

Report to Health Overview Scrutiny Committee March 2007

Building Compliance for The New Smoke-Free England

The purpose of this report is to explain the implications of the new Health Act 2006, and to outline Bolton's readiness for the impact of the legislative change.

Background

Smoking continues to pose the single biggest avoidable risk of ill health and premature death. In recognition of this the Government set a number of targets aimed at reducing smoking, through its White Paper 'Smoking Kills' and subsequent guidance. Within Bolton significant importance was attached to addressing these smoking related targets and they are reflected in both the Borough's Community Strategy '*Clear Vision – Bright Future*'¹ and within the Corporate Objectives of Bolton Primary Care Trust (PCT).

'Making Smoking History' a Strategy for Bolton 2003 – 2006 identified how local agencies, working in partnership, would contribute towards those targets in Bolton. The four priorities for action are the provision of smoke-free public places, tackling illegal sales of tobacco, provision of stop smoking support for those who wish to quit and developing an evidence based approach to prevention with children & young people.

Bolton PCT, Bolton Metropolitan Council, Bolton Hospitals NHS Trust, Bolton CVS and other local agencies established a Smoke-free Bolton Steering Group to oversee the delivery of multi-agency actions from the strategy.

In 2005 the White Paper 'Choosing Health – Making Healthy Choices Easier' the government set out proposals to restrict smoking in the workplace and in enclosed public places. Early proposals appeared somewhat complex, suggesting that food serving pubs would be smoke free but that non food serving pubs may not have to be. However these proposals were widely consulted on with the result that MP's were allowed a free vote to decide whether a more comprehensive form of legislation should be implemented.

In a free vote at the Commons Report Stage of the Health Bill on February 14, 2006, MPs voted 384 to 184 in favour of comprehensive legislation prohibiting smoking in enclosed public places. The Bill passed through the House of Lords and was given Royal Assent on 19th July becoming the Health Act 2006

Chapter 1 of The Health Act Introduces Smokefree Laws for Workplaces, Enclosed Public Places and Vehicles. This includes all licenced premises, pubs, clubs, bars, restaurants and private memberships clubs without exemption. The full document can be viewed at

http://www.opsi.gov.uk/acts/acts2006/ukpga_20060028_en.pdf

The date for implementation of the new law is set out as 6.00am on July 1st 2007, thus leaving some 5 months to prepare premises and people in Bolton to be in a position to comply with the law change.

The Health Act 2006 introduced powers for Regulations to be made by ministers to control the smoking of tobacco and tobacco products in public places.

The Smoke Free Regulations

There are 5 sets of regulations due to be approved soon. They are:

1. The Smoke Free (Premises and Enforcement) Regulations – these regulations define enclosed and substantially enclosed places which must be smoke free, and the bodies that will enforce smokefree legislation.
2. The Smoke Free (Exemptions and Vehicles) Regulations - these regulations define the limited exemptions to the Regulations and specify that most public and work vehicles are to be smokefree.
3. The Smoke Free (Penalties and Discounted Amounts) Regulations – these regulations describe the offences and indicate the arrangements for the use of Fixed Penalty Notices
4. The Smoke Free (Signs) Regulations – set out the requirements for no smoking signs and whose legal responsibility it will be to ensure that smoke free vehicles display no smoking signs
5. The Smoke Free (Vehicle Operators and Penalty Notices) Regulations – set out who will have legal duties to cause any person who is smoking on a smoke free vehicle to stop, and specifies the form of fixed penalty notice for use by enforcement authorities.

The effect of these regulations is to prohibit smoking in enclosed and substantially enclosed places and vehicles. The main offences are:

1. Failure to display no smoking signs
2. Smoking in a smoke free place
3. Failure to prevent smoking in a smoke free place

Offences 1 and 2 may be dealt with as Fixed Penalty notice offences. No Fixed Penalty Notice is available for the offence of failing to prevent smoking in a smoke free place. This offence would be dealt with in line with the other enforcement options available within the Council's Enforcement Policy which include prosecution or formal caution.

In order to ensure that businesses and members of the public are treated fairly under the regulations and to ensure there is consistency in applying the Fixed Penalty Notice regime, work is underway at a Greater Manchester level to agree an enforcement protocol. It will be possible to quickly finalise the protocol once the regulations are in place to act as a guide for enforcement staff.

Members have recently agreed Fixed Penalty Notices for offences under the Clean Neighbourhoods and Environment Act 2005 and have set fine levels and early payment discounted amounts. Within the Smoke Free Regulations however, the level of fines for offences are set by the Regulations themselves and cannot be changed by local authorities. The levels of fines (and discounted amounts for early payment) in the draft Regulations were:

Smoking in a smoke free place £50 (discounted to £30)
Failure to display signage £200 (discounted to £150)

It is expected that these levels of fine will remain unchanged when the Regulations are finalised.

