roof and, except for doors, windows or passageways, have permanent openings in the walls less than half of the total areas of the walls. There will be requirements for prescribed signs at the entrance to all enclosed public premises indicating that it is a No Smoking Area.
8. There are some limited exemptions to the regulations relating to private accommodation, accommodation for guests, e.g. hotels and other residential accommodation (care homes, hospices and prisons for adults). There are also some specific exemptions for performers, specialist tobacconists, research and testing facilities, and offshore platforms.

Approach to Enforcement

9. First-tier local authorities, together with Port Health Authorities, will enforce the smoke free legislation. In Southampton, the enforcement of the regulations in more than 7,000 workplaces, and other premises with shared public spaces, will be carried out by the Environmental Health & Consumer Protection Division. There will also be collaboration with other services such as Licensing, Housing, and City Patrol to enforce the regulations, particularly in relation to vehicles, including taxis and the common parts of flats and houses in multiple occupation.
10. A non-confrontational approach to enforcement is proposed, which focuses on raising awareness and understanding to ensure compliance. Enforcement officers have been working closely with businesses and this will continue with an aim of building compliance through education, advice and support, before and for a period of time after, the legislation comes into force. Where evidence that non-compliance is due to misunderstanding or a lack of diligence, then further information, advice and guidance will be provided. However, where businesses do not make the effort to comply, and they are un-cooperative or antagonistic, then enforcement action will be taken.
11. Programmed enforcement visits will be based on risk and where possible, they will be combined with other regulatory inspections to reduce burdens on businesses and maximise the efficiency of the regulatory service. Visits will also be carried out in response to complaints of non compliance that are made either direct to the Council or via a national telephone line. Complaints will provide useful information and, whilst in themselves will not constitute evidence of an offence, will need to be followed up.
12. Officers will have the following enforcement options:
 - Issuing a verbal warning;
 - Issuing a written warning;
 - Issuing a Fixed Penalty Notice or pursue legal proceedings against a person in charge* of a no-smoking premises for failing to display prescribed signage;
 - Issuing a Fixed Penalty Notice or pursue legal proceedings against an individual smoking in a no-smoking premises; or
 - Pursuing legal proceedings against a person in charge* of no-smoking premises for failing to prevent smoking in such a place.

* owner, occupier, manager or any other person in charge of a premises

Detailed enforcement procedures will be developed based on the LACORS guidance attached as a background paper.
13. Enforcement action in the first instance will be taken against those who allow smoking rather than individual smokers, except where proprietors of businesses can show that they have taken all reasonable steps to prevent smoking on their premises. In the period between the commencement date and consideration by Council on 16th July 2007 should an urgent need arise to take enforcement action adequate delegated powers are in situ and granted to the Solicitor to the Council.
14. In countries where smoke free legislation is already in place e.g. Republic of

Ireland, this approach to enforcement has led to high levels of compliance.

Implications for Other Council Services

15. The introduction of smoke free legislation is likely to result in a significant increase in people smoking outside, on the street and in areas specifically provided for them.
16. Although businesses will have a responsibility to control issues associated with the smoke free legislation, there are likely to be implications for Council services arising from:
 - Noise nuisance complaints from nearby residents;
 - Litter on the street.

Planning and licensing procedures will be used to control shelters for smokers, and tables and chairs on the street. Awareness amongst smokers to dispose of their litter responsibly will be raised through a variety of initiatives. The provision of bins for the disposal of cigarette ends will also be promoted. Enforcement action where necessary will be pursued under existing legislation should any issues arise.

17. There are also direct implications for the Council in complying with the regulations in Council buildings. The Council's No Smoking Policy already restricts smoking in Council premises and vehicles, and arrangements have been made to ensure that all necessary signage is provided.

FINANCIAL/RESOURCE IMPLICATIONS

Capital

18. None

Revenue

19. The Department of Health have agreed a total funding package of £29.5 Million for first-tier local authorities in England to enforce the new smoke free legislation.
20. Southampton City Council has received a grant to the value of £131,906 paid under Section 31 of the Local Government Act 2003. £22,366 was paid to cover work undertaken during 2006/07 and £109,540 for 2007/08 to support the enforcement of the Smoke Free legislation. The funding will support the Smoke Free Communications Plan (attached as Appendix 1) and provision of additional temporary agency staff.
21. In addition, the Southampton Primary Care Trust through the Hampshire and Isle of Wight Tobacco Control Alliance, has provided a grant to Southampton City Council of £9,000 to support work promoting the smoke free legislation to include their Quitters Service, which helps those wishing to give up smoking.
22. It is expected that smoke free public premises will become accepted as the norm and that by the end of 2007/08, enforcement activity will reduce to a level that can be accommodated as part of routine enforcement work. Therefore no additional ongoing funding will be required.

Property

23. Additional staff resources can be accommodated within current accommodation.

Other

24. None.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

25. The Health Act 2006, The Smoke-free (Premises and Enforcement) Regulations 2006, The Smokefree (Exemptions and Vehicles) Regulations 2007, The Smokefree (Penalties and Discounted Amounts) Regulations 2007, The Smokefree (Vehicle Operators and Penalty Notices) Regulations 2007, The Smokefree (Signs) Regulations 2007.

Other Legal Implications:

26. In considering the matters set out in this report, the Council must have regards to the Human Rights Act 1998 and s.17 Crime & Disorder Act 1998.

POLICY FRAMEWORK IMPLICATIONS

27. The effective implementation of the smoke free legislation will contribute to the priorities contained in the Councils Local Area Agreement and Health & Well Being Strategy.

SUPPORTING DOCUMENTATION

Appendices

1.	Communication Plan
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Documents In Members' Rooms

1.	None
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Background Documents

	Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt / Confidential (if applicable)
1.	Implementation of Smoke Free Legislation in England – Guidance for local Council regulatory officers, LACORS Guidance.	

2.	Implementation of Smoke Free Legislation in England – Associated Issues, LACORS Guidance	
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Background documents available for inspection at: 3rd Floor, Southbrook Rise.

REPORT OF: Head of Environmental Health and Consumer Protection

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File Name: 070407 Smoke Free legislation