

INFORMATION ITEM

REPORT TO CABINET

12 APRIL 2007

**REPORT OF
CORPORATE
MANAGEMENT TEAM**

INFORMATION ITEM

Adult Services and Health – Lead Cabinet Member – Councillor Cains

SMOKEFREE LEGISLATION IMPLEMENTATION STRATEGY

SUMMARY

From 1st July 2007, all enclosed public places and workplaces in England will become smokefree and the Local Authority will enforce this legislation. This report outlines the strategy and policy for how Smokefree will be implemented and is for member's information.

DETAIL

- 1 From 1st July 2007, virtually all enclosed public places and workplaces in England will become smokefree, and smoking in these places will be a thing of the past – and against the law. Enclosed public spaces and workplaces that will become smokefree will include offices, factories, shops, pubs, taxis and work vehicles that are used by more than one person.
- 2 Smokefree will benefit everyone by providing protection from harmful second hand smoke. It is estimated that it will save thousands of lives over the next decade and will help the 7 out of 10 smokers who want to quit, to do so. But most of all it will create a cleaner and healthier environment for everyone.
- 3 Most people will comply, but those who don't may be liable to a fixed penalty notice or prosecution if they:
 - Smoke in a smokefree place or vehicle
 - Fail to display a no smoking sign
 - Allow smoking in a smokefree place or vehicle
- 4 Enforcement of the legislation will be by Local Authorities and in Stockton the Council's Environmental Health Officers, Licensing Officers, Trading Standards Officers and Enforcement Officers will combine enforcement of smokefree with their usual enforcement duties. The Environmental Health Unit will lead on implementation of Smokefree and will act as the first point of contact for queries, complaints or concerns on any aspect of the Smokefree legislation.
- 5 This strategy document outlines the general policy to be adopted by Stockton-on-Tees Borough Council (SBC) to implement the Smokefree legislation in its area. Leading up to 1st July 2007 Council Officers will provide advice and guidance to local business to raise

awareness of the legislation. After implementation there will be a high profile presence in key affected businesses and we anticipate high levels of compliance.

- 6 Where this advice is ignored the enforcement powers available to Authorised officers, including issue of fixed penalty notices will be considered and used in accordance with Stockton's Enforcement Policy
- 7 Implementation will include
 - Training of Authorised officers as well as other Council staff, Smokefree Stockton partners and members
 - Updating database of affected businesses
 - Publicity and Information distribution including leaflet drops, web information, Stockton News articles.
 - Advice and query service – both proactive during routine visits for other purposes and reactive to service requests.
 - Enforcement – both proactive and reactive following implementation.
- 8 These measures will also involve providing advice and consideration of complaints regarding associated issues such as Noise and litter from smokers outside buildings, planning matters on siting of smoking shelters and outside drinking areas, fire and health and safety concerns and licensing issues. The legislation is also an opportunity to provide advice on Smoking policies in premises and to promote smoking cessation and other health education programmes.
- 9 Copies of the Smokefree Legislation Implementation Strategy are attached as Appendix 1.

FINANCIAL AND LEGAL IMPLICATIONS

- 10 The authority has been allocated grants of £17,676 for 2006/07 and £86,567 for 2007/08 by the Government to support implementation of Smokefree legislation. No additional funding is provided for ongoing enforcement from 2008/09 onwards.

COMMUNITY STRATEGY IMPLICATIONS

Community Strategy	Areas of Smokefree that link to this strategy
Promote the safety and well-being of the community	Under age tobacco sales enforcement Health and safety at work enforcement policy
Further regenerate the Borough and improve the local economy	Advice, assistance and practical help to local businesses comply with smokefree
Secure a safe and attractive environment for current and future generations	Noise and litter issues resulting from smoking areas outside premises. Planning requirements for smoking areas. Licensing issues
Improve the health of the local community	Protection of workers and the public from passive smoking Promotion of smoking cessation Links to Smoke Free Stockton Initiative
Improve opportunity and achievement in education and lifelong learning	

RISK ASSESSMENT

- 11 Failure to provide effective advice may result in involvement with high profile legal action, however this is unlikely given experience from Scotland and Ireland and the enforcement policy of restraint in legal action.

