



Leicester
City Council

WARDS AFFECTED

ALL

Cabinet

12 March 2007

Implementation of Smokefree Legislation in Leicester

Report of the Corporate Director of Regeneration & Culture

1. Purpose of Report

The purpose of this report is to outline the legislative restrictions on smoking from 1 July 2007 and the preparations being taken to discharge the City Council's regulatory responsibilities in Leicester.

2. Summary

- 2.1 Smoking is the principal avoidable cause of premature deaths in the UK. Smokefree places is one on the measures being taken to reduce the 106,000 deaths in the UK caused by smoking every year (86,500 in England) and this measure is specifically aimed at protecting the health & safety of employees, visitors and vehicle users from second hand smoke.
- 2.2 From 1 July 2007 smoking in enclosed public places, workplaces and vehicles will be illegal. The following offences have been created by The Health Act 2006:
- Failing to prevent smoking in a smokefree place
 - Failing to display the prescribed no-smoking signage
 - Smoking in a smokefree place
- 2.3 The ban on smoking and the requirement for signage is almost comprehensive with minor exemptions for hotels, only care homes and prisons. The legislation applies, amongst other places, to shops, factories, offices, leisure facilities, NHS premises, taxis, buses and company cars.
- 2.4 Responsibility for enforcement of the smoke free places legislation in Leicester falls onto the City Council. It is proposed that lead responsibility for enforcement of smoke free legislation should rest with the Environmental Services Division of the Regeneration and Culture Department, because of the close links to existing environmental health and licensing enforcement responsibilities.

- 2.5 Officers will need to be empowered to undertake inspections, investigations, impose fixed penalty fines and instigate prosecutions. A comprehensive Control Strategy has been developed, incorporating targeted business information and education programs; advice for businesses, employees and customers; and a post implementation inspection program. The key objective over the coming months will be to maximise public and local business awareness and compliance with the new legislation, so as to minimise the need for enforcement action.
- 2.6 Officers of the Environmental Services Division and the Primary Care Trust will work together to promote the availability and take up of smoking cessation services.
- 2.7 The Control Strategy will be funded with new monies made available by Government and received by way of a Section 31 Grant under the Local Government Act 2003. A sum of £193,007 has been earmarked for Leicester City Council (£32,819 in 2006/07 and £160,188 in 2007/08).

3. Recommendations

Cabinet is asked to:

- 3.1 Endorse the broad framework for implementation of Smokefree legislation in Leicester;
- 3.2 Delegate the powers introduced by this legislation to the Corporate Director of Regeneration & Culture, who will make arrangements for these powers to be exercised by relevant officers on his behalf; and
- 3.3 Request that a Smokefree Regulatory Policy is developed and submitted to Cabinet for approval prior to 1st July 2007.

4. Financial and legal Implications

- 4.1 Financial Implications
See 7.1 and subsequent, below in Supporting Information
Martin Judson, Head of Resources, Regeneration & Culture, 21 February 2007
- 4.2 Legal Implications
See 8.1 and subsequent, below in Supporting Information
Anthony Cross, Head of Litigation, 21 February 2007

5. Report Author/Officer to contact:

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Key Decision	NO
Reason	
Appeared in Forward Plan	NO
Executive or Council Decision	EXECUTIVE



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Supporting Information

1. Background

- 1.1 Smoking is the principal avoidable cause of premature deaths in the UK. In its *Choosing Health* White Paper the Government set out a clear comprehensive strategy to tackle smoking including controls on advertising, information campaigns, labelling requirements, reducing supply through taxation measures, the provision of smoking cessation services.
- 1.2 The Health Act 2006 introduces two measures to tackle smoking and its adverse health consequences. Under the Health Act 2006:
- virtually all enclosed public places and workplaces will be smoke free from 1 July 2007
 - it will be illegal to sell cigarettes to people under the age of 18 from 1 October 2007
- 1.3 The Health Act 2006 places the regulatory responsibility for this legislation on local authorities.

