



**Charnwood Borough Council**

**Smokefree  
Enforcement  
Policy**

**July 2011**

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## I. **Statement of Aims and Objectives**

It is this Council's policy as an Enforcing Authority under the Health Act 2006, to seek to protect people working in or visiting enclosed or substantial enclosed workplaces and public places from exposure to second hand smoke. Contributing to the Charnwood Borough Council corporate aim of 'people matter' and ensuring the Borough is recognised as **Leading in Leicestershire** for the quality of its living environment for all.

This policy shall come into effect on 1<sup>st</sup> July 2007 at 6am and will be reviewed annually or at such a period of time, as deemed appropriate by the Environmental Health Manager.

Initially an educational, advisory and non-confrontational approach will be taken, both before and for a period of time after the legislation comes into force. Subsequently it will become apparent which businesses are making efforts to comply and which are not.

Where non compliance is due to misunderstandings or a lack of diligence, then further information, advice and guidance can be provided. However, where it is evident that serious efforts are not being made to comply, or the attitude is un-cooperative or antagonistic, then a decision to take enforcement measures will be considered.

It is likely that enforcement actions will attract publicity and public attention and it is recommended that each decision on enforcement action should be properly considered and taken with clear justification. Where a person is determined to flout the law, a robust response will be appropriate.

This enforcement policy has been produced in line with the guidance "Implementation of smoke-free legislation in England – Guidance for local council regulatory officers" from LACoRS (Local Authority Co-ordinators of Regulatory Services) and the Chartered Institute of Environmental Health Officers in consultation with the Department of Health, the Trading Standards Institute, the WHO Collaborating Centre on Tobacco Control, individual local authorities and other concerned agencies.

The Government's objectives for delivering smokefree legislation are to:

- Reduce the risk to health from exposure of secondhand smoke;
- Recognise a person's right to be protected from harm and enjoy smokefree air;
- Increase the benefits of smokefree 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 (and for the foreseeable future) by reducing both exposure to hazardous smoke and overall smoking rates.

The council will seek to ensure, through the provision of advice, education, publicity, guidance and, fair and reasonable formal enforcement action, that persons in control of enclosed public places, their representatives, the public and other duty holders comply with the smoking legislation. We will enforce the law through the principles of:

**Proportionality** <sup>(1)</sup> in applying the law and securing compliance;

**Consistency** <sup>(2)</sup> of approach;

**Targeting** <sup>(3)</sup> of enforcement action;

**Transparency** <sup>(4)</sup> about how we operate and what persons in control of workplaces and public buildings, their representatives, the public and other duty holders may expect from us;

**Accountability** <sup>(5)</sup> to all stakeholders for our actions.

<sup>(1)</sup> Proportionality means ensuring that the level of enforcement is proportionate the risk, and the seriousness of any breach of law.

<sup>(2)</sup> Consistency relates to the enforcement practice within this local authority, and also between this authority and other local authorities. Consistency does not mean uniformity, but means taking a similar approach in similar circumstances to achieve similar ends.

<sup>(3)</sup> Targeting means ensuring enforcement activities, such as inspections and investigations, are focused on activities giving rise to the greatest risk or the least well controlled.

<sup>(4)</sup> Transparency is the extent to which duty holders and the public are clear about what is expected of them and what they can expect from the enforcing authority in terms of advice and enforcement action.

<sup>(5)</sup> Accountability means that enforcing authorities must have policies and standards against which they can be judged and an effective and easily accessible mechanism, for dealing with comments and handling complaints.

The approach that this council will take is to:

- Undertake a priority based pro-active inspection programme.
- Investigate all complaints regarding smokefree issues.
- Provide guidance and advice and seek to educate persons in control of premises, their representatives, the public and other duty holders as to the requirements regarding smokefree.
- Strive to achieve consistency in enforcement standards through staff training, quality procedures and active participation in all liaison arrangements with other local authorities.
- Provide guidance and advice to new businesses and new employers during the planning stage of their venture.

Successful implementation of smokefree legislation will be measured by the number of premises that are meeting the requirements of the law and are smokefree and/or where smoking no longer takes place, rather than by the number of enforcement actions taken by any individual local authority.

## **2. Legislation**

The legislation which prohibits smoking in enclosed and substantially enclosed workplaces and public places, is Part 1 of the Health Act 2006. Schedules 1 and 2 to the Act contain the powers of authorised officers and details of Fixed Penalty Notices (FPNs).

The specific requirements are set out in the following legislation;

- Smoke-free (Premises and Enforcement) Regulations 2006
- Smoke-free (Signs) Regulations 2007
- Smoke-free (Exemptions and Vehicles) Regulations 2007
- Smoke-free (Penalties and Discounted Amounts) Regulations 2007

- Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007

## 2.1 Smokefree Premises

To determine whether a workplace or public place is required under the legislation to be smokefree, it must be:

- Used as a place of work by more than one person (even if persons who work there do so at different times, or only intermittently); or
- Open to members of the public; and
- In either case it must be enclosed or substantially enclosed.