Corporate Director of Development & Neighbourhood Services

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Background Papers None
Education Related Item? No
Ward(s) and Ward Councillors: Not Ward Specific

Stockton on Tees Borough Council

Smokefree Legislation Implementation Strategy

2007

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1. Introduction

- 1.1 From 1st July 2007, virtually all enclosed public places and workplaces in England will become smokefree, and smoking in these places will be a thing of the past – and against the law. Enclosed public spaces and workplaces that will become smokefree will include offices, factories, shops, pubs, taxis and work vehicles that are used by more than one person.
- 1.2 Smokefree will benefit everyone by providing protection from harmful second hand smoke. It is estimated that it will save thousands of lives over the next decade and will help the 7 out of 10 smokers who want quit, too. But most of all it will create a cleaner and healthier environment for everyone.
- 1.3 Most people will comply, but those who don't may be liable to a fixed penalty notice or prosecution if they:
 - 1.3.1 Smoke in a smokefree place or vehicle
 - 1.3.2 Fail to display a no smoking sign
 - 1.3.3 Allow smoking in a smokefree place or vehicle
- 1.4 Enforcement of the legislation will be by Local Authorities and in Stockton the Council's Environmental Health Officers, Licensing Officers, Trading Standards Officers and Enforcement Officers will combine enforcement of smokefree with their usual enforcement duties.
- 1.5 The Environmental Health Unit will lead on implementation of Smokefree and will act as the first point of contact for queries, complaints or concerns on any aspect of the Smokefree legislation. Environmental Health can be contacted by telephone on 01642 526575 or by email on Environmental.Health@stockton.gov.uk
- 1.6 This strategy document outlines the general policy to be adopted by Stockton-on-Tees Borough Council (SBC) to implement the Smokefree legislation in its area. Leading up to 1st July 2007 Council Officers will provide advice and guidance to local business to raise awareness of the legislation. After implementation there will be a high profile presence in key affected businesses and we anticipate high levels of compliance.
- 1.7 Where this advice is ignored the enforcement powers available to Authorised officers, including issue of fixed penalty notices will be considered and used in accordance with Stockton's Enforcement Policy
- 1.8 Implementation will include
 - 1.8.1 Training of Authorised officers as well as other Council staff, Smokefree Stockton partners and members
 - 1.8.2 Updating database of affected businesses
 - 1.8.3 Publicity and Information distribution including leaflet drops, web information, Stockton News articles.
 - 1.8.4 Advice and query service – both proactive during routine visits for other purposes and reactive to service requests.
 - 1.8.5 Enforcement – both proactive and reactive following implementation.
- 1.9 These measures will also involve providing advice and consideration of complaints regarding associated issues such as Noise and litter from smokers outside buildings, planning matters on siting of smoking shelters and outside drinking areas, fire and health and safety concerns and licensing issues.
- 1.10 The legislation is also an opportunity to provide advice on Smoking policies in premises and to promote smoking cessation and other health education programmes.

2 Legislation

- 2.1 **Background** - The medical and scientific evidence of the risks to health from exposure to secondhand smoke is well established. Through the Choosing Health White Paper, the Government set out a clear strategy to tackle smoking, as well as the effects of smoking on others. A key aspect of the strategy is to shift the balance significantly in favour of smoke-free places to reduce exposure to secondhand smoke.
- 2.2 The Government's objectives through delivering smoke free legislation are to:
 - 2.2.1 Reduce the risks to health from exposure to second hand smoke
 - 2.2.2 Recognise a person's right to be protected from harm and enjoy smoke free air

- 2.2.3 Increase the benefits of smoke free 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
- 2.2.4 Save thousands of lives over the next decade by reducing both exposure to hazardous second hand smoke and overall smoking rates.
- 2.3 **The Health Act 2006**, given Royal Assent in July 2006, enables the creation of regulations providing for smoke-free premises and vehicles. Five sets of regulations will provide the detail on enforcement of the provisions of the Act in relation to: -
 - 2.3.1 Premises and Enforcement, which sets out which authorities are responsible for enforcement of the legislation, details which places are involved and also confirm what is meant by “enclosed” and “substantially enclosed”. Premises include Business premises, Multi-occupied and shared housing and Public places. Vehicles included are those used as public service vehicles, or used at any time by more than one person in connection with their business or employment.
 - 2.3.2 Signs, which relate to required signage under smoke-free legislation
 - 2.3.3 Exemptions and vehicles which detail those premises or vehicles that are exempt such as private accommodation, some hotel bedrooms, residential care rooms, prisons, performers on stage, specialist tobacconists, research facilities and offshore platforms.
 - 2.3.4 Penalties and discounted amounts; will set penalty levels as detailed below and a discounted level if fixed penalties paid at an early date.
 - 2.3.5 Offences in vehicles and the format for fixed penalty notices.
- 2.4 **Offences** - There are three offences detailed in the legislation: -
 - 2.4.1 Individuals Smoking in a smokefree place who will be liable to a fixed penalty notice of £50 or a fine of up to £200 if prosecuted.
 - 2.4.2 Business Owners failing to prevent smoking in a smokefree place will be liable to a fine of up to £2500 if prosecuted.
 - 2.4.3 Business Owners failing to display adequate no smoking signs will be liable to a fixed penalty notice of £200 or a fine of up to £1000 if prosecuted.

