

# Implementation of smokefree legislation in England

Guidance for local council regulatory officers



**In offering this advice LACORS wishes to make it clear that:**

- legislation may change over time and the advice given is based on the information available at the time the guidance was produced – it is not necessarily comprehensive and is subject to revision in the light of the further information;
- only the courts can interpret statutory legislation with any authority; and
- this advice is not intended to be definitive guidance nor a substitute for the relevant law and independent legal advice should be sought where appropriate.

# Contents

<b>1</b>	<b>Purpose of the guidance</b>	<b>4</b>
<b>2</b>	<b>Background to the legislation</b>	<b>6</b>
<b>3</b>	<b>Overall approach and enforcement policy</b>	<b>8</b>
<b>4</b>	<b>Legislative requirements and offences</b>	<b>9</b>
<b>5</b>	<b>Enforcement agencies and authorised officers</b>	<b>12</b>
<b>6</b>	<b>Inspections</b>	<b>14</b>
<b>7</b>	<b>Application</b>	<b>16</b>
<b>8</b>	<b>Enforcement action</b>	<b>21</b>
<b>9</b>	<b>Operational procedures and data collection</b>	<b>26</b>
<b>10</b>	<b>Working with the media</b>	<b>29</b>
<b>Appendix 1</b>	<b>Evidence</b>	<b>30</b>
<b>Appendix 2</b>	<b>Definitions</b>	<b>31</b>
<b>Appendix 3</b>	<b>Media interview prompt sheet</b>	<b>33</b>
<b>Appendix 4</b>	<b>Offences and penalties</b>	<b>34</b>
<b>Appendix 5</b>	<b>Fixed penalty notice guide</b>	<b>35</b>
<b>Appendix 6</b>	<b>Example incident recording form for businesses</b>	<b>44</b>
<b>Appendix 7</b>	<b>RTPM contact details and smoking cessation information</b>	<b>45</b>
<b>Appendix 8</b>	<b>Key issues in relation to smoking shelters</b>	<b>47</b>
<b>Appendix 9</b>	<b>The ten reasons for smokefree legislation</b>	<b>48</b>
<b>Appendix 10</b>	<b>Application, exemptions and advice on good practice</b>	<b>49</b>
<b>Appendix 11</b>	<b>Summary of the Department of Transport consultation document</b>	<b>58</b>

# 1 Purpose of the guidance

The purpose of this guidance is to support council regulatory officers in successfully implementing the new smokefree legislation to be enforced in England from 06:00 on 1 July 2007.

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 secondhand smoke, in the long term, increases the risk of a non-smoker developing lung cancer and heart disease by around 25 per cent, and in the short term – after just 30 minutes – the blood becomes stickier increasing the risk of blood clots and stroke. There are over five million people with asthma in the UK and 80 per cent find that secondhand smoke worsens their symptoms and can trigger asthma attacks. See **Appendix 1** for further evidence about the benefits of smokefree environments.

It is the view of both LACORS, CIEH and TSI that the smokefree requirements for England are both sensible and comprehensive and that the task for councils in securing compliance will be straightforward.

As with all legislation, there is always the opportunity for local interpretation and application according to local circumstances. However, in the light of the extensive business and public interest that has been expressed about these requirements, it is particularly important to ensure a consistent approach to implementation so that both employees and members of the public are properly protected and businesses across England will consider that they are being treated fairly.

Throughout this guidance, the term 'regulatory officer' is used and is intended to mean all those officers who have been authorised by a local council to undertake the work of securing compliance with the smokefree legislation. It is envisaged that these

It is intended that the smokefree requirements will bring benefits to communities by protecting the health of people in virtually all enclosed and substantially enclosed workplaces and public places from the risks to health from exposure to secondhand smoke

will include those regulatory officers most experienced in carrying out enforcement duties in relation to workplaces and businesses, such as environmental health officers and trading standards officers. It may also be appropriate to authorise:

- a variety of other council officers, for example street wardens;
- staff recruited specifically for these duties as smokefree compliance officers; and
- staff of other appropriate organisations such as community support officers.

Other specific definitions as set out in the legislation are covered in **Appendix 2**.

This legislation concerns the protection of public health from secondhand smoke, but it also raises concerns about smoking in general. For this reason it is envisaged that, upon the introduction of this

legislation, there will be many people who will wish to take the opportunity to quit smoking altogether. Where possible and appropriate to do so, regulatory officers are encouraged to promote Local NHS Stop Smoking Services. These services offer advice, information and support to help people stop smoking and can also assist with coming to terms with not being able to smoke at work. For an on-line resource centre go to [gosmokefree.co.uk](http://gosmokefree.co.uk)

Details of local services and other support may also be obtained from the NHS Smoking Helpline on **0800 169 0 169**.

The overall co-ordination of tobacco control activities, including local Stop Smoking Service, is the responsibility of the Department of Health's Regional Tobacco Policy Managers (RTPMs) whose contact details can be found in **Appendix 7**. RTPMs can provide advice and support to local councils.

This guidance has been developed by LACORS and the Chartered Institute of Environmental Health in consultation with the Department of Health, Trading Standards Institute, Tobacco Control Collaborating Centre, individual councils and others. It will be amended and updated in the light of experience of implementation. LACORS welcomes both your comments and your suggestions for further clarification and future inclusions.

**Sarah Bull**

LACORS

*sarah.bull@lacors.gov.uk*

**Jane MacGregor**

LACORS

*jane.macgregor@lacors.gov.uk*

**Ian Gray**

Chartered Institute of Environmental Health

*i.gray@cieh.org*

## 2 Background to the legislation

The Government's White Paper *Choosing Health: Making healthy choices easier*<sup>2</sup> published in 2004 proposed action on secondhand smoke and set out a clear strategy to tackle smoking as well as to reduce the effects of smoking on others.

The Health Act 2006 Chapter 1<sup>3</sup> containing the smokefree legislative provisions received Royal Assent in July 2006 and will come into force in England on 1 July 2007. Similar legislation will be implemented in Wales on 2 April 2007 and in Northern Ireland on 30 April 2007. The Republic of Ireland and Scotland are already smokefree, as are the Channel Island States of Guernsey and Jersey. There are minor differences in the legislation across the British Isles however the vast majority of requirements are the same.

The Government's objectives for delivering smokefree legislation are to:

- reduce the risks to health from exposure of secondhand smoke;
- recognise a person's 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; and
- save thousands of lives over the next decade (and for the foreseeable future) by reducing both exposure to hazardous secondhand smoke and overall smoking rates.

It has been reported that across Scotland<sup>4</sup> and the Republic of Ireland<sup>5</sup> that levels of compliance with the legislation achieved within the first six months have

been as high as 95 per cent. Polls from both countries also indicate that the introduction of smokefree legislation has been both popular and successful. The following are quotes from regulatory officers who have first-hand experience of securing compliance with smokefree legislation:

### Republic of Ireland

#### Smokefree since 29 March 2004

**“Environmental Health Practitioners need to be aware that the majority of people are in favour of smokefree legislation and the evidence from Ireland and Norway is that the popularity of such controls increases once it is introduced and working. However, we must not be complacent. Compliance building is key. The public and business need to be reminded of the primary purpose of such measures, that is the protection of workers from the very real health risks associated with secondhand smoke. They also expect a consistent and reasonable approach with regard to enforcement – in return they will work with you in making smokefree work. Slainte.”**

#### **Maurice Mulcahy MEHOA, MIOSH, FCIEH**

*Principal Environmental Health Officer  
Health Service Executive, Galway, Republic of Ireland  
Member of the Board ASH Ireland  
Co-Chair Environmental Health Officers Association  
Tobacco Control Committee*

### Scotland

#### Smokefree since 26 March 2006

**“From the outset, my colleagues and I were very pleasantly surprised at the high levels of compliance with the smokefree legislation.**

<sup>2</sup> [www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT\\_ID=4094550&chk=aN5Cor](http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT_ID=4094550&chk=aN5Cor)

<sup>3</sup> [www.opsi.gov.uk/acts/acts2006/ukpga\\_20060028\\_en.pdf](http://www.opsi.gov.uk/acts/acts2006/ukpga_20060028_en.pdf)

<sup>4</sup> [www.clearingtheairscotland.com/](http://www.clearingtheairscotland.com/)

<sup>5</sup> [www.otc.ie](http://www.otc.ie)

Smoking is recognised to be the greatest single cause of preventable illness and premature death in the UK, killing around 106,000 (86,500 in England) people a year [www.nice.org.uk/page.aspx?o=502811](http://www.nice.org.uk/page.aspx?o=502811)

Even in what we thought would be the most challenging sectors – working men’s pubs, social clubs and betting shops – there was full acceptance from day one. Occasionally, at the start, we would meet up with some recalcitrance towards the initiative but that has very largely disappeared and now smokefree is accepted as the norm.”

**John Sleith**

*Food and Safety Regulation Manager,  
Falkirk Council*

“The introduction of the smoking ban in enclosed public places has been successful in Scotland and fortunately the task of enforcing the new legislation, carried out by Environmental Health, has been easier than originally anticipated. During routine visits and inspections to premises over this first year of the ban, environmental health enforcement staff have generally been very well received.”

**Evonne Tennant**

*Chartered Environmental Health Officer,  
East Dunbartonshire Council*

**Guernsey**

**Smokefree since 2 July 2006**

“There was great enthusiasm from every environmental health practitioner for this

measure – we felt it would have an immense public health impact. Our visits were almost universally welcomed by staff in the hospitality trade, even among those who smoked, and our commitment together with their support made the transition to smokefree workplaces an instant reality.”

**Tony Rowe MCIEH**

*Deputy Chief Environmental Health Officer, Guernsey*

**Jersey**

**Smokefree since 1 January 2007**

“During the first two weeks of the ban my colleagues and I visited over 200 premises throughout the island including restaurants and cafes without incident. I can happily report that the sense of humour amongst those enjoying a drink, particularly in St Helier during the evening, was as lively and quick witted as ever.”

**Robert Wareing-Jones**

*Health Protection Technician/Tobacco Control,  
Public Health Department, Jersey*

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 and to build compliance by helping them to prepare through the Smokefree England campaign.

The Department of Health and Smokefree England are undertaking a national communications campaign, informing businesses and the public about the smokefree legislation. For further information see [smokefreeengland.co.uk](http://smokefreeengland.co.uk)

The Department of Health is also providing guidelines on the new law to all businesses in England, which will include no-smoking signs for businesses to use.

Links to the Health Act and final regulations can also be found at [smokefreeengland.co.uk](http://smokefreeengland.co.uk)

### 3 Overall approach and enforcement policy

Regulatory officers 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 envisaged that the approach taken to smokefree legislation will be in the same manner as that usually adopted by the council, i.e. on a risk based approach.

The experience of other countries has shown that this type of legislation is widely supported, that high rates of voluntary compliance can be anticipated and that there will therefore be only a minimal need to employ enforcement measures.

