

Implementation of smokefree legislation in England

Guidance for council regulatory officers – second edition



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.

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1 Purpose of the guidance

The purpose of this updated guidance is to support council regulatory officers in continuing to successfully implement the smokefree legislation which came into force in England on 1 July 2007. This replaces the previous version issued in March 2007.

It is the view of LACORS, CIEH and TSI that the smokefree requirements for England are both sensible and comprehensive and that the task for councils in securing compliance continues to 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 continue to ensure a consistent approach to the application of the legislation so that both employees and members of the public are properly protected and businesses across England will consider that they are being treated fairly.

Statistics confirm¹ that in the first year of implementation of the smokefree legislation, compliance has been consistently high:

- 98 per cent of all premises and vehicles inspected between July 2007 and March 2008 were smokefree in compliance with the requirements of the law; and
- 87 per cent of all premises and vehicles were displaying the correct no-smoking signage.

This has helped to create improved working conditions for many employees and has ensured that enclosed public places are a healthier place to be.

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

Appendix 1.

This legislation concerns the protection of public health from secondhand smoke, but it also raises concerns about smoking in general. For this reason 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. An on-line resource centre can be accessed at <http://smokefree.nhs.uk> Details of local services and other support may also be obtained from the NHS Smoking Helpline on **0800 022 4 33 2**. In addition, NICE have produced a leaflet which sets out what employers can do to encourage and support their employees to stop smoking (www.nice.org.uk/nicemedia/pdf/PHI005leaflet.pdf) which can usefully be delivered by local council officers on their visits to, and correspondence with, businesses.

The overall co-ordination of tobacco control activities, including local Stop Smoking Services, is the responsibility of the Department of Health Regional Tobacco Policy Managers (RTPMs). RTPMs can provide advice and support to local councils on all tobacco control measures. RTPM contact details and smoking cessation links are available in **Appendix 2.**

This guidance has been developed by the Local Authorities Coordinators of Regulatory Services (LACORS) and the Chartered Institute of Environmental Health (CIEH) in consultation with the Department of Health, Trading Standards Institute, Tobacco Control Collaborating Centre, individual councils and others. It will continue to be amended

¹ *Smokefree England – One year on* (www.smokefreeengland.co.uk/files/dhs01_01-one-year-on-report-final.pdf)

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*² 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 1³ containing the smokefree legislative provisions, received Royal Assent in July 2006 and came into force in England on 1 July 2007. Smokefree legislation has also been successfully implemented in the Republic of Ireland, Scotland, Wales, Northern Ireland, the Channel Island States of Guernsey and Jersey and the Isle of Man. There are minor differences in the legislation across Britain and Ireland 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.

See **Appendix 3** for further evidence about the health benefits of smokefree environments.

The following are quotes from people with key roles in the successful implementation of the smokefree legislation:

"When we introduced the smokefree law last month [July 2007] we predicted that it would be largely self-enforcing based on experience elsewhere and the fact that three-quarters of the public supported the move."

Dawn Primarolo

Minister of State for Public Health

Press release *Smokefree England - One month on*
www.smokefreeengland.co.uk/media/smokefree-england-one-month-on.html

"The legislation this country has implemented represents some of the most far-reaching protection provided to the public and employees anywhere in the world."

"This landmark development will leave a large footprint in the history of public health and will be of lasting benefit for generations to come."

Liam Donaldson

Chief Medical Officer, Department of Health

On the state of public health: Annual report of the Chief Medical Officer 2006

www.dh.gov.uk/en/Publicationsandstatistics/Publications/AnnualReports/DH_076817

"In time to come those who follow us into the environmental health fraternity will be envious of us that we had such an opportunity, and proud of us that we delivered the desired outcome so completely."

Ian Gray

Principal Policy Officer, Chartered Institute of Environmental Health

From *Environmental Health News*, 4 July 2008

These successes have been achieved largely as a result of the supportive work undertaken by councils and

² www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT_ID=4094550&chk=aN5Cor

³ www.opsi.gov.uk/acts/acts2006/ukpga_20060028_en.pdf

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 continues to provide information to businesses and the public about the smokefree legislation. For further information see www.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. risk based.

The experience in England to date, like that of other countries who have introduced comprehensive smokefree legislation, is that this type of legislation is widely supported by the public, that high rates of self enforcement are evident and that there is therefore only a minimal need to employ enforcement measures.

Therefore, successful implementation of smokefree legislation will continue to 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 council.

In order to ensure that a fair, proportionate and consistent approach is being taken to smokefree legislation, regulatory officers will need to demonstrate that any enforcement action being taken is in accordance with the principles of the council's enforcement policy and the Regulators' Compliance Code.⁴

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:

'Smokefree legislation in England has been in force for over a year and the expectations of compliance with the legislation by businesses should be high. Nevertheless, 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 <http://www.berr.gov.uk/files/file45019.pdf>

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.

To date the Department of Transport has carried out consultations in respect of proposed smokefree requirements for sea going ships and inland waterway vessels. A further consultation to apply restrictions on smoking on ships is expected in early 2009.

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 (see **Appendix 4** for further advice).

Smokefree vehicles

Section 5 of Chapter 1 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 (MSA).

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 smokefree when its roof is completely stowed away so that it does not cover any part of a compartment in which persons may travel.

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 as would be the case with a private leased car.

Ships or hovercraft in relation to which regulations could be made under section 85 of the MSA (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 MSA: 'ship includes every description of vessel used in navigation'.

Any ship or vessel that is not covered by the 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 5** 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 councils 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 council 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/lead/primary authority. Such an arrangement must be carried out with the agreement of the receiving authority.

Authorisation of regulatory officers

Councils will need to continue to identify 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, trading standards officers and licensing 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.

Other agencies

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.

Smoking on railway property

The Association of Train Operator Companies (ATOC) and Network Rail have introduced a comprehensive smokefree policy throughout all railway stations in England as well as railway offices – station offices, canteens and workplace areas which are covered by the legislation. This means that smoking is no longer allowed on all station concourses, ticket halls, on platforms – covered and uncovered – and footbridges and subways at station premises. Retail and food outlets are also required to be smokefree. However, smoking will still be permitted on some station forecourts and in (uncovered) station car parks. No-smoking signs will indicate which areas are smokefree.

The following therefore applies to the railways in England:

No smoking

- Station premises including corridors, lifts, toilets, reception areas, waiting rooms and shelters etc, railway offices;
- on trains; and
- platforms, footbridges and subways – covered, uncovered and partially covered.

Smoking permitted

- Areas external to the station, such as most uncovered car parks and station forecourts.

The British Transport Police (BTP) enforce a bye-law which prohibits smoking on railway property. Network Rail and the train operating companies will appropriately sign station concourses and leisure areas so that BTP officers may enforce smokefree requirements through the medium of Bye-law 3 – ‘the no smoking bye-law’.

Ministry of Defence

All Ministry of Defence (MOD) and Service enclosed workplaces in England, Wales, Northern Ireland and Overseas and all MOD and Service vehicles have been smokefree since 31 December 2006. Appropriate signs are displayed at all entrances to defence establishments and instructions issued to ensure that all personnel are aware of this requirement. Royal Navy surface warships, ships of the Royal Fleet Auxiliary and HM Submarines everywhere are smokefree below decks.

Smoking is prohibited within all enclosed MOD and Armed Forces premises with the only exemptions being for:

- service family quarters;
- MOD residential housing; and
- designated Service Single Living Accommodation – local commanders may if they wish, designate a number of sole or multiple occupancy bedrooms in single living accommodation where smoking will be permitted.

Smoking remains permitted in the open air on the MOD estate or inside premises that do not meet the definition of enclosed premises. Local commanders have to ensure that safety is not compromised by persons smoking in the open on an MOD establishment.

6 Inspections

Smoking is prohibited in all enclosed or 'substantially enclosed' public places and workplaces under the Health Act 2006 and therefore council enforcement staff will continue to work closely with businesses to raise their awareness of the legal requirements under the Health Act 2006 and to ensure compliance. This approach will be complemented by inspections of smokefree premises. Inspections will either be proactive, i.e. to confirm compliance, or reactive in response to complaints. It will be a decision for local council staff to choose what will be the most appropriate course of action once all factors have been taken into account. Prosecution and the use of fixed penalty notices will generally be seen as a last resort and used only when the serial and serious nature of the situation warrants it.

As always, each and every occasion or case must be considered on its merits (i.e. what are the specific circumstances, what warnings have previously been given, why this method now, etc).

A council should consider whether monitoring smoking within smokefree premises could be an invasion of any person's Article 8 rights (i.e. the right to respect for private and family life under the Human Rights Act 1998). There may be circumstances where there could be an invasion of privacy and where this is the case it may be necessary to consider authorising directed surveillance under the Regulation of Investigatory Powers Act 2000 (RIPA).

RIPA does not provide any powers to carry out covert activities. All RIPA does is to ensure that if such activities are conducted by council officers, then RIPA regulates them in a manner that is compatible with the European Convention of Human Rights and Fundamental Freedoms, which is incorporated into domestic law by the Human Rights Act 1998.