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.

This is known as the 50 per cent rule – put simply:

- If 50 per cent of the walls or more are missing then it is legal to smoke in the area; or
- If more than 50 per cent of the walls are present then it is illegal to smoke in the area.

When determining the area of an opening, no account can be taken of openings in which there are doors, windows, or other fittings that can be opened or shut.

**All premises** that are required by law to be smokefree will also be required to display the prescribed **no-smoking signs at each entrance for use by people**.

Signs must be displayed in a **prominent position** and meet the following minimum requirements:

- Be a minimum of A5 in area (210mm x 148mm);
- Display the international non-smoking symbol at least 70mm in diameter;
- Carry the following words in characters that can be easily read – **‘No smoking. It is against the law to smoke in these premises.’**

Substitute words can be used for ‘these premises’.

A sign that consists only of the international no-smoking symbol in red and black with a minimum diameter of 70mm can be displayed at entrances to smokefree premises where:

- They are located within other smokefree premises that carry the A5-sized sign at entrances, e.g. a bar within a train station, or a shop within an inside shopping mall; or
- They are only for use by members of staff, provided that the A5 sign is displayed on at least one entrance to the premises.

Signs that meet the requirements set out in the regulations are to be made available to businesses free of charge by the Department of Health. These are available to order or download from the Smokefree England website at [www.smokefreeengland.co.uk](http://www.smokefreeengland.co.uk).

## **2.2 Smokefree Vehicles**

An enclosed vehicle shall be smokefree if it is used:

- By members of the public or a section of the public, whether or not for reward or hire; or
- In the course of paid or voluntary work by more than one person, even if the persons who work there do so at different times or only intermittently.

All vehicles that are legally required to be smokefree will also be required to display no-smoking signs in each enclosed compartment of the vehicle in which people can be carried, as a minimum this must be the international no-smoking symbol with a minimum diameter of 70mm.

**Smokefree vehicles are required to be smokefree at all times.**

## **2.3 Smoking Shelters**

There is no legal requirement for owners of premises, managers or staff, or anyone else to provide an outdoor shelter for their employees, customers or residents to smoke in. Smoking shelters must not be enclosed or substantially enclosed, they may require planning permission and building control consent; their siting and use may affect the licensing conditions of a bar/restaurant if customers are drinking outside; they may increase noise levels in the open air and they may also adversely affect street cleanliness.

Anyone intending to erect or use a smoking shelter is advised to discuss their proposals with an authorised officer before ordering, purchasing or installing such equipment.

## **2.4 Exemptions**

There are exemptions from the requirements of smokefree and these will be made clear in the guidance provided by Smokefree England and guidance provided by the authorised officers. Officers will provide clear advice and reasoning behind the decision whether any premises or vehicle should be smokefree, in accordance with the legislation.

The exemptions are limited to specified areas in certain categories of premises, including:

- Private dwellings;
- Accommodation let for temporary or holiday use;
- Designated sleeping accommodation for guests and members at hotels, inns, guesthouses and member's clubs;
- Designated sleeping accommodation or smoking rooms in residential care homes, hospices and prisons (for use by persons over 18 years of age);
- Performers;
- Specialist tobacconists;
- Offshore installations;
- Research and testing facilities; and
- A time limited temporary exemption for residential mental health units (Until 1<sup>st</sup> July 2008).

In all cases, there are particular conditions that must be met and authorised officers will assess these when deciding whether an exemption has been properly implemented.

Crown properties **are not** covered by the smokefree provisions in the Health Act 2006.

Authorised officers can also enforce the provisions of the Health Act 2006, within council workplaces and vehicles.

## 2.5 Management Controls

It is recommended that persons in control of smokefree premises:

- Develop a smokefree policy (preferably in writing, in consultation with employees);
- Adopt procedures (again, preferably in writing) for dealing with any people who smoke or attempt to smoke within the premises;
- Train staff in both the smokefree policy and the written procedures and their roles and responsibilities for implementation;
- Keep a record of any incident where an individual smokes on the premises, in contravention of the legislation, together with the action taken by any members of staff and the outcome; and
- For premises with exemptions, keep a written record of any rooms designated as rooms in which smoking will be permitted, in accordance with legal requirements.

Businesses should be encouraged to contact their local council after any incident to inform them of the occurrence.