3 Enforcement Structure in Stockton Borough Council Area

- 3.1 **Officer Authorisation** - In order to maximize the beneficial impact on both public health and health and safety of employees in Stockton there will be a broad brush approach with the following officers being authorised.
 - 3.1.1 All Environmental Health staff who may visit the relevant premises in the course of their existing duties in relation to Health and Safety enforcement, Food Safety enforcement, Health Promotion advice and Noise and Pollution investigation.
 - 3.1.2 All Licensing staff who may visit licensed premises and in particular taxis within the course of their duties.
 - 3.1.3 All Trading standards staff that may visit relevant premises whilst enforcing Food standards and trading standards legislation.
 - 3.1.4 All Neighbourhood Enforcement Services staff (including joint ASB/Enforcement officer) – this group is less involved with relevant premises but is experienced in the use of Fixed Penalty Notices. Their involvement will be mainly with regard to public enclosed spaces (shopping malls, bus shelters etc.), litter enforcement outside relevant premises and supporting directed enforcement action in relevant premises.
 - 3.1.5 Planning Enforcement Officers will not be directly involved but will need to be aware of the legislation to deal with secondary planning issues, such as provision of smoking shelters, that arise.
- 3.2 **Training** sessions in the legislation, enforcement policy and associated issues will be provided to all of the above staff. In addition partners in the Smokefree Stockton Alliance will also attend training to assist in awareness raising and to maximize the potential for

promoting smoking cessation afforded by introduction of the Smokefree legislation. It is important to note that the legislation will not in isolation reduce the number of people who smoke but it will provide a great incentive for smokers to stop.

- 3.3 The Department of Health is providing training through the Chartered Institute of Environmental Health to Officers for both service planners and lead enforcement officers. This training will be cascaded down to all authorised Officers.
- 3.4 Additional training will also be available through FRESH, Smokefree North East and Smokefree Stockton.
- 3.5 **Council and HSE Premises** - The Health and Safety Executive are not included as an enforcing body for the Smokefree legislation and so the responsibility for enforcement in all of their workplaces will lie with the Environmental Health Unit who are responsible for health and safety in all other workplaces. This will include all of the Council's own premises as well as hospitals, factories and industrial premises. Liaison with the HSE inspectors is in place and they will have access to the training provided and guidance on Enforcement policy so that they may advise business during the course of their duties and refer any enforcement matters to Environmental health.

4 **Enforcement Policy**

- 4.1 The Department of Health's intention is to create a supportive environment where people are encouraged to comply with the new legislation. Smokefree legislation has been successfully implemented in both Ireland and Scotland where there has been a high level of compliance.
- 4.2 The approach to enforcement will be non-confrontational, focused on raising awareness and understanding to ensure compliance, and enforcement officers are expected to work closely with businesses to build compliance through education, advice and support before the legislation comes into force, combined with other regulatory inspections to reduce burdens on business.
- 4.3 The Local Authority will have enforcement responsibilities for both smoke-free premises and smoke-free vehicles in their areas, and for enforcement cases that are transferred to them under arrangements with other enforcement authorities such as the Health and Safety Executive.
- 4.4 Prior to 1st July 2007 action in Stockton will be to provide advice, information and guidance to ensure a high level of awareness of the legislation in the local area. This will supplement the national publicity campaign to raise awareness provided by the Department of Health including a comprehensive Smokefree England website www.smokefreeengland.co.uk and freephone Smokefree information line.
- 4.5 In July and August 2007 there will be high profile presence of Council Enforcement staff, predominantly to provide support to businesses on implementation of the legislation to ensure a high level of compliance. Where enforcement action is required this will have regard to the **Council's Enforcement Policy**, to ensure a consistent approach that is appropriate and proportionate. Action will consider the use of warnings, fixed penalty notices and/or prosecution.