**Successful implementation of smokefree legislation will therefore be measured by the number of premises that are meeting the requirements of the law and are smokefree and/or where smoking no longer takes place, rather than by the number of enforcement actions taken by any individual authority.**

The approach taken by regulatory officers to smokefree legislation should be determined primarily by the local council's enforcement policy and this will need to take account of several important factors:

- It may be important to raise awareness and understanding of the reasons for the introduction of the legislation i.e. that the health of workers and the general public needs to be protected from the damaging health effects that exposure to secondhand smoke can cause. It is therefore recommended that regulatory officers be equipped with the necessary facts to do this convincingly. See **Appendix 9** for ten reasons for smokefree.
- The public will be well aware of the introduction of the legislation through extensive publicity that will be provided through the Smokefree England campaign and general media coverage. This will serve to heighten the expectation of compliance by the business community and may lead to increased numbers of complaints concerning non-compliance.

- There will be occasions when the initial advisory approach to a business does not result in compliance, in which case any decision on enforcement action against an individual or business will need to be taken in accordance with the principles of the enforcement policy in order to ensure that a fair, proportionate and consistent approach is being taken.

- It is believed that enforcement, including issuing FPNs, against children under the age of 16 is not warranted. There are more effective ways to deal with children who smoke, including requiring them to leave any smokefree premises or vehicle.

Councils will therefore need to determine an appropriate enforcement approach for their area. The following text may be useful to form the basis of such an enforcement policy:

**'Initially an educational, advisory and non-confrontational approach should be taken, 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 can be provided. However, where it is evident that serious efforts are not being made to comply, or the attitude is un-cooperative or antagonistic, then a decision to take enforcement measures should be considered.'**

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

# 4 Legislative requirements and offences

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; and
- Merchant Shipping Act 1995.

Proposed regulations in respect of smokefree requirements for ships and vessels are currently out for consultation. It is expected that they will come into force from 1 October 2007. Further information is available from [smokingonships@dft.gsi.gov.uk](mailto:smokingonships@dft.gsi.gov.uk) or **020 7944 5427**. The consultation is at [www.dft.gov.uk/consultations/open/smokingonvessels/smoking](http://www.dft.gov.uk/consultations/open/smokingonvessels/smoking)

## 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 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.

This is known as the **50 per cent rule** – put simply:

- **if 50 per cent of the walls or more are missing then it is legal to smoke in the area; or**
- **if more than 50 per cent of the walls are present then it is illegal to smoke in the area.**

When determining the area of an opening, no account can be taken of openings in which there are doors, windows or other fittings that can be opened or shut.

**A roof** includes any **fixed or movable** structures, such as canvas awnings.

**Tents, marquees or similar constructions** will also be classified as enclosed premises if they fall within the definition (note that tent/marquee side-panels will be classed as rolled down even when they are rolled up).

In general if an opening or cover can be closed, the 50 per cent rule will be calculated on the basis that those openings are closed.

### 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 in respect of which regulations can be made under Section 85 of the Merchant Shipping Act 1995.

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 is able to 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 (eg private leased cars).

Ships or hovercraft in relation to which regulations could be made under section 85 of the Merchant Shipping Act 1995 (relating to safety and health on ships) are not covered by smokefree regulations. The statutory definition of a ship for these purposes is provided in section 313 (1) of the Merchant Shipping Act 1995: 'ship includes every description of vessel used in navigation'.

The Department for Transport is consulting on the UK Government's proposals for extending the smokefree provisions of the Health Act 2006 to sea-going and inland waterway vessels. Therefore such ships or hovercraft will not be required to be smokefree until

appropriate regulations have been made by the Secretary of State for Transport (likely to be late this year).

Any ship or vessel that is not covered by the Merchant Shipping Act 1995 (MSA) does come within the provisions of smokefree legislation and should be enforced by local councils. For example, floating restaurants might not be covered by the MSA. The Maritime and Coastal Agency can assist in establishing if a particular ship or vessel is covered by the MSA.

The regulations do not apply to aircraft. The Government believes that provisions in the Air Navigation Order 2005 regarding smoking in aircraft are working satisfactorily. The Air Navigation Order also makes suitable provision regarding no-smoking signage.

### **Offences and penalties**

The table in **Appendix 4** 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 which 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.

# 5 Enforcement agencies and authorised officers

## Enforcement authorities

Enforcement authorities responsible for this legislation are designated in the Smoke-Free (Premises and Enforcement) Regulations 2006 as lower tier local authorities and port health authorities.

The following authorities are therefore the enforcement authorities for the smokefree legislation within the areas for which they have responsibility:

- a unitary authority;
- a district council in so far as it is not a unitary authority;
- a London borough council;
- a port health authority;
- the Common Council of the City of London;
- the Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple; and
- the Council of the Isles of Scilly.

An enforcement authority has enforcement functions in relation to the premises and vehicles that are within:

- in the case of a port health authority, the district for which it is a port health authority; and
- in the case of other authorities, the area for which it is a local authority other than any part of that area which falls within the district of a port health authority.

The legislation allows that where an investigation is being undertaken, the enforcement functions can be transferred from one or more of the specified enforcement authorities to any other enforcement authority under arrangements made between the transferring and receiving authorities. An investigation

could therefore be started by the council where the offence took place and then transferred to another council, for example the council functioning as the Home Authority. Such an arrangement must be carried out with the agreement of the receiving authority.

## Authorisation of Regulatory Officers

Councils will need to identify, select and possibly recruit appropriate regulatory officers to carry out duties to secure compliance with the smokefree 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 ideal for this purpose and could incorporate this work into their other inspection activities.

It may also be appropriate to authorise:

- a variety of other council officers, for example street wardens;
- staff recruited specifically for these duties, such as smokefree compliance officers; or
- staff of other appropriate organisations, such as community support officers.

Authorisation of officers will need to be made in accordance with normal council procedures.

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. Similarly, it is appropriate for tobacco control specialists from the local primary care trust to be involved in providing information and advice on the new law.

## Other agencies

An enforcement protocol between a variety of agencies and regulators is being drawn-up. It will set out the commitments of other agencies:

- to inform businesses about the new legislation;
- to pass on intelligence to the appropriate council; and
- to alert councils to potential and actual breaches of the legislation.

Councils will need to be aware of the protocol and establish a procedure for processing any information or intelligence received from other regulatory bodies. It may be that this information can be treated the same as that arising from the National Smokefree Compliance Line.

Specific details on the enforcement protocol will be made available in due course.

Inspectors of the Health and Safety Executive (HSE) will bring matters of concern to the attention of the employer, particularly if it involves a number of smokers or if there is a failure to display no-smoking signs. Should the employer resist acting on this advice, the inspector will then bring the matter to the attention of the appropriate council. Any complaints received by HSE about smokefree issues will be referred to the appropriate council.

Other action being taken by HSE in support of the new legislation includes:

- providing Department of Health produced information on the smokefree legislation for businesses;
- updating current briefing for HSE InfoLine and Workplace Health Direct;
- adding links on the smokefree legislation to relevant HSE webpages (e.g. respiratory disease and asthma);

- distributing literature on the smokefree legislation as part of routine visits (e.g. on health based topics); and
- working in partnership with councils on health promotional matters as appropriate.

## Funding

Funding for councils to assist with the costs of implementation of the smokefree legislation has been provided by the Department of Health. Details of the funding provisions can be found in LAC (2006) 17 at [www.dh.gov.uk/assetRoot/04/14/17/46/04141746.pdf](http://www.dh.gov.uk/assetRoot/04/14/17/46/04141746.pdf)

The Department of Health has transferred funding to councils by BACS payment identified as 'Department of Health grant for smokefree legislation 2006/07'.

The second phase of funding will be transferred as soon as possible in April 2007 in the same way.

# 6 Inspections

Inspections carried out by regulatory officers will be either:

- **proactive**, e.g. to advise businesses and to confirm compliance with the legislation; or
- **reactive**, i.e. in response to a complaint.

In terms of reactive work councils will need to decide how they are to deal with complaints and intelligence they receive from a variety of sources – from the general public, National Smokefree Compliance Line, other council staff and other regulatory bodies.

For proactive inspections councils should devise a means to generate lists from their premises database which will allow the programmed visits to be focussed on premises:

- 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.

Over a period of time, a risk based inspection programme for premises can be developed, taking into account factors such as:

- confidence in management;
- history of compliance with the requirements of the smokefree legislation; or
- number of complaints received from the National Smokefree Compliance Phone Line and other information sources.

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 including Fit3 and food hygiene inspections.

## Approaches to inspections

Regulatory officers may 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.

- **Official visit** Officer announces themselves upon arrival and shows their authorisation 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 authorisation 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.

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. Councils should consider the following issues:

- **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 (ie the right to respect for private and family life under the Human Rights Act). LACORS 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** LACORS 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** LACORS 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)** LACORS 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. This is not an approach LACORS would advise and strongly believe that it should not be necessary for an officer to establish or maintain such a relationship.

The need to take enforcement action should not result in the personal safety of officers being compromised and this should already be an explicit consideration in the council's existing health and safety policy and procedures. There might be times when enforcement authorities need to work collaboratively with the police to effectively enforce the legislation.

Therefore, when dealing with each particular circumstance, regulatory officers must exercise their own judgement as to the best course of action. For example, in a situation where a covert inspection is being carried out, if an officer perceives a threat of violence or abuse, they should not engage with the manager at that stage, but return at a safer time, such as the next day with support if appropriate.

It should be emphasised that the experience of regulatory officers engaged in securing compliance with the smokefree legislation in other countries is that violent behaviour and even the threat of violent behaviour is an extremely rare occurrence.

# 7 Application

## Compliance at smokefree premises

Businesses will be receiving an information pack from Smokefree England on the requirements of the legislation and the actions they need to take to comply. Further information can be found at [smokefreeengland.co.uk](http://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.

Regulatory officers will need to carry out an assessment to determine whether owners, occupiers, managers or any person in control of smokefree 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 which represent good practice – see **Appendix 10**.

## 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.

**Signs that meet the requirements set out in the regulations are to be made available to businesses free of charge by the Department of Health. These are downloadable from the Smokefree England website at [smokefreeengland.co.uk](http://smokefreeengland.co.uk)**



**ABOVE** A5 statutory sign  
**LEFT** Simple sign – international no-smoking symbol

**Note** – it needs to be recognised that many premises are already smokefree and may have been so for a considerable period of time. They may not realise, therefore, that they will now legally have to display no-smoking signs.

### Good practice for premises

**Appendix 10** contains further advice on good practice in various premises and circumstances.

### Management controls

It is recommended that 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.

### Smokefree policy and procedures

People who are in charge of a 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 the person continues to smoke then refuse them service, if appropriate, and ask them to leave the premises.
- 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.

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

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

### **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.

### **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. See **Appendix 6** for example incident recording form.

### **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.

### Shelters

**There is no legal requirement for owners of premises, managers of staff, or anyone else to provide an outdoor shelter for their employees, customers or residents to smoke in.**

However, any shelter that is erected for such a purpose should not be constructed so as to be substantially enclosed as described in the definitions in **Appendix 1**. Shelters may require planning permission and building control consent; their siting and use may affect the licensing conditions of a bar/restaurant if customers are drinking outside; they may increase noise levels in the open air and they may also adversely affect street cleanliness. Addressing all of these issues in a 'joined-up' response will require the council to act in a co-ordinated manner and a properly developed corporate policy may be needed for this purpose.

Anyone intending to erect such a shelter should be advised to discuss their proposal with the appropriate council staff at the earliest opportunity.

See **Appendix 8** for key issues in relation to shelters.

### Compliance in smokefree 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.

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.