In LACORS' view, every effort should be made to conduct inspections overtly, i.e. officers should generally announce themselves upon arrival and show their local council's authorisation in writing to the person in charge of the premises, prior to carrying

out an inspection of the premises to assess compliance. In such circumstances no authorisation is required under RIPA.

Covert surveillance should only be used when a council is satisfied that it is necessary and proportionate. In all cases it is important to demonstrate that all the usual overt methods to ensure compliance have been tried or discounted. If discounted, it is helpful to provide documentary evidence to support reasoning.

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 judgment 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 smokefree legislation here and in other countries is that violent behaviour and even the threat of violent behaviour is an extremely rare occurrence.

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.

LACORS also believes that it is very unlikely that an officer will 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 we strongly believe that it should not be used.

If the council believes that covert surveillance is necessary for the 'purpose of preventing or detecting crime or of preventing disorder' i.e. they believe that a genuine crime is being committed then it may be appropriate to consider authorising directed surveillance under RIPA. Councils cannot authorise directed surveillance under RIPA on the ground of protecting public health as this ground is not available to local councils. Councils must also believe that such directed surveillance is proportionate i.e. it should be the last resort and not the easiest or most convenient method and an attempt ought to have been made to warn the 'offenders' in an overt manner before considering covert activity.

The council has to consider whether the directed surveillance is:

- for the purpose of a specific investigation or operation;
- likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation); and
- otherwise than by way of an immediate response to events.

LACORS believes that directed surveillance in a smokefree premise would not generally be an invasion of a person's Article 8 rights, as a smokefree place is generally a public place, such as a workplace or public house, and there will often be a lower expectation of privacy. However, if technical equipment is used to record evidence, the Office of Surveillance Commissioners has expressed the view that it regards the recording of information for later use as an invasion of privacy and directed surveillance would need to be considered.

If the council decides that it is not necessary and proportionate to seek the protection of RIPA, but covert activity continues, it would be prudent to maintain an internal audit process that is verifiable.

It is also worth noting that LACORS understands that the Office of Surveillance Commissioners would criticise any council that it perceives is using unauthorised covert surveillance as routine *modus operandi*.

7 Application

Compliance at smokefree premises

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 4**.

Signage for premises

All premises that are required by law to be smokefree will also be required to display the prescribed **no-smoking sign 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 no-smoking symbol in red and black with a minimum diameter of 70mm;
- 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 described previously are met.

Signage for residential accommodation which contains communal areas where smoking is prohibited could say:

‘No smoking. It is against the law to smoke in the communal parts of this building.’

The specialist tobacconist trade body has produced a specific no-smoking sign to make it clear to members of the public that people may only sample pipe tobacco or cigars in their premises. This wording says:

‘No smoking. It is against the law to smoke in this specialist tobacconist except when sampling cigars and pipe tobacco.’

There are some situations where a smaller sign (the standard sign) may be displayed as an alternative to the A5 statutory 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:

- the entrances are located within other smokefree premises that carry the A5 statutory sign at entrances, e.g. a shop within an indoor shopping mall; or
- the entrances are only for use by members of staff, provided that the A5 statutory 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. They can also provide as much additional signage as they wish in whatever format and language they consider appropriate to inform people and support compliance. For example further signs may be



ABOVE A5 statutory sign
LEFT Standard sign

Note: both contain the international no-smoking symbol

appropriate in toilets and toilet compartments and at reception desks in public areas.

Signs that meet the requirements set out in the regulations are available to businesses free of charge. These are downloadable from the Smokefree England website at smokefreeengland.co.uk

Note – it needs to be recognised that many premises may have been smokefree for a considerable period of time even before the legislation came into force. The business owners may not have realised though that they are now legally required to display no-smoking signs.

There are some establishments which comprise a number of connected or separate buildings on a single site, e.g. schools, universities, commercial and industrial complexes. In such circumstances there may be requests for a relaxation of the requirement for A5 statutory signs on each and every public entrance.

It is suggested that where the complex of buildings is located within a perimeter wall or other continuous boundary which effectively restricts access to controlled entrances then the following reduced signage might be permitted:

- A5 statutory signs at the perimeter entrances as well as at all principal public entrances e.g. the main reception areas, public halls, catering and hospitality areas; and
- standard signs at all other entrances.

However, where the complex of buildings is not located within a perimeter wall or other continuous boundary that restricts access (e.g. as with many modern university campuses), then the normal requirements should apply.

Good practice for premises

Appendix 4 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 and 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 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 law that has previously been sent to all businesses, and can be downloaded from smokefreeengland.co.uk. This can be adapted by businesses and organisations for their individual use.

The procedures for dealing with an individual who smokes or attempts to smoke 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; and
- 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 their 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 subsequently been complained about to the regulatory officer it will be important for the person in charge of the premises 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 for cleaning or 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.

ENCAMS have produced a guide for businesses on reducing smoking-related litter. The guide can be

found at www.encams.org/uploads/publications/CigaretteLitterbr.pdf

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.

See **Appendix 7** for key issues in relation to shelters.

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 no-smoking symbol in red and black with a minimum diameter of 70mm (the same requirements as for the 'standard' sign). The no-smoking signs must be displayed in a prominent position and in each compartment. There is no definition of the term 'prominent position' but commonsense indicates that the signs need to be visible at all times by the occupants of the compartment and should not therefore be easily obstructed e.g. by the storage or luggage, or on windows which can be opened.

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 ensure 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 other parts of Great Britain and Northern Ireland. Therefore signs that comply with the Scottish, Northern Irish and Welsh requirements would automatically comply in England.

The Smoke-free (Exemptions and Vehicles) Regulations set out that a vehicle that is used primarily for private purposes of a person who owns it or has a right to use it in an unrestricted way is not required to be smokefree.

The regulations do not say how 'primarily for private purposes' is to be interpreted. It is the responsibility of the person who owns or uses the vehicle for private purposes to make the case that the vehicle is used primarily for private purposes as opposed to business purposes. This could be demonstrated on the basis of log books showing mileage, time used and/or fuel used for either purpose.

Work vehicles that are used for work purposes by more than one person must be smokefree. However, where a vehicle that is used for work by only one person is handed over to another person who will be the only one who uses it for work (for example, because the employee originally using the vehicle leaves the company) then it could be reasonably argued that the vehicle need not be smokefree as it will continue to be used for work by only one person.

The Highway Code advises all drivers to avoid distractions when driving, including smoking, and where smoking has contributed to the cause of an accident, a driver might be considered to have driven without due care and attention. There are further benefits in making all work vehicles smokefree, including the fact that smokefree vehicles may have

higher re-sale values. There might be a situation as well where a new employee might not wish to accept a vehicle in which the previous user had smoked.

A flowchart on decision-making in relation to smokefree vehicles can be found in **Appendix 8**.

Where a suspected breach of the smokefree legislation takes place in work vehicles that are from a company not based in the officer's council area then that intelligence should be passed to the home/lead/primary authority for them to deal with as appropriate.

Appendix 4 sets out the process for local councils to request details from the Driver and Vehicle Licensing Agency (DVLA) of the registered keeper of the vehicle in order to carry out investigations in connection with an offence or to prosecute an offence.

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.

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 MOD has taken a decision that their premises will be completely smokefree. However, inspection, signage etc may differ slightly for MOD premises and vehicles.

The Prison Service has introduced strict controls on smoking in prisons, which will apply to both publicly and privately provided prisons. The Prison Service Order has been implemented in all prisons since 1 April 2007. Broadly, the Order requires 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 exposure to secondhand smoke.

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

All police premises and vehicles are required to be smokefree. Holding cells within police stations are not prisons and do not become so even when prisoners are being held in them.

Diplomatic premises

Diplomatic premises must be recognised as such by the Foreign and Commonwealth Office (FCO), and a diplomatic note verbale is issued. Confirmation on whether any premises has been classified as having diplomatic status can be obtained by contacting the Protocol Directorate FCO on 020 7008 1038.

Individuals with diplomatic status are expected to comply with UK laws and regulations. However, premises with diplomatic status are inviolable, meaning that government officials cannot enter them

without the express permission of the head of mission (e.g. the Ambassador or High Commissioner). Diplomats also enjoy immunity from criminal jurisdiction. In practice, therefore, it will be difficult to enforce smokefree legislation in bona fide diplomatic premises.

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 in hotels, guest houses, inns, hostels or members' clubs;
- care homes and hospices;
- prisons;
- performers;
- specialist tobacconists;
- offshore installations and
- research and testing facilities.

Note – a time limited temporary exemption for mental health units expired on 1 July 2008. From that date mental health units have been required to be smokefree in all enclosed or substantially enclosed areas without exception.

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 4 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 smokefree premises for failing to display no-smoking signage (section 6(5) offence);
- FPN or legal proceedings against an individual smoking in smokefree premises (section 7(2) offence); and
- legal proceedings against an owner, occupier, manager or any other person in charge of smokefree premises for failing to prevent smoking in a smokefree place (section 8(4) offence) – fixed penalty is not available for this offence.

LACORS believes that the smokefree legislation specifies a suitable range of enforcement options, from FPNs through to prosecution, and that therefore officers should be considering these for use first before looking to any other options such as simple cautions.