2. Protection from Secondhand Smoke

- 2.1 Smokefree places and vehicles is one on the measures being taken to reduce the 106,000 deaths in the UK caused by smoking every year (86,500 in England). This measure is specifically aimed at protecting the health & safety of employees, visitors and vehicle users from second hand smoke.
- 2.2 The Government's objectives in delivering smokefree legislation are to:
- reduce the risks to health from exposure to secondhand smoke;
 - recognise a person's right to be protected from harm and to enjoy smokefree air;
 - increase the benefits of smokefree enclosed public places and workplaces for people trying to give up smoking so that they can succeed in an environment where social pressures to smoke are reduced; and
 - save thousands of lives over the next decade by reducing both exposure to hazardous secondhand smoke and overall smoking rates.

- 2.3 Secondhand smoke is other people's tobacco smoke and is also known as passive smoke or 'environmental' tobacco smoke. Secondhand smoke consists of **side stream smoke** from the burning tip of the cigarette, and **mainstream smoke** exhaled by the smoker. Side stream smoke typically makes up nearly 85% of the smoke in a smoky environment. This type of smoke contains a much higher concentration of toxins, such as hydrogen cyanide, ammonia, carbon monoxide and acrolein, than mainstream smoke. Secondhand smoke contains a cocktail of over 4,000 different chemicals, many of which are toxic and harmful including more than 50 known carcinogens such as benzo(a)pyrene, chromium, vinyl chloride, and benzene.
- 2.4 The medical and scientific evidence of the risks to health from exposure to secondhand smoke is well established. In reviewing the evidence of the health risks from secondhand smoke, the Government's independent Scientific Committee on Tobacco and Health (SCOTH 1998 and 2004) concluded that exposure to secondhand smoke causes a range of serious medical conditions, including:
- lung cancer
 - heart disease
 - asthma attacks
 - childhood respiratory disease
 - sudden infant death syndrome
 - reduced lung function
- 2.5 The World Health Organisation classifies tobacco smoke as a known human carcinogen. The US Environmental Protection Agency classifies secondhand smoke as a 'class A' human carcinogen – along with asbestos, arsenic, benzene and radon gas. Medical estimates are that secondhand smoke increases the risk in nonsmokers of lung cancer by 24% and heart disease by 25%
- 2.6 Evidence shows that ventilation cannot control exposure to secondhand smoke. Secondhand smoke is made up of gases and microscopic particles and 85% of it is invisible and odourless. To remove the risks of secondhand smoke, an enclosed premises would need wind tunnel-like rates of ventilation. In many cases existing ventilation systems redistribute secondhand smoke throughout buildings.
- 2.7 Smokefree places have been introduced in many countries and medical researchers report significant positive impacts on workers. For example, in non-smoking Irish bar workers levels of carbon monoxide decreased by 45% one year after the legislation was introduced, and a Dundee University study showed bar workers' lung function increased by as much as 10% just two months after smokefree legislation was introduced.

3. What will be a Smokefree Place?

- 3.1 The smokefree provisions within the Health Act 2006 relate to smoking of tobacco or anything that contains tobacco, or smoking any other substance, including manufactured cigarettes, hand-rolled cigarettes, pipes and cigars. The smokefree provisions also cover the smoking of waterpipes (alternatively known as Sheesha, Hookah, Hubble Bubble).

- 3.2 Section 2 of the Health Act 2006 sets out that **premises that are open to the public, or are used as a place of work by more than one person or where members of the public might attend to receive or provide goods or services are to be smokefree in areas that are enclosed or substantially enclosed.** Regulations define what is meant by “enclosed” and “substantially enclosed” premises.
- 3.3 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.
- 3.4 Premises will be considered to be 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% rule.
- 3.5 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.

4 What will be a Smokefree Vehicle?

- 4.1 Regulations will require enclosed vehicles 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),
 - in the course of paid or voluntary work by more than one person, even if those people use the vehicle at different times, or only intermittently.
- 4.2 Vehicles required to be smokefree will not need to be smokefree when they are conveying persons if they have a removable or stowable roof and during the time of conveyance the roof is completely removed or stowed. 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.

