
**REGULATION OF SMOKING IN SMOKE-FREE PREMISES,
PLACES AND VEHICLES**

**Responsible Cabinet Member - Councillor Stephen Harker,
Consumer and Environmental Services Portfolio**

Responsible Director - John Buxton, Director of Development and Environment

Purpose of Report

1. To consider and approve a strategy and policy to implement those parts of the Health Act 2006 that regulates smoking in smoke free premises, places and vehicles.

Information and Analysis

2. Darlington Borough Council is an Enforcement Authority for the purposes of the Smoke-free (Premises and Enforcement) Regulations 2006 made under Section 10 of the Health Act 2006.
3. The Act places a duty, from 1 July 2007, on Enforcement Authorities to enforce the smoke-free provisions of the Act and regulations made under it.
4. The Health Act 2006 provides for four main offences which can be summarised as:
 - (a) Persons in control or concerned with the management of a smoke-free place, failing to prevent smoking.
 - (b) Smoking in a smoke-free place.
 - (c) Failing to display conforming "no smoking" signs in smoke-free premises.
 - (d) Intentional obstruction of an Authorised Officer.
5. The Act provides for an Authorised Officer to enforce the legislation and issue Fixed Penalty Notices with respect to offences stated in 4(a) and 4(b) above (a fixed penalty allows an individual to discharge any liability to conviction by payment of a prescribed amount). The legislation also makes provision for prosecution with respect to each of the four offences.
6. The Regulations made under the Health Act 2006 are:
 - (a) Smoke-free (Premises and Enforcement) Regulations 2006
 - (b) Smoke-free (Signs) Regulations 2007
 - (c) Smoke-free (Exemptions and Vehicles) Regulations 2007
 - (d) Smoke-free (Penalties and Discounted Amounts) Regulations 2007

7. The legislation has the aim of protecting people who work in, or visit enclosed and substantially enclosed public places and work places, from exposure to secondhand smoke.
8. It is intended that Authorised Officers will assess whether premises comply with the legislation. They will determine whether owners, occupiers, managers, or persons in control of premises have taken all reasonable precautions to avoid people smoking and whether the required “no smoking” signs are in place.
9. Individuals who are found to smoke in a smoke-free place may have formal enforcement action taken against them if the owner, occupier, manager or any other person in charge can demonstrate that they have taken all reasonable precautions against these individuals smoking on their premises. After considering the experiences of the Scottish and Irish Enforcement Authorities, it is not anticipated that this action will be frequently used. Fixed Penalty Notices may be issued in these cases. In determining the need for prosecution, the case officer will consider the alleged offence and the circumstances so that action is proportionate and in accordance with published guidance. Prosecutions will only be undertaken with the approval of a section manager.
10. Based on the experiences of enforcement authorities in Ireland and Scotland it is anticipated that there will be general public support for the smoke-free laws and early compliance in most premises will be achieved through self-regulation.
11. The Council has been allocated funding of £9,500 for 2006/07 and £46,468 for 2007/08 to enforce the legislation.
12. A Healthy Workplace Officer has been recruited for an 18 month period to promote compliance with the legislation and act as an Enforcement Officer. Environmental Health Officers, Trading Standards Officers, Licensing Enforcement Officers and Uniformed Wardens also have a role to play.

Proposed Enforcement Strategy

13. Enforcement will be by officers authorised in writing by the Director of Development and Environment.
14. Authorised officers will follow the Council's published enforcement policy. The ethos for enforcement in Darlington Borough Council is that individuals and businesses should be assisted, where possible, and educated, where necessary, to achieve compliance. Enforcement action will be the minimum necessary to ensure compliance with the law, to avoid undue burdens on businesses and the community and make best use of this authority's resources.
15. Authorised Officers will be trained in the enforcement of this legislation, commensurate with their enforcement roles. They will be made aware of the enforcement actions that they can take under this legislation in a written Public Protection Division enforcement procedure.
16. Enforcement action will be targeted so that priority is given to premises that pose the greatest risk of non-compliance, where a comparatively large number of people may be exposed, or where complaints are received.

17. Formal enforcement action will be fair, proportional and consistent and only taken when the seriousness of the situation warrants it. A diagrammatic representation of enforcement decision process is attached as **Appendix A**.
18. Consistency in enforcement standards will be achieved through staff training, written enforcement procedures and forms, and monitoring by senior officers.
19. Where appropriate, the review process for a premises licence issued under the Licensing Act 2003, will be used. This will be with respect to the licensing objective for the Prevention of Crime and Disorder.
20. Enforcement activity will be co-ordinated by the Environmental Health Manager.