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, proportionate and consistent

and decided upon with reference to the Regulators’ Compliance Code (www.berr.gov.uk/bre/inspection-enforcement/implementing-principles/regulatory-compliance-code/page44055.html) and the enforcement policy statement of the particular council.

See **Appendix 9** for a FPN guide.

Key points from successful prosecutions

There have been a number of prosecutions, primarily against the operators of licensed premises, hospitality premises and shisha bars for failing to prevent smoking taking place. Virtually all have had successful outcomes in that convictions have been secured and substantial financial penalties, including costs, have been awarded.

In addition, some offenders have been reprimanded by the Courts where it has been shown that they have intentionally failed to prohibit smoking on their premises, or have been careless as to whether smoking takes place, or through their public statements have created an environment in which people would be likely to believe that they could smoke without restriction. Although such statements cannot be quoted in evidence and are not binding on future judgments, they do provide an indication of how the Courts viewed the information provided in the course of particular prosecutions.

The following general points can be made:

- the legal requirements are sufficiently concise for offences to be clearly demonstrated;
- no ‘gaps’ or loopholes have been revealed in the legal requirements, the required procedures or their application;
- the use of the defences is extremely limited and, where claimed, rebuttal appears to be a straightforward matter of evidence; and

- to date there have been no successful defences or appeals based on claims of infringements of human rights legislation.

Some councils have included within their prosecution statements:

- a brief explanation of the purpose of the smokefree legislation;
- the need for universal compliance by businesses in order to maintain the level trading field;
- the extent of national and local publicity which it could reasonably be anticipated that businesses would have received as well as recorded advisory visits and deliveries of printed information; and
- either that exemptions do not apply to the business, or that the specific requirements for the exemption to be claimed have not been met.

Convictions are most likely to succeed where:

- smoking has been observed on more than a single occasion;
- it can be demonstrated that the person responsible, or their staff, observed that smoking was taking place or could be reasonably expected to have done so;
- it can be positively confirmed that it was smoking that was taking place and not simply the handling of unlit smoking materials, or the simple extinguishing of them, or the use of so-called 'electronic smoking products'; and
- that the person in control had previously been made aware that it had been alleged or demonstrated that smoking was taking place on their premises.

In addition to the evidence of smoking taking place, the Courts have also indicated that they are taking into consideration the following matters:

- the number of occasions on which the council is able to demonstrate that information and advice on the smokefree requirements have been provided to the person in control;
- the failure by the person in control to take action after the receipt of such information and advice; and
- public statements made by or on behalf of the person in control:
 - that they do not agree with or support the smokefree legislation;
 - that they are actively campaigning against it; or
 - that they do not intend to do anything more than simply inform people that they should not smoke.

Officers of LACORS and the CIEH are continuing to closely monitor prosecutions and may be able to provide information on trends, levels of fines and costs, etc but not of course advice to councils in preparing their own cases. Of particular interest are those cases brought against repeat offenders which test the ability of the council to secure penalties prescribed in the legislation which will act as a deterrent against further offending as this information may be used to inform responses to further consultations by the Government.

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 have been smokefree for a considerable period of time and may not realise the need to continue displaying 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 organise any such activities with their local police service well in advance in order to ensure that the work coincides with the availability of police resources. The programmed activity should be focused 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).

Fixed Penalty Notices

Word® and PDF versions of the FPNs for use by councils are available on the LACORS website at www.lacors.gov.uk The regulations make provision for councils to adapt the penalty notices to suit their own requirements in certain ways (i.e. adding additional information about payment and including the council logo, etc), but councils are advised to check the regulations before making any such changes.

Monies from FPNs served

The Department of Health has been in discussion with the Treasury on the issue of recovering fine revenue

from councils and may pursue this policy if it is practicable to do so and there is a simple mechanism for doing so. However, the message to councils continues to be that enforcement of smokefree legislation should follow a 'light-touch' approach, with enforcement measures used only as a last resort. Therefore, it is expected that little revenue will be generated by this legislation and can reasonably be utilised by councils to offset their enforcement costs.

