



Executive
29th May 2007

**Report from the Director of
Human Resources and Diversity**

For Action

Wards Affected:
ALL

Smoke-Free Policy

Forward Plan Ref: HR-06/07-04

1.0 Summary

- 1.1 Regulations made under the Health Act 2006 to make smoke -free all workplaces, work or public vehicles and public premises, which are enclosed or substantially enclosed, take effect on July 1st 2007. Members are asked to formally endorse a new policy to put the Council on a suitable footing to undertake our new duty to enforce the smoke-free regulations. The policy was agreed insofar as it relates to employment matters by General Purposes Committee on 3rd May 2007.

2.0 Recommendations

- 2.1 That members note the effect of the new duty to enforce the smoke free regulations in respect of the work place, work or public vehicles and public premises and approve the new Smoke-Free Policy attached to this report.

3.0 Detail

- 3.1 The Health Act 2006 aims to protect people from the harmful effects of exposure to second-hand smoke, also known as passive smoking, which increases the risk of lung cancer, heart disease and other illnesses. Ventilation or separating smokers and non-smokers within the same airspace does not completely stop potentially dangerous exposure.

- 3.2 Since December 2006 the Government has made a series of regulations which set out how the Health Act will be implemented and enforced. These regulations impose new duties on the Council. Notably the Council has been given responsibility to enforce the Health Act 2006 in enclosed or substantially enclosed workplaces, work vehicles, public vehicles and public premises in the Borough. Further, where the Council controls or is concerned in the management of premises the legislation and regulations impose new duties on the Council to prevent smoking on its premises. These new duties may apply to the Council in its capacity as landlord insofar as it is regarded as having control and management of the premises for the purposes of the Health Act 2006. The regulations also impose new duties on the Council as the owner and controller of vehicles to prevent smoking in its vehicles. The new policy has been concerned to ensure that the Council presents a good practice example to the Borough's employers, catering businesses and public space owners before we deploy officers to enforce the regulations in July.
- 3.3 The Council's existing smoking policy was approved in 2005 and was concerned principally with the removal of the practice of "smoking breaks" previously afforded to employees who smoked. It has been necessary to revise the policy to take account of the increased legal liability placed on the Council as an employer and controller of premises and of vehicles as a result of the new regulations.
- 3.4 The new policy attached at Annexe 1 aims to provide:
- Information on how we ensure our premises are smoke-free
 - Information on smoking in our parks and other open spaces
 - Guidance on the issue of smoking during working hours
 - Advice on how employees can get help to stop smoking
 - A sound basis from which the Council can undertake its new duty to enforce the Smoke-Free law across Brent.
- 3.5 The policy outlines arrangements for communicating the new policy to employees and other stakeholders during June 2007.
- 3.6 The new policy harmonises Council policy with the new regulations by:
- Clarifying the position in relation to vehicles used for Council business
 - Clarifying our duty in relation to contractors undertaking services on behalf of the Council.
 - Clarifying that the only accommodation exempted from the Smoke-Free law are Council premises that are used as residential accommodation
- 3.7 Existing employees will be informed of the new policy by a payslip attachment. New employees will be informed during their induction. Contractors and visitors will be made aware of the smoke free policy by the prohibition signs that will be deployed and their compliance with the policy will be monitored by the Heads of Service that commission their work or provide a service to them.

Heads of Service shall make arrangements to take appropriate action on identifying, or receiving a report of a failure to comply with the policy.

- 3.8 Appropriate “No smoking” signs will be clearly displayed and maintained by facilities officers at the entrances to and within each council building. Responsibility for taking this action rests with the respective Heads of Service responsible for the premises in line with the Council’s Health and safety policy.

4.0 Financial Implications

- 4.1 The additional cost of implementing the Smoke Free Law to the Council as an employer and controller of premises and of vehicles is relatively low. The Government has provided resources such as signs and has funded national publicity and information sources. The main costs are likely to be the need to co-ordinate enforcement activities and reporting systems. Further costs will arise from the need to inform employees and other stakeholders of the change in law and consequential variation to their conditions of service, contracts etc. The exceptional costs can be contained within existing resources allocated to Health and Safety activity within the council.
- 4.2 The Government has also provided sufficient funding to set up an enforcement service in time for the July 1st implementation date for the new regulations.

