

APPENDIX E

SUPPLEMENTARY ENFORCEMENT POLICY ISSUES – ENVIRONMENTAL HEALTH (SMOKING ENFORCEMENT)

The purpose of this appendix is to give further guidance on the provisions of smoke free legislation prescribed by the Health Act 2006 as updated in 2015.

Part I of the Health Act 2006 makes provision for the prohibition of smoking in certain enclosed or substantially enclosed premises, and allows for regulations to be made providing for other places (which need not be enclosed) and vehicles to be smoke-free. The Smoke-free (Exemptions and Vehicles) Regulations 2007 provide for enclosed vehicles used by the public or as a workplace by more than one person to be smoke free. The Smoke-free (Private Vehicles) Regulations 2015 will require all private vehicles to be smoke-free when they are enclosed, contain more than one person and a person under 18 is present in the vehicle.

Exemptions to the requirements for premises and vehicles to be smoke free are also contained in the Smoke-free (Exemptions and Vehicles) Regulations 2007.

Smoke free enforcement

It is our policy as the enforcing authority, to protect people working in or visiting an enclosed or substantially enclosed public place from exposure to second hand smoke. This policy also applies to vehicles used in connection with work and public service.

We will not embark upon a rigid proactive inspection programme under this legislation however, visits to check compliance will be undertaken at the same time as other enforcement visits or following receipt of a complaint. Enforcement activities by inspection will involve different approaches depending upon the circumstances including announced or unannounced inspections.

Authorised officers will assess compliance by observation within the premises, subsequently announce themselves and show appropriate identification to the person in charge of the premises at the end of the period of inspection.

Enforcement

Enforcement powers available include:

Preventative / remedial action

A verbal warning, an informal letter or fixed penalty notice

Licensed premises and drivers

For licensed premises and drivers matters can be referred to a Licensing or Regulatory sub-committee respectively. This will take precedence over other enforcement responses excluding preventative/remedial actions outlined above.

Criminal enforcement responses

- Prosecution
- A fixed penalty notice may be issued when an offence has been committed.

- Fixed penalty notices apply to persons who smoke in a smoke free place,
- Premises or vehicle, or where the appropriate signage is not displayed at such places.
- A fixed penalty notice will be issued at the time when the contravention is identified or if appropriate at a later date.

Where repeat breaches of the legislation are witnessed or where fixed penalty notices are not paid in full, then prosecution proceedings will be taken. Prosecution will be considered against an individual found smoking in a smoke free premise or against a person in control of a smoke free premise who fails to erect the correct signage, where informal action and fixed penalty notices have failed to secure compliance. A prosecution will be considered against a person in control of a smoke free premise who fails to prevent smoking after informal action has been taken and liaison will be undertaken with the Licensing Team in respect of any licenced premises.

A general duty of care will apply under the Health and Safety at Work etc. Act 1974. This may be applied when checking, or giving advice on, smoking shelters, ventilation of non-smoke-free rooms, and people working in non-smoke-free rooms and private dwellings.

Smoking in private vehicles

The existing smoke-free law, which makes public places and work premises and vehicles smoke-free was extended in 2015. The Smoke-free (Private Vehicles) Regulations 2015 requires all private vehicles to be smoke-free when they are enclosed, contain more than one person and a person under 18 is present in the vehicle. It will be an offence for someone to smoke in a private vehicle with someone under age 18 present and for a driver not to stop someone smoking.

Note that electronic cigarettes and all forms of nicotine vaporisers are not included within the definition of smoking. The purpose is to protect children from the harm to their health caused by exposure to second-hand smoke in vehicles.

The police will be responsible for enforcing the legislation in vehicles on the road and have the power to serve fixed penalty notices. As the local authority, we have powers to carry out investigations together with providing information and raising awareness to ensure compliance. In doing so we will take into account CIEH guidance: Implementation of Smoke-free Legislation in England - The Smoke-free (Private Vehicles) Regulations 2015.