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

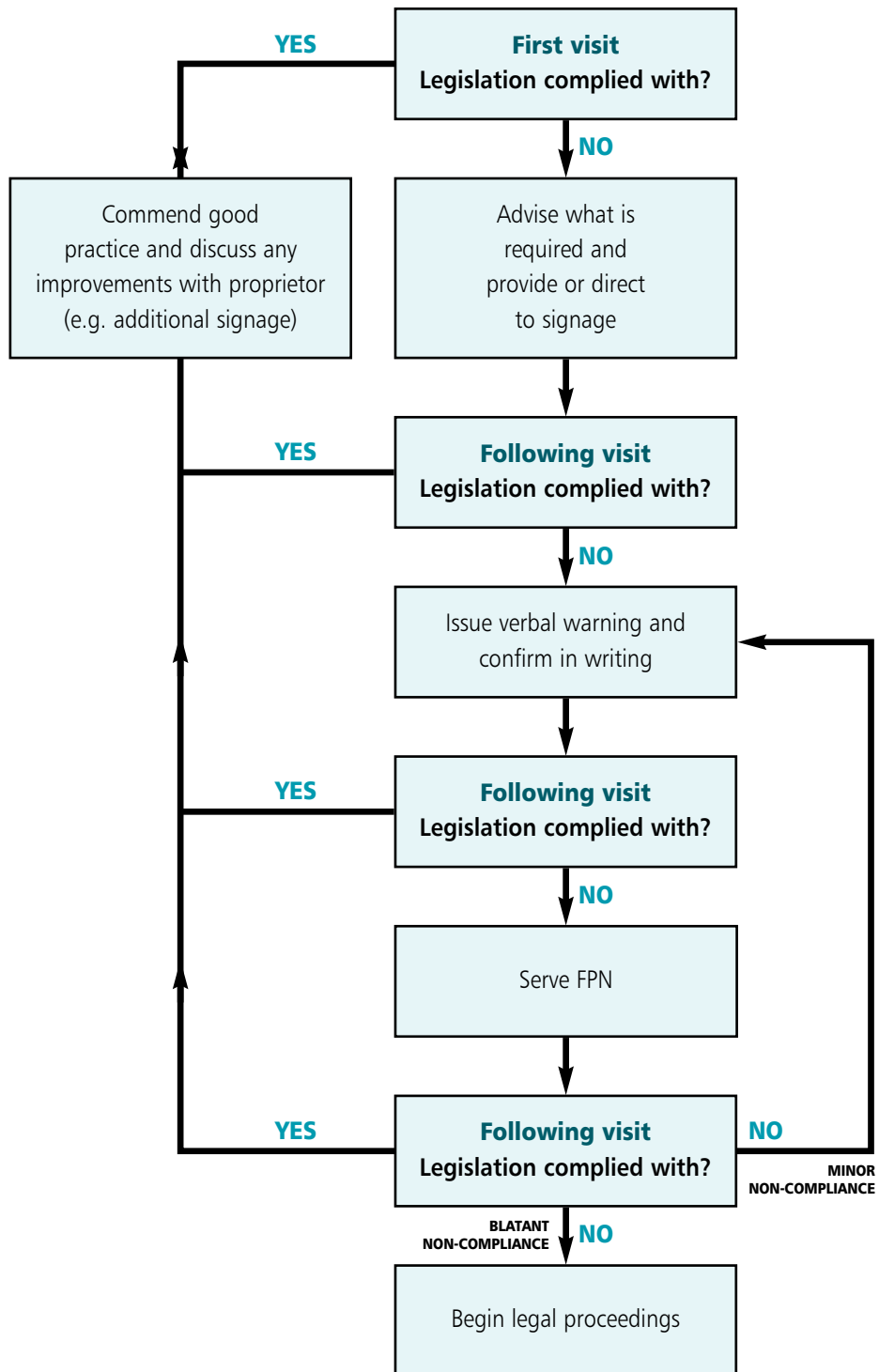


Figure 2 Enforcement flowchart – smoking in a smokefree place

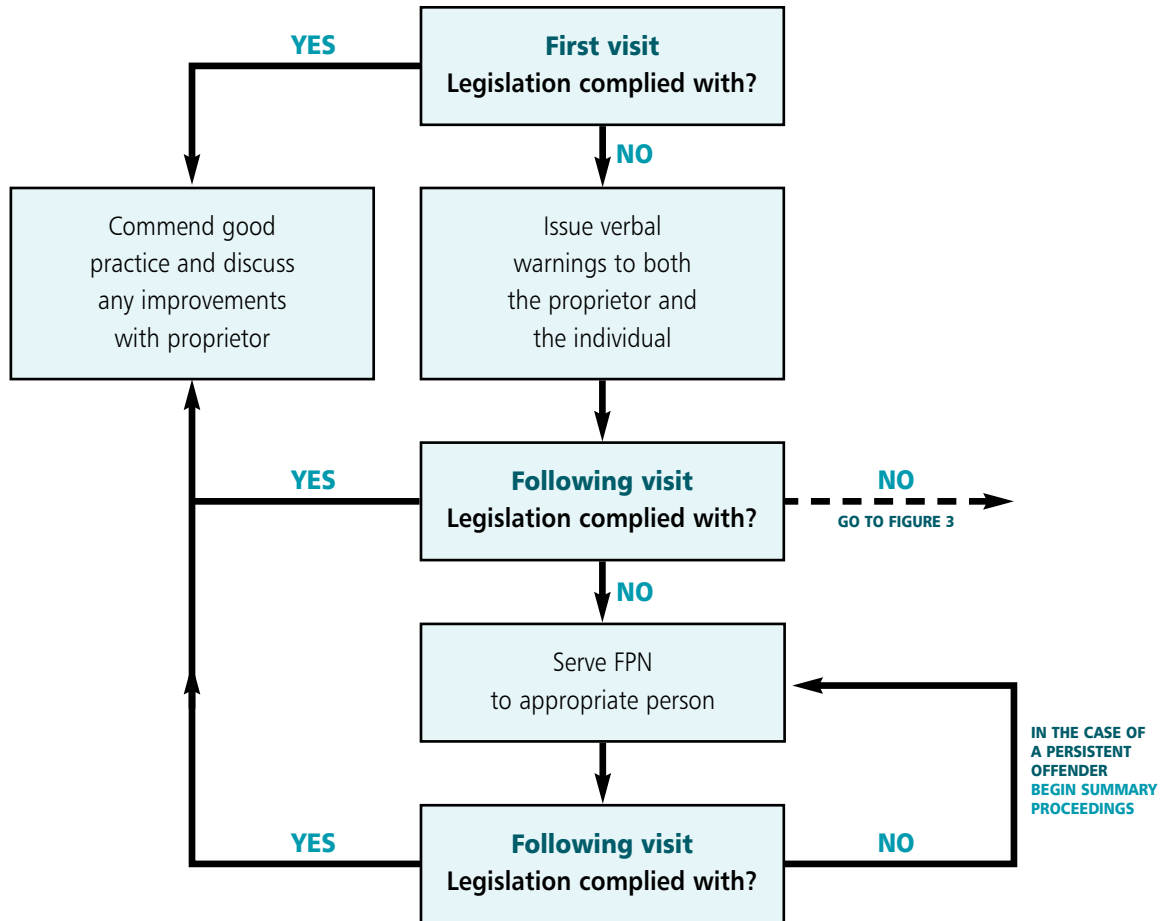
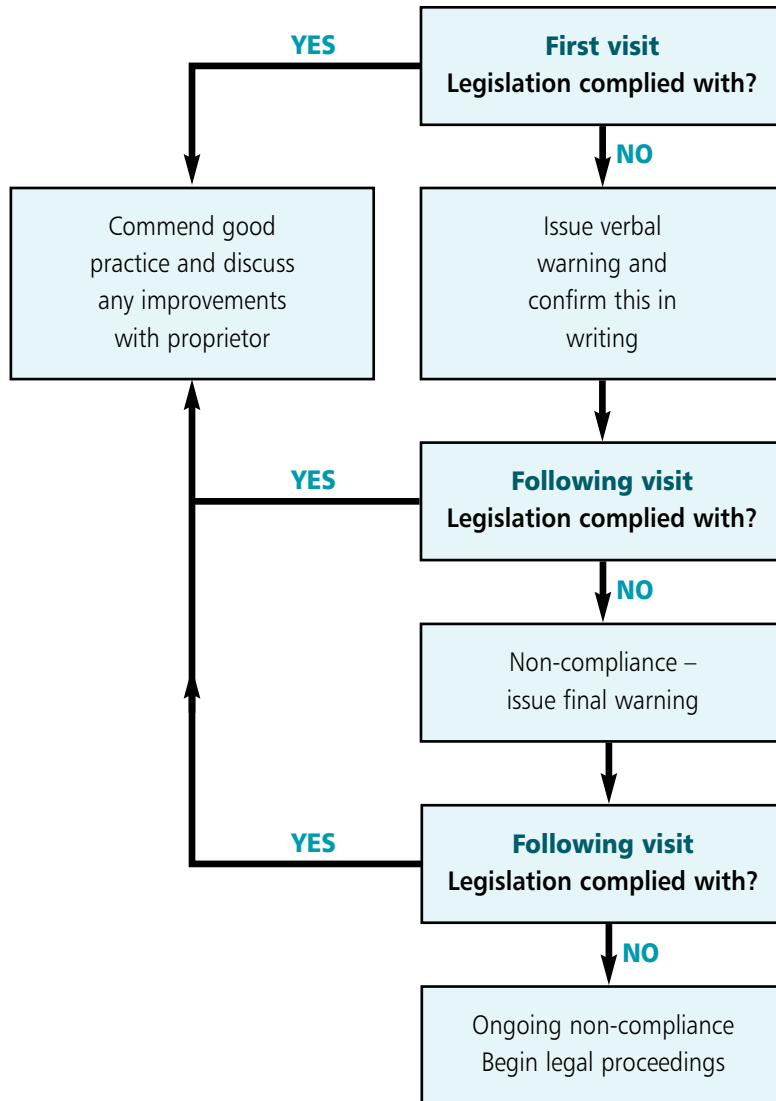


Figure 3 Enforcement flowchart – failure to prevent smoking in a smokefree place



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.

LACORS has produced an associated issues document and this can be found at www.lacors.gov.uk/lacors/home.aspx?docID=15957&docType=C

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.

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 and collected by Local Government Analysis and Research (LGAR). Data is being 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 is also being proactively used for communication reasons on the work of enforcing authorities and the level of compliance. Data collection on smokefree activity will continue until 2010.

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.

Home authority, lead authority and primary authority schemes

It may be appropriate for the council 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. This will be especially important for business involved with public transport, peripatetic workers and work vehicles.

Complaint handling

To assist compliance, a freephone National Smokefree Compliance line is available. Call centre operators have been trained to understand the basics of the legislation and to identify offences. This information is forwarded to an identified person within each council. The number to call is **0800 587 1667**.

Contacts with the line comprise the following:

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. These enquiries should be resolved fairly quickly as enquirers receive clarification and follow-up advice.

Hoax calls Some people will want to continue 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.

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 the council, or even to provide notification that use is being made of an exemption.

It will therefore be important that councils 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 3**).

Training

An online training resource for all officers engaged in smokefree legislation activities is available through TS Desk Companion, an e-learning product provided by the Trading Standards Institute.

www.tsi.org.uk/tsdesk

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.

Appendix 1 Definitions

These definitions are set out in full in the smokefree regulations.

Authorised officer

This means any person (whether or not an officer of the council) 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.

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.

Council

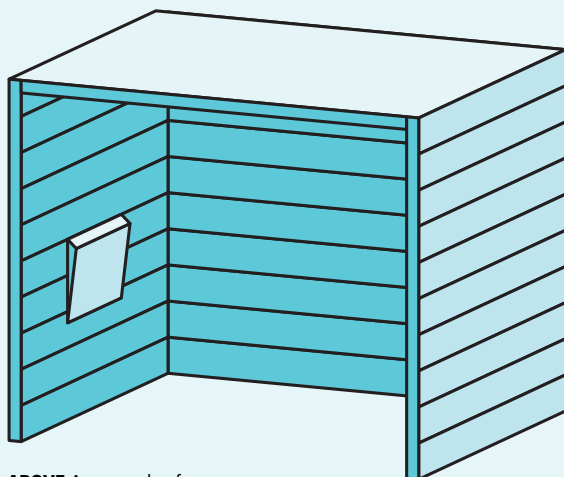
By using the term 'council' in this guidance we mean all authorities defined by the Smokefree (Premises and Enforcement) Regulations 2006 as enforcement authorities.

'Enclosed' and 'substantially enclosed' premises

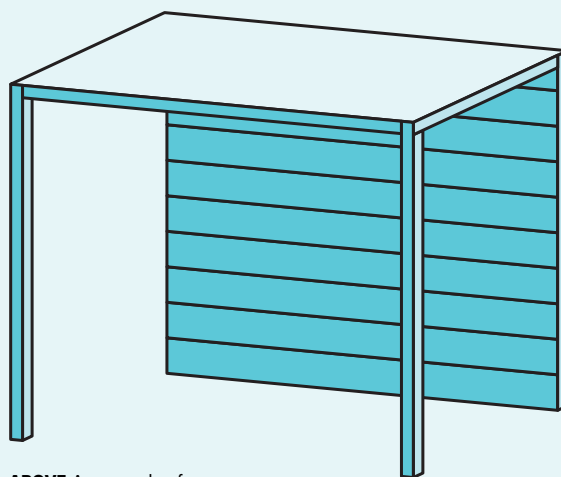
Premises will be considered to be **enclosed** if they have a ceiling or roof and, except for doors, windows or passageways, are wholly enclosed, whether on a **permanent or temporary** basis.

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.



ABOVE An example of substantially enclosed premises



ABOVE An example of non-substantially enclosed premises

International no-smoking sign

The term 'international no-smoking sign' is generally understood by the public and by businesses as meaning the symbol as described in the regulations. There are slight variations on this around the world, for example the cigarette sometimes points in the opposite direction, or the representation of the smoke is slightly different.

