

Torbay Council

Policy for the Enforcement of Smoke Free Legislation in Premises and Vehicles

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Appendix 1 Good Practice Recommendations

1. Statement of Aims and Objectives

It is this Council's policy, as enforcing authority, to seek to protect people working in or visiting enclosed or substantially enclosed public places from exposure to second hand smoke. This policy will also apply to vehicles used in connection with work and public service.

The Council will discharge its duty to enforce the provisions of Part 1 of the Health Act 2006 and regulations made there under in accordance with this policy statement.

The Council endorses and fully supports the Principles of Good Enforcement as set out in the Enforcement Concordat published by the Government's Cabinet Office. This has been formally adopted by the Council.

The Council will ensure that all persons affected by the enforcement of smoke free legislation receive fair and equal treatment regardless of race, ethnicity, gender or disability. Officers will be aware of the potential problems of comprehension where English is not the first language.

This policy will come into effect on the 1st July 2007 and will be reviewed annually or, at such time as deemed appropriate by the Principal Environmental Health Officer (Food Safety). Where possible, the Council will adopt a staged approach to enforcement by the use of education and advice to facilitate these objectives. However, where it is appropriate, enforcement action by the use of fixed penalty notices and the institution of legal proceedings will be used to ensure compliance with the law.

2. Legislation and Guidance on which this Policy is based

Health Act 2006 Part 1

The Smoke-free (Premises and Enforcement) Regulations 2006

The Smoke-free (Signs) Regulations 2007

The Smoke-free (Exemptions and Vehicles) Regulations 2007

The Smoke-free (Penalties and Discounted Amounts) Regulations 2007

Department of Health Guidance

Guidance issued by the Local Authorities Co-ordinators of Regulatory Services (LACORS).

3. Offences

It is an offence for:

- A person who controls or is concerned in the management of smoke-free premises, to fail to cause a person smoking there to stop smoking;
- A person to smoke in a smoke-free place;
- A person who occupies or is concerned in the management of smoke-free premises to fail to ensure that no-smoking signs are displayed in accordance with the Regulations;
- Any person to intentionally obstruct an authorised officer in the exercise of his functions under the Act;
- Any person, without reasonable cause, to fail to give an authorised officer any facilities, assistance or information he reasonably requires.

4. Defences

It is a defence for a person charged with smoking in a smoke-free place to show that he did not know, and could not reasonably have been expected to know, that it was a smoke-free place.

It is a defence for a person charged with failing to stop a person smoking in a smoke-free place to show: -

- a. that he took all reasonable steps to cause the person in question to stop smoking, or
- b. that he did not know, and could not reasonably have been expected to know, that the person was smoking, or
- c. that on other grounds it was reasonable for him not to comply with the duty.

5 Enforcement principles

The Council will enforce the law through the principles of:

- a) **Proportionality** - this means ensuring that the level of enforcement is proportionate to the risk, and the seriousness of any breach of the law.
- b) **Consistency** - this 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.
- c) **Targeting** - this means ensuring enforcement activities, such as inspections and investigations, are focused on activities giving rise to the greatest risk or the least well controlled.
- d) **Transparency** - this is the extent to which duty holders and members of 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.
- e) **Accountability** - this means 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.

6. Enforcement Strategy

The Council will seek to: -

- a) Undertake a priority based pro-active inspection programme. (See '7' below). This may be incorporated within other interventions/inspection programmes carried out under other legislation for which the Council has responsibility.
- b) Investigate all complaints in accordance with the procedure detailed in item 8 below.
- c) Provide guidance and advice to persons in control of enclosed or substantially enclosed work or public places, their representatives, the public and other duty holders as to the requirements regarding smoke-free places.

- d) Achieve consistency in enforcement standards through staff training, quality procedures and active participation in liaison arrangements with other local authorities, Government Departments and other agencies.
- e) Provide guidance and advice to new businesses and new employers during the planning stage of their venture.

7. Inspections

Enforcement activities will involve different approaches depending on the circumstances: -

- a. Announced inspection – Authorised Officers will announce themselves to the person in charge on entering the premises, and show appropriate identification, prior to assessing compliance with the law.
- b. Inspection/visit to the premises by Authorised Officers prior to revealing their identity. Officers will assess compliance by observation within the premises, and subsequently announce themselves and show appropriate identification to the person in charge of the premises at the end of the period of inspection.
- c. Covert (undercover) surveillance – specific investigation undertaken by Authorised Officers to gather evidence of non compliance with the law, affecting the business or person in charge of the premises or place, where it is considered necessary and proportionate in the circumstances and where such action is duly authorised by an appropriate officer of the Council.
Visits may arise from a planned inspection programme, complaints or other information received. Any directed covert surveillance will be undertaken in accordance with the Regulation of Investigatory Powers Act 2000, with the required authorisation being obtained prior to any such covert surveillance being undertaken. Covert surveillance will only be undertaken in circumstances where Authorised Officers of the Council have good reason to suspect that an offence under the Act is being committed, and that evidence of the offence cannot be obtained in any other way.
- d. Vehicles – assessment for compliance in vehicles used in connection with work or public service will be carried out at the operator's base or where the vehicle is stationary.

