

Herefordshire and Worcestershire Councils

Enforcement Protocol

on

**Health Act 2006 –
Smoke-Free Premises, Places and Vehicles**

March 2007

Enforcement Protocol

This document outlines the key principles of the enforcement of the smoking provisions of the Health Act 2006 as agreed between the individual Councils which form the Counties of Herefordshire and Worcestershire.

Legislation

The Health Act 2006 provides for 3 main offences:

- failing to display a non smoking sign,
- allowing smoking in a smoke-free place or vehicle.
- smoking in a smoke-free place or vehicle,

The Act allows for an individual to discharge any liability to conviction by payment of a fixed penalty fine. It also provides for a Local Authority officer to enforce the legislation and issue fixed penalty notices. These enforcement officers encompass all local authority officers who may be engaged in enforcement work associated with the enforcement controls and may include Environmental Health Officers, Technical Officers, Licensing Officers and Housing Officers.

Enforcement

The provisions of the Health Act 2006 will be enforced in accordance with the hierarchy of measures detailed in the departmental enforcement policy. Regard will be had to guidance published by the Department of Health, Chartered Institute of Environmental Health and Local Better Regulation Office.

Officers of the Local Authority will work in partnership with external agencies such as the HSE, Police, Fire Brigade, NHS, relevant Smoke-free Alliances and Primary Care Trusts and other stakeholders to ensure fair and consistent enforcement, taking the views of others in to account.

Enforcement officers will assess whether premises comply with the legislation. Enforcement officers will do so by determining whether owners, occupiers, manager or persons in control of premises have taken all reasonable precautions to prevent people smoking (Appendix 2).

Enforcement officers will work closely with businesses, building compliance with legislation through education, advice and

information. Enforcement action will be taken only when the seriousness of the situation warrants it. The approach to enforcement will be non-confrontational, focused on raising awareness and understanding to ensure compliance. Any enforcement action undertaken will be fair, proportional and consistent. Enforcement action will be considered against individuals smoking in no-smoking premises where the owner, occupier, manager or any other person in charge can demonstrate that they have taken all reasonable precautions against these individuals smoking on their premises. Appendix 1 summarises the enforcement options available.

Inspections

Inspections carried out by enforcement officers will either be proactive, e.g. to advise businesses and to confirm compliance with the legislation, or reactive, i.e. in response to a complaint.

The initial focus of inspections will be on premises: -

- High risk in that they are open to large numbers of people
- Where there is an absence of pre-existing self imposed smoking controls
- Where enforcement officers do not usually visit as part of their routine inspections under other legislation.

A short term, risk based inspection programme for premises is likely to evolve as officers become more familiar with the new requirements and start to receive intelligence on levels of compliance. Such a programme may include factors such as:

- Confidence in management.
- History of compliance with the requirements.
- Number of complaints received from the Compliance Phone Line.

Enforcement officers may carry out a number of different types of inspections in relation to smoking controls - examples are listed below. Officers will choose the most appropriate course of action once all factors have been taken into account, i.e. which action will bring the most benefit to the public and ensure the safety of each officer.

- 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 an appropriate time to discuss their findings with the manager of the premises.

Any covert inspection will be in full compliance with each local authority's policy in relation to the Regulation of Investigatory Powers Act 2000 (RIPA).

Complaints Protocol

All complaints will be assessed by an enforcement officer and action taken appropriate to the nature of the complaint

Assessment of Compliance

Enforcement officers will carry out an assessment to determine whether or not owners, occupiers, managers or any person in control of no-smoking premises have taken "all reasonable precautions" to avoid people smoking. These precautions are detailed in Appendix 2 and will include a combination of compliance with specific legal requirements and activities which would be considered good practice by organisations in demonstrating that they are taking all reasonable precautions.

Enforcement Against Persons in Control of Premises

Enforcement action will be pragmatic and based on enforcement resources currently available. For this reason, initial enforcement activity will focus on the owner/proprietor as they are likely to have management and control of the premises. If owners/proprietors self regulate their premises, then it is likely that individuals using these premises will comply.

Enforcement at Council owned property will be in accordance with the principles of this protocol.

