

# **Smoking in Public Places Enforcement Policy**

March 2006

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# DEFINITIONS

<b>No-smoking premises</b>	“No-smoking premises” are those premises which are wholly or substantially enclosed and which are one of the premises or classes of premises which are set out in schedule 1 of the regulations (See Appendix I)
<b>Wholly or substantially enclosed</b>	“wholly or substantially enclosed”: the legal definition of ‘wholly or substantially enclosed’ is set out in the Smoking Regulations at regulation 3(3). Put simply, it means premises, which have a roof, and walls on more than 50% of the perimeter of the premises.
<b>Smoke</b>	‘Smoke’– means tobacco smoke, any substance or mixture which includes it or any other substance or mixture; and a person is to be taken as smoking if the person is holding or otherwise in possession or control of lit tobacco, of any lit substance or mixture which includes tobacco or of any other lit substance or mixture which is in a form or in a receptacle in which it can be smoked.

## **1. STATEMENT OF AIMS AND OBJECTIVES**

It is this Council's policy as an Enforcing Authority under the Smoking, Health and Social Care (Scotland) Act 2005, to seek to protect people working in or visiting enclosed public places from exposure to second hand smoke.

Where possible, the aim of this authority will be to adopt an educational and advisory role to facilitate these objectives. Where necessary, formal enforcement action such as fixed penalty notices and the submission of reports to the Procurator Fiscal will be used, to ensure the objectives of public and employee health protection are achieved.

In selecting the appropriate approach to enforcement, the authority will be mindful of the principles of proportionality, consistency, targeting and transparency.

## **2. LEGISLATION AND GUIDANCE ON WHICH THIS POLICY IS BASED**

### **2.1 Legislation**

Smoking, Health and Social Care (Scotland) Act 2005  
Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006

### **2.2 Offences and Penalties**

The Smoking, Health and Social Care (Scotland) Act 2005 details a number of offences. It is an offence for a:

- person with management or control of no-smoking premises to knowingly permit another person to smoke there.
- person to smoke in no-smoking premises.
- person having management or control of no-smoking premises to fail to conspicuously display no-smoking signs as required.
- person (who is believed to have committed an offence, or is believed to have information relating to such an offence), to fail, without reasonable excuse, to supply the officer with their name and address when required to supply it.

The Act provides for two enforcement options:-

- Fixed Penalty Notices; and
- Submission of reports to the Procurator Fiscal for prosecution

It is the policy of this authority to utilise fixed penalty notices in the first instance where appropriate.

<b>Offence</b>	<b>Defence under Act</b>	<b>Maximum fine if found guilty</b>
Section 1 of Act: Person with management or control of no-smoking premises knowingly permits another to smoke there.	Section 1(3) of Act Accused can demonstrate that they took all reasonable precautions and exercised all due diligence to avoid commission of offence or there was no lawful or practicable means by which the accused could prevent person from smoking there.	Level 4 (£2,500)
Section 2 of Act Person smokes in no-smoking premises.	Section 2(2) of Act Accused can demonstrate they did not know and could not reasonably be expected to have known premises were no-smoking.	Level 3 (£1,000)
Section 3 of Act Person having management or control of no-smoking premises fails to conspicuously display no-smoking signs as required.	Section 3(1) of Act Accused can demonstrate that they (or any employee or agent of theirs) took all reasonable precautions and exercised all due diligence to avoid commission of offence.	Level 3 (£1,000)
Section 7(3) of Act Person who enforcement officer believes is committing or has committed any of above offences or believes to have information relating to such an offence, and fails without reasonable excuse to supply the officer with their name and address when required to supply it.		Level 3 (£1,000)

<b>Offence for which Fixed Penalty Notice is issued</b>	<b>Full Amount</b>	<b>Discounted amount</b>
<b>Section 1</b> offence - person having management or control of no-smoking premises fails to prevent others from smoking in those premises.	£200	£150
<b>Section 2</b> offence - smoking in no-smoking premises.	£50	£30
<b>Section 3</b> offence - person having management or control of no-smoking premises fails to conspicuously display warning notices in those premises.	£200	£150

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).

### 3. STATEMENT OF INTENT

#### 3.1 Principles of Enforcement

This Enforcing Authority will seek to ensure, through the provision of advice, education, publicity, guidance and, fair and reasonable formal enforcement action, that persons in control of enclosed public places, their representatives, the public and other duty holders comply with the smoking legislation.