Policy for Targetted Inspections

21. Inspections will be proactive (programmed visit) to confirm compliance, or reactive in response to a complaint.
22. First priority for inspection will be given where:
 - (a) Premises are of a type where people have traditionally smoked.
 - (b) Large numbers of people could be affected because of the numbers employed, or they are more extensive enclosed public places.
 - (c) Complaints about non-compliance are received.
 - (d) An advisory letter, or warning letter has been sent for non-compliance.
 - (e) Formal enforcement action has previously been taken for smoke-free offences.
 - (f) Premises serve a population where there is a disproportionately high burden of health risks due to smoking.
23. Second priority for inspection will be given where:
 - (a) There is knowledge that clear efforts are being made to achieve compliance.
 - (b) Businesses have asked for advice and information.
24. Third priority for inspection will be given where:
 - (a) The business has several premises and there is confidence that they will self-regulate.
 - (b) Businesses are displaying the “no smoking” signs and no complaints have been received.

25. No priority for inspection will be given where:
- (a) Premises are known to be smoke-free because they have a National Clean Air Award.
 - (b) Premises are known to be smoke-free because of information collected by the Environmental Health, Licensing and Trading Standards Teams during programmed and reactive inspections.
26. During the inspection process Authorised Officers may:
- (a) announce themselves, show identification to a person in charge of premises and then assess compliance with the provisions; or
 - (b) assess compliance covertly by observation within the premises. Then at the end of the period of surveillance, announce themselves and show identification to the person in charge of the premises; or
 - (c) assess compliance covertly by observation within the premises and then leave. They will wait until the following working day to discuss their findings with the manager of the premises or write to them;
 - (d) check the entrances to premises to ensure that the required “no smoking” signs are displayed.
27. The Council is mindful of its obligations for the health and safety of its staff and personal safety of officers should not be compromised by enforcement action.

Policy for Responding to Requests for Service

28. Members of the public will be able to complain to the Council about their concerns that specified businesses are not complying with the smoke-free legislation. The Contact Centre is expected to receive these mainly by email and telephone.
29. The response to complaints received about non-compliance with the legislation will be prioritised taking into account the number of complaints received, the number of people likely to be affected, the nature of the complaint and whether the alleged offender has been previously warned regarding non compliance.
30. Action taken by an Authorised Officer with respect to a complaint about smoking will be appropriate to the nature of the complaint and and in accordance with enforcement policy.

Prosecution Policy

31. In deciding whether to prosecute for offences under the Health Act 2006, factors including the following, will be taken into consideration:
- (a) Whether there has been a blatant 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. Blatant disregard includes deliberate non-compliance with the smoke-free legislation.
 - (b) The general record and attitude of the offender to compliance.
 - (c) Whether prosecution is desirable to deter others from similar failures to comply with the law.
 - (d) Whether the evidence available provides a realistic prospect of conviction.

- (e) Whether an Authorised Officer has been obstructed in the lawful course of their duties.
- (f) Whether or not the offender has taken all necessary steps to prevent a recurrence of the problem.
- (g) The ability of any important witnesses and their willingness to co-operate.
- (h) Whether a Fixed Penalty Notice has not been paid within the required timescale.
- (i) Action being taken to meet the smoke-free requirement.

Complaints about Officers or Service Provision

32. Any complaints about Authorised Officers, or service provision can be raised in the first instance with the Section Manager. Complaints will be dealt with under the Council's Complaints Procedure. This procedure and a complaint form can be found on the Council web site www.darlington.gov.uk or can be obtained from any Council office.

Legal Implications

33. This report has been considered by the Borough Solicitor for legal implications in accordance with the Council's approved procedures. There are no issues which the Borough Solicitor considers need to be brought to the specific attention of Members, other than those highlighted in the report.

Section 17 of the Crime and Disorder Act 1998

34. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. It is not considered that the contents of this report have any such effect.

Council Policy Framework

35. The issues contained within this report do not represent change to Council policy or the Council's policy framework.

Decision Deadline

36. For the purpose of the 'call-in' procedure this does not represent an urgent matter.

Key Decisions

37. This is a key decision as the enforcement actions will have an affect on businesses, residents and visitors in Darlington.

Recommendation

38. It is recommended that:
- (a) The Director of Development and Environment be given delegated authority to enforce those parts of the Health Act 2006 that relate to regulation of smoking.

- (b) That the strategy and policy for enforcement detailed in the report be approved.
- (c) That the actions taken by officers to prepare for implementation of this legislation be approved.

Reasons

39. The recommendations are supported by the following reasons:

- (a) The Council is an Enforcement Authority for the purposes of the Health Act 2006 and is required under Section 10 (3) of the Act to enforce the smoke-free provisions of the Act and regulations made under the Act.
- (b) A clear strategy and an agreed policy on enforcement will ensure fair, consistent, proportional, transparent and accountable regulation of the legislation.

John Buxton
Director of Development and Environment

Background Papers

Health Act 2006

Appendix

A Diagrammatic illustration of enforcement decision process

Barry Pearson : Extension 388560
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Appendix A - Enforcement Action Decision Tree