The no-smoking signs must be displayed in a prominent position and in each compartment.

**A compartment includes each part of the vehicle which:**

- is constructed or adapted to accommodate persons; and
- is or may from time to time be wholly or partly covered by a roof.

It is the legal responsibility of any person with management responsibility for the smokefree vehicle to make sure that the required no-smoking signs are in place.

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.

### Ships

See Summary of the Department of Transport consultation document in **Appendix 11**.

### 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.

Crown properties are not covered by the smokefree provisions in the Health Act 2006. The NHS is not exempted from the legislation (except the specific arrangements for residential mental health units until 1 July 2008).

All central government and NHS buildings have been smokefree since the end of 2006, meeting the commitments the Government set out in the 2004 White Paper *Choosing Health*.

The Prison Service will introduce strict controls on smoking in prisons, which will apply to both publicly and privately provided prisons through the Prison Service Order that will be implemented in all prisons from 1 April 2007. Broadly, the Order will require all indoor areas to be smokefree, with the exception of cells occupied solely by smokers, and for

arrangements to be in place to minimise the dangers of secondhand smoke.

### **Establishments or units holding prisoners under 18 years of age must have an entirely smokefree environment within their buildings.**

#### **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. **Appendix 10** provides detailed explanations of these exemptions.

## 8 Enforcement action

Regulatory officers have the following enforcement options available to them:

- verbal warning;
- written warning;
- FPN 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);
- FPN or legal proceedings against an individual smoking in no-smoking premises (section 7(2) offence); and
- 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.

None of these offences are indictable and therefore Formal Cautions (now known as simple cautions) cannot be given, neither can injunctions be obtained. Councils are also advised against creating additional quasi-legal procedures such as ‘warning notices’ as these have been previously discredited.

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 council to be identified to whom the recipient can direct questions about the service of the FPN. The council should appoint an appropriate person to be able to deal with such questions and, if appropriate, to decide upon the cancellation of the FPN.

As with all council enforcement measures, all action taken should be fair, proportional and consistent and decided upon with reference to the Enforcement Concordat at

[www.cabinetoffice.gov.uk/regulation/documents/pst/pdf/concord.pdf](http://www.cabinetoffice.gov.uk/regulation/documents/pst/pdf/concord.pdf) and the enforcement policy statement of the particular council.

**Figure 1 sets out the enforcement flowchart for the offence of failure to display correct no-smoking signage** The policy adopted by a council for signage penalties should recognise this as a technical infringement and should perhaps continue with the educational approach for longer than might normally be the case before taking enforcement action. It should be borne in mind that many businesses are already smokefree and may have been so for a considerable period of time and may not realise the need to display signs. It may also be the case that the signage has been removed and not been replaced rather than never provided in the first place. However where advice has been given and a proprietor is clearly not complying then a FPN should be served.

**Figure 2 sets out the enforcement flowchart for the offence of smoking in a smokefree place** There are practical difficulties in taking effective enforcement action against an individual smoking in smokefree premises or vehicles (i.e. serving a FPN). Therefore, as an initial stage the regulatory officer might wish to be satisfied that the owner, occupier, manager or any other person in charge can demonstrate that all reasonable steps have been taken to prohibit individuals from smoking on their premises and to detect and deal with illegal smoking when it does occur. (For guidance on management controls and signage, see **Section 7** on Application).

To ensure that enforcement action against individuals smoking in a smokefree premises or vehicle is effective, councils could consider targeting individuals as part of a pre-arranged programmed activity, organised in liaison with local police officers to give support if necessary. Regulatory officers are advised to ensure they organise any such activities with their local police service well in advance in order to ensure

that the work coincides with availability of police resources. The programmed activity should be focussed on premises which have demonstrated that all reasonable steps have been taken and that, despite these efforts, certain individuals continue to smoke in smokefree places.

See **Section 6** on Inspections in relation to RIPA.

If regulatory officers experience a situation where the person they wish to serve with a FPN does not provide their name and address on request, then the officer should advise the person that such a refusal constitutes an offence of obstruction under the Health Act 2006 for which they may be prosecuted. Further action at this time may not be possible, however a detailed description of the individual may enable subsequent identification and the serving of an FPN at a later date.

It should be noted that there is no restriction on the time lapse between the commission of the offence and the service of the notice but if there is any delay it 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 FPN is served.

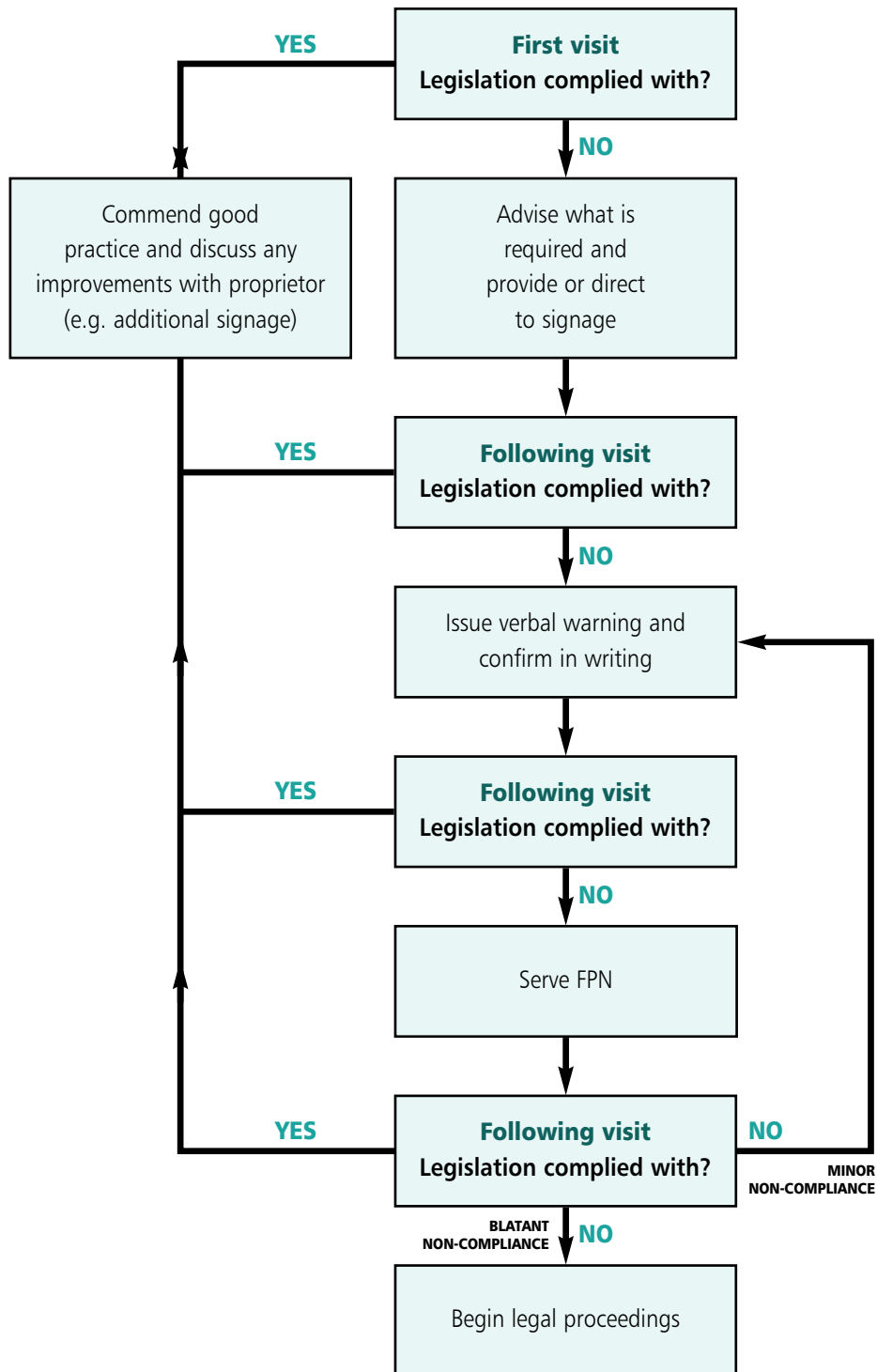
**Figure 3 sets out the enforcement flowchart for the offence of failing to prevent smoking in a smokefree place**

Councils should consider initiating legal proceedings against owners, occupiers, managers or other persons in charge of smokefree premises or vehicles only after repeated efforts to secure compliance with the legislation or where there have been serious or persistent contraventions.

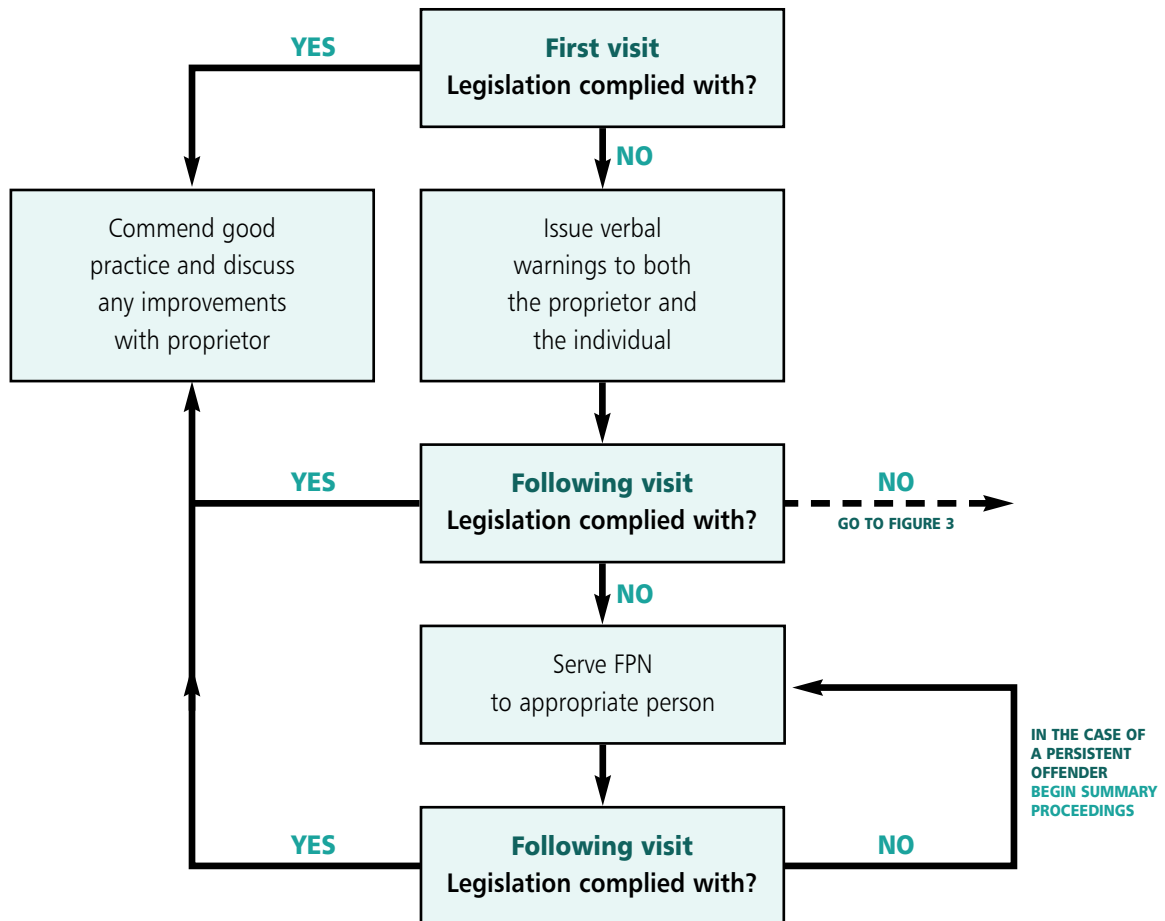
Regulatory officers should therefore initially take an educational and non-confrontational approach wherever possible. As an initial stage the regulatory officer might wish to be satisfied that the owner, occupier, manager or any other person in charge can demonstrate that all reasonable steps are being taken

to prohibit individuals from smoking on their premises and to detect and deal with illegal smoking when it does occur. (For guidance on management controls and signage, see **Section 7** on Application).