This enforcing authority will enforce the law through the principles of:

**proportionality**<sup>1</sup> in applying the law and securing compliance;

**consistency**<sup>2</sup> of approach;

**targeting**<sup>3</sup> of enforcement action;

**transparency**<sup>4</sup> about how we operate and what persons in control of enclosed public places, their representatives, the public and other duty holders may expect from us; and

**accountability**<sup>5</sup> to all stakeholders for our actions.

For the purposes of this Policy, an Enforcement Officer is any member of staff employed by Aberdeenshire who is appointed by the Council under the Smoking, Health and Social Care (Scotland) Act 2005.

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<sup>1</sup> **Proportionality** means ensuring that the level of enforcement is proportionate to the risk, and the seriousness of any breach of the law.

<sup>2</sup> **Consistency** relates to enforcement practice within this local authority, and also between this authority and other local authorities. Consistency does not mean uniformity, but means taking a similar approach in similar circumstances to achieve similar ends.

<sup>3</sup> **Targeting** means ensuring enforcement activities, such as inspections and investigations, are focused on those whose activities give rise to the greatest risk or the least well controlled.

<sup>4</sup> **Transparency** is the extent to which employers, employees and the public are clear about what is expected of them and what they can expect from the enforcing authority in terms of advice and enforcement action.

<sup>5</sup> **Accountability** means that enforcing authorities must have policies and standards against which they can be judged, and an effective and easily accessible mechanism for dealing with comments and handling complaints.

## 4. ENFORCEMENT STRATEGY

The approach that we will take is to:

- a) Undertake a priority based pro-active inspection programme.
- b) Investigate all complaints in accordance with the procedure detailed in item 4.2
- c) Provide guidance and advice to persons in control of enclosed public places, their representatives, the public and other duty holders.
- d) Seek to educate persons in control of enclosed public places, their representatives, the public and other duty holders as to the requirements regarding enclosed public places.
- e) Strive to achieve consistency in enforcement standards through staff training, quality procedures and active participation in all liaison arrangements with other local authorities
- f) Provide guidance and advice to new businesses and new employers during the planning stage of their venture.

### 4.1 Inspections

Enforcement activities will include various different approaches

- a. Official inspection - Officers announce themselves and show appropriate identification to person in charge of premises, prior to assessing compliance with the provisions.
- b. Covert – Officers will assess compliance by observation within the premises, and subsequently announce themselves and show appropriate identification to person in charge of premises, at the end of the period of surveillance.
- c. Covert and leave – As above, but the officers wait until the following day to discuss their findings with the manager of the premises.

These visits may result from a planned inspection programme, complaints or other intelligence.

Any directed surveillance will be undertaken in accordance with the Regulation of Investigatory Powers (Scotland) Act 2000

## 4.2 Complaints

The identity of the complainant will not be revealed.

1<sup>st</sup> Complaint received

Warning letter to proprietor and acknowledgement to complainant

2<sup>nd</sup> Complaint received

Official inspection - if offence identified, final warning and covert visit planned.

- if not, acknowledge good practice.