There has been much debate around premises types which may be exempted from the smoke free requirements. Until the regulations are released, exempted premises remain a grey area, but the draft document proposes that they include care homes, hospices, prisons and a temporary exemption for some mental health units until 1 July 2008.

Preparing for Implementation

Successful implementation of the new legislation will rely on fostering compliance among the general public and local businesses combined with effective enforcement.

Through the local Tobacco Control Strategy: *Making Smoking History*, a significant amount of work has been done locally to raise awareness of the dangers of second-hand smoke and to empower non-smokers to voice their rights to smoke-free environments. This work combined with other regional and national efforts has created widespread support for the legislation among both smokers and non-smokers. Experience from other countries suggests that this level of public support minimises the likelihood of breaches once the legislation is introduced and fosters a self-policing culture.

Building on this work, a multi-disciplinary working group has been set up within Bolton to prepare in detail for the introduction of the new legislation. This group is closely linked to the Primary Care Trust and contributes to enforcement planning taking place at a Greater Manchester level, for which Bolton is leading.

Timely advice and access to information particularly for businesses affected by the smoke free legislation is regarded as the key to successful implementation. Much information will be available direct from the Department of Health in a variety of formats. Local interventions will focus on meeting any additional needs identified with businesses and the public. The local interventions currently being developed focus on:

Encouraging businesses to plan ahead before the regulations come into force.

- Encouraging early submission of planning applications for smoking shelters, particularly since existing smoking shelters may not comply with the new regulations
- Supporting businesses who want to go smoke free before the regulation deadline by working closely with the Local Implementation Group

Providing information about the requirements to supplement the Department of Health campaign

- Planning workshops/seminars for businesses to offer support and assistance
- Work with local media to raise awareness of the legislation and its implications with the general public.

Enforcement activity

- Considering the options available across the Council to share enforcement responsibilities and provide an effective, flexible and responsive enforcement service
- Equipping officers with the skills they need to carry out any enforcement work effectively

Giving consideration to wider issues such as

- Dealing with the potential for increased tobacco-related litter

- How assessment of proposed shelters against the legislation can be built into the planning application process.
- The capacity to deal with a sudden increase in planning applications.

4. Funding smoke free enforcement

- 4.1 The Department of Health is making funding available through the Local Government Association for the implementation of the smoke free regulations. Councils will receive notifications of their exact allocation, which is expected to equate, on average, to 2 enforcement officer posts per authority. This additional funding, if made available to the teams involved in the implementation of the smoke free regulations, will enable them to respond effectively to demands from the public and businesses and aid effective enforcement.
- 4.2 The Department of Health expect the additional funding to be directed to the services delivering smoke free enforcement. In Bolton, provided this funding is directed to the front line services, it would be most beneficial to use it to enhance existing enforcement officer roles within the Council as opposed to appointing additional staff. As additional funding is available only until March 2008, the appointment of temporary staff is not seen as a sustainable option as their expertise would be lost once funding dries up. Using the funding to pay for existing experienced enforcement staff to work out of hours is likely to be more cost effective, particularly as it may be difficult to attract experienced enforcement staff to a temporary post. Furthermore, there is likely to be strong competition between local authorities across England as they all try to recruit at the same time.
- 4.3 Wherever possible proactive enforcement will be linked to existing enforcement priorities e.g. higher risk food safety and health and safety inspections. However, most of the premises regarded as high risk from a smoke free point of view may not be regarded as such within the other inspection regimes. These are the areas where the additional funding will be most helpful.
- 4.4 Revenue from fixed penalty notice payments is not to be retained by the Council and is to be returned to the Treasury. Identifying the amount of funding coming into the Council to assist with this work and the redirection of that funding to the lead regulatory service, Environmental Health & Trading Standards Services, would benefit the implementation of the regulatory requirements.

Conclusion.

As with all new legislation, it is difficult to predict the levels of compliance, but with the initiatives planned around workshops for businesses, communication with the public, training for officers, and good support to help businesses comply, it is hoped that we will see a smooth transition, and ultimately significant health improvements. Evidence from other countries which have already banned smoking in public places has shown an increase in people stopping smoking. The current gap in life expectancy between Bolton and the rest of England, and within the borough itself, can partly be explained by the variation in smoking prevalence. Any intervention which reduces smoking prevalence is therefore to be welcomed.

Ursula Seddon, Alan Doodson, Lesley Jones, Jan Hutchinson 22.02.2007