

HELA Meeting 1 March 2006

Smokefree

A paper by LACORS

Issues

1. To discuss any potential impact the smokefree work may have on LA contributions to Fit3
2. To discuss the arrangements between HSE and LAs - especially in relation to premises which may claim exemptions.

Decision required

3. How to manage expectations of HSC and HSE in regards to Fit3 work?
4. How arrangements set out in a letter from HSE to LACORS and CIEH about their role in raising awareness of smokefree legislation is being taken forward within HSE?
5. How information regarding premises claiming an exemption for example offshore platforms is managed?

Papers attached

6. Annex 1: Background information on smokefree legislation – including communications, funding, regulations.
7. Annex 2: Letter from HSE to LACORS and CIEH on their smokefree role.

Annex 1:
Smoke free update paper

- The Health Act 2006 bringing in the Smoke Free legislation received Royal Assent in July 2006.
- The implementation date for the Smokefree legislation is the 1st July 2007
- **Background to the legislation**
 - The medical and scientific evidence of the risks to health from exposure to secondhand smoke is well established. Through the Choosing Health White Paper, the Government set out a clear strategy to tackle smoking, as well as the effects of smoking on others. A key aspect of the strategy is to shift the balance significantly in favour of smoke-free places to reduce exposure to secondhand smoke.
 - The Governments objectives through delivering smoke free legislation are to:
 - reduce the risks to health from exposure to second hand smoke
 - recognise a persons right to be protected from harm and enjoy smoke free air
 - increase the benefits of smoke free enclosed places and workplaces for people trying to give up smoking so they can succeed in an environment where social pressures to smoke are reduced and
 - save thousands of lives over the next decade by reducing both exposure to hazardous second hand smoke and overall smoking rates.
- The Department of Health has now published all of the Regulations which set out some of the detail of the Health Act 2006.

The **Smoke-free (Premises and Enforcement) Regulations**, which include definitions of enclosed and substantially enclosed and details of enforcement authorities, were laid before Parliament on Monday, 18 December 2006.

The **Smoke-free (Signs) Regulations**, which relate to required signage under smoke-free legislation, are currently being considered by Europe under the Technical Standards Directive and will be laid before Parliament after the 3 month consultation process is complete. There is no intention to change these regulations any further, they therefore should be used as the final regulations until these are laid.

The final drafts of the **Smoke-free (Exemptions and Vehicles) Regulations** and the **Smoke-free (Penalties and Discounted Amounts) Regulations**, both of which are subject to the affirmative parliamentary procedure were published on 5th Feb 2007

The final draft of the **Smoke-free (Vehicle Operators and Penalty Notices) Regulations** was also published on 5th Feb 2007.

- Local Authority enforcement staff will be responsible for this new legislation.
The following authorities are designated as enforcement authorities:
 - (a) a unitary authority;
 - (b) a district council in so far as it is not a unitary authority;
 - (c) a London borough council;
 - (d) a port health authority;
 - (e) the Common Council of the City of London;
 - (f) the Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple; and
 - (g) the Council of the Isles of Scilly.

An enforcement authority has enforcement functions in relation to the premises and vehicles that are within

- (h) in the case of a port health authority, the district for which it is a port health authority; and
- (i) in the case of other authorities, the area for which it is a local authority other than any part of that area which falls within the district of a port health authority,

The regulations explain how enforcement functions may be transferred from one enforcement authority to another.

- **Funding**

Funding is being provided by the Department of Health under the new burdens doctrine as this is a new policy which increases the cost of providing local authority services. The Department of Health have now set out the level of funding for authorities to implement the legislation, this can be found at

<http://www.dh.gov.uk/assetRoot/04/14/17/46/04141746.pdf>

The Department of Health have confirmed to the LGA and LACORS that the funding (set out in the LAC (2006) 17) for the enforcement of smokefree legislation for this financial year has been transferred to most local authorities who will have enforcement responsibilities. The Department of Health has been in contact with the local authorities who have not yet received funding to obtain required information so funding can be transferred.

The Department of Health has transferred funding to local authorities by BACS payment identified as "Department of Health grant for smokefree legislation 2006/07".

The second phase of funding will be transferred as soon as possible in the next financial year.

- **Communications**

The Department of Health are also funding a national communications campaign to inform the public and businesses about the new legislation and what it means for them. The Smokefree England campaign has been put in place to secure sustainable compliance with the smokefree legislation from 1 July 2007. The campaign aims to achieve comprehensive awareness of the legislation and implementation date and a full understanding amongst key groups of how it affects them and what action they need to take. Work is taking place on a national, regional and local level.

As you may already be aware, there are several strands to the campaign. Below is a brief overview of the different elements of work.

Stakeholder engagement - on a national and regional level, close working with a large number of stakeholders is taking place, to maximise their communications channels to their members and other organisations.

Media relations - In addition to announcements such as the detail of the final guidance, a number of initiatives are planned to maximise awareness in the run up to 1 July.

Direct mail –all businesses will be receiving the guidance, when available, through a direct mailing. In addition, a pre-mailer has been sent to around 700,000 businesses identified as having the most to do to ensure compliance at implementation.