**Figure 1 Enforcement flowchart – failure to display correct no-smoking signage**



**Figure 2 Enforcement flowchart – smoking in a smokefree place**

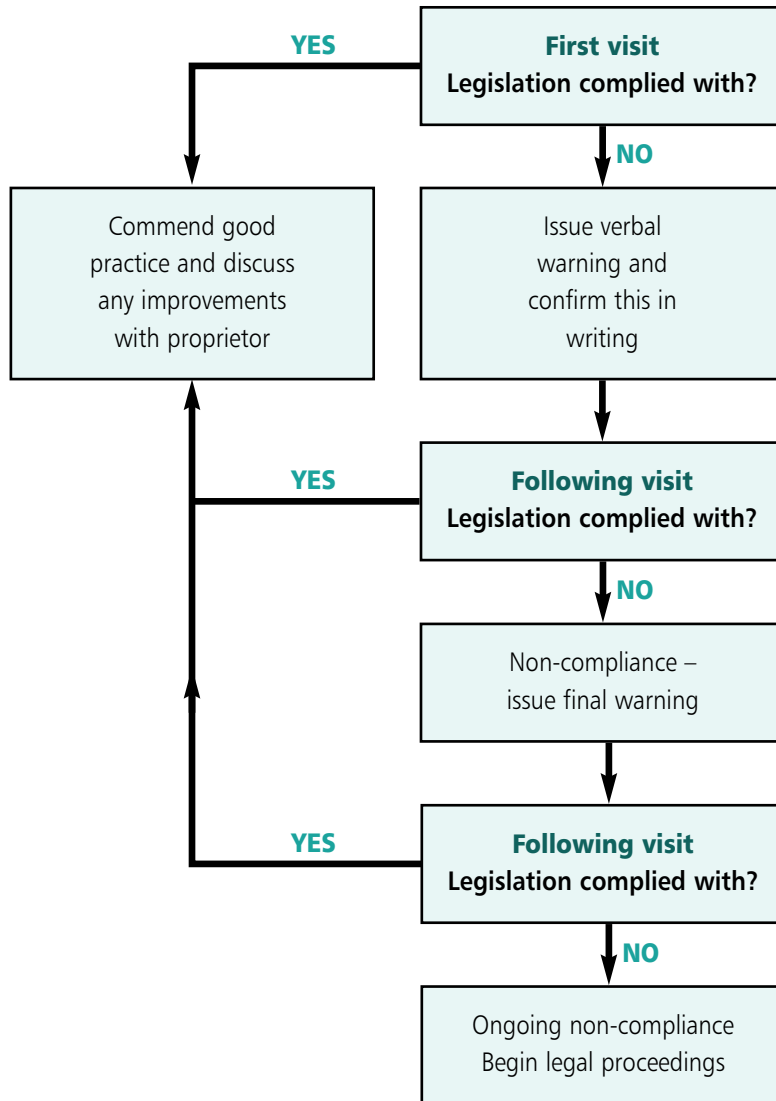


As stated in the overall approach, councils should take an educational approach in the first instance but at a certain point this should be reinforced through a stronger enforcement approach.

There may be instances where regulatory officers may find smoking taking place in the same premises on

several occasions. It would therefore be a matter to raise with management about the controls they have in place – therefore use figure 3. Alternatively officers may come across the same individual either at the same premise or different premises who refuses to smoke outside, at which point it may be appropriate to serve an FPN on the individual.

**Figure 3 Enforcement flowchart – failure to prevent smoking in a smokefree place**



# 9 Operational procedures and data collection

## Co-ordination of council services

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. Councils are expected to demonstrate a corporate approach from all council services so as to ensure that messages to businesses and the public are comprehensive and consistent.

To support lead officers in encouraging their council to adopt a corporate approach to the implementation of the smokefree legislation, a model briefing presentation has been developed and is available for use and can be downloaded from

**[www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=508B63C&id=15453](http://www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=508B63C&id=15453)**

## Staffing arrangements

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

In addition, as this work might on occasions become confrontational, staff could be supported with additional training on assertive behaviour and awareness of personal safety including when working alone and out of normal office hours.

## Database

It is likely that there will be a need to make changes to the council's regulatory premises database to incorporate the additional and wide range of premises covered by smokefree legislation. Some types of premises will not have been previously subject to inspection by council staff and there will therefore be no information on history, plans, key contacts etc. Councils may need to work with other agencies to develop their database to record

compliance with smokefree legislation e.g., HSE enforced premises.

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 activities of councils in relation to securing compliance with the smokefree legislation need to 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.

Individual councils can also use the data locally to show how well businesses are doing in their area in comparison with national figures and to continue to get messages to businesses and the public about what they need to do.

Information on data requirements will be communicated to councils by LACORS.

## Home authority, lead authority and LOPP schemes

It may be appropriate for the authority with the lead contact with a large/multi-site organisation to discuss with the company their smokefree policies and their approach to ensuring compliance with the smokefree legislation especially for smokefree public transport vehicles. A brief explanation of the three different schemes is set out below.

## Home authority

Businesses will generally build up a relationship with, and receive advice and information from, one particular local authority. This is usually the local authority where the business headquarters are based. In relation to trading standards and food safety matters, local government has developed a voluntary scheme where that authority is referred to as the **Home Authority** i.e. *'the local authority where the relevant decision making base of a business is located'*. Further information is available from the LACORS website at [www.lacors.gov.uk](http://www.lacors.gov.uk)

## Lead authority and LOPP

The **Lead Authority Partnership Scheme (LAPS)** is a voluntary partnership set up between a local authority (the Lead Authority) and a large/multi-site/national organisation. The scheme aims to raise the standard of health and safety management within a partner organisation or business and encourage consistency of enforcement across those councils that engage with it.

Similarly, with organisations involved in the **Large Organisations Partnership Pilot (LOPP)** colleagues are requested to inform the Account Manager of issues of national significance identified during inspections. Account Managers are also willing to discuss planned inspections with enforcing authorities to get an idea of the priorities proposed in the improvement/engagement plans. Further information is available from the HSE website at [www.hse.gov.uk](http://www.hse.gov.uk)

## Complaint handling

Experience from other countries that have implemented smokefree legislation shows that contacts with the Smokefree England campaign line and National Smokefree Compliance line will comprise the following:

**Requests for information** These will be minimal if the advisory visits, media campaign, direct mailing arrangements etc are successful. These enquiries should be resolved fairly quickly as enquirers obtain the necessary information.

**Requests for advice** Even where advice material has been received it may not be well understood and enquirers will also want to know how the legislation applies in their particular circumstances. Again, these enquiries should also be resolved fairly soon as enquirers receive clarification and follow-up advice.

**Hoax calls** Some people will want to test the system to see if complaints are dealt with seriously.

**Complaints of non-compliance** These may well provide useful intelligence which would not easily be obtained by other means. Whilst in themselves they do not constitute evidence of any offence, they will need to be followed-up in order to substantiate the allegation or otherwise.

Councils will deal with all complaints, including those from the National Smokefree Compliance line, in accordance with their existing corporate complaint procedure and the usual data protection policies that apply.

There may be complaints which fall outside the scope of the legislation. For example, where smoking is taking place on the pavement outside a window and the secondhand smoke is blowing back into the room. It is beyond the scope of this document to provide guidance on how such matters should be dealt with.

Councils will also need to ensure that they are able to respond effectively to any complaints in relation to offences committed by their own staff i.e. by having a suitable policy and internal disciplinary procedures in place.

To assist compliance, a freephone line will be operational from 1 July 2007. Call centre operators will be trained to understand the basics of the legislation and to identify offences. This information will then be forwarded to an identified person within each council. The number to call will be **0800 587 1667**.

### Administration of exemptions

There is no requirement for a business owner, or anyone else:

- to make use of the exemptions permitted under the smokefree legislation; or
- to seek consent from, or even to provide notification to, the council that use is being made of an exemption.

It will therefore be important that the council record details of any exemptions in place that its officers become aware of, the nature and extent of the exemption, and the manner in which the specific conditions attached to exemptions are being met. This information will assist in the following ways:

- ensuring future compliance with the conditions of exemptions;
- responding to future applications for alterations to the premises, change of use, etc;
- prioritising proactive visits;
- responding to complaints; and
- ensuring consistency of approach.

In relation to the latter point, it will be important for staff to be able to ensure that the required standards are consistently met in relation to the specific conditions attached to exemptions. This would be best addressed by the adoption of a council policy setting out its required standards, based on this guidance and other reference material (see **Appendix 10**).

### Ongoing training

An online training resource for all officers engaged in smokefree legislation activities will be available through *TS Desk Companion*, an e-learning product provided by the Trading Standards Institute. Information on the online resource will be provided for councils in the near future at **[www.tsi.org.uk/tsdesk](http://www.tsi.org.uk/tsdesk)**

# 10 Working with the media

## ‘Smokefree protects health and is positive for business’

This simple message is at the heart of the Smokefree England campaign being run by the Department of Health. It underpins the key themes that going smokefree:

- is needed to protect the health of workers and the public;
- is wanted by the majority of people; and
- is workable as has been proven by experience of other countries.

This message and the national campaign materials can be used by councils in support of their own media messages and local campaigning. Resources can be downloaded and ordered from [www.smokefreeengland.co.uk/campaignpartners](http://www.smokefreeengland.co.uk/campaignpartners)

There can be no doubt that there will be media interest in this legislation and the success or otherwise of its implementation.

Councils will be in the spotlight for maybe several weeks or months around the time of implementation. If well prepared and well briefed, this may be seen as a great advantage for the council – good news stories, enhanced profile are to be welcomed but conversely, if the implementation is not managed well and the spokespersons are not well briefed this could equally well have quite damaging consequences for the council. From recent experiences in Scotland, councils may for example be questioned about the allocation of resources for this particular activity. For this reason it is recommended that you get to know your local press journalists and radio/TV interviewers or at least ensure that your council’s media or communications team are known to you.

There are some key messages around the benefits of going smokefree that councils can use for example:

**‘This is about the freedom to breathe safe, clean air at work and thereby protecting public health. It is estimated that over 600 people die each year from illnesses caused by breathing in other peoples tobacco smoke in the workplace in the UK – that is two people per day.’**

There will be other local messages that you will want to use and it will be important to plan for the media interest in this area. Where possible prepare good news stories in advance. For example numbers of premises that have gone smokefree early, levels of compliance, low number of complaints etc.