Enforcement Against Individuals

Individuals who smoke on premises will only be targeted for enforcement action once the person having management or control of the premises has demonstrated that they have made all reasonable attempts to stop the person from smoking. Individuals can be served with a Fixed Penalty Notice by the enforcement officer. However, all efforts should be made to encourage the person to stop smoking or leave the premises, if appropriate, prior to taking enforcement action.

Prosecutions

Owners, occupiers, managers or other persons in charge will be recommended for prosecution after repeated failure to comply with the legislation. Again, this will be reserved for serious or persistent contraventions, and an educational and non-confrontational approach should be used whenever possible.

Enforcement Action

The following enforcement options are available to officers:

- a. Verbal warning,
- b. Written warning,
- c. Fixed Penalty Notice on owner, occupier, manager or any other person in charge of no-smoking premises for not displaying appropriate signage,
- d. Fixed Penalty Notice on individual smoking in no-smoking premises.
- e. Prosecution report for any/all offences.

All action taken will be fair, proportional and consistent.

Powers of Entry

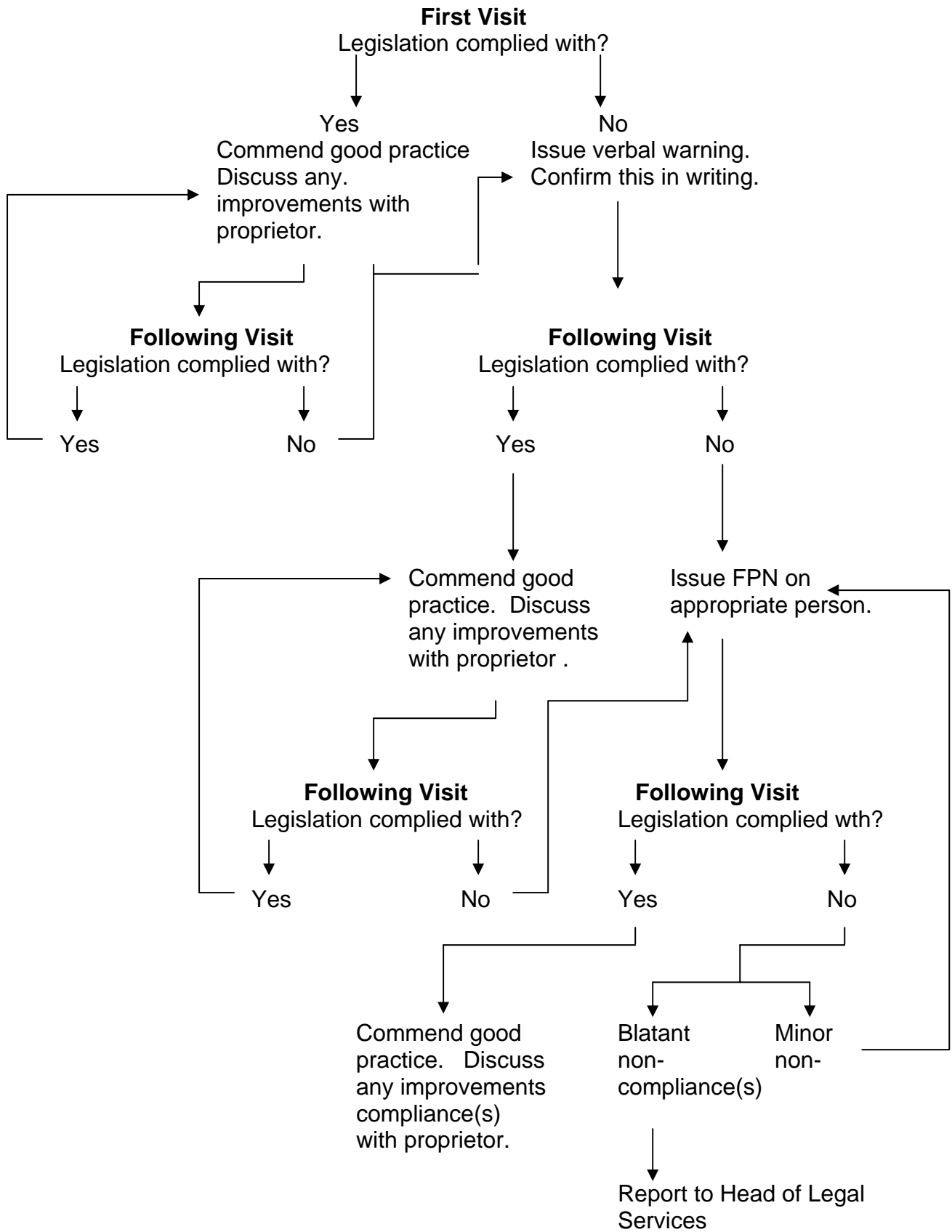
An authorised officer has the right to do any of the following, on production (if required) of his written authority-

