

REPORT TO: Safer Halton Policy & Performance Board
DATE: 23 January 2006
REPORTING OFFICER: Strategic Director Environment
SUBJECT: Smoke free premises legislation
WARDS: Boroughwide

1.0 PURPOSE OF THE REPORT

This report is brought to the board to inform them on the current position relating to the introduction of the smokefree legislation in England.

2.0 RECOMMENDATION: That

- (1) the board note and consider the report; and**
- (2) that the Environmental Health and Risk Assessment Working Party continue to meet to undertake an overview of the legislation as national guidance is made available and report back to the board as appropriate.**

3.0 SUPPORTING INFORMATION

Background

- 3.1 Smoking rates in England have fallen from 28 per cent in 1998 to 24 percent in 2005—meaning around 1.6 million fewer smokers at 2005 population levels. The Department of Health has a target to reduce smoking rates further to 21 per cent or less by 2010, and to reduce smoking amongst routine and manual groups to 26 per cent or less over the same time period (from the 2005 level of 31 per cent). The Government aims to achieve reductions in smoking prevalence through an integrated combination of policies that will help the 70 per cent of smokers who say they want to quit to be successful.
- 3.2 The medical and scientific evidence of the risks to health from exposure to secondhand smoke is well established and documented. The Government's independent Scientific Committee on Tobacco and Health (SCOTH) has confirmed that secondhand smoke is a substantial public health hazard, and recommended restrictions on smoking in public places and workplaces to protect non-smokers.
- 3.3 The *Choosing Health Making Healthier Choices Easier* White Paper set out the Government's proposed action on secondhand smoke. In February 2006 MPs in the House of Commons voted to modify proposals set out in the Government's White Paper so that smoking will be banned in all enclosed public spaces.
- 3.4 The Government therefore introduced smoke-free legislation in the Health Act 2006 with the aim of:
 - reducing the risks to health from exposure to secondhand smoke;

- recognising a person's right to be protected from harm and to enjoy smokefree air;
- increasing the benefits of smoke-free 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
- saving thousands of lives over the next decade by reducing both exposure to hazardous secondhand smoke and overall smoking rates.

The legislation

- 3.5 In June 2006 the Health Act 2006 with its smokefree provisions received Royal Assent. The Health Act 2006 provides regulation-making powers this will enable the government to introduce details provisions by way of regulations.

All enclosed public places and workplaces will become smokefree from 1st July 2007. The implementation of the smoke-free elements of the Health Act 2006 will mean that virtually all enclosed public places and workplaces will become smoke-free environments. This will include offices, factories, shops, pubs, bars, restaurants, membership clubs, public transport and work vehicles that are used by more than one person. The legislation will make it an offence for those who control or manage smoke-free premises to fail to stop people smoking on them. Exemptions currently under consultation include some hotel/guest bedrooms and designated rooms in care homes, hospices, long stay mental health units and adult prisons. Private homes that are not used as workplaces will not be covered by the law. Signage will be required for smokefree premises and vehicles in prominent positions.

- 3.6 Smoke-free legislation is not a "smoking ban". The Government respects individual autonomy, including a person's right to choose whether to smoke. The legislation will protect others from exposure to harmful secondhand smoke.

Local authorities are identified as being best placed to enforce smoke-free legislation, and the government expects that in most local authorities, environmental health sections would primarily undertake the work. At present Health and safety executive (HSE) share health & Safety enforcement with LA's in eg they regulate large factories, crown buildings and LA buildings. However, the HSE have stated that they will not enforce the smoking legislation. If the Government upholds this then Environmental Health may be in the position of regulating legal council premises.

- 3.7 A three-month consultation on the draft regulations ran from July to October 2006. Around 550 responses were received, many of them very detailed, from a range of stakeholders. The Department of Health has made a number of changes to draft regulations based on consultation responses.

