
Meeting of the Executive Member for Neighbourhood Services and Advisory Panel

7 June 2007

Report of Director of Neighbourhood Services

The implementation of smokefree legislation in England

Summary

1. On 1 July 2007, the provisions within the Health Act 2006 relating to smokefree areas in England becomes law.
2. The purpose of this report is to provide some background to the smokefree legislation and to outline how businesses will be assisted to achieve compliance with the legislation. The Executive Member is also requested to approve the proposed enforcement policy, attached at Annex One.

Background

3. In December 2006, the Government announced that the smokefree legislation will become law at 6 am on 1 July 2007.
4. The primary reason for this smokefree legislation, is to protect the health and safety of employees across all sectors of the employment market. The evidence for implementing the smokefree agenda is clear; each year, over 600 employees die prematurely as a direct result of exposure to second hand smoke in the workplace.
5. The only effective way to prevent exposure to second hand smoke, is to completely ban smoking. Technological fixes, such as ventilation systems, have been scientifically proven as ineffective, as there is no safe level of exposure to second hand smoke.
6. Earlier drafts of the smokefree regulations contained a number of broad exemptions, such as pubs that do not serve food and private clubs. However, following a free vote by MPs on 14 February 2006, there was an overwhelming decision to apply smokefree legislation to virtually every workplace.

Legislative requirements

7. The smokefree regulations have been issued under the Health Act 2006.
8. These regulations will apply to virtually all 'enclosed' and 'substantially enclosed' work places and public places. This requirement also extends to vehicles used for work purposes and also to temporary structures (eg marquees).

9. There are a number of exemptions to the legislation, which are as follows:
 - Private accommodation (but not communal areas of flats, such as enclosed hall ways and stair cases)
 - Accommodation for guests (eg: hotel bedrooms)
 - Other residential accommodation (eg: care homes, prisons)
 - Performers in theatre productions
 - Specialist tobacconists (there is one in York)
10. The smokefree regulations will impose the following requirements:
 - Smokefree premises/vehicles must display an adequate number of smokefree signs, in suitable locations (there are statutory signage requirements).
 - Managers, occupiers and other responsible parties, must prevent smoking occurring where the legislation applies.
 - Individuals must not smoke in smokefree premises/vehicles.

Implementation

11. Traditionally, new legislation such as this would be delivered at a local level, by the local authority alone. The smokefree campaign is different, as there are other key stakeholders involved, meaning partnership working is essential.
12. Nationally, the Department of Health (DoH) has the lead role for the smokefree agenda. They have already started raising awareness in a number of ways:
 - a national advertising campaign
 - providing information packs to businesses
 - supplying free no-smoking signage
 - providing a business advice line
13. At the Yorkshire and the Humber level, there is a network of NHS staff involved in stop-smoking services. These teams have a budget, which will allow them to supplement the national campaign, with local initiatives. Their aim is to bolster the smokefree awareness campaigns, and to provide assistance to those individuals who want to stop smoking (eg: the stop-smoking bus sometimes seen in Parliament Street).
14. At a local level, environmental health professionals are responsible for educating and advising businesses during the lead in period. This will be followed by enforcement action, where this becomes necessary.
15. The aspiration of the DoH, is to raise awareness and understanding prior to the legislation going live, in order to achieve high levels of compliance. By using this approach, it is hoped that the need for enforcement action will be minimised. Although environmental health will be the regulators, there is a clear need to work closely with the other stakeholders, thereby ensuring that clear and consistent messages are delivered across the authority's area.