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.

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.

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).

Work

The term 'work' includes voluntary work.

Appendix 2 RTPM contact details and smoking cessation information

RTPM contact details

Contact details for Regional Tobacco Policy Managers can be found at www.dh.gov.uk/en/Publichealth/Healthimprovement/Tobacco/DH_089018

Support available for anyone who wants to stop smoking

It is estimated that 70 per cent of smokers want to give up smoking, and the smokefree law might provide them with an extra reason and additional opportunities 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 022 4 332** (lines are open daily from 7am to 11pm);
- visit www.smokefree.nhs.uk (*This is an online resource for all the advice, information and support needed to stop and stay stopped, including details of the support programme 'Together' which 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*); 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.

Guidance from the National Institute for Health and Clinical Excellence (NICE) advises employers on how to

help employees stop smoking. Visit www.nice.org.uk for more information.

Useful links

Lifting the smokescreen: 10 reasons for a smoke free Europe

http://dev.ersnet.org/uploads/Document/46/WEB_CHEMIN_1554_1173100608.pdf

Appendix 3 Evidence of health effects

The smokefree legislation was 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.

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.

Scientific evidence also shows that ventilation does not eliminate the risks to health from 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 smokefree laws. It is estimated that the required prohibitions on smoking 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**

Research undertaken by the Department of Health, and in Northern Ireland shows that there have already been improvements in the health of employees who work in premises where smoking was previously prevalent.

The *Smokefree England – One year on* report contains a summary of the interim findings of the 'Smokefree Bars 07' study. This is a collaborative study by the University of Aberdeen, the Institute of Occupational Medicine, and Liverpool John Moore's University, and forms part of the programme of academic research commissioned by the Department of Health to evaluate the impact of smokefree legislation in England.

In the 52 bars that were visited, both before and after the legislation came into force, there was a fall in the average level of some 91 per cent of secondhand smoke indicating substantial improvements in the air quality in bars.

The full report can be found at www.smokefreeengland.co.uk/files/smoke-free-bars-07-200508.pdf

You can find out more information about the new law on the Smokefree England website at www.smokefreeengland.co.uk

For further information see www.smokefreeengland.co.uk/files/smokefreeis-needed-fact-sheet-final—30.11.pdf

Appendix 4 General requirements, exemptions and good practice

Within this appendix of advice and good practice, actual requirements are indicated in **black text**.

A General requirements

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.

Further information about designated room requirements can be found in sections **B3** and **B4** in this appendix.

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 to be carried out.

The general duty of care under the HSW Act also applies in relation to the construction and use of smoking shelters.

In most cases the siting and construction of the shelter will have been carried out so as to ensure an adequate level of natural ventilation which will remove and help to prevent the build up of

secondhand smoke. However, in circumstances where the shelter is sited or constructed in a manner that secondhand smoke is not effectively removed and does build up, then the employer of staff who are expected to carry out work in a smoking shelter (e.g. servicing and cleaning) 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 smoking shelter will be unavailable for use; or
- by stipulating that staff will not normally carry out servicing and cleaning and that failure to use the facility safely, e.g. avoiding spills, clearing tables and returning empty glasses, may result in its closure.

A3 Ventilation of designated non-smokefree rooms

In general, the most effective method of ventilation is likely to be through openable windows to the external air. Therefore the advice of the council may be:

- that rooms which do not have windows which are capable of being opened fully in accordance with the recognised standards of building construction should not be used as designated non-smokefree rooms;
- that windows in a room intended to be designated as a non-smokefree room should be fully openable;
- in respect of windows where restrictors or other security measures are considered to be necessary, the requirement should be that any restrictors can be released by an adult occupant or house-keeping staff; and
- where rooms in upper stories are to be designated as non-smokefree rooms and the windows have opening restrictors attached in order to prevent falls from height, then businesses will need to consider all risks.

B Exemptions

B1 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.

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.**

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 they may work with someone else if they all live in the dwelling house).

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.

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.**

This requirement can apply both to self-contained dwellings within a single structure as well as to houses in multiple occupation (HMOs), halls of residence, nursing homes, etc.

The areas that may be required to be smokefree could include:

- common entrance areas such as halls, corridors, stairwells and lifts in blocks of flats;
- facilities shared by the occupants of more than one household such as communal kitchens, bathrooms or laundry rooms in halls of residence; or
- the 'common parts' of an HMO which would include any kitchens, bathrooms or living/dining areas that are shared by more than one household;

but only where the area or facility is **used as a workplace by more than one person** or they are **open to members of the public** – see below for specific guidance on these points.

The greatest area of confusion appears to be where housing accommodation is in shared use, either as an entire property, or lettings within the property.

There is no legal definition of a 'shared house'. However LACORS has issued guidance for the purposes of determining fire precautions within

HMOs – www.lacors.gov.uk/lacors/ContentDetails.aspx?id=19843 (see section 35).

This states that shared housing exists where the property has been rented out by an identifiable group of sharers such as students, work colleagues or friends as joint tenants. Each occupant normally has their own bedroom but they share the kitchen, dining facilities, bathroom, WC, living room and all other parts of the property. All the tenants will have exclusive legal possession and control of all parts of the property, including all the bedrooms. There is normally a significant degree of social interaction between the occupants and they will, in the main, have rented out the accommodation as one group. There is a single joint tenancy agreement. In summary, the group will possess many of the characteristics of a single family household, although the occupants are not all related.

LACORS believes that this is a helpful definition to make reference to in relation to the requirements of the smokefree legislation in that, in such circumstances as described above, it would be reasonable to expect the occupants to negotiate and agree arrangements for permitting and restricting smoking – as they would need to do in relation to other matters, including housekeeping arrangements and bill payments.

Place of work

The question of whether the common parts are used as a place of work by more than one person will be a question of fact and degree. So, for example, it would be appropriate to discount work which by its nature means that entry to the common parts is irregular and ad-hoc; e.g. parcel deliveries, fast food deliveries, supermarket shopping deliveries, house removal firms, estate agents, etc. The kind of work which will need to be taken into account is work which is regular and frequent such as cleaners, porters, security guards, etc, who are specifically employed to work in the common parts of the residential property.

Where there is only one such person employed then the provision of a second person on a temporary basis to cover a period of sickness absence or holiday might be discounted.

In addition to people specifically employed by the owner, landlord or property manager to work in the common parts of the building, there may also be other employees who use the common parts as a 'place of work'. For example, daily postal or milk deliveries to individual units of accommodation which may necessitate people walking through the common parts of the building.

Open to the public

Some buildings containing housing accommodation have entrances that provide unrestricted access to the public. However, LACORS believes that in situations, where locked street-door or entry-phone access exists, that this might not constitute 'open to the public' because the occupier's private property extends to the shared front door and access beyond this has to be permitted by the occupants.

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 secondhand smoke or to mitigate its effects upon the employee.

The Trade Union Congress (TUC) has developed guidance specifically for people who visit clients in their homes, available at

www.smokefreeengland.co.uk/files/guidance-for-people-working-in-the-home.pdf

Comprehensive guidance has also been issued by the Royal College of Nursing, available at www.rcn.org.uk/publications/pdf/protecting_community_staff_smoke.pdf

B2 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.

B3 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**, **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 less than a quarter of the population smoke and many people who do smoke will prefer smokefree bedrooms.

Businesses are free to decide for themselves when to change the designation of bedrooms. However, they will have to take into account the impact on changing the designation of bedrooms from smoking to smokefree and vice versa because:

- the bedroom will need to meet designated room status;
- the signage for the room will need to be changed;
- the list of bedrooms designated as smoking rooms will need to be updated; and
- there may be extra cleaning costs.

In effect this means that, although the designation of bedrooms could be changed on a daily basis, from a practical point of view if a bedroom changes from being smoking one day to smokefree the next – unless there is an effective method of cleaning the room – it is likely that a non-smoking guest occupying a previously designated smoking bedroom will complain about the smell, at the very least.

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

B4 Accommodation in care homes and secure institutions

In care homes, hospices and prisons that provide residential accommodation – designated bedrooms, or designated rooms used only for smoking (*designated smoking rooms*), 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, A2** and **A3**.

A designated smoking room should be provided only for that singular purpose and it is advisable therefore that it 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. In addition, 'designated rooms' must always meet the requirements set out in regulation 5 of the Smoke-free (Exemptions and Vehicles) Regulations 2007.

Designated smoking rooms are intended to be provided for the use of residents only, however the Smoke-free (Exemptions and Vehicles) Regulations 2007 do not specify who exactly may and may not use them. The provisions in the Health Act 2006 are for places of work to be smokefree, so there is an expectation that employees in these premises will not smoke anywhere in the premises.

However, while it is probably not unlawful for employees to smoke in designated smoking rooms (and therefore, it is unlikely that enforcement action would be successful), councils should encourage managers of exempted premises to institute smokefree policies requiring employees to smoke outdoors, for the health of residents and other members of staff, and to best meet Health and Safety at Work legislation.

Care homes are encouraged to discuss their arrangements for the designation of rooms for smoking with councils. Where the resident-base within a care home is mobile, managers should be encouraged to create suitable (and if need be, secure) outdoor smoking facilities, to move smoking outdoors entirely.