8. Complaint Investigation

The identity of the complainant will not be revealed during the investigation of any complaint.

The response to complaints received about non-compliance with the legislation will be prioritised taking into account the following factors:

- The number of complaints received about particular premises
- The number of people likely to be affected if the complaint relates to persons smoking in smoke-free premises.
- Whether the nature of the complaint suggests to the enforcing officer a degree of complicity between the various parties in the alleged offence.
- Whether the alleged offender has been previously warned, convicted or subject to fixed penalty notice regarding non compliance.

All complaints will be acknowledged within five working days, provided the complainant has given all necessary contact details.

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 (Enforcement Principles). The complainant will be advised of the outcome of the investigation, provided they have given contact details.

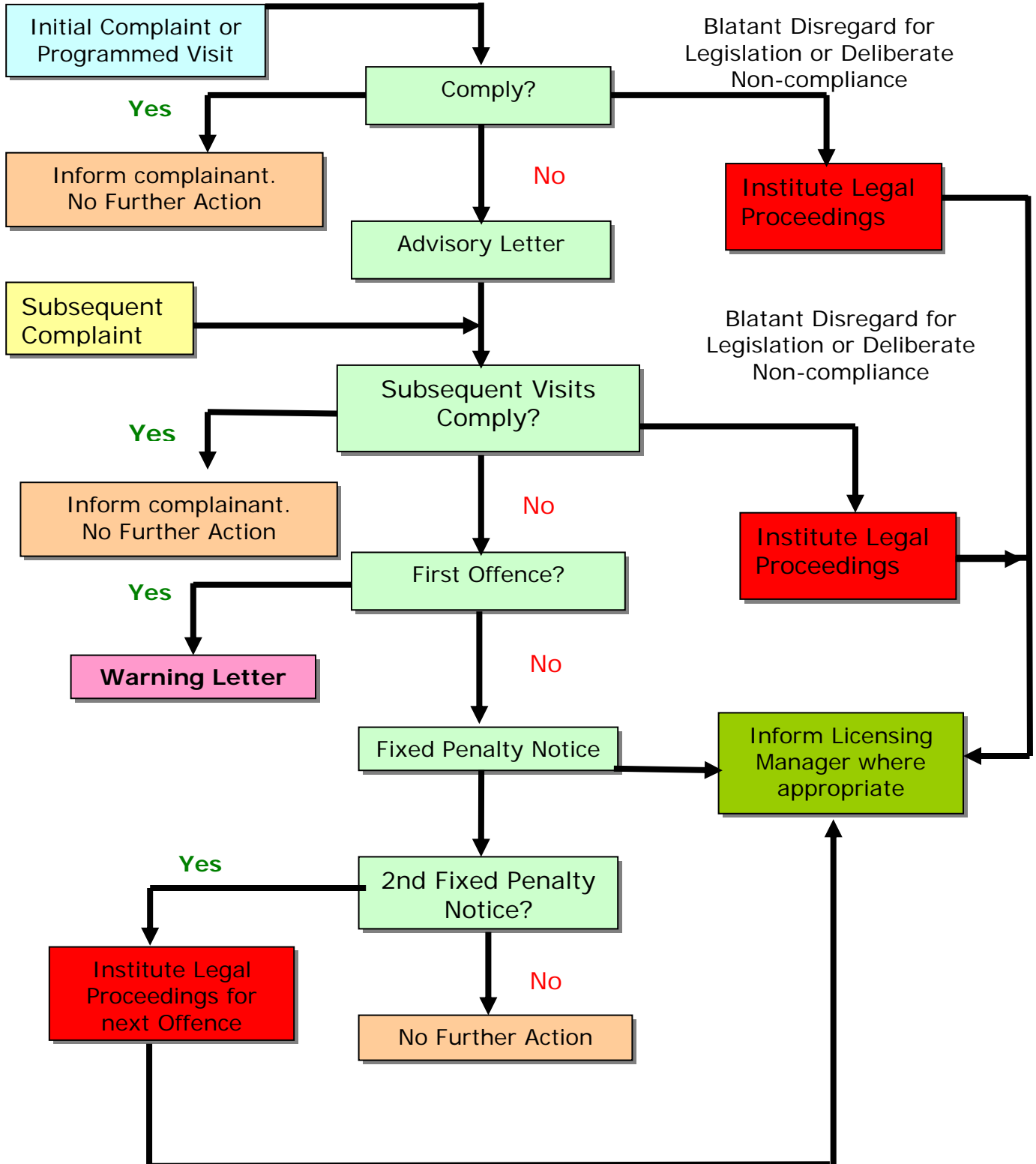
If the Officer feels that no action is required, or the complaint is not justified, then the complainant will be advised accordingly. Where preliminary investigations reveal that the complaint is not within the scope or remit of this Council, the matter will be referred to the appropriate local authority and the complainant advised of this action.

