



## Norfolk Smoke-Free Enforcement Protocol

This document outlines the key principles for the enforcement of the smoking provisions of the Health Act 2006 as agreed by the seven Norfolk Local Authorities.

### Legislation

The Health Act 2006 and Regulations made under the Act provide for four main offences. These are:

- ***Permitting others to smoke in a no smoking premises.***
- ***Smoking in no smoking premises.***
- ***Failing to display warning notices in a no smoking premises.***
- ***Obstruction or failing to give information/assistance to an authorised officer***

### Enforcement

Authorised officers from the enforcing authority will assess whether the premises comply with the legislation. They will do so by determining whether owners, occupiers, managers or persons in control of the premises have taken all reasonable precautions to avoid people smoking. Authorised officers work closely with businesses, building compliance with legislation through education, advice and presentations. Enforcement action is taken forward only when the seriousness of the situation warrants it. The approach to enforcement will generally be non-confrontational focusing on raising awareness and understanding to ensure compliance.

Any enforcement action undertaken must be fair, proportional and consistent. Action will always be taken in line with the local authority's adopted Enforcement Policy.

Enforcement action may be considered against individuals smoking in non-smoking premises where the owner, occupier, manager or other person in charge can demonstrate that they have taken all reasonable steps against these individuals smoking on their premises.

'Authorised officers' encompass all local authority officers who may be engaged in enforcement work associated with smoking controls and include Environmental Health Officers, Technical Officers, Licensing Officers etc.

### Fixed Penalty Notices / Prosecution

Some offences in the Health Act can lead to prosecution. This may be particularly relevant for repeat offences or where a person wilfully ignores the law.

The Act also provides for an authorised officer to issue fixed penalty notices in certain circumstances.

Individuals can discharge any liability to conviction by payment of a fixed penalty. If the alleged offender refuses to pay or chooses to do so the matter can be referred for a court hearing.

A fixed penalty notice must:

- Identify the offence to which it relates and give reasonable particulars of the circumstances alleged to constitute that offence.
- State the amount of the penalty and the period in 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 of which payment may be made (i.e. the local council for the area where the alleged offence was committed, or a person acting on behalf of the council).
- State the method or methods by which payment may be made.
- State the person to whom and the address of which any representations relating to the notice may be made.
- State the consequences of not making a payment within the period prescribed.

## Inspections

Inspections will either be proactive, i.e. to confirm compliance; or reactive in response to a complaint. The initial focus on inspections should be on premises:

- Which are open to substantive numbers of people.
- Where there is an absence of pre-existing self imposed smoking controls.

A risk based inspection programme for premises is likely to evolve as officers become more familiar with the new requirements. The development of such a programme could include factors such as:

- Confidence in management.
- History of compliance with the requirements.
- Number of complaints received.

Authorised officers may carry out a number of different types of inspection in relation to smoking controls such as those listed below. These options are not mutually exclusive. Officers should choose the most appropriate course of action once all factors have been taken into account.

- (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 the person in charge at the premises, at the end of the period of surveillance.
- (c) Covert and Leave** – As above, but the officers wait until an appropriate time (e.g. the next working day) to discuss their findings with the manager of the premises.

Any covert inspection should comply fully with each Local Authority's policy in relation to the Regulation of Investigatory Powers Act 2000 (RIPA).

The personal safety of officers should not be compromised by any enforcement action. Where possible, checks will be made with Norfolk Constabulary, HSE etc. to identify potentially difficult occupiers.

## Complaints Protocol

All complaints will be investigated in line with the council's own Policy and timescales. All complaints will be assessed by an enforcement officer and action taken appropriate to the nature of the complaint.

## Assessment of Compliance

Authorised officers will make 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 will include compliance with the requirements of:

- The Health Act 2006
- The Smoke-Free (Premises and Enforcement) Regulations 2006
- The Smoke-Free (Signs) Regulations 2007
- The Smoke-Free (Penalties and Discounted Amounts) Regulations 2007
- The Smoke-Free (Exemptions and Vehicles) Regulations 2007
- The Smoke-Free (General Provisions) Regulations 2007

### Note:

This protocol was agreed by representatives of the seven Norfolk District Councils in March 2007 and will be regularly reviewed in light of changes to legislation, unforeseen implications of the introduction of the smoking ban etc.