Where possible, use local data (available from your Regional Tobacco Policy Manager) to support your story and remain focused on the issues particularly where a radio or TV interview is planned (see **Appendix 3** – media interview prompt sheet).

In the lead-up to 1 July 2007, you can also get further support for your media activities from the Smokefree England campaign team on **020 7492 0980** or by email at **campaign@smokefreeengland.co.uk**

You can also get support and advice from your Regional Tobacco Policy Manager.

# Appendix 1 Evidence

The new smokefree law is being introduced to protect employees and the public from the harmful effects of secondhand smoke.

Secondhand smoke is a serious health hazard, and there is no safe level of exposure. Every time someone breathes in secondhand smoke, they breathe in over 4,000 chemicals. Many are highly toxic. More than 50 are known to cause cancer.

Medical and scientific evidence shows that the people exposed to secondhand smoke have an increased risk of medical conditions such as lung cancer, heart disease, asthma attacks, childhood respiratory disease, sudden infant death syndrome (SIDS) and reduced lung function.

Scientific evidence also shows that ventilation does not eliminate the risks of health of secondhand smoke in enclosed places. The only way to provide effective protection is to prevent people breathing in this smoke in the first place. This is why the Government has introduced the new smokefree law.

It is estimated that the law will save thousands of lives over the next decade, and help create cleaner and healthier environments for everyone to work in or visit.

- **Secondhand smoke contains over 4,000 chemicals – over 50 are known to cause cancer**
- **Around 85 per cent of secondhand smoke is invisible and odourless**

You can find out more information about the new law on the Smokefree England website at **[smokefreeengland.co.uk](http://smokefreeengland.co.uk)**

For further information see **[www.smokefreeengland.co.uk/files/smokefree-is-needed-fact-sheet-final--30.11.pdf](http://www.smokefreeengland.co.uk/files/smokefree-is-needed-fact-sheet-final--30.11.pdf)**

## Appendix 2 Definitions

### 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**.

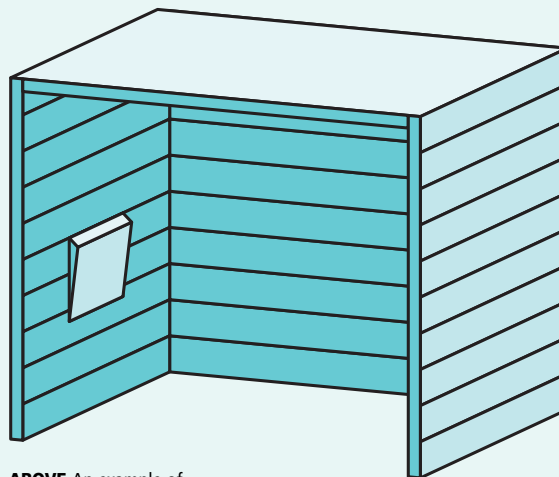
A **roof** includes **any fixed or movable structures**, such as canvas awnings. **Tents, marquees or similar** will also be classified as enclosed premises if they fall within the definition.

### No-smoking symbol

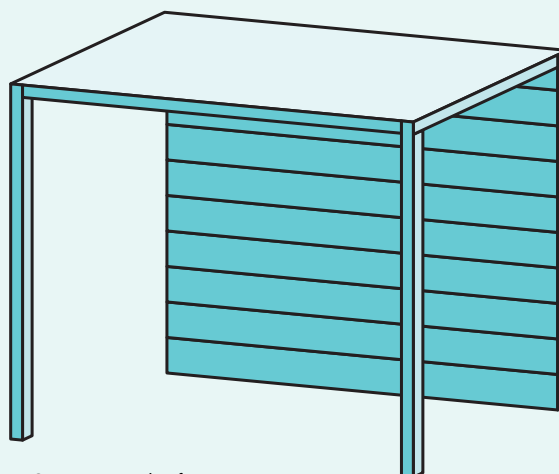
A symbol which consists solely of a graphic representation of a single burning cigarette enclosed in a red circle of at least 70 mm in diameter with a red bar across it.

### Smoking

Refers to smoking tobacco or anything which contains tobacco, or smoking any other substance, and includes being in possession of lit tobacco or of anything lit which contains tobacco, or being in possession of any other lit substance in a form in which it could be smoked. This includes smoking cigarettes, cigars, herbal cigarettes and pipes (including water pipes, shisha, and hookah).



**ABOVE** An example of substantially enclosed premises



**ABOVE** An example of non-substantially enclosed premises

## **Compartment**

This includes each part of the vehicle which

- is constructed or adapted to accommodate persons; and
- is or may from time to time be wholly or partly covered by a roof.

## **Private vehicle**

See regulation 11(5) of the Smoke-free (Exemptions and Vehicles) Regulations 2007 – this means a vehicle where it is 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.

## **Council**

By using the term council in this guidance we mean all authorities defined by the Smokefree (Premises and Enforcement) Regulations 2006 as enforcement authorities.

## **Work**

The term 'work' includes voluntary work.

## **Authorised officer**

This means any person (whether or not an officer of the authority) who is authorised by it in writing, either generally or specifically, to act in matters under Chapter 1 of the Health Act 2006, Smoke-free Premises, Places and Vehicles.

# Appendix 3 Media interview prompt sheet

Use the space below to write the **three main points** that you wish to convey in your interview

**1**

---

---

---

**2**

---

---

---

**3**

---

---

---

**Write some national statistics or evidence in the space below**

---

---

---

**Write some local statistics or evidence in the space below**

---

---

---

**Write the standard/corporate line in the space below (to be used in every interview if possible)**

---

---

---

# Appendix 4 Offences and penalties

## Offence under the Health Act 2006

**Section 6(5)** Failure to display no-smoking sign in a smokefree premise or vehicle (occupier or manager)

**Section 7(2)** Person who smokes in a smokefree place or vehicle (any person smoking)

**Section 8(4)** Person having management or control of smokefree premises or vehicle fails to stop a person from smoking there (manager or person in control)

**Section 11** 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

## Defence under the Health Act 2006

**Section 6(6)** 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 **or** 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 **or** that on other grounds it was reasonable for them not to comply with this duty.

**Section 7(4)** 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.

**Section 8(5)** It is a defence for the person charged to show 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 duty.

## FPN

IF PAID IN 15 DAYS

**£150**

**£30**

Not applicable

Not applicable

## FPN

IF PAID IN 29 DAYS

**£200**

**£50**

Not applicable

Not applicable

## Max. court awarded fine

IF FOUND GUILTY

Level **3** on standard scale – currently up to **£1000**

Level **1** on standard scale – currently up to **£200**

Level **4** on standard scale – currently up to **£2500**

Level **3** on standard scale – currently up to **£1000**

# Appendix 5 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 a record of this must be kept by the officer.

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**

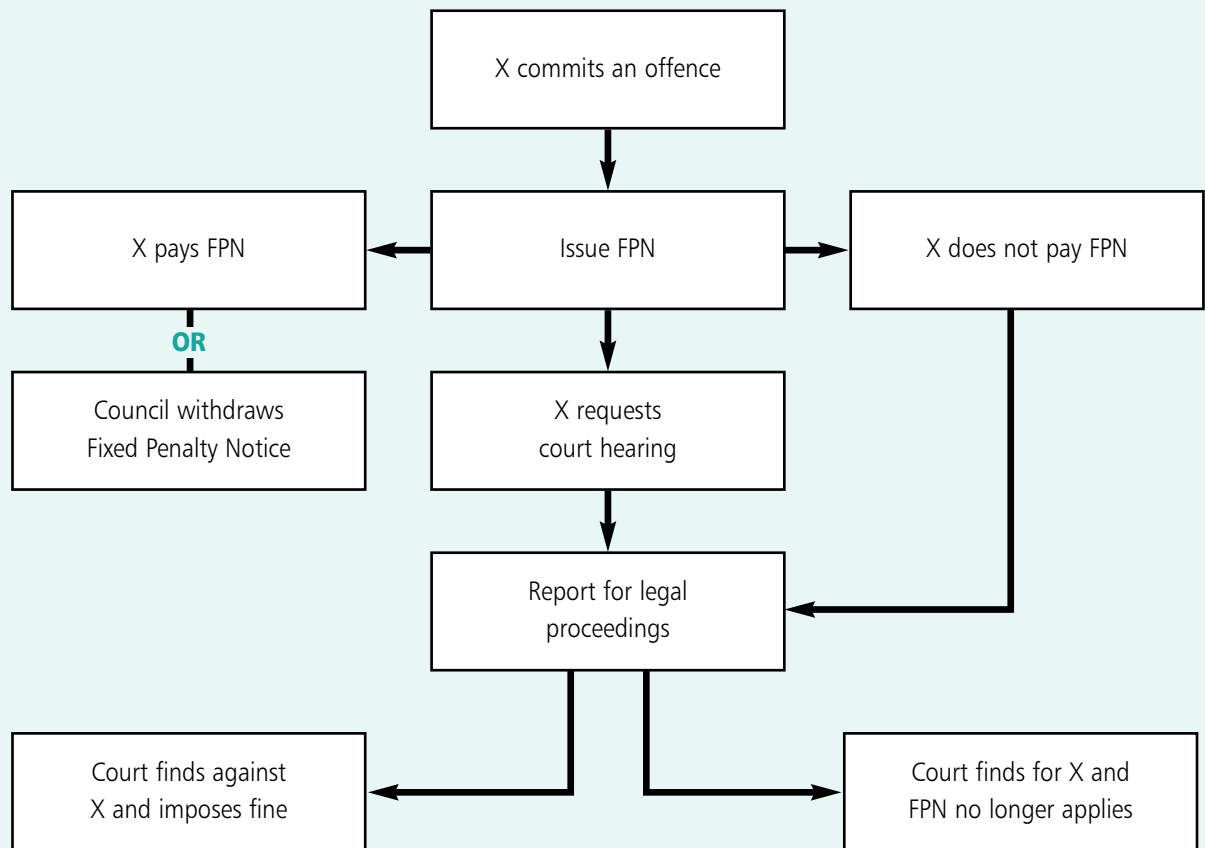
Where a person has received a FPN they can give notice in writing to the council requesting a Court hearing in respect of the offence for which they have received the notice. Legal proceedings may then be brought against them before the end of the penalty payment period. If the person changes their mind 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*.

**FPN flowchart Applicable to offences relating to failure to display correct no-smoking signage and smoking in a smokefree place**



**SCHEDULE 1** Regulation 3(2)

*Form 1 - Failing to display prescribed no-smoking signs or failing to display no-smoking signs in a prescribed manner*

[NAME OF ENFORCEMENT AUTHORITY]

[ADDRESS OF ENFORCEMENT AUTHORITY]

**HEALTH ACT 2006:**

**SECTION 6 (FAILURE TO DISPLAY NO-SMOKING SIGNS IN ACCORDANCE WITH REQUIREMENTS MADE BY OR UNDER SECTION 6)**

**FIXED PENALTY NOTICE**

PENALTY AMOUNT £200

**PART 1****RECIPIENT COPY**

**Penalty notice number:**

**Full name of alleged offender**

**Address of alleged offender**

**Postcode**

**Date of birth (if known)**

**Male/female (circle one)**

I, \_\_\_\_\_ (name), an authorised officer of [name of enforcement authority] under section 10 of the Health Act 2006, have reason to believe that you committed an offence under section 6 of the Health Act 2006 (failure to display no-smoking signs in accordance with requirements made by or under section 6) in premises, a place or vehicle in relation to which [name of enforcement authority] has enforcement responsibilities.