- a. at any reasonable hour, enter any appropriate premises
- b. carry out such inspections and examinations as he considers necessary,
- c. require the production of any substance or product, inspect it, take and retain samples of or extracts from it and take possession thereof,

d. require any person to give him such information, or afford him such facilities and assistance, as he considers necessary for that purpose.

e. may apply for a warrant to enter premises.

Appendix 1: Enforcement Protocol



1.0 **Signage**

1.1 Signage for Premises

It is a legal requirement to display a “No-smoking” sign in a prominent position at each entrance, which: -

- (a) is of A5 size;
- (b) displays the international no smoking symbol in colour, a minimum of 70 mm in diameter; and
- (c) carries the words in characters that can be easily read –

“No smoking. It is against the law to smoke in these premises”.

On the sign, the words “these premises” may be changed to refer to the particular premises where the sign is displayed, for example “this hotel” or “this NHS clinic”

A no smoking sign which simply displays the international no-smoking symbol in colour, a minimum of 70mm diameter is the minimum requirement at entrances to smoke free premises which:

- (a) are for staff only (on the basis that the premises displays at least one A5 sized sign with the words as set out above, or
- (b) which are located within other smoke-free premises (for example, a shop within an indoor shopping centre)

1.2 Signage in Vehicles

It is a legal requirement to display a “No-smoking” sign in each enclosed compartment in a vehicle that can accommodate people. These signs must simply display the international no-smoking symbol in colour, a minimum of 70mm in diameter.

2.0 **Assessment of Reasonable Compliance by Persons in Control of Premises**

2.1 Management Controls

It is recommended that those in control of no-smoking premises:

1. Develop a smoke-free policy, (preferably written).

2. Develop a procedure for dealing with any people who smoke (preferably written).
3. Train staff in both the policy and written procedure.
4. Keep a written record of any incident (and outcome) where responsible member of staff confronts an individual for smoking on the premises.

2.2 Ashtrays

Ashtrays and other such receptacles should not be present in no-smoking premises.

2.3 Smoke-free policy and procedures

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 smoke-free policy is available from the Environmental Health Division of the Local Authority. This can be adapted by individual businesses and organisations for their use, if they wish.

The procedures should contain items similar to the following:

- Draw the person's attention to the "No Smoking" signs in the area and inform them that he/she is committing an offence by smoking. Politely ask them to stop smoking.
- Direct them to the nearest place where they are able to smoke legally.
- Advise the person smoking that their actions could result in the person in control of the premises being prosecuted and receiving a fine of up to £2,500.
- If the person is a customer, refuse them service.
- If the person is a customer and that person continues to smoke, ask them to leave the premises otherwise invoke company disciplinary procedures.
- If the customer refuses, implement normal procedures for anti-social/illegal behaviour on the premises.
- Maintain a written record of all such incidents and outcomes.

- If physical violence is threatened by the person smoking, notify and/or seek assistance from the Police.

The policy should identify members of management and/or staff who have responsibility for its implementation and review.

2.4 Staff training

Employers and managers of no-smoking premises should ensure that all staff including new members of staff, are trained in relation to the no-smoking policy. All staff working in no-smoking premises should be aware of which member of staff or management present is the responsible person for dealing with any persons smoking. Regular staff training should reinforce any policy on an on-going basis.

2.5 Record of incidents

In order to assist any future defence of "due diligence", each premises should keep a documented record of:

- Date and time of incident.
- Where person was smoking.
- What action was taken by staff (including name of staff member).
- Outcome.
- Name of person smoking (if known).

Businesses should be encouraged to contact their local Environmental Health Office should they require support after following these procedures.