16. Joint working between the various stakeholders is fundamental, if the smokefree legislation is going to be successfully and smoothly implemented.
17. The DoH has provided the council with a grant to help it implement the smokefree agenda. This money has been used to employ two smokefree officers for a 12 month period, and to cover other implementation costs.
18. In restricting the grant to terminate by March 2008, the Government anticipates that once the legislation has been in place for a number of months, smokefree places will be regarded as the norm and in most instances, will self-regulate. Consequently, the Government feels there will not be a continuing need for additional funding from 2008, and it is anticipated that any work load will be dealt with using existing resources.
19. The DoH is keen to ensure that local authorities use an enforcement approach that is non-confrontational in the first instance, by raising levels of awareness and understanding amongst those affected. It is intend to approach the smokefree agenda in two phases:

Phase 1 – Education, awareness and understanding

This programme has already started, and various departments within the council have already been made aware of the forthcoming legislation. Presentations have been given at team meetings, such as planning and licensing, which has provided a useful forum to debate around the issues specific to those teams.

In addition to the above, a business education programme has already started, some examples of which include:

- An article on the smokefree requirements is shortly to appear in Copper's Tale, a Police publication sent to all licensed premises in the City of York Council area.
- A presentation was given to businesses, by environmental health and the PCT, at the recent Safer Working Communities health and safety training week in the Guild hall.
- A presentation was given to licensees at the recent annual licensing meeting. The event is held at the race course and is primarily aimed at licensees who operate pubs and clubs in the York area.

The council's press office have been kept updated on the smokefree agenda, and have assisted with press releases and the like.

Communications and marketing are playing a key role and have helped to develop a strategic education/awareness campaign. The use of less traditional media formats, such as adverts on local commercial radio, are being considered.

Over the past couple of months officers have been responding to requests for assistance from businesses, and have made a number of visits to provide site specific guidance.

Phase 2 - Enforcement

The DoH has made very clear that they wish local authorities to take an informal approach to enforcing the legislation after 1 July. With this in mind we have

developed a proposed enforcement policy, which states how City of York Council intends to deal with any breaches of the legislation.

As can be seen by the proposed enforcement policy at Annex One, the council will offer advice and assistance in the first instance. It is only where this advice is not acted upon, or where an individual flouts the law that we will consider taking formal enforcement action.

Consultation

20. The approach to formal enforcement action, found in section 5 of the proposed enforcement policy, has been agreed following consultation with all the North Yorkshire district councils.

Options

21. There are two options for members to consider:

Option 1

Approve the enforcement policy found at Annex One.

Option 2

Not approve the enforcement policy found at Annex One.

Analysis

22. Approval of the attached enforcement policy will encourage the consistent application of the smokefree legislation in the North Yorkshire region. It also assists businesses understand what is required of them and promotes a transparent approach to our enforcement activities. Having an approved enforcement policy is necessary in order to strengthen the councils position in court should formal enforcement action be taken
23. Not approving the enforcement policy will leave businesses and the public unclear on the council's position in respect of enforcing the smokefree agenda, and would jeopardise any future formal enforcement action.

Corporate Priorities

24. The smokefree legislation has the potential to impact upon a number of the council's corporate priorities:
 - Improving the condition and appearance of York's streets.
 - Reducing the impact of nuisance behaviour.
 - Improving the health and lifestyles of York residents.
 - Improving the way the Council and its partners work together to deliver better services

Implications

Financial

25. There are no financial implications associated with this report. All costs relating to enforcing the smokefree legislation are expected to be contained within the 2007/8 grant.

Other implications

26. There are no significant HR, equalities, legal, crime and disorder, IT, property or other implications other than those set out in the body of this report.

Risk Management

27. There are no risks associated with the recommendation of this report.

Recommendations

28. That the Advisory Panel advise the Executive Member to note the contents of this report and approve the enforcement policy found at Annex One.

Reason: To encourage the consistent application of the smokefree legislation in the North Yorkshire region, to assist businesses to understand what is required and an approved enforcement policy would strengthen the councils position in court.

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Report Approved



Date 18/05/2007

Specialist Implications Officer(s) None

Wards Affected:

All

For further information please contact the author of the report

Background Papers:

'Implementation of smokefree legislation in England' – Published by LACORS, CIEH and TSI.

Annex One – Enforcement Policy (Smokefree Legislation)