The circumstances alleged to constitute the offence are that at:

\_\_\_\_\_ (time) on \_\_\_\_\_ (date)

you, at/on the following premises, place or vehicle (where alleged offence took place, including address, if any):

being premises, a place or vehicle to which the provisions of section 6 of the Health Act 2006 applies, allegedly (details of offence):

This notice offers you the opportunity of discharging any liability for conviction for that offence by the payment of a fixed penalty of **£200 (two hundred pounds)**. No proceedings will be taken for this offence before the expiration of the period of 29 days beginning with \_\_\_\_\_ (insert the date on which this notice is given). You will not be liable to conviction for the offence if you pay the fixed penalty within that period. In this Form this period is referred to as the **29 day period**.

**You can pay a discounted amount of £150 (one hundred and fifty pounds) if you pay within the period of 15 days beginning with \_\_\_\_\_ (insert the date on which this notice is given). If the 15th day is not a working day, you may pay on the next working day. 'Working day' means any day which is not Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971. In this Form this period is referred to as the 15 day period.**

Information for the immediate attention of the person who has been issued this penalty notice is at Part 2 of this notice. Details about how to pay this fixed penalty are at Part 3 of this notice. Details about how to request a court hearing in relation to this alleged offence are at Part 4 of this notice. **If you have any questions, or if you wish to discuss this notice, please contact [insert name and address of enforcement authority and contact details].**

**Signature of authorised officer**

**Date of issue**

## PART 2

### INFORMATION FOR THE IMMEDIATE ATTENTION OF THE PERSON WHO HAS BEEN ISSUED WITH THIS PENALTY NOTICE

You have received this notice because the authorised officer of *[name of enforcement authority]* named in Part 1 of this notice has reason to believe that you have committed the offence of failing to display a no-smoking sign in accordance with requirements made by or under section 6 of the Health Act 2006. Within the 29 day period specified in Part 1, **you must either** pay the penalty **or** request that the matter be heard by a court. You may not do both.

If you fail to do either, *[name of enforcement authority]* as an enforcement authority by virtue of section 10 of the Health Act 2006, may pursue this matter in court. A person found guilty of the offence of smoking in a smoke-free place is liable on summary conviction to a fine not exceeding level 1 on the standard scale (a).

(a) Currently £200 – see section 37 of the Criminal Justice Act 1982 (c.48) as amended by section 17 of the Criminal Justice Act 1991 (c.53).

## PART 3

### PAYING THE PENALTY

The amount of the fixed penalty is **£200 (two hundred pounds)**. It must be paid within the 29 day period which is specified in Part 1.

You can pay a discounted amount of **£150 (one hundred and fifty pounds)** if you pay within the 15 day period specified in Part 1.

If you choose to pay the penalty, no further action will be taken in respect of the alleged offence described at Part 1 of this penalty notice. The payment of the penalty involves no admission of guilt and will not result in a record of criminal conviction being made against you.

Payment may be made by completing Part 3A below and returning it with payment to the address stated in that Part, or by completing Part 3A below and paying in person at *[name of enforcement authority]*. Acceptable methods of payment include cash, cheque, postal order or money order.

Cheques, postal orders or money orders should be made payable to *[name of enforcement authority]*. If you choose to pay this penalty in cash by post, this must be sent by registered post, and proof of posting must be retained. If you require a receipt for the payment of the penalty, you must ask for one at the time of payment, and if paying by post, you must provide a stamped, self-addressed envelope.

**WARNING – LATE PAYMENT WILL NOT BE ACCEPTED  
YOU WILL NOT BE SENT A REMINDER**

## PART 3A

### PAYMENT OF FIXED PENALTY ISSUED UNDER SECTION 6 OF THE HEALTH ACT 2006 (FAILURE TO DISPLAY NO-SMOKING SIGNS IN ACCORDANCE WITH REQUIREMENTS MADE BY OR UNDER SECTION 6)

*This slip must accompany all payments*

To: *[Name and address of enforcement authority where payment should be sent]*

#### Penalty notice number

I enclose the amount of:  **£150** (if the payment is made within the 15 day period specified in Part 1)  
(tick one box)  **£200** (if the payment is made within the 29 day period specified in Part 1)

Full name of alleged offender

Address of alleged offender

Postcode

Signature x

Date of issue

**PART 4**  
**REQUESTING A COURT HEARING**

If you choose to request a court hearing, you **must** within the 29 day period do so by completing Part 4A and sending it to [name of enforcement authority], or by writing to *[name of enforcement authority]* at the address stated on Part 4A, giving your details, the penalty notice number (which can be found in Part 1 of this notice) and an address at which a summons can be served on you. The summons will tell you when and where to attend court. Only the recipient of this penalty notice (the person named at Part 1) may request a court hearing.

**PART 4A**  
**HEALTH ACT 2006: FAILING TO DISPLAY A NO-SMOKING SIGN IN  
ACCORDANCE WITH REQUIREMENTS MADE BY OR UNDER SECTION 6**  
**REQUEST FOR ALLEGED OFFENCE TO BE DEALT WITH BY A COURT OF LAW**

To: *[Name and address of enforcement authority]*

**Penalty notice number**

---

I wish to be dealt with by a court of law for the alleged offence.

**Full name of alleged offender**

---

**Address of alleged offender**

---

**Postcode**

---

**Signature** x

---

**Date of issue**

---

**SCHEDULE 2** Regulation 3(2)

*Form 1 - Failing to display prescribed no-smoking signs or failing to display no-smoking signs in a prescribed manner*

[NAME OF ENFORCEMENT AUTHORITY]

[ADDRESS OF ENFORCEMENT AUTHORITY]

**HEALTH ACT 2006:  
SECTION 7 (OFFENCE OF SMOKING IN A SMOKE-FREE PLACE)  
FIXED PENALTY NOTICE  
PENALTY AMOUNT £50**

**PART 1  
RECIPIENT COPY**

**Penalty notice number:**

**Full name of alleged offender**

**Address of alleged offender**

**Postcode**

**Date of birth (if known)**

**Male/female (circle one)**

I, \_\_\_\_\_ (name), an authorised officer of [name of enforcement authority] under section 10 of the Health Act 2006, have reason to believe that you committed an offence under section 7 of the Health Act 2006 (smoking in a smoke-free place) within premises, a place or vehicle in relation to which [name of enforcement authority] has enforcement responsibilities. Section 7(1) to the Health Act 2006 provides that smoke-free places include smoke-free premises and smoke-free vehicles.

The circumstances alleged to constitute the offence are that at:

\_\_\_\_\_ (time) on \_\_\_\_\_ (date)

you, at/on the following premises, place or vehicle (where alleged offence took place, including address, if any):

being premises, a place or vehicle to which the provisions of section 7 of the Health Act 2006 applies, allegedly (details of offence):

This notice offers you the opportunity of discharging any liability for conviction for that offence by the payment of a fixed penalty of **£50 (fifty pounds)**. No proceedings will be taken for this offence before the expiration of the period of 29 days beginning with \_\_\_\_\_ (insert the date on which this notice is given). You will not be liable to conviction for the offence if you pay the fixed penalty within that period. In this Form this period is referred to as the **29 day period**.

**You can pay a discounted amount of £30 (thirty pounds) if you pay within the period of 15 days beginning with \_\_\_\_\_ (insert the date on which this notice is given). If the 15th day is not a working day, you may pay on the next working day. 'Working day' means any day which is not Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971. In this Form this period is referred to as the 15 day period.**

Information for the immediate attention of the person who has been issued this penalty notice is at Part 2 of this notice. Details about how to pay this fixed penalty are at Part 3 of this notice. Details about how to request a court hearing in relation to this alleged offence are at Part 4 of this notice. **If you have any questions, or if you wish to discuss this notice, please contact [insert name and address of enforcement authority and contact details].**

**Signature of authorised officer**

**Date of issue**

## PART 2

### INFORMATION FOR THE IMMEDIATE ATTENTION OF THE PERSON WHO HAS BEEN ISSUED WITH THIS PENALTY NOTICE

You have received this notice because the authorised officer of *[name of enforcement authority]* named in Part 1 of this notice has reason to believe that you have committed the offence of smoking in a smoke-free place as described in Part 1. Within the 29 day period specified in Part 1, **you must either** pay the penalty **or** request that the matter be heard by a court. You may not do both.

If you fail to do either, *[name of enforcement authority]* as an enforcement authority by virtue of section 10 of the Health Act 2006, may pursue this matter in court. A person found guilty of the offence of smoking in a smoke-free place is liable on summary conviction to a fine not exceeding level 1 on the standard scale (a).

(a) Currently £200 – see section 37 of the Criminal Justice Act 1982 (c.48) as amended by section 17 of the Criminal Justice Act 1991 (c.53).

## PART 3

### PAYING THE PENALTY

The amount of the fixed penalty is **£50 (fifty pounds)**. It must be paid within the 29 day period which is specified in Part 1.

You can pay a discounted amount of **£30 (thirty pounds)** if you pay within the 15 day period specified in Part 1.

If you choose to pay the penalty, no further action will be taken in respect of the alleged offence described at Part 1 of this penalty notice. The payment of the penalty involves no admission of guilt and will not result in a record of criminal conviction being made against you.

Payment may be made by completing Part 3A below and returning it with payment to the address stated in that Part, or by completing Part 3A below and paying in person at *[name of enforcement authority]*. Acceptable methods of payment include cash, cheque, postal order or money order.

Cheques, postal orders or money orders should be made payable to *[name of enforcement authority]*. If you choose to pay this penalty in cash by post, this must be sent by registered post, and proof of posting must be retained. If you require a receipt for the payment of the penalty, you must ask for one at the time of payment, and if paying by post, you must provide a stamped, self-addressed envelope.

### WARNING – LATE PAYMENT WILL NOT BE ACCEPTED YOU WILL NOT BE SENT A REMINDER

## PART 3A

### PAYMENT OF FIXED PENALTY ISSUED UNDER SECTION 7 OF THE HEALTH ACT 2006 (OFFENCE OF SMOKING IN A SMOKEFREE PLACE)

*This slip must accompany all payments*

To: *[Name and address of enforcement authority where payment should be sent]*

#### Penalty notice number

I enclose the amount of:  **£30** (if the payment is made within the 15 day period specified in Part 1)  
(tick one box)  **£50** (if the payment is made within the 29 day period specified in Part 1)

Full name of alleged offender

Address of alleged offender

Postcode

Signature x

Date of issue

## PART 4 REQUESTING A COURT HEARING

If you choose to request a court hearing, you **must** within the 29 day period do so by completing Part 4A and sending it to [name of enforcement authority], or by writing to [name of enforcement authority] at the address stated on Part 4A, giving your details, the penalty notice number (which can be found in Part 1 of this notice) and an address at which a summons can be served on you. The summons will tell you when and where to attend court. Only the recipient of this penalty notice (the person named at Part 1) may request a court hearing.

