

ANNEX ONE

City of York Council

Enforcement policy (Smokefree legislation)

1.0 Introduction

City of York Council has a statutory duty to enforce the smokefree provisions of the Health Act 2006. In general terms, smoking is prohibited in all enclosed and substantially enclosed premises to which the public have access. Work premises and vehicles used by more than one person are also included.

Section 5 of this policy has been agreed with the other local authorities in North Yorkshire, in order to promote a consistent approach to enforcement of the smokefree legislation across the region.

This document sets out the policy of City of York Council for enforcement of this legislation.

2.0 Objectives

The objective of the smokefree legislation is to prevent smoking occurring where people's health could be affected from the exposure to second hand smoke.

Our objective is to implement the smokefree legislation in an equitable and consistent manner. We will apply the law proportionally, to ensure a fair and safe trading environment for members of the public, employees and businesses.

3.0 Achieving the objectives

We will use an educational, advisory and non-confrontational approach, both before and for a period of time after the legislation comes into force.

We aim to help businesses and those who smoke to comply with the legislation by raising awareness and understanding of the legal requirements. We will actively work with local businesses to advise on, and assist with, compliance with the law.

4.0 Offences and penalties

The smokefree legislation introduces three offences that carry a range of penalties, consisting of fines and fixed penalty notices (FPN):

| Offence | Penalty* |
|---|--|
| <ul style="list-style-type: none">Failing to prevent smoking in a smokefree premises/vehicle | <ul style="list-style-type: none">Fine – up to £2500 |
| <ul style="list-style-type: none">Failing to display the appropriate smokefree signage, in an appropriate position, on a smokefree premises/vehicle. | <ul style="list-style-type: none">Fine – up to £1000FPN - £200 (£150 if paid in 15 days) |
| <ul style="list-style-type: none">Smoking in a smokefree premises/vehicle | <ul style="list-style-type: none">Fine – up to £200FPN – £50 (£30 if paid in 15 days) |

* Penalties may be subject to change by the government.

5.0 Circumstances for taking formal enforcement action

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

Before deciding whether to prosecute, we will consider a number of factors in line with the Code for Crown Prosecutors, and any other national guidance concerning the taking of relevant enforcement action.

We recognise that there may be some unintentional breaches of the legislation and our approach to achieving compliance will be as follows:

Failure to display no-smoking signage

The manager or occupier of smokefree premises/vehicles will be approached where signage does not comply with the statutory guidance.

Advice on the signage requirements will be given and a timescale to take corrective action will be verbally agreed and subsequently confirmed in writing.

Where appropriate signage has not been installed in the agreed timescale (or extended timescale as agreed with the local authority), a verbal and written warning will be issued and we will specify a date for compliance.

If we establish that appropriate signage is still not installed by the specified compliance date, we will consider serving a FPN.

We will consider taking legal proceedings where appropriate signage is still not in place following the service of a FPN, or where a previously issued FPN has not been paid.

Failure to prevent smoking in a smokefree premises or vehicle

Where smoking is witnessed by an officer or is alleged to have occurred in a smokefree premises/vehicle, we will approach the management or person in control of that premises/vehicle.

We will offer them advice and a timescale to take reasonable corrective action. We may also issue them with a verbal warning and will follow any verbal warning up in writing.

Where this advice is not acted upon and we establish that smoking is taking place in a premises/vehicle, we may issue a final written warning.

We will consider taking legal proceedings against the manager or person in control of a premises/vehicle if they have not taken reasonable corrective action after receiving a final written warning.

Smoking in a smokefree premises or vehicle

Our aim is to achieve compliance with the legislation by ensuring that the management or person having control of a premises/vehicle prevents smoking where they are legally required to do so.

Where reasonable steps have been taken to prevent smoking by the management or person having control, we will approach individuals who are smoking. Depending on the circumstances we will issue a verbal and/or written warning.

Where this verbal/written warning is ignored and an individual continues to smoke, we will consider serving a FPN.

We will consider taking legal proceedings where we become aware of an individual who has previously received a FPN and continues to flout the law. We will also consider prosecuting those who fail to pay a FPN.

6.0 Rights of appeal

There are no formal appeal provisions against the incorrect service of a FPN (eg: the FPN was served on the wrong person). In such cases, an individual can appeal against a FPN directly to the council, who have the power to cancel the FPN. The decision on whether to cancel a FPN will be taken by the Director of Neighbourhood Services, or any person authorised to do so under the City of York Council Scheme of Delegation.

Where the recipient of a FPN wishes to challenge the offence for which they have received a notice, they can make a request for a court hearing. This request must be made in writing to the local authority within 29 days of the FPN being issued.

7.0 Review

This policy will be subject to an annual review with additional reviews as and when required.

Contact

If you have any comments or queries about this policy please contact the Food and Safety Unit Manager by calling (01904) 551525, or by writing to 9 St Leonards Place, York, YO1 7ET or email at food.safety@york.gov.uk