Website and information line - www.smokefreeengland.co.uk is the information hub for the campaign, housing all information and resources relating to the legislation. Information can also be accessed through the information line on 0800 169 169 7. It is important that all employers are encouraged to sign up to receive regular updated, final guidance and free signage when available, at www.smokefreeengland.co.uk/stayinformed or through the information line.

Advertising - Advertising is currently taking place in the business sections of tabloids and Sunday broadsheets and online.

Collateral - An array of leaflets, posters and other materials will be available through the website over the coming months.

For further information on the campaign and the legislation, do visit www.smokefreeengland.co.uk.

- **Training**

The Department of Health has funded training to be run by CIEH, for service planners to enable them to build the smokefree legislation into their plans for 07/08. This training took place in Nov/Dec 2006. There will also be

training for regulatory officers in Spring 07 to train them on the implementation and enforcement of the legislation.

- **Guidance**

LACORS in partnership with CIEH and Department of Health are also producing separate guidance specifically for enforcement officers. This is due to be available at the end of March and will cover the legislation, application and offences, overall approach to enforcement, example approach to enforcement action and also information about working with the media. It will also address the key issues relating to shelters.

- **Issues**

- Councils need to also be aware of potential consequences of the legislation such as increased licensing/ planning applications, noise issues and streetscene issues especially litter.
- Smoking shelters – LACORS will be providing guidance on key issues in relation to shelters.
- Undoubtedly, there will be a lot of press interest in this issue. Authorities need to be prepared with information about what the authority is planning to do and once the regulations are finalised, be proactive in getting messages out encouraging businesses to go smoke-free early. This is the best way to achieve compliance and was the strategy used in Ireland. Councils will also need to ensure there are consistent messages from planning, licensing and environmental health services.

Definitions

Definition of 'enclosed' and 'substantially enclosed' premises:

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 which are **less than half** of the total areas of walls, including other structures which 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.

Main Contacts for this issue

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Contact at CIEH – Ian Gray - I.Gray@cieh.org

Annex 2 :
Letter from HSE to LACORS and CIEH regarding smokefree

To: LACoRS

30th October 2006

Dear Derek

Health and Safety Executive and new legislation to prohibit smoking in enclosed public places and workplaces in England and Wales.

In light of the Department of Health's (DH) recent consultation on its draft regulations on smoke-free premises and vehicles, I thought it might be an appropriate time to set try and clarify HSE's position on second hand smoking. I have had some conversations with Sarah who I know has some concern over the extent to which HSE is able to proactively become involved.

As you know this topic is being taken forward as a public health measure which will be enforced by Local Authorities (LA). HSE wants to fully support LA Officers both in raising employer's awareness of their responsibilities and in encouraging employers and employees to comply with the new legislation.

HSE's current policy on smoking at work is set out in our guidance "Passive smoking at work – IND (G) 63 (L)". It actively encourages employers to have smoking policies in place which give priority to the needs of non-smokers who do not wish to breathe tobacco smoke. We have also recently published an Operational Circular (OC 255/15) which confirms HSE's commitment to positively support local authorities following the introduction of new legislation on smoking in England and Wales. It recommends that inspectors (HSE) may wish to suggest that employers prepare for the forthcoming legislation on smoking. Local Authorities have been advised of the OC in the HSE Health and Safety Newsletter to Local Authorities. It can be viewed on http://www.hse.gov.uk/foi/internalops/fod/oc/200-299/255_15.pdf

In summary, following the introduction of the new legislation, HSE Inspectors will bring matters of concern to the attention of the employer, particularly if it involves a number of smokers or if there is a failure to display warning notices. Should the employer resist acting on this advice, the inspector will then bring the matter to the attention of the appropriate local authority. Any complaints received by HSE about the smoking ban will be referred to the appropriate local authority.

In exempted premises, HSE will continue to promote sensible, proportionate management of second hand smoking to as low a level as is reasonably practicable and to encourage employers to adopt smoking policies in the workplace which give precedence to the wishes of non-smokers not to be exposed to second hand smoking. It will not be possible to require exposure

to second hand smoking to be eliminated at source in exempted premises, although employers may choose to do so in premises under their control.

Other positive action taken by HSE in support of the new legislation includes

- Sending out flyers produced by Department of Health on smoking for businesses with other mailing
- Updating current briefing for HSE InfoLine and Workplace Health Direct
- Adding links on the smoking ban to relevant HSE webpages (eg respiratory disease and asthma);
- Making our information on smoking more readily accessible on our website as it is currently only available as an FAQ on <http://www.hse.gov.uk/contact/faqs/smoking.htm>;
- Distributing smoking literature as part of routine visits (eg on health based topics); and
- Working in partnership with local authorities on health promotional matters as appropriate.

I thought you might also be interested to note that our very recent publication Workplace health, safety and welfare leaflet (INDG244-rev1) contains reference to the introduction of smoking legislation in England and Wales

I have been encouraged by the success we have enjoyed in Scotland and I hope this letter will reassure local authorities of our support by clarifying HSE's position in relation to smoking in the workplace in England and Wales.

Allan Davies

Head of Local Authority Unit
Health and Safety Executive

Cc: Andrew Black, Department of Health