### PART 4A HEALTH ACT 2006: OFFENCE OF SMOKING IN A SMOKEFREE PLACE UNDER SECTION 7 REQUEST FOR ALLEGED OFFENCE TO BE DEALT WITH BY A COURT OF LAW

To: *[Name and address of enforcement authority]*

**Penalty notice number**

---

I wish to be dealt with by a court of law for the alleged offence.

**Full name of alleged offender**

---

**Address of alleged offender**

---

**Postcode**

---

**Signature x**

---

**Date of issue**

---



# Appendix 7 RTPM contact details and smoking cessation information

## RTPM contact details (correct as at March 2007)

North East	<b>Ailsa Rutter</b>	ailsa.rutter@freshne.com
North West	<b>Brenda Fullard</b>	brenda.fullard@dh.gsi.gov.uk
Yorkshire & Humber	<b>Pat Hodgson</b>	patricia.hodgson@dh.gsi.gov.uk
East Midlands	<b>Kath Childs</b>	kath.childs@dh.gsi.gov.uk
West Midlands	<b>Paul Hooper</b>	ph7@blueyonder.co.uk
East	<b>Beelin Baxter</b>	beelin.baxter@dh.gsi.gov.uk
London	<b>Andrew Hayes</b>	andrew.hayes@dh.gsi.gov.uk
	<b>Jo Locker</b>	joanne.locker@dh.gsi.gov.uk
South East	<b>Helen Atkinson</b>	helen.atkinson@dh.gsi.gov.uk
South West	<b>Fiona Andrews</b>	fiona.andrews@gosw.gsi.gov.uk

## Support available for anyone who wants to stop smoking

It's estimated that 70 per cent of smokers want to give up smoking, and the new smokefree law might provide them with an extra reason to do so. If businesses would like to help staff and customers become non-smokers, there is excellent free support available from the NHS. This includes:

### Local NHS Stop Smoking Services

To find your local service:

- call the NHS Smoking Helpline free on **0800 169 0 169**;
- visit **gosmokfree.co.uk**;
- text 'GIVE UP' and your full postcode to **88088**; or
- ask at your local GP practice, pharmacy or hospital.

### Employees

Employees can speak to their local NHS Stop Smoking Service about support for their employees during or outside working hours.

### NHS Smoking Helpline

Individuals can speak to a specialist adviser by calling **0800 169 0 169** (lines are open daily from 7am to 11pm).

### gosmokefree.co.uk

This is an online resource for all the advice, information and support needed to stop and stay stopped.

### Together

This support programme is free to join, and is designed to help individuals stop smoking using both

medical research as well as insights from ex-smokers. You can choose to receive emails, text messages, mailing packs and phone calls. For more information call the NHS Smoking Helpline on **0800 169 0 169** or visit **gosmokefree.co.uk**

New guidance from the National Institute for Health and Clinical Excellence (NICE) will advise employers on how to help employees stop smoking. Visit **www.nice.org.uk** for more information.

## Appendix 8 Key issues in relation to smoking shelters

The smokefree legislation does not require the creation of shelters for smokers and an owner of a premises cannot be compelled to make such provision.

However, it is likely that some businesses will want to build shelters to accommodate people who work on or visit their premises and who can no longer be allowed to smoke inside their buildings.

Furthermore, the smokefree legislation does not deal with how smoking shelters should be constructed or sited. Since that is the case, it is not possible for LACORS to specify how such shelters should be constructed or sited. Some organisations have asked for national planning guidance to be issued regarding smoking shelters. It is the view of LACORS and supported by Communities and Local Government that it would not be possible to produce meaningful planning guidance at a national level that would adequately cover the range of considerations that might be important at a local level.

Therefore the approval of such shelters, or otherwise, will necessarily be a matter for local determination by regulatory officers liaising with planning officers and others to ensure that any shelter that is used for smoking is not substantially enclosed and can be used by smokers without offences being committed.

However, the following can be offered as general guidance. Where businesses do want to erect shelters they will need to give consideration to the following:

- local planning requirements;
- building control requirements;
- licensing requirements in terms of outside hours/ use of the street;
- noise issues, especially at night and adjacent to residential areas

- provision of suitable litter receptacles to help keep the streets/outside areas clean; and
- the use of any temporary covers that may cause the structure to be classed as substantially enclosed.

The siting of the shelter is also important and it is therefore recommended that:

- it should not be sited too close to sheltering walls or other structures which may prevent proper air-flow through the shelter since this would not only be against the spirit of the legislation and commonsense but could also effectively render the structure substantially enclosed and raise the prospect of offences being committed when it is used by smokers; and
- it should be sited so as to ensure as far as possible that secondhand smoke will not be likely to drift into smokefree areas of premises and give rise to complaints.

For the above reasons it is advised that before any final decision is made on type and location of a shelter, businesses should seek the advice from their local council.

Whilst regulatory officers will wish to provide advice where possible on the provision of smoking shelters, the main focus of their attention will be to ensure compliance with the smokefree legislation in those enclosed and substantially enclosed areas which constitute the workplaces and 'indoor' public places and that work must take priority.

## Appendix 9 Ten reasons to go smokefree<sup>6</sup>

- 1** Second-hand smoke exposure kills and harms health
- 2** Every worker has the right to be protected from exposure to tobacco smoke
- 3** Scientific evidence shows that ventilation does not protect against exposure to tobacco smoke
- 4** Smokefree laws do not result in negative economic effects
- 5** Freedom of choice includes the responsibility not to harm others
- 6** The public supports smokefree legislation
- 7** The public complies with smokefree legislation
- 8** It has been done elsewhere. It can be done everywhere
- 9** It is a cost effective public health intervention
- 10** Comprehensive smokefree policies work

---

<sup>6</sup> *Lifting the smokescreen: 10 reasons for a smoke free Europe* [http://dev.ersnet.org/uploads/Document/46/WEB\\_CHEMIN\\_1554\\_1173100608.pdf](http://dev.ersnet.org/uploads/Document/46/WEB_CHEMIN_1554_1173100608.pdf)

# Appendix 10 Application, exemptions and advice on good practice

## The application of the smokefree requirements, exemptions and advice on good practice

### Requirements

### Advice and good practice

#### A General advice notes

##### **A1** Designation of non-smokefree rooms

*If a designated room does not meet the required conditions and people are permitted to smoke in it then an offence will have been committed. The advice to the persons in control of such premises should therefore be that the council should be consulted on the suitability or otherwise of individual rooms before the decision is made on designation.*

##### **A2** General duty of care under Health and Safety at work (HSW) etc Act 1974

*The employer of staff who are expected to carry out work in designated rooms will still have a general duty of care under the HSW Act. The employer should consider what needs to be done to minimise exposure of the employee to secondhand smoke or to mitigate its effects upon the employee – for example by specifying the time periods during which the designated room will be available for use or by stipulating when the room must be vacated each day in order to allow sufficient time for the room to be ventilated prior to cleaning and housekeeping activities being carried out.*

##### **A3** Ventilation of designated non-smokefree rooms

*A method of ventilation is likely to be through openable windows to the external air. Therefore the advice of the council may be that the windows in a room intended to be designated as a non-smokefree room should be fully openable. In respect of windows where opening restrictors or other security measures are considered to be necessary, the requirement should be that any such restrictors can be released by an adult occupant or house-keeping staff.*

## 1 Private dwellings

These requirements are intended to achieve a balance between allowing people to smoke in their own residential space and protecting others from exposure to secondhand smoke.

**1a** The following parts of a private dwelling are required to be smokefree – any parts of a dwelling which are used **solely** as a place of work for:

- more than one person who does not live at the dwelling;
- a person who does live at the dwelling and any person who does not; or
- any person whether they live at the dwelling or not, if people who do not live at the dwelling come to give or receive goods or services.

**1b** The following parts of a private dwelling are required to be smokefree:

- any parts of premises that are used in common by more than one premise and are used as a workplace by more than one person or is a place that is open to members of the public.

*The general principle is that the person living in the dwelling is free to decide whether the premises should be smokefree or not unless the dwelling is also used for work purposes by others or visited by the public (note the person may be an employed home worker and one who works with someone else if they both live in the dwelling).*

*The effect of this requirement is that the exemption can only be claimed by a self-employed person working at home alone and where clients or members of the public are not admitted. It is considered that these conditions will rarely apply.*

*Visited by the public means at any time that the premises are being used for work purposes – i.e. when they are open for business.*

*In respect of premises which are only open to the public for limited specified periods and which are not otherwise a workplace e.g. 'stately homes' then the requirement to be smokefree only applies for that period.*

*This requirement applies both to self-contained dwellings within a single structure as well as to houses in multiple occupation, halls of residence, nursing homes etc.*

*The areas that may be required to be smokefree could include: common entrances halls, stairwells and lifts in a block of flats; communal kitchens, bathrooms or laundry rooms in halls of residence; and the 'common parts' of an HMO but only where it is used as a workplace by more than one person or open to members of the public.*

*The question of whether work is carried out will be a question of fact and degree. For example in halls of residence there might be daily cleaning, whereas in some houses in multiple occupation there may be no regular cleaning arrangements other than that arranged by the occupants themselves.*

**1c** There is no restriction on people smoking in any part of their private dwellings used for work, if the work is undertaken solely to:

- provide personal care for someone living in the dwelling;
- assist with the domestic work of the household in the dwelling;
- maintain the dwelling; or
- install, maintain or remove any service provided to the dwelling for the benefit of people living there.

*This exemption means that there is no requirement to be smokefree whilst there is a nanny, cleaner, carer, builder or service engineer present.*

*However, the householder and person providing the service should be encouraged to come to an agreement about where and when smoking can take place.*

*The employer of staff carrying out work in private residential accommodation will still have a general duty of care under HSW Act. Therefore:*

- where the contract of employment provides accommodation within the home of the employer it would be sensible for the smokefree status of the accommodation, or different parts of the accommodation, to be specified; and
- where the employed person is required to visit, attend or carry out services or treatments for a person in their own home, then the employer should consider what needs to be done to minimise exposure of the employee to second-hand smoke or to mitigate its effects upon the employee. Comprehensive guidance for this purpose has been issued by the Royal College of Nursing.  
**[www.rcn.org.uk/publications/pdf/protecting\\_community\\_staff\\_smoke.pdf](http://www.rcn.org.uk/publications/pdf/protecting_community_staff_smoke.pdf)**

## **2 Accommodation let for temporary or holiday use**

There is no restriction on people smoking in self-contained residential accommodation for temporary or holiday use such as a holiday cottages, caravans, lodges or flats so long as it is rented in its entirety for private residential use, as well as any other structures such as garages or sheds that are for the exclusive use of persons living in the dwelling.

*It is important that potential hirers are clearly advised at the time of booking on the smokefree status of the accommodation they intend to occupy.*

*Owners may choose to require their premises to be smokefree and these regulations will not affect their right to require this. As a deterrent, the owner might wish to retain a deposit against cleaning a property should smoking in contravention of the condition of the hire have taken place. In order to comply with the Unfair Terms in Consumer Contracts Regulations 1999, the amount of such a deposit should not be more than the costs of the cleaning.*

### 3 Sleeping accommodation in hotels, guest houses, inns, hostels and members clubs

In hotels, guest houses, inns, hostels or members' clubs **designated bedrooms** need not be smokefree if they are designated as such in writing by the person in charge.