Subsequent complaints

Covert visit - if offence identified Fixed Penalty Notice

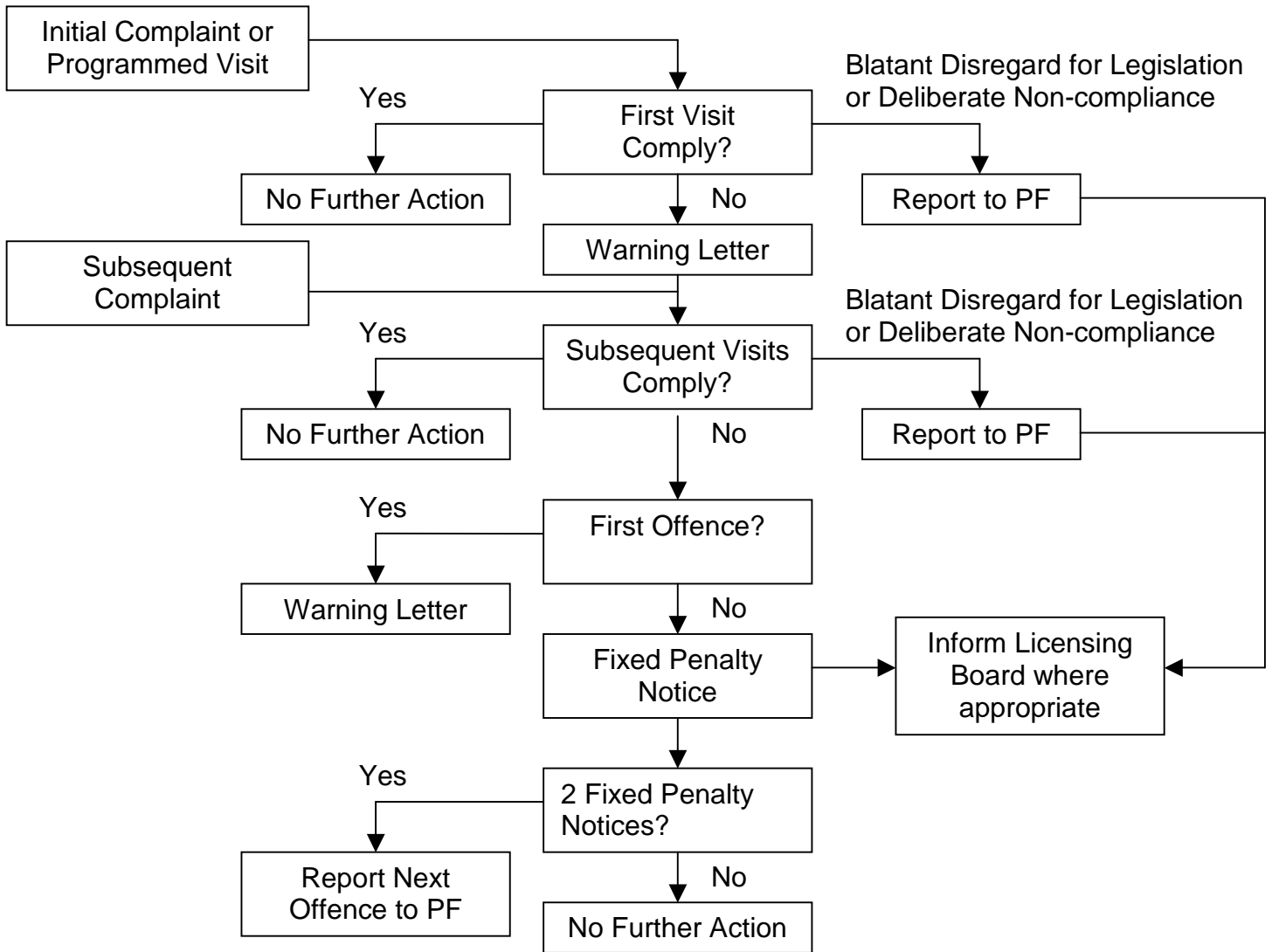
- if not, acknowledge good practice.

Where more than 2 Fixed Penalty Notices have been served on a person in control of a premises, or there is a blatant disregard for the requirements, consideration will be given to submitting a report to the Procurator Fiscal.

The overriding principles in the enforcement strategy in dealing with complaints will be that of proportionality, consistency and transparency. If the investigation of a complaint reveals non-compliance with the law, the Officer will select the most appropriate enforcement response, taking into account the factors described in section 5 of this Policy (Formal Enforcement Action). The complainant will be advised of the outcome of the investigation, provided they have given this Service a contact telephone number, e-mail address or home address.

If the Officer feels that no action is required, or the complaint is not justified, then the complainant will be advised accordingly. If preliminary investigations reveal that the complaint is not within the scope or remit of this Enforcing Authority, then the complaint will be referred to the appropriate enforcement agency and the complainant advised of this action.

Enforcement Officers will seek to ensure that risks are controlled so far as is reasonably practicable by encouraging the employers to follow relevant good practice.



## 5. FORMAL ENFORCEMENT ACTION

In deciding upon the appropriate action, Enforcement Officers will have due regard to this policy.

### 5.1 Advisory and Warning letters

An Enforcement Officer will issue an advisory letter where no contraventions of the legislation are identified. An advisory letter may contain recommendations on good practice. This may consist of a hand written sheet or word-processed document.

A warning letter will be issued on the first occasion that contraventions are identified, unless there is a blatant disregard for the legislation. It will provide details of the contraventions identified, the remedial work required and the time period for compliance. This may consist of a hand written sheet or word-processed document.

## 5.2 Fixed Penalty Notices

A fixed penalty notice will be issued when a contravention has been identified and a warning letter has already been issued (when there appears to have been blatant disregard for the legislation – then a report to the Procurator Fiscal will be considered).

A Fixed Penalty Notice may be issued at the time that the contravention is identified, or if appropriate at a later date.

A Fixed Penalty Notice will:

- identify the offence to which it relates and give reasonable particulars of the circumstances alleged to constitute that offence
- 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 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.
- state the person to whom and the address at which any representations relating to the notice may be made.
- state the consequences of not making a payment within the period for payment.

## 5.3 Reports to the Procurator Fiscal

This Enforcing Authority will consider preparing a report to the Procurator Fiscal in one or more of the following situations:

- an offence has been committed by an organisation rather than an individual; or
- there appears to have been blatant disregard for the legislation; or
- there have been repeated breaches of legal requirements in an establishment, or in various branches of a multiple concern; or
- an individual suspected of committing an offence has refused to supply their name and address when requested; or
- a fixed penalty notice has not been paid within the appropriate time period.