Data Protection

Authorised Officers will ensure that they are aware of the Council's Corporate Policy on Data Protection and will only disclose information to authorised personnel.

9. Formal Enforcement Action

In deciding upon the appropriate action, Authorised Officers will have due regard to this policy. The approach taken by the Council's Authorised Officers will follow the flow diagram detailed below: -



10. Advisory and Warning letters

An Authorised Officer may issue an advisory letter where no offences of the legislation are identified. An advisory letter may contain recommendations on good practice.

A warning letter will be issued on the first occasion that offences are identified, unless there is a blatant disregard for the legislation. It will provide details of the alleged offence(s), and where necessary, the remedial work required and the time period for compliance.

11. Fixed Penalty Notices

A Fixed Penalty Notice may be issued when an offence has been identified and a warning letter has already been issued, or where there appears to have been blatant or systematic non compliance with the law. 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 may be issued at the time if the authorised officer has reason to believe that a person is committing an offence or has committed an offence or, if appropriate, at a later date.

A Fixed Penalty Notice will:

- have details of enforcing authority on whose behalf authorised officer was acting
- identify the alleged offence and give 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.
- 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.
- inform recipient of notice of right to be tried for alleged offence and how to go about it

12. Institution of legal proceedings

In deciding whether to institute legal proceedings the following factors will be taken into consideration:

- whether there has been a blatant or systematic 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, including previous offences at the premises in question or at other premises under the control of the same person or organisation;
- whether a fixed penalty notice has been paid within the appropriate time period
- whether it is in the public interest to prosecute;
- whether the evidence available provides a realistic prospect of conviction;
- whether an authorised 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 cooperate

13. Authorisation of Officers

All Authorised Officers will be appointed under the Health Act 2006.

When carrying out their duties, Authorised Officers must 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: -

Task	Scope of authorisation	Comments/conditions
Power of entry to premises and vehicles	All authorised officers	
Power to require reasonable facilities, assistance and information.	All authorised officers	
Service of advisory and warning letters	All authorised officers	
Service of Fixed Penalty Notices	All authorised officers specifically authorised to do so.	
Preparing prosecution report	All authorised officers	All reports to be assessed by Team Manager before presentation to Assistant Director.
Decision to prosecute	Assistant Director	
Authorisation for Covert surveillance	Assistant Director	
Carrying out covert surveillance	Authorised Officers who have received RIPA training	

14. Appeals and Complaints

The recipient of a Fixed Penalty Notice is entitled to make a representation relating to the Notice. The details of which will be given on the Notice.

The recipient of a Fixed Penalty Notice also has the right to elect to be tried before a court for the alleged offence. The procedure for which will be clearly explained to the recipient in the notes contained within the Notice, but the request for the hearing must be made in writing and before the payment period for the penalty expires. The Magistrates Court will be notified on receipt of a request for a hearing.

The Council has adopted a formal complaints procedure and any person aggrieved by the enforcement action taken by the Council may register their complaint in accordance with that procedure. A copy is available upon request by writing to Torbay Council, Roebuck House, Abbey Road, Torquay TQ2 5EJ or telephoning 01803 208010 or via the Council's website at www.torbay.gov.uk

All our publications are available in alternative formats, such as large print or a language other than English. Please contact us on 01803 208010 or e-mail food.safety@torbay.gov.uk.

Ashtrays

Ashtrays would be helpful at door entry points to allow customers the facility of extinguishing their cigarettes safely and thereby comply with the law. Arrangements will need to be made for the proper emptying and disposal of these receptacles.

Management Controls

It is recommended that those in control of smoke-free premises:

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

Smoke-free policy and procedures

It is strongly recommended that owners and managers establish and implement written policy and procedures to demonstrate their compliance with the law. Guidance on developing a smoke-free policy is available see www.smokefreeengland.co.uk or telephone the Smokefree England information line 0800169 169 7. Individual businesses and organisations can adapt this for their use, if they wish. There may be a case for two policies - one directed at staff who may wish to smoke and one detailing how customers are to be dealt with.

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 and may result in a fixed penalty fine for them of £50. 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 receiving a Fixed Penalty Notice or being prosecuted and receiving a fine of £2,500.
- Refuse the person service.
- If the person continues to smoke, ask them to leave the premises.
- If he/she 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.

Staff

Employers and managers of smoke-free premises should ensure that all staff, including new members of staff, are aware of the no-smoking policy. All staff working in smoke-free premises should be aware of which member of staff or management present is the responsible person for dealing with any persons smoking.

Record of incidents

In order to assist any future defence that a person took "reasonable steps to cause the person in question to stop smoking", each business should keep a documented record of incidents.