5 The Smokefree Offences and Regulatory Powers

- 5.1 From 1 July 2007 smoking in enclosed public places, workplaces and vehicles will be illegal. The following offences have been created by The Health Act 2006:
- Failing to prevent smoking in a smokefree place (maximum fine on conviction is level 4 on the standard scale, currently £2,500)
 - Failing to display the prescribed no-smoking signage (the fixed penalty is £200 or maximum fine on conviction is level 3 on the standard scale, currently £1000)
 - Smoking in a smokefree place (the fixed penalty is £50).
- 5.2 The Health Act 2006 places the regulatory responsibility on Leicester City Council to reinforce compliance and deliver the public health benefits. Under Section 10 (3) it is “the duty of an enforcement authority to enforce”, as respects the premises, places and vehicles in relation to which it has enforcement functions, the provisions of the Act and regulations made under it. The Act makes it an offence to obstruct an officer.

- 5.3 Enforcing officers have the power to:
- Enter any premises (other than dwelling places not open to public) at any reasonable time
 - Undertake purchases of products and services
 - Take possession of any substance or product
 - Require the provision of information

6. Implementation of Smokefree Legislation in Leicester

- 6.1 It is proposed that lead responsibility for enforcing the new Smokefree legislation should rest with the Environmental Services Division of the Regeneration and Culture Department, because of the close links to existing environmental health and licensing enforcement responsibilities. A control strategy has already been developed, incorporating targeted business information and education programs; advice for businesses, employees and customers; the promotion of cessation services in co-operation with the PCT and a post implementation inspection program.
- 6.2 The Control Strategy that has been developed is a 'living' action plan which is under constant review and is amended in the light of issues discovered and guidance produced. The Control Strategy includes the following actions with indicative timescales:
- Sectoral and business risk assessment to identify subjects requiring special attention and support – March 2007
 - Issue of Sectoral Guidance – March 2007
 - Promotion of smoking cessation support – from March 2007
 - Advice visits – April to June 2007
 - Advice line for businesses and other institutions – from March 2007
 - Advice and Inspection visits – from July 2007
 - Complaints investigations – from July 2007
- 6.3 The scale of the task facing the City Council as enforcing authority is indicated by the following data. Based on Non Domestic Rates data it is estimated that there are around 12,000 buildings in Leicester that will become smoke free from 1 July 2007. This include pubs, clubs, restaurants, shops, factories and also less obvious buildings such as bus shelters, residential care homes and places of worship.
- 6.4 The number of work and public vehicles is unknown but again, the scale is indicated by the fact that there are approximately 1,500 taxis in the city, which together with all buses, coaches, business and public sector fleet vehicles is likely to bring the total number of vehicles covered by the legislation to in excess of 10,000.
- 6.5 National survey statistics indicate that just over half of the workforce already work in premises in which there are restrictions on smoking. While this is a positive finding it also suggests a potential for confusion about the application of statutory requirements and existing business/institution smoking policies. Additional factors which will impact on compliance in the City are the number of businesses being set up by new communities that have arrived from countries where there are no restrictions on smoking or the restrictions are very different from those that will prevail in England. We are anticipating cultural and language barriers as well as economic barriers to

compliance. These matters will need to be dealt with sensitively in the interests of community cohesion, yet at the same time ensuring that legislation is complied with.

- 6.6 The Service is anticipating significant requests for information and advice in the lead up to 1 July 2007. In particular, many work places and licensed premises are likely to alter or adapt their premises as a consequence of this legislation. Works of this nature may require building control and/or planning consent and may affect licensing conditions. Hence, there may be a 2 month lead-in period for such changes, meaning that March and April may be key months for providing multi-disciplinary advice to businesses in the city.
- 6.7 Therefore, an immediate priority for the Department is ensuring that robust liaison arrangements are in place to between relevant Council services, so as to ensure that businesses are given multi-disciplinary advice on compliance with smokefree and all other legislative requirements. Furthermore, a “single-point of contact” approach will be adopted wherever possible, so as to make it easier for businesses to get all of the advice that they might need.
- 6.8 While the City Council’s existing enforcement and investigative policies are comprehensive and adequate to accommodate this new regulatory function it is considered that, given the wide-ranging impact of this legislation and the anticipated public interest in its enforcement, a separate Smokefree Regulatory Policy will be developed for approval by Cabinet. The Policy will take into consideration new statutory requirements on regulators, Regulation of Investigatory Powers Act and Human Rights Act.

