

EAST AYRSHIRE COUNCIL

COMMUNITY SERVICES COMMITTEE – 1st FEBRUARY 2006

SMOKING IN PUBLIC PLACES – ENFORCEMENT AND STAFFING ARRANGEMENTS

Report by the Executive Director of Neighbourhood Services

1. PURPOSE OF REPORT

- 1.1 To advise the Committee of the enforcement and staffing arrangements relative to implementation of the prohibition of smoking in enclosed public places due to commence on 26th March 2006.

2. BACKGROUND

- 2.1 The report submitted to the Community Services Committee on 14th September 2005 provided details of the implementation of the smoke-free provisions as indicated by the Scottish Executive on the run up to the 26th March 2006 implementation date.
- 2.2 The details of the Scottish Executive implementation plan included an active media campaign, a mail drop to households and businesses and guidance to businesses, the NHS and Local Authorities.
- 2.3 The Scottish Executive recognised that Environmental Health has a vital role to play in education and compliance of the smoke free legislation. After 26th March 2006 Environmental Health are tasked to ensure compliance with the smoking ban.

3. ENFORCEMENT PROVISIONS

- 3.1 Inspections will be carried out by Enforcement Officers based in the Environmental Health Service. Inspections will be either proactive e.g. to advise businesses and to confirm compliance with the legislation or reactive i.e. in response to a complaint.
- 3.2 The initial approach following introduction of the legislation will be a high profile exercise initially of a non-confrontational nature to focus on raising awareness and understanding of the reasons for the smoking ban and to ensure compliance with the ban.
- 3.3 Proactive inspections to ensure compliance will be carried out as part of an inspection programme including and in addition to those premises which are currently inspected under other legislative controls (food hygiene and health and safety inspections).

- 3.4 Enforcement Officers will carry out official announced inspections, covert inspections and covert and leave inspections. Compliance with the requirements of the Regulation of Investigatory Powers (Scotland) Act 2000 will be required in respect of covert surveillance.
- 3.5 Enforcement Officers will inspect for compliance with all provisions of the legislation including the provision of signage relating to No Smoking, the provision of a Smoke Free Policy and the actual act of smoking or otherwise in the premises.
- 3.6 Enforcement Officers will provide initial advice and take subsequent enforcement action when required in terms of the legislation by the issue of a verbal warning, written warning or a Fixed Penalty Notice on the owner, occupier or manager of a no smoking premises or on an individual in a no smoking premises.
- 3.7 A smoke free compliance line will be set up by the Scottish Executive where incidences of non-compliance may be reported and subsequently investigated by Enforcement Officers.
- 3.8 Enforcement Officers will also encourage the promotion of smoking cessation so that in addition to enforcement the smoking ban can have maximum impact in improving public health.
- 3.9 Enforcement Officers will work with businesses to ensure a smooth transition regarding compliance with the smoke free provisions.
- 3.10 As the new legislation applies to all Council activities, an ad hoc Working Group has reviewed the implications for the Council in terms of compliance. The Group's Action Plan has been submitted to CMT and is being implemented in accordance with the various timescales dictated.
- 3.11 Although the guidance suggests that Councils can have discretion in deciding whether or not to extend the ban to other areas (e.g. playparks etc) the general view is that the ban should initially be enforced in the prescribed areas only. This position if approved, would be the subject of ongoing review.

4. STAFFING AND FUNDING PROVISIONS

- 4.1 The agreed recommendation of CoSLA and the Scottish Executive is that all Councils will receive funding to fund two temporary Enforcement Officers with the balance of funding being distributed on the basis of the Environmental Health GAE indicator.
- 4.2 Funding will be offered for the remainder of 2005-06 on a pro-rata basis with additional funding for 2006-07 and 2007-08 to secure two Enforcement Officers to implement and enforce the provisions of the smoking ban.

5. FINANCIAL IMPLICATIONS

- 5.1 Funding for two temporary Enforcement Officers will be allocated by the Scottish Executive in accordance with the agreed formula. A small additional amount will be made available for additional street sweeping services anticipated as a result of the new legislation.
- 5.2 Funding will be of a temporary nature to cover 2005-06 (£15,872), 2006-07 (£81,524) and 2007-08 (£70,101) to ensure compliance with the legislation. It is felt however that this allocation will fall short of the anticipated expenditure by approximately £30,000 and this sum will require to be met from other Council resources.

6. LEGAL IMPLICATIONS

- 6.1 The Smoking, Health and Social Care (Scotland) Act 2003.

7. POLICY IMPLICATIONS

- 7.1 The enforcement and advisory provisions are in line with improving public health in Scotland and support the principles of the Community Plan regarding health.

8. CONCLUSIONS

- 8.1 By 26th March 2006, with relatively few exemptions, places where the public have access to require to be smoke free.
- 8.2 Environmental Health will be tasked to ensure compliance with the smoking ban and additional temporary staff will be employed to enforce the provisions of the legislation. Advice and enforcement provisions will be undertaken by staff to ensure compliance in all relevant premises.
- 8.3 Funding for additional temporary enforcement staff will be provided by the Scottish Executive. Existing staff will also support the compliance provisions of the legislation.
- 8.4 It is thought the additional funding allocation will result in a shortfall which will have to be met from other Council resources.

9. RECOMMENDATIONS

- 9.1 The Community Services Committee is invited to:-
 - (i) note that the ad hoc Working Group has prepared an Action Plan which has been submitted to CMT and is being implemented in accordance with the statutory timescale;

- (ii) remit to Corporate Governance Committee for its interest arrangements relative to staffing and enforcement of the smoke free legislation;
- (iii) note the requirement to meet an estimated shortfall of £30,000/annum from other Council resources; and
- (iv) otherwise note the contents of the report.

William Stafford
Executive Director of Neighbourhood Services

WS/PLT/RRS

10th January 2006

LIST OF BACKGROUND PAPERS

1. Letter from Scottish Executive, Health Department, Tobacco Control Division dated 13 January 2006.

Any person wishing to inspect the above background papers should telephone 01563 576111 and ask to speak to John Crawford, Head of Protective Services.

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