5.0 Legal Implications

- 5.1 The report includes background information about the general effect of the Health Act 2006 and the application of smoke-free regulations. The Smoke-free (Premises and Enforcement) Regulations 2006 impose a duty on the Council to enforce the relevant regulations made under the Health Act 2006 to ensure that enclosed or substantially enclosed workplaces, work vehicles, public vehicles and public premises in Brent are smoke-free from July 1st 2007.
- 5.2 The Smokefree (Penalties and Discounted Amounts) Regulations 2007 set out the levels of fixed penalties for offences under smokefree legislation. Officers authorised by the Council will be empowered to serve notices in respect of these offences stating the amount of the penalty.
- 5.3 The Health Act 2006 and the Smokefree (Vehicle Operators and Penalty Notices) Regulations 2007 impose a duty on the Council to take reasonable steps to ensure that its enclosed or substantially enclosed workplaces, premises and vehicles are kept free of smoke with effect from 1st July 2007. Breach of that duty will be a criminal offence punishable by a fine of up to £2500. Where the breach is as a result of any neglect on the part of a Council manager proceedings for the offence can be brought against that individual as well as against the Council.

- 5.4 Where the Council decides to take enforcement action against members of the public and businesses it will follow the “Joint Regulatory Services” Enforcement Policy. This will ensure that the action taken is consistent, fair and appropriate. Enforcement will be the responsibility of officers from Health Safety and Licensing and Environmental Health.
- 5.5 The 2007 Regulations state that the amount of a fixed penalty for smoking in a smoke free place shall be £50 (reducing to £30 if paid early). Where a prosecution is brought for such an offence the maximum fine is £1000. The offence of failing to prevent smoking in a smoke free place is a maximum fine of £2500 (there is no provision for use of fixed penalty notices for this offence). Failing to display no smoking signs is punishable by fixed penalty of £200 (reducing to £150 for early payment) or on prosecution by a maximum fine of £1000.
- 5.6 The Health Act 2006 and the Smokefree (Signs) Regulations 2007 impose a duty on the Council as a controller of smoke-free premises and vehicles to take reasonable steps to ensure that no-smoking signs are displayed in those premises and vehicles. Breach of that duty will be a criminal offence punishable by a fine of up to £1000. Where the breach is as a result of any neglect on the part of a Council manager proceedings for the offence can be brought against that individual as well as against the Council.
- 5.7 The new Council Smoke-Free Policy is required in order for the Council to comply with the new regulations as a controller of premises and of vehicles and to place the organisation on a proper footing to assume its responsibilities for enforcing the new regulations.

6.0 Diversity Implications

- 6.1 No diversity implications have been identified arising from this change of policy.

7.0 Staffing/Accommodation Implications

- 7.1 The Smokefree (Signs) Regulations 2007 require controllers of smoke-free premises and vehicles to display signs to clearly indicate to premises and vehicle users that smoking is not permitted. Council officers responsible for facilities management will be informed of the arrangements for the deployment of signs and will put the work in hand during May and June 2007.

Background Papers

The Smoke-free (Premises and Enforcement) Regulations 2006 set out what is meant by enclosed and substantially enclosed premises and the bodies responsible for enforcing smokefree legislation.

The Smokefree (Exemptions and Vehicles) Regulations 2007 set out the premises exempted from to smokefree legislation and the vehicles required to be smokefree.

The Smokefree (Penalties and Discounted Amounts) Regulations 2007 set out the levels of penalties and of fines for offences under smokefree legislation.

The Smokefree (Vehicle Operators and Penalty Notices) Regulations 2007 set out the responsibility on vehicle operators to prevent smoking in smokefree vehicles and the forms for fixed penalty notices.

The Smokefree (Signs) Regulations 2007 set out the requirements for no-smoking signs required under smokefree legislation.

Contact Officers

Colin Conboy, Health and Safety Services Manager, Brent House, 349 High Road, Wembley, Middlesex HA9 6BZ. Tel. 020 8937 5409

VAL JONES

Director of Human Resources and Diversity