5 **Timetable**

December 2006

- Training provided for Service Planners on Implementation Strategy
- Announcement of Implementation date
- First 2 sets of regulations issued
- Announcement of financial support provided for Enforcement

January 2007

- Preparation of Implementation Strategy.
- Liaison with HSE to establish joint approach.
- Confirmation of availability of funding.
- Report Implementation strategy to Smokefree Stockton Alliance

February 2007

- Draft implementation strategy for consultation with Community Protection DMG, UETG, Smokefree Stockton, Members.
- Communication officer training

March 2007

- Issue guidance to relevant premises via Business Rates.
- Training session for officers, including planners, smoking cessation advisors, publicity officers and members.
- Training sessions for Officers and Business advisors
- Develop pack of information
- Communication strategy
- 23/03/07 – 100 days to go publicity

April / May 2007

- DoH Officer training 4 officers to attend.
- Respond to service requests for advice and guidance.
- All officers to issue guidance during routine visits.
- Development of web page
- Updating of Commercial database to include all commercial premises and all HSE premises.
- Survey non registered premises and follow up to returns

June 2007

- Publicity to all council staff and members via outlook
- Detailed Briefing session for all Enforcement staff.
- Identification of any premises requiring targeted advice/enforcement.

July 2007

- Stockton News
- High profile Officer visits to all targeted premises
- Complaint investigation

6 **Secondary Issues**

6.1 **Noise Issues** to be considered will include:

- 6.1.1 Members of the public congregating outside buildings but remaining within the curtilage of the premises (i.e. in building constructions or structures made specifically to accommodate the ban on smoking e.g. roof patios, lean-to constructions, hut-like structures and shelters etc.).
- 6.1.2 Members of the public congregating on public footpaths or areas out with the curtilage of the premises. This makes enforcement under the Environmental Protection Act 1990 difficult, as the noise does not emanate from within the premises. It is likely that such scenarios will be dealt with using the Licensing Act and/or by Police action.
- 6.1.3 Owners of premises placing musical equipment or speakers (radios, speakers, CD players etc.) for the enjoyment of their customers, in the structures erected to accommodate the smoking ban.

6.2 Action taken to address any noise problems may involve a variety of approaches, including:

6.2.1 Proactive education and information provision e.g. consider a noise education programme for establishment owners and inform them of potential problems (target known areas of probable trouble).

6.2.2 Communication with Planning departments and use of planning legislation to prevent the construction/erection of structures in locations conducive to the creation of noise nuisance problems.

6.2.3 Use of Licensing Act powers and conditions specific to premises held responsible for the noise.

6.2.4 The use of enforcement powers contained within, The Environmental Protection Act 1990 for service of Abatement Notices and seizure of equipment

6.2.5 The use of Anti-Social Behaviour provisions

6.3 **Litter Issues** to be considered will include:

6.3.1 Litter accumulation in or near structures erected to accommodate the smoking ban, blowing onto or impinging on public areas.

6.3.2 The likely increase in cigarette butts and other litter deposited on footpaths and other public areas in the vicinity of establishments in which smoking is prohibited.

6.4 Action taken to address any litter problems may involve a variety of approaches, including:

6.4.1 Proactive education and information provision.

6.4.2 The provision of special bins, with compartments for smoking related litter, placed at locations where problems are expected.

6.4.3 The use of enforcement powers contained within The Environmental Protection Act 1990 (reference sections 87, 88, 90, 92, & 93), Powers include issuing Fixed Penalty Notices; stipulation of Litter Control Areas and

issuing Litter Abatement Notices for non-compliance therein, and the issuing of Street Litter Control Notices where applicable.

6.5 **Smoke Infiltration** Issues to be considered will include:

6.5.1 The location of structures erected to accommodate the smoking legislation wherein smokers congregate. This could result in the infiltration of secondary smoke into residential and/or commercial properties in the close proximity of the structures, including infiltration into the no-smoking premises from where the smokers came.

6.6 Action taken to address any smoke infiltration problems may involve a variety of approaches, including:

6.6.1 Proactive education and information provision.

6.6.2 Structures to be erected to accommodate the smoking legislation should not be located under or near any openable windows of the same or adjoining property.

6.6.3 Structures to be erected to accommodate the smoking legislation should not be located under or near any air intake fans of the same or adjoining property.

6.6.4 Structures to be erected to accommodate the smoking legislation should not be located directly at or in front of the entry and/or exit doors to any premises.

6.6.5 Such matters are likely to be considered at the Planning stage of the development and thus close liaison with Planning Departments is recommended.

6.7 **Health and Safety Issues** to be considered will include:

6.7.1 The use of heating devices, which are intrinsically unsafe, installed or located in an unsafe manner, and/or poorly secured.

6.7.2 Structures erected to accommodate the smoking ban and where the public congregate, being located close to chemical and/or gas cylinder stores.

6.7.3 The intrinsic safety of some structures erected to accommodate the smoking ban may be an issue.

6.7.4 Fire issues in areas used for smoking

6.7.5 Safe access and egress to and from the smoking areas.

6.7.6 Poor lighting and/or outside areas becoming icy, wet, damp or covered in litter thereby increasing the risk of slips, trips and falls.