In deciding whether to submit a report to the Procurator Fiscal, the following factors will also be considered:

- there has been a blatant disregard for the law, particularly where the economic advantages of breaking the law are substantial and the law abiding are placed at a disadvantage to those who disregard it;
- the general record and approach of the offender;

- whether it is desirable to be seen to produce some public effect, including the need to ensure remedial action and, through the punishment of offenders, to deter others from similar failures to comply with the law;
- whether the evidence available provides a realistic prospect of conviction;
- whether an enforcement officer has been obstructed in the lawful course of their duties
- whether or not the offender has taken all necessary steps to prevent a recurrence of the problem;
- the ability of any important witnesses and their willingness to co-operate.

## 6. AUTHORISATION OF OFFICERS

All Enforcement Officers will be appointed under the Smoking, Health and Social Care (Scotland) Act 2005. When carrying out their duties, Enforcement Officers will always be able to produce their authorisation on request.

The following table outlines the degree of authority afforded to the various different types of Enforcement Officer involved.

### AUTHORISATION OF OFFICERS

Area of Work	Scope of Permission	Comments/Conditions
Service of advisory and warning letters	All qualified Officers and appropriately authorised Enforcement Officers.	
Service of Fixed Penalty Notices.	All qualified Officers and appropriately authorised Enforcement Officers.	
Reports to Procurator Fiscal	All qualified Officers and appropriately authorised Enforcement Officers may prepare reports to the Procurator Fiscal. A decision to submit a report to the Procurator Fiscal rests with the Environmental Health Specialist Officer (Health and Safety).	The preparation of all reports to the Procurator fiscal is monitored by the Senior EHO/Principal EHO, and sighted by the Environmental Health Specialist Officer (Health and Safety).

## **7. APPEALS**

The right of appeal against a fixed penalty notice will be clearly explained to the recipient in the notes contained within the Notice.

Any appeals against a decision to submit a report to the Procurator Fiscal will only be heard in the context of apparent non-application of this policy, and should be made in the first instance to the Director of the Service.

This Service will hear and investigate representations alleging unfair or inconsistent treatment by Enforcement Officers. These should be raised in the first instance with the Environmental Health Manager. Any representations alleging unprofessional conduct on the part of any of our Enforcement Officers should be submitted in writing to the Director of the Service. All such representations will be investigated through the Council's complaints system.

# Appendix 1

## “No-smoking premises” (as set out in Schedule 1 to the Smoking Regulations)

- Restaurants.
- Bars and public houses.
- Shops and shopping centres.
- Hotels.
- Libraries, archives, museums and galleries.
- Cinemas, concert halls, theatres, bingo halls, gaming and amusement arcades, casinos, dance halls, discotheques and other premises used for the entertainment of members of the public.
- Premises used as a broadcasting studio or film studio or for the recording of a performance with a view to its use in a programme service or in a film intended for public exhibition.
- Halls and any other premises used for the assembly of members of the public for social or recreational purposes.
- Conference centres, public halls and exhibition halls.
- Public toilets.
- Club premises.
- Offices, factories and other premises that are non-domestic premises in which one or more persons work.
- Offshore installations.
- Educational institution premises.
- Premises providing care home services, sheltered housing or secure accommodation services and premises that are non-domestic premises which provide offender accommodation services.
- Hospitals, hospices, psychiatric hospitals, psychiatric units and health care premises.
- Crèches, day nurseries, day centres and other premises used for the day care of children or adults.
- Premises used for, or in connection with, public worship or religious instruction, or the social or recreational activities of a religious body.
- Sports centres.
- Airport passenger terminals and any other public transportation facilities.
- Public transportation vehicles.
- Vehicles which one or more persons use for work.
- Public telephone kiosks.

Note that all of the above are defined terms and so, in order to properly interpret the list, reference must be made to the interpretation provision in regulation 1(1) of the Smoking Regulations.

# Appendix 2

## Exemptions (as set out in Schedule 2 to the Smoking Regulations)

Those premises or parts of premises, which are exempt from the legislation are:

- Residential accommodation
- Designated rooms in adult care homes.
- Adult hospices.
- Designated rooms in psychiatric hospitals and psychiatric units.
- Designated hotel bedrooms
- Detention or interview rooms, which are designated rooms.
- Designated rooms in offshore installations.
- Private vehicles.

Note that all of the above are defined terms and so, in order to properly interpret the list, reference must be made to the interpretation provision in regulation 1(1) of the Smoking Regulations.