Hospices, like care homes, can have both designated bedrooms and designated smoking rooms.

B5 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.

The parts of premises in which a person performs need not be 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 **single** test of whether someone can smoke on stage is based on the 'artistic integrity of the performance'. This is a matter most properly decided by the director of the production, or the person with overall responsibility for the management of the performance or the venue. Therefore the council may wish to request from the director or manager of the production or venue, in advance of the performance taking place, justification of the claim of 'artistic integrity' as well as details of when smoking will take place, in what form, by whom and for what periods.

The council may also wish to determine in advance the safety measures which will be in place including:

- the means of extinguishing lit materials – this could be requested in the form of a risk assessment;

- the means of alerting the public that smoking will be taking place during the performance – this could include signs on the entrance doors to the performance area and at the points of sale for admission fees and tickets; and
- that in all other respects the arrangements for securing compliance with the smokefree legislation are in place and robust.

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 councils to take into account in determining these matters and it will be necessary for each case to be decided on its merits. Councils may be of the opinion that they do not need to accept at face value that inclusion in the script of a direction to smoke is sufficient in itself and they may wish to be provided with an explanation of the contribution that the action of smoking is intended to make to 'artistic integrity'.

In reaching their decision, councils may wish to take the following points into consideration:

- the possibility of advising the use of so-called 'stage cigarettes' which can simulate smoking without the use of any lit smoking materials;
- whether the script requires simply the demonstration of 'lighting-up' (i.e. that the character smokes) or whether a prolonged period of smoking can be justified; and
- whether repeated and prolonged periods of smoking can be justified, since by their nature these will increase the level of exposure and subsequent risk to other performers, members of staff and the public.

Councils may take the view that the nature of the venue is a significant factor to be taken into account e.g. when a performance is to take place on school premises, or in healthcare facilities, or in other workplaces which are normally required by the legislation to be maintained smokefree.

This issue may arise with performers in public houses and other hospitality sector premises as well as public halls, etc and it should be raised with the managers of such premises when discussing smokefree requirements in general.

B6 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).

The Smoke-free (Exemptions and Vehicles) Regulations 2007 set out that the shop of a specialist tobacconist (that meets the requirements of the Tobacco Advertising and Promotion Act) is exempt from smokefree legislation during the time people are **sampling** cigars or pipe tobacco (including waterpipe tobacco), provided that it also meets the conditions required within regulation 7 of the Smoke-free (Exemptions and Vehicles).

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 sampling of non-tobacco products would not be permissible. Sampling is defined in dictionaries as 'taking a **small** separated part of something illustrating the qualities of the mass'. Time-wise, sampling is also generally understood as a brief activity, not an extended trial over a period of time. A customer spending a lengthy period of time 'sampling' a product might mean that they are actually 'consuming' the product.

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

Application to serve waterpipes

Any business that sells tobacco (including tobacco for waterpipes) must display 'age of sale' signs that meet statutory requirements. In addition, all tobacco products offered for sale must carry mandatory health warnings and the manufacturers must have provided detailed product information to the Department of Health, in line with the requirements of the Tobacco Products (Manufacture, Presentation and Sale)(Safety) Regulations 2002. Trading Standards Officers can provide advice and support on these requirements.

If a business serving waterpipes is able to meet all the requirements to be defined as a specialist tobacconist, in addition to the requirements set out in the exemption for specialist tobacconists within the Smokefree (Exemptions and Vehicles) Regulations 2007, it may be lawful for the business to allow sampling of pipe tobacco on its premises.

For a business serving waterpipes to be considered a specialist tobacconist under the requirements of section 6(2) of the Tobacco Advertising and Promotion Act 2002 (c.36), it would need to:

Be a shop, or a self-contained part of a shop

To qualify as a specialist tobacconist, a business would need to show that they are genuine retailers, and that the sale of (in this case), pipes and pipe tobacco is the

principal part of their business, rather than just one aspect of their business. Therefore, it would be expected that there would be substantial displays of tobacco and pipes and other smoking paraphernalia displayed for sale, with price information.

What actually constitutes a 'shop' is open to interpretation. A premises that is furnished with comfortable chairs, cushions and tables, or provides a range of leisure services not necessary for, or directly connected to, the purpose of the 'sampling' of tobacco, may not be a retailing shop but rather a different kind of leisure facility for example a restaurant or café.

Meet certain sales requirements of 'specialist tobacco' products

To be a specialist tobacconist, a business would need to be a genuine retail business that focuses on the sale of specialist tobacco products. Under the Tobacco Advertising and Promotion Act, a business can only be a specialist tobacconist if **more than half** of the sales in the shop are derived from the sales of cigars, snuff, pipe tobacco (including tobacco for waterpipes) and smoking accessories (including actual waterpipes and non-tobacco products smoked in waterpipes). The key factors in calculating the amount of sales are set out in section 6(3) of the Tobacco Advertising and Promotion Act, and Trading Standards Officers can provide further advice and support.

B7 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).

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

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

B8 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.

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.

B9 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.**

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.

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.

This will mainly apply to convertible cars and tour buses.

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.**

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.

Establishing details of the registered keeper

Where offences have been observed or reported for failure to comply with the requirements of the smokefree legislation in relation to motor vehicles, it may be necessary to establish details of the registered keeper of the vehicle in order to carry out investigations in connection with the offence or to prosecute for the offence.

Regulation 27(1) (a) of the Road Vehicles (Registration and Licensing) Regulations 2002 provides for the release of information from DVLA's vehicle records to councils for the investigation of an offence or decriminalised parking contravention.

Councils are able to request information from DVLA either manually, using the appropriate form (VQ4), or electronically using the Electronic Data Interchange (EDI) link.

The officers of the DVLA have confirmed that it would be acceptable for councils to request information via the EDI link in relation to vehicles in which an offence

has been committed or is under investigation under the smokefree legislation, (where this relates to smoking in vehicles which are deemed a 'place of work'). The advice of the DVLA is that the EDI Agreements in place between DVLA and councils would not need to be changed to cover this use. The terms of the EDI Agreement would of course have to be adhered to, including the requirement for an audit trail to be kept in relation to the reason for the request.

Within each council there will be an officer identified with responsibility for the submission of inquiries to the DVLA and their advice should be obtained on local procedures and required audit trails.

While councils also have access to the Web Enabled Enquiry (WEE) link, under the terms of agreement between local councils and DVLA this is only to be used for requests for information in relation to abandoned or nuisance vehicles, so requests in relation to the smokefree legislation would NOT be permitted.

B10 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.

B11 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.

C Good practice

C1 Application of the smokefree legislation to subways, tunnels, bridges and other covered thoroughfares

It may be helpful to consider covered thoroughfares in the following categories:

subways – these may be described as underground passageways and underpasses, usually located under roadways;

tunnels – these may be described as passageways running underground or through structures;

bridges – these may be described as aerial passageways connecting structures or other thoroughfares; and

covered roadways and footpaths – these may be described as roadways and footpaths for public use which are partially or completely covered over.

Are they premises?

In order to apply the smokefree legislation it is necessary to be satisfied that in any particular case the covered thoroughfare can be considered as a premises, or a part of a premises, and not simply part of the highway. This is because the smokefree legislation is only intended to apply to premises. To reach this decision it may be helpful to consider the actual use that is made of the covered thoroughfare.

It will be the case that all covered thoroughfares are open to the public, or at least a section of the public. It might be helpful therefore to consider both the nature and extent of public access and also of work activities.

Use of covered thoroughfares

Three types of use of covered thoroughfares can be considered:

Type 1 – those that simply provide a safe and direct connection between one roadway or footpath and another

There may be no reason for the public to enter other than in order to transit to and from the entrance and exit points. The nature and extent of any work activities will be a question of fact and degree and may be carried out by peripatetic workers such as cleaners, security patrols, etc and these may be considered to be irregular or infrequent and not therefore a significant factor.

Type 2 – those whose purpose includes providing access to premises (e.g. shopping centre); to facilities (e.g. car parking or public lavatories); or to transport connections (e.g. train stations or bus termini)

The public will need to enter, not only in order to transit to and from the access points, but also to gain access to the premises, facilities or transport connections whose entrances are located therein. The case might be made that because the structure provides access to a place which is required to be smokefree, then it can be considered as part of, or an extension to, that access.

In addition to periodic cleaning and patrolling activities, there may be retail kiosks and other additional regular and frequent work activities such as newspaper selling, fast food vending, permitted busking or charity collections.

Type 3 – those whose purpose is the normal function of a roadway or footpath for public use and providing access to the usual range of premises (e.g. retail shops, offices, hospitality premises, dwellings, etc)

In this case all of the usual activities associated with public use and maintenance of the roadway and footpath will be carried out and those parts of the roadway that are enclosed or substantially enclosed will be required to be smokefree at all times.

Note – where the roofing is not continuous along the entire length (as is the case with some covered thoroughfares comprising roadways, footpaths, bridges and subways with open-air intersections), then the smokefree requirements can only be applied to those areas which are covered over, since the definition of ‘enclosed’ requires the presence of a roof.