6.7.7 Unsafe electrical systems provided for outdoor structures and heating equipment.


- 6.8 Action taken to address any Health and Safety problems may involve a variety of approaches, including:
- 6.8.1 Proactive education and information provision.
 - 6.8.2 The use of enforcement powers provided within The Health and Safety at Work *etc.* Act 1974 and associated relevant statutory provisions.
 - 6.8.3 Liaison with Fire and Rescue Services where Fire Safety Officers may provide general advice and inspect plans, premises, structures and heating devices, which are a cause for concern.
- 6.9 **Planning and Building Control Issues** to be considered will include:
- 6.9.1 Does the structure to be erected to accommodate the smoking ban comply with the Smokefree legislation?
 - 6.9.2 Does the structure to be erected to accommodate the smoking ban comply with the spirit of the legislation? *e.g.* it should not be situated in an area through which non-smoking patrons have to pass to get into the establishment, or in an area where pedestrians walking past the establishment could be exposed to cigarette smoke.
 - 6.9.3 With respect to plans for structures to be erected to accommodate the smoking ban, are there any causes for concern regarding noise nuisance, litter, smoke infiltration, fire safety and health and safety?
 - 6.9.4 Do planned alterations including shelters or cigarette bin provision give cause for concern regarding visual impact; are they in conservation areas, listed buildings etc?
- 6.10 Action taken to address any Planning problems may involve a variety of approaches, including:
- 6.10.1 Proactive education and information provision.
 - 6.10.2 Anecdotal evidence concerning the type and location of structures to be erected to accommodate the smoking ban, suggests strongly that planning applications will have to be considered on a case by case basis. Thus, it is important that enforcement officers have good communication arrangements with Planning and Building Control Departments to ensure that any potential problems are addressed at the planning and/or building warrant application stages.
- 6.11 **Licensing Issues** to be considered will include:
- 6.11.1 Collation of information with a view to addressing persistent non-compliance with smokefree legislation.
 - 6.11.2 Collation of information with a view to addressing all relevant, indirect issues arising as a consequence of the smoking ban *e.g.* noise and litter problems.


- 6.12 Action taken to address any Licensing problems may involve a variety of approaches, including:
- 6.12.1 Proactive education and information provision.
 - 6.12.2 Licensing Committee agree to consider representations/reports concerning non-compliance with the smoking legislation and all other relevant, indirect issues arising as a result of the smoking ban e.g. noise and litter problems.
 - 6.12.3 Communication with, liaison with, and provision of reports for the Licensing Committee to ensure that any problems are addressed.
 - 6.12.4 Reports made by EHO's to the Licensing Committee can be considered under the Act and suspensions up to the balance of the duration of the license may be considered. It is possible that persistent non-compliance with smoking legislation will be treated seriously by Licensing Committee. The response to indirect problems such as noise and litter, arising as a consequence of the introduction of the smoking legislation, may also be Licensing Committee dependent and could be affected at the time of license renewal, usually every three years.

7 **Contacts**


- 7.1 Smokefree Implementation – Colin Snowdon, Environmental Health Manager
☎ 01642 526555
✉ Colin.Snowdon@stockton.gov.uk
- 7.2 Smokefree Media / Communications issues – Mark Malik, Assistant public Relations Officer
☎ 01642 528300
✉ Mark.Malik@stockton.gov.uk
- 7.3 Planning Issues - Planning Office
☎ 01642 526022
✉ planning@stockton.gov.uk
- 7.4 Noise/Licensing issues – Claire Llewellyn, Environmental Health Consultation Officer
☎ 01642 526575
✉ Claire.Llewellyn@stockton.gov.uk
- 7.5 Licensing/ Taxi issues – Mick Vaines, Licensing Manager
☎ 01642 526578
✉ Mick.Vaines@stockton.gov.uk
- 7.6 Litter Enforcement – Graeme Small, Enforcement Surveillance Co-ordinator
☎ 01642 528037
✉ Graeme.Small@stockton.gov.uk
- 7.7 Environmental Health Unit, Stockton-on-Tees Council
☎ 01642 526575
✉ Environmental.Health@stockton.gov.uk

7.8 Smokefree England Information Line

 0800 1691697


 Smokefreeengland.co.uk

7.9 NHS Smoking Helpline

 0800 1690169

 www.givingupsmoking.co.uk

7.10 Fresh, the Campaign for a Smoke Free North East

 0191 3872139

 www.freshne.com