- 3.8 The Department of Health has published two sets of regulations, which set out some of the detail of the Health Act 2006. These sets of regulations cover:

- Definition of 'enclosed' and 'substantially enclosed' premises
- Enforcement authorities
- Signage

- 3.9 Three further sets of regulations will be published in the New Year containing: exemptions and vehicles; penalties and discounted amounts; and offences in vehicles and the format for fixed penalty notices. The last two sets of regulations will be subject to Parliamentary debate. The Smoke-free (Premises and Enforcement) Regulations have been made in advance of other regulations to give businesses and local authorities as much certainty as possible over how businesses will be able to comply with smoke-free legislation.
- 3.10 In the Smoke-free (Premises and Enforcement) Regulations 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 that are less than half of the total areas of walls, including other structures that 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. 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. Further guidance will be produced for local authorities, business and other enforcement authorities. Premises and vehicles that are to be smokefree under the law will be required to have no-smoking signs in place at each entrance, displayed in a prominent position.
- 3.11 **Essential factors for consideration**
- a) Enforcement policy, protocols in the light of national guidance
 - b) The impact upon other regulatory functions for example licensing, litter and planning.
 - c) Effective advice and support for businesses and how it will be delivered
 - d) The resource implications and any potential need to bid for additional funding
 - e) Effective communication and media strategies keeping businesses the public at large informed establishments halton council employees informed and responding to media interest prior and post the implementation date.

Environmental Health and Risk Assessment Working Party

- 3.12 The chair has agreed that the Environmental Health and Risk Assessment Working Party set up by the board to consider such issues should take on an overview and a scrutiny examination of this issue. The panel has met to be briefed on the background and the government's intentions. With the arrival of the detailed legislation and the promise of detailed guidance to follow this group will be able meet again to fulfill this role.

4.0 POLICY IMPLICATIONS

- 4.1 Effective and proportionate regulation is a best value consideration (BVPI-166). There is already an environmental health enforcement policy, which will need to be reviewed to reflect anticipated guidance and best practice on smokefree regulation.

5.0 OTHER IMPLICATIONS

- 5.1 Under smoke-free legislation, enforcement authorities will be first-tier local authorities i.e. a unitary authority; a district council in so far as it is not a unitary authority; a London borough council, or a port health authority. The regulations will impose a new burden on enforcement authorities. In the first instance it is accepted by government that enforcement cannot be readily accommodated from existing resources. Recognising this burden, the Department of Health will be funding local authorities to support the implementation of smoke-free legislation. The Department is currently finalising the funding package for 2007/08. Ongoing enforcement requirements will be assessed to inform funding for local authorities in future years.
- 5.2 There may be unintended consequences of action, including costs to local authorities in cleaning up or providing disposal facilities for cigarette butts in outdoor public places. It has also been suggested that there might be some increase in anti-social behavior from smokers drinking on the streets rather than in licensed premises.

6.0 RISK ANALYSIS

- 6.1 This is an opportunity to contribute to one of the Council's five strategic priorities for the borough of improving health standards by working with partners and local people to create a healthier community.
- 6.2 The main risk is that comprehensive smoke-free legislation may not reflect public opinion completely, and may therefore be controversial and difficult to enforce. It carries a risk of alienating sections of the community.
- 6.3 Similarly failure to communicate effectively with stakeholders from the outset could make enforcement far more resource intensive and costly than it needs to be.
- 6.4 A failure to account for the potential unintended consequences

7.0 EQUALITY AND DIVERSITY ISSUES

- 7.1 The environmental and regulatory services department in exercising its regulatory services aim to be consistent and even handed in all regards and as such the service does not apply differently to any particular group. Even though the services are not intended to have either a positive or negative impact but as a service dealing directly with the whole cross section of the community in a regulatory capacity there is always scope for a group or individuals to perceive to be affected differently.

7.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

There are no background papers within the meaning of the Act
General background information can be found on the
www.smokefreeengland.co.uk web site