C2 Open air events

During the summer months many outdoor fetes, festivals and concerts take place. Many of these may be attended by very large numbers of people and there is a need to give detailed consideration to how best to secure the maximum levels of compliance with the smokefree legislation.

Tents, marquees and other demountable structures

The legal requirement is that a structure which is, or can be made, substantially enclosed should be treated as substantially enclosed and required to be smokefree at all times.

Some good practice points:

- the temporary structures need to be determined, preferably in advance, as either enclosed, substantially enclosed, or not substantially enclosed – it will be a matter of fact as to whether a temporary structure can be substantially enclosed, i.e. are there rolled-up side awnings or fixings for additional awnings or panels to be attached; and
- the specifications of the intended structures submitted in accordance with any prior approval process should help determine whether they will be substantially enclosed – however, careful inspection of the structures in-situ should be carried out to ensure that they have been constructed and situated as originally proposed and intended.

There may be opportunities for officers to exercise discretion in relation to the application of this

requirement where certain conditions can be satisfied to them completely.

Basically the officer would need to be satisfied either:

- that the sides had been permanently removed (as would be the case where a tented structure was used in the manner of a ‘gazebo’); or
- that the management arrangements are such as to ensure that removable sides are only put in place at times when the structure is closed for use and unoccupied, e.g. fairground rides and stalls which need to be made secure at night against unauthorised access.

The business would also need to ensure that there is no contingency plan in place for sides to be added, for example in wet weather, or for other structures to be added or positioned to provide protection – thereby effectively enclosing it.

It is important that we demonstrate a consistency of approach to this requirement, and our use of any discretion, as the providers of tented and demountable structures councils will need to be able to provide similar advice to hirers and users.

Signage

The legal requirement is for the display of statutory A5 no-smoking signs at each public entrance to every enclosed and substantially enclosed area.

Some good practice points:

- the A5 statutory sign may not be easily seen where there are large crowds entering and therefore additional larger signs displayed at high level may be useful;
- signs need to be displayed in a manner that they are protected from the wind and rain (e.g. made of waterproof material or enclosed in clear plastic

sheeting) and cannot easily be removed maliciously (e.g. permanently fixed to display boards); and

- additional signs may be needed inside some structures such as large covered performance arenas and spectator areas, structures where smoking is likely to occur (such as dance and beer tents) and individual toilet compartments.

Providing additional information to the public

Some good practice points:

- advertise the event as smokefree as a positive incentive for people to attend;
- print tickets to indicate that the event is smokefree;
- display site maps to show where smoking is and is not permitted;
- make public address announcements to remind people not to smoke inside smokefree structures; and
- display reminder messages over stages, etc on electronic message boards.

Enforcement

Smoking in an enclosed or substantially enclosed structure will be an offence.

Anyone who smokes in contravention of the legal requirements can be served with an FPN at the time or their personal details and the evidence of their offence recorded for subsequent consideration.

Some good practice points:

- council enforcement officers need to be in attendance and their presence needs to be known to the organisers so that they can be called upon to deal with illegal smoking incidents where appropriate;

- the stewarding staff should be properly briefed and expected to deal with any smoking in contravention of the law and to provide direct assistance to the enforcement officers;

- people who are smoking can be asked to extinguish smoking materials before being allowed to enter smokefree areas and can be refused admission until they have done so (appropriately labelled receptacles at the entrances for extinguishing smoking materials will provide an additional reminder and a safe means of disposal);

- people who are smoking inside smokefree areas can be asked to extinguish their smoking materials immediately or told to leave the area and only readmitted when in compliance (enforcement officers and stewards can be provided with commercially available personal cigarette extinguishing boxes which they can hand to the smoker for this purpose); and

- people who smoke in contravention of the legal requirements can be required to leave the site.

C3 Electronic cigarettes

A number of so-called 'electronic smoking products' are being sold and LACORS is aware that there has been a growing level of concern expressed by colleagues about both the safety of these new products and the possibility that their use will be confused with normal smoking of tobacco.

It is not possible to provide any statements about the safety aspects since there are no recognised safety standards. The Department of Health is supportive of further work in this area and has agreed to fund the purchase, testing and reporting on a number of electronic cigarette products. This work is being coordinated by Kent Trading Standards. Once the reports have been received and reviewed the next step will be the preparation and distribution of guidance by LACORS. Councils which act as the Home Authority for a supplier of one of the selected products will be notified separately and provided with

a copy of the test report so that they may take appropriate action.

The advice to enforcement officers is that their prosecution statements for smoking offences need to include sufficient description of the evidence that smoking has been observed so as to be able to rebut any assertion that what they had actually seen was the use of electronic cigarettes. Guidance on the possible factors that enforcement officers can observe and record and include in their evidence to assist them in making the necessary differentiation is available at

www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=57CC81D&id=19508

Indeed it may well be worth officers including in any statement that they have positively discounted the possibility that they have observed the use of an electronic cigarette and their reasons for so concluding. Officers may also want to consider collecting physical evidence where appropriate, including cigarette butts and cigarette ash (the Health Act 2006 contains the powers to do this).

C4 Schools

It is believed that enforcement, including issuing FPNs against children under the age of 16 will not be warranted.

LACORS believes that within school grounds children who are caught smoking should be dealt with through normal school disciplinary procedures.

Councils should state clearly in contracts with school bus and other transport providers that smokefree vehicles must be provided and any incidents of smoking on the vehicle must be recorded and reported.

Where there are continuing problems with smoking on vehicles by school children then deterrent and detection measures may need to be employed, including additional signage, increased vigilance by

drivers and supervisory staff, spot inspections by school staff, use of CCTV, etc.

Ways of dealing with an offending school child include sending a letter to their parents inviting them and the child to attend a meeting at which the regulatory officer will be present together with the senior representatives of the school, when the evidence will be presented. If there is no improvement and smoking occurs again on the bus or in the school premises then deterrents and penalties can be applied by the school. In the case of the bus company this can include issuing a warning letter and ultimately revocation of travel permits or banning the pupil from the bus altogether.

C5 Sports stadia

Sports stadia are treated in the same way as other buildings – if they are enclosed or substantially enclosed they will be required by law to be smokefree.

In reality, many sports stadia comprise of a number and range of buildings and structures, some of which are enclosed, or substantially enclosed, and some of which are open to the air or roofed over in such a way as to make it difficult to decide whether they should be required to be smokefree or not e.g. partially covered stands.

Ensuring compliance on such premises may pose a challenge for the site managers and a simple remedy will be for the adoption of a corporate policy for the entire site to be declared to be smokefree. This is already the case with many of the major sports and entertainments stadia and is to be encouraged and supported.

D 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 room intended to be designated in specified premises, then the council must require the room to be smokefree under the provisions in the Health Act 2006.

| Types of premises | 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) | Specialist tobacconists shops (as defined in the Tobacco Advertising and Promotion Act 2002) |
|---|--|---|-----------------------------|--|--|
| Type of room that can be designated | 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 | 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 5 Offences and penalties

| Offence under the Health Act 2006 | Defence under the Health Act 2006 | FPN IF PAID IN 15 DAYS | FPN IF PAID IN 29 DAYS | Max. court awarded fine IF FOUND GUILTY |
|--|--|---------------------------|---------------------------|--|
| <p>Section 6(5) Failure to display no-smoking sign in a smokefree premise or vehicle (occupier or manager)</p> | <p>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 <i>not</i> being displayed in accordance with the requirements or that on other grounds it was reasonable for them not to comply with this duty.</p> | <p>£150</p> | <p>£200</p> | <p>Level 3 on standard scale – currently up to £1000</p> |
| <p>Section 7(2) Person who smokes in a smokefree place or vehicle (any person smoking)</p> | <p>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.</p> | <p>£30</p> | <p>£50</p> | <p>Level 1 on standard scale – currently up to £200</p> |
| <p>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)</p> | <p>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.</p> | <p>Not applicable</p> | <p>Not applicable</p> | <p>Level 4 on standard scale – currently up to £2500</p> |
| <p>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</p> | | <p>Not applicable</p> | <p>Not applicable</p> | <p>Level 3 on standard scale – currently up to £1000</p> |

Appendix 7 Key issues in relation to smoking shelters

Provision of 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 the case that some businesses 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.

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. There have been requests for national planning guidance to be issued regarding smoking shelters. It is the view of LACORS, supported by the Department of Communities and Local Government, that it is not 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.

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

General considerations

Where businesses do want to erect shelters they will need to give consideration to the following:

- local planning requirements and whether planning consent will be required;
- building control requirements and whether building control consent will be required;
- licensing requirements and whether conditions will need to be met in terms of late night 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.

It is expected that councils will wish to act in a co-ordinated manner in addressing all of these issues and providing a 'joined-up' response. To this end the council may need to adopt a properly developed corporate policy. Anyone intending to erect such a shelter should be advised to discuss their proposal with the appropriate council staff at the earliest opportunity.

Siting

The siting of the shelter is an important consideration and it is 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.