Each designated bedroom has to meet specified requirements in relation to ventilation, separation and signage (see table of requirements for designation of rooms for smoking).

A designated bedroom cannot be a dormitory, or other room for accommodation that is made available under separate arrangements for persons to share at the same time.

*See general advice notes A1 and A2 and A3.*

*The person in control of the premises must designate the bedrooms in writing and it is good practice for that person to prepare a list of designated bedrooms that can be produced for inspection when requested by the regulatory officer.*

*The only rooms which can be designated are bedrooms and not other parts of a suite or rooms which are used in common with other bedrooms or in other parts of the building, even if all bedrooms are designated.*

*In deciding upon the proportion of bedrooms in which to permit smoking, the person in charge needs to be aware that only a quarter of the adult population smoke and many people who do smoke will prefer smokefree bedrooms.*

*Designated bedrooms are intended only be used by guests and not by staff who wish to smoke.*

### 4 Accommodation in care homes and secure institutions

In care homes, hospices, prisons and mental health units that provide residential accommodation – designated bedrooms, or designated rooms used only for smoking, need not be smokefree if they are designated as such in writing by the person in charge.

The designated rooms can only be used by persons over the age of 18 years.

Each designated bedroom or designated smoking room has to meet specified requirements in relation to ventilation, separation and signage (see table of requirements for designation of rooms for smoking).

*See general advice notes A1 and A2 and A3.*

*A designated smoking room should be provided only for that singular purpose. Therefore it is advisable that the room does not contain any recreational equipment or material or furniture, other than that necessary to meet the mobility needs of individuals whilst they are using the room to smoke.*

*Designated smoking rooms are primarily provided for the use of residents and their visitors only.*

*Note: In the case of a mental health unit the designation is limited to premises providing residential accommodation (not day facilities) and expires on 1 July 2008.*

## 5 Performers

Persons participating in a performance are not to be prevented from smoking if the artistic integrity of the performance makes it appropriate for that person to smoke.

Parts of premises in which a person performs is not smokefree in relation to that person only during the time of the performance.

This exemption does not extend to rehearsals or to persons other than the particular performer who should be identified in the script.

If a performer smokes in smokefree premises when the artistic integrity of the performance does not require smoking to take place, then both the performer and any person that controls or manages the premises could be committing an offence.

*The requirements to prevent smoking will cover the duties of the directors to ensure that the requirements set out in the regulations for performers are followed.*

*See general advice note A2.*

*This provision does not exist in the legislation for Scotland where smoking on stage has been the subject of challenges and media interest. The absence of any definition of 'performance' and of criteria for determining 'artistic integrity', together with the obvious conflict between opinions about 'artistic integrity' and the rights of employees to smokefree workplaces, will ensure that there will be disagreements about whether smoking should be allowed or disallowed. It has not been possible to identify any clear guiding principles for local authorities to take into account in determining these matters and it will be necessary for each case to be decided on its merits.*

*This issue may arise with performers in public houses and smaller venues etc. and it should be raised with landlords/owners when discussing smokefree requirements.*

## 6 Specialist tobacconists

Specialist tobacconists need not be smokefree for the time they are used for persons sampling cigars and pipe tobacco.

Specified requirements similar to those for a designated smoking room have to be met in relation to ventilation, separation and signage (see table of requirements for designation of rooms for smoking).

*Specialist tobacconists are defined in section 6(2) of the Tobacco Advertising and Promotion Act 2003. These shops are small in number and are businesses where over half their sales come from cigars, pipe tobacco and related specialist tobacconists materials.*

*The exemption is only for the sampling of cigars and pipe tobacco and not for cigarettes or rolled tobacco.*

*The exemption applies to the whole shop provided the specified conditions are met.*

*A list of specialist tobacconists in England is available on the LACORS website.*

## 7 Offshore installations

A designated room used solely for smoking in offshore installations need not be smokefree if it is designated in writing by the person in charge.

Each designated smoking room has to meet specified requirements in relation to ventilation, separation and signage (see table of requirements for designation of rooms for smoking).

## 8 Research and testing facilities

A room in a research or testing facility need not be smokefree during the time that it is being used for research or tests if it is designated in writing by the person in charge.

Each designated room has to meet specified requirements in relation to ventilation, separation and signage (see table of requirements for designation of rooms for smoking).

Note that these could include research facilities in schools.

*This exemption is intended for oil platforms and offshore installations where smoking in the open air would create a risk.*

*See general advice notes A1 and A2 and A3.*

*Local councils with such facilities in their area may feel that securing compliance with these requirements should be taken into account by the Health and Safety Executive in establishing the overall safety standards for such facilities. This would include considerations of how best to protect employees from exposure to secondhand smoke, arrangements to minimise accidental exposure of the employees or to mitigate effects and regular health screening.*

*The research or tests must relate to:*

- emissions from tobacco and other products used for smoking;*
- development of products for smoking with lower hazard or fire safety testing of materials involving products for smoking;*
- development of smoking or pharmaceutical products that could result in the manufacture of less dangerous products for smoking; or*
- smoking cessation programmes.*

## 9 Smokefree vehicles

Enclosed vehicles are required to be smokefree at all times if they are 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 voluntary work by more than one person, even if those people use the vehicle at different times, or only intermittently.

Vehicles that are required to be smokefree and that have a removable or stowable roof will not be required to be smokefree when they are conveying persons during the time that the roof is completely removed or stowed.

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.

*The Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007 set out the persons who will have legal duties to cause any person who is smoking on a smokefree vehicle to stop smoking, namely:*

- *the driver;*
- *any person with management responsibilities for the vehicle; and*
- *any person in a vehicle who is responsible for order or safety on it.*

*This will mainly apply to convertible cars and open top tour buses that are making a journey.*

*A privately owned vehicle used by the owner in connection with their work and only occasionally for conveying other people in connection with work activities will not be required to be smokefree.*

*A vehicle which is on hire for long term personal use does not have to be smokefree (unless the hire company specifies smokefree as a rental condition or the company employing the driver restricts the use of the vehicle to a particular journey).*

*A pool car which is available for general work use for a particular journey is required to be smokefree.*

*A rental vehicle being delivered to a customer is considered to be a work vehicle and would be required to be smokefree.*

## **10 Ships and hovercraft**

It is intended that the requirements of the smokefree regulations will, where appropriate, apply to all vessels, both passenger and non-passenger ships, including fishing vessels, that come within the scope of the Merchant Shipping Act 1995 and that similar legislation will be apply to hovercraft. The requirements would only apply whilst the vessels are operating within the 12-mile UK territorial limit, unless they are in transit and will not be calling at a UK port.

*It is not proposed to extend the smokefree provisions to any vessel which is operated by self-employed seafarers with no employed crew and/or paying passengers on board, or to private vessels which are not carrying any fare paying passengers or any employed crew on board. This would mean that the provisions would not apply to vessels used primarily for private purposes, nor to private vessels such as yachts, motor cruisers, and small private fishing vessels, unless they are carrying at least one paying passenger, or are operating with crew employed under a contract.*

*Where a boat is moored and for example used for other purposes, the council will need to check with the Maritime and Coastguard Agency (MCA) as to whether the vessel falls under the jurisdiction of the MCA or is for the council to investigate.*

## **11 Aircraft**

This legislation does apply to aircraft.

*The Government believes that provisions in the Air Navigation Order 2005 regarding smoking in aircraft are working satisfactorily. The Air Navigation Order also makes suitable provision regarding no-smoking signage.*

## Conditions required to be met for designated rooms

The chart below details the conditions that must be met for designated rooms in specified premises, as set out in the Smoke-free (Exemptions and Vehicles)

Regulations 2007. A tick on the chart means that the condition must be met in order to designate a room for smoking. If all required conditions are not met in any designated room in specified premises, the room must be smokefree under the provisions in the Health Act 2006.

<b>Types of premises</b>	Accommodation for guests and club members (hotels, guest houses, inns, hostels or members' clubs), not including dormitories	Other residential accommodation (only care homes, hospices and prisons)	Offshore installations	Research and testing facilities (limited to those engaged in research or tests specified in regulations)	Mental Health units that provide residential accommodation (exemption allowed until 1 July 2008)	Specialist tobacconists shops (as defined in the Tobacco Advertising and Promotion Act 2002)
<b>Type of room that can be designated</b>	Guest bedrooms, set apart exclusively for sleeping accommodation	Bedrooms or rooms used only for smoking	Rooms used only for smoking	Rooms used for specified research or tests	Bedrooms or rooms used only for smoking	Entire shop for sampling of cigars or pipe tobacco
Room has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid floor-to-ceiling walls	✓	✓	✓	✓	✓	
Room does not have a ventilation system that ventilates into any other part of the premises (except any other designated rooms)	✓	✓	✓	✓	✓	✓
Room does not have any doors that open onto smokefree premises, which are not mechanically closed immediately after use	✓	✓ except prisons	✓	✓	✓	✓
Room is clearly marked as a room in which smoking is permitted	✓	✓	✓	✓	✓	✓

# Appendix 11 Summary of the Department of Transport consultation document

The Department of Transport has published its consultation on the *Proposed Restrictions on Smoking on Sea Going and Inland Waterway Vessels*.

**[www.dft.gov.uk/consultations/open/smokingonvessels/smoking](http://www.dft.gov.uk/consultations/open/smokingonvessels/smoking)**

The smokefree provisions are designed to protect employees at their work place, as well as the public. Therefore, it seems inconsistent if the crew of merchant ships and inland waterway vessels, or their passengers, are not likewise protected. The Government's view therefore is that all vessels within the scope of the Merchant Shipping Act 1995 should be covered by similar smokefree provisions as those set out in the Health Act in England, providing that either at least one paying passenger and/or someone who is employed under a contract of employment is on board.

It is intended that the smokefree regulations will apply to all vessels, both passenger and non-passenger ships, including fishing vessels, that come within the scope of the Merchant Shipping Act 1995 and that similar legislation will apply to hovercraft. The requirements would only apply whilst the vessels are operating within the 12-mile UK territorial limit, unless they are in transit and will not be calling at a UK port.

Similar to the requirements of the Health Act, whilst all common enclosed areas of the vessel must be smokefree, the vessel operator may permit resident crew members and guests to smoke in an entirely private space that is essentially residential, and which does not have ventilation which is shared with, or discharges into, the smokefree common areas of the vessel.

It is not proposed to extend the smokefree provisions to any vessel which is operated by self employed seafarers with no employed crew and/or paying passengers onboard, or to private vessels which are not carrying any fare paying passengers or any employed crew onboard. This would mean that the

provisions would not apply to vessels used primarily for private purposes, nor to private vessels such as yachts, motor cruisers, and small private fishing vessels, unless they are carrying at least one paying passenger, or are operating with crew employed under a contract.

The consultation period began on 14 February 2007 and will run until 11 May 2007. The Chartered Institute of Environmental Health Port Health Special Interest Group will be interested in any intended responses to this consultation and these can be directed to Ian Gray, CIEH Policy Officer at **[i.gray@cieh.org](mailto:i.gray@cieh.org)**



LACORS  
Local Government House  
Smith Square  
London SW1P 3HZ

Enquiries **020 7665 3888**  
Fax **020 7665 3887**  
Email **info@lacors.gov.uk**

**[www.lacors.gov.uk](http://www.lacors.gov.uk)**