7 Financial Implications

- 7.1 The implementation of Smokefree legislation will be funded with new monies made available by Government and received by way of a Section 31 Grant under the Local Government Act 2003. A sum of £193,007 has been earmarked for Leicester City Council being £32,819 in 2006/07 and £160,188 in 2007/08. Future funding levels and arrangements are not known at present.
- 7.2 It is likely that the majority of this grant will be used to fund a team of 4 staff who will lead on implementation of the smokefree legislation, with the remainder being used to fund associated costs, production of guidance, awareness events for local businesses, legal costs, etc.
- 7.3 It is proposed that staff will be recruited on a permanent basis and, in the event that funding is not sustained at the same levels beyond 2007/8, post holders could be integrated into other relevant regulatory teams, with funding being found potentially by using vacancies available at the time.
- 7.4 The funding issue can be addressed in the 2008/09 budget setting process which will commence in the latter half of 2007.

Martin Judson, Head of Resources, Regeneration & Culture, extension 7390

8 Legal Implications

- 8.1 This report summarizes the implications for the council of new statutory powers given to local authorities by the Health Act 2006.
- 8.2 In accordance with the Council's constitution, the report provides for enforcement of the Act to be delegated to the Corporate Director of Regeneration and Culture, who will make the necessary operative arrangements in accordance with the Regeneration and Culture Department's scheme of delegation.
- 8.3 The report identifies a number of new offences that have been created under the act and Legal Services will work closely with R & C officers in connection with any cases that come forward for prosecution. Any prosecutions under the Act will be considered in accordance with the Council's Prosecutions Policy, which will need to dovetail into the anticipated smokefree regulatory policy.

Anthony Cross, Head of Litigation, x6362

9. Equality issues

- 9.1 An Equality Impact Assessment will be completed and accompany the proposed Smoke Free Regulatory Policy when it is presented to Cabinet.

HER IMPLICATIONS	YES/NO	PARAGRAPH REFERENCES WITHIN SUPPORTING PAPERS
Equal Opportunities	NO	See 9.1
Sustainable and Environmental	NO	
Crime and Disorder	NO	
Human Rights Act	NO	See 6.8
Older People/People on Low Income	NO	Some of the highest levels of smoking occur within deprived areas/communities. Legislative impact and public health benefit are therefore likely to be greatest in these areas.

11. Background Papers – Local Government Act 1972

Health Act 2006

Report of the Scientific Committee on Tobacco and Health, 1998

Secondhand Smoke: Review of evidence since 1998 (Update of evidence on health effects of secondhand smoke), Scientific Committee on Tobacco and Health (SCOTH), Department of Health, 2004

12. Consultations

Dr Stephen Whitehead, Director of Public Health, Leicester City Primary Care Trust, 21 February 2007

"I welcome the ban on smoking in enclosed public places to be implemented from the summer of 2007.

This ban is a major step forward in protecting Leicester residents from the proven harm to smokers themselves and to those exposed to other people's smoke. I hope it will also be further incentive for smokers to give up. Smoking is responsible for around 450 deaths in Leicester each year, and for around 40 –50 deaths due to passive smoking.

We should not underestimate the importance of this decision for de-normalising smoking, which will help young people not to start in the first place. It is building on a trend. We often forget that the majority of the people who live in Leicester do not smoke. Only in the region of 23% of the City's population aged over 18 smoke, but this still adds up to around 50,000 people."

it is important that communities, the licensed trade, private members clubs, health trusts and the city council work closely together to plan the implementation of the ban, so that it is properly understood and put in to practice. There will be a clear need for effective information and communication around the ban, particularly in the areas of the city where smoking is most widespread. The city's primary care trusts and their partners will need to ensure that there is sufficient capacity to capitalise on the likely increased demand for help to quit smoking."