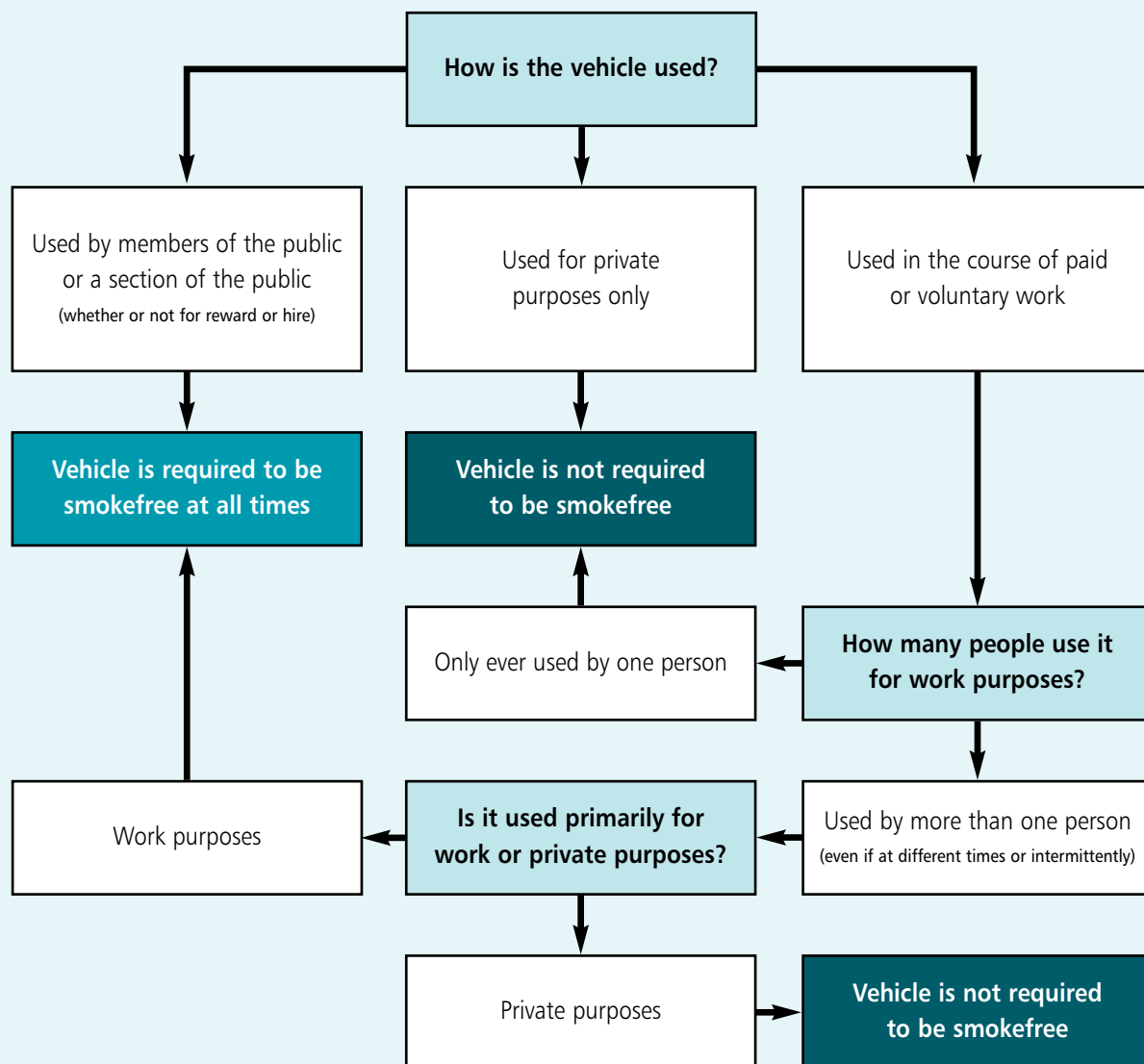
Again, it is advised that before any final decision is made on type and location of a shelter, business owners should seek the advice from their local council.

Construction

There are now many varieties of structure in use including commercially available prefabricated and demountable structures as well as those that have been achieved by making alterations and additions to existing buildings. Regardless of the shape of any structure, if it is closed in at the top by any means or material, then it effectively has a roof. The only discretion that might be applied is where the 'roof' is composed of netting which does not impede the egress of secondhand smoke. This feature is being employed in situations where the intention is not to provide shelter as such, but rather to contain people within a secure area whilst they are smoking.

Some structures incorporate balustrading, lattice work or netting to form the walls and this will need to be taken into account when assessing the whole structure in relation to the 50 per cent rule. It may be that the balusters are spaced well apart or they may be very close together and effectively serve the purpose of a wall. Similarly where planting is employed so as to form an outer face of the structure, or it is in such close proximity as to be effectively contiguous with the face of the structure, then this will need to be taken into account. In cases of doubt measurements will be required.

Appendix 8 Smokefree vehicles decision-making flowchart



Notes to this flowchart:

- vehicles that are to be smokefree and that have a removable or stowable roof are not required to be smokefree when the roof is removed or stowed;
- vehicles used 'by members of the public or a section of the public' include public transport, taxis, etc; and
- vehicles that are to be smokefree must also display no-smoking signs that comply with the new law.

Appendix 9 Fixed penalty notice guide

Schedule 1 to the 2006 Health Act sets out the Fixed Penalty Notice (FPN) scheme that applies to the Act. A FPN 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 Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007, a FPN 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 are 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 FPN

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.

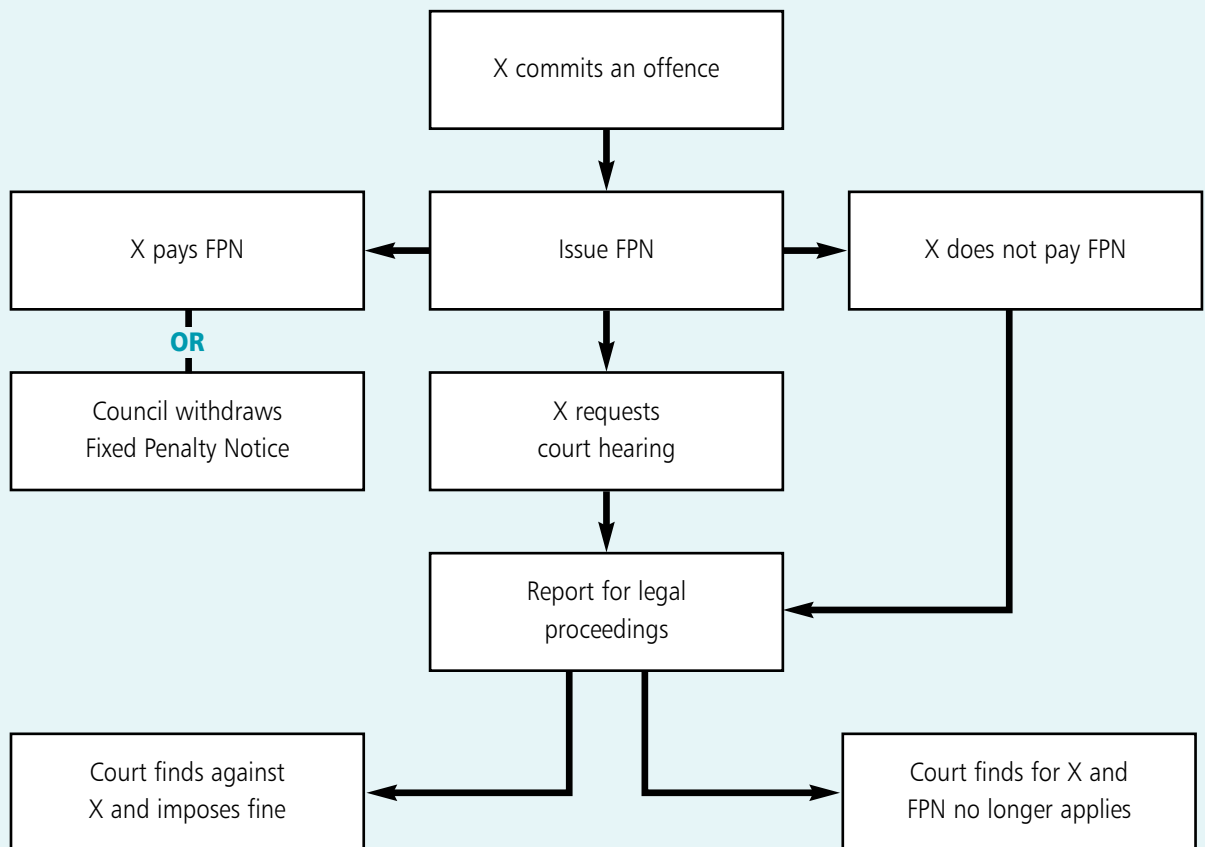
may ask questions or put forward information that they feel relevant to the issue of the notice. Should such information suggest that, for example, a notice has been incorrectly issued then the council may give notice in writing to the person and withdraw the FPN. If any monies have already been paid, these must be repaid.

Withdrawal of notices

There is no right of appeal against the service of a notice but the person on whom the notice is served

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



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

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

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

Continued

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

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

Continued

**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 2 - Smoking in a smoke-free place

[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

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