## 3. Offences and Penalties

The Health Act 2006 creates a number of offences which are as follows;

Offence	Defence	Penalty
<b>6(5)</b> Failure to display no-smoking sign in a smokefree premise or vehicle (occupier or manager).	<b>6(6)</b> it is a defence for the person charged to show that they did not know and could not reasonably have been expected to know that the premises/place/vehicle were smoke-free <b>or</b> that they did not know and could not reasonably have been expected to know, that no-smoking signs complying with the requirements were <i>not</i> being displayed in accordance with requirements, <b>or</b> that on other grounds it was reasonable for them not to comply with the duty.	Summary conviction to a fine not exceeding <b>level 3</b> on the standard scale - currently <b>£1,000</b> .  FPN <b>£200</b> if paid in <b>29 days</b> . FPN <b>£150</b> if paid in <b>15 days</b> .
<b>7(2)</b> Person who smokes in a smokefree place or vehicle (any person smoking).	<b>7(4)</b> It is a defence for the person charged to show that they did not know and could not reasonably have been expected to know that it was a smokefree place.	Summary conviction to a fine not exceeding <b>level 1</b> on the standard scale - currently <b>£200</b> .  FPN <b>£50</b> if paid in <b>29 days</b> . FPN <b>£30</b> if paid in <b>15 days</b>
<b>8(4)</b> Person having management or control of smoke-free premises or vehicle fails to stop a person from smoking there (manager or person in control).  Offence of failing to prevent smoking in a smoke free-place	<b>8(5)</b> It is a defence for the person charged to show that they took reasonable steps to cause the person in question to stop smoking <b>or</b> that they did not know, and could not reasonably have been expected to know, that the person in question was smoking, <b>or</b> that on other grounds it was reasonable for them not to	Summary conviction to a fine not exceeding <b>level 4</b> on the standard scale - currently <b>£2500</b> .

	comply with the duty	
<b>11</b> Any person who intentionally obstructs an authorised officer <b>or</b> who fails to give assistance when requested to do so <b>or</b> who gives false or misleading information.	Not applicable	Summary conviction to a fine not exceeding <b>level 3</b> on the standard scale - currently <b>£1,000</b> .

#### 4. Authorisation of Officers

A Health Protection Officer has been appointed to carry out duties to secure compliance with the smoke-free legislation for a period of 12 months from May 2007.

Existing officers, who are experienced in carrying out enforcement duties in relation to workplaces and businesses, (such as Environmental Health Officers), will also be authorised under the Health Act 2006 and incorporate this work into their other inspection activities.

All smokefree enforcement officers will have details of their authorisation in their annex to the identification card.

Procedures are in place to ensure that all officers are competent and acting in a consistent and proportionate manner, in line with this enforcement policy.

There are officers of the Council who will be trained on the requirements of smokefree legislation but are not to be authorised under the Health Act 2006, to carry out enforcement duties. This training will enable them to provide any appropriate advice when visiting premises for other purposes and to pass on any appropriate information to authorised officers.

#### 5. Inspections

Inspections to be carried out by authorised officers will either be;

##### 5.1 **PROACTIVE** i.e. to offer advice to businesses and/or to confirm compliance with the legislation. Proactive inspections will concentrate on premises

- Where it has previously been customary for people to assume that they can smoke;
- Where the managers may not realise the law applies to them;
- Where the legislation proposals have been altered during the parliamentary process (e.g. in relations to private members' clubs);
- Where it can be anticipated that the management of the premises may have difficulty in securing compliance;
- Where it is likely that the management will wish to make use of the exemption provisions for designated bedrooms and designated smoking rooms;
- Which are open to a substantial number of people;
- Where there is an absence of pre-existing voluntarily adopted controls on smoking; or
- Where regulatory officers do not usually visit as part of their routine inspections under other legislation.

##### 5.2 **REACTIVE** i.e. in response to a complaint. Complaints could be taken by Charnwood Borough Council staff or by other regulatory bodies. The newly created National



Smokefree Compliance Line (0800 587 1667), may also pass on complaints or intelligence to this local authority.

Anonymous complaints will be accepted and investigated.

Proactive and reactive smokefree inspections can be incorporated within other compliance work e.g. health and safety visits and food hygiene inspections.

Authorised officers may carry out visits in a number of different ways in relation to ascertaining compliance with smokefree legislation. It will be a decision for the officers to choose the most appropriate course of action once all factors have been taken into account, i.e. which action will be likely to be the most effective and ensure the safety of the officer.

- **Official Visit** – Officer announces themselves upon arrival and shows their authorisation in writing to the person in charge of the premises, prior to carrying out an inspection of the premises to assess compliance.
- **Covert Visit** – Officer assesses compliance by observation from within the premises, and subsequently at the end of the period of surveillance they announce themselves and show their authorisation in writing to the person in charge of the premises and, if necessary, carry out an inspection of the premises.
- **Covert Visit and Leave** – Officer assesses compliance by observation from within the premises and then leaves without announcing themselves. Officer returns at an appropriate time when they announce themselves and discuss their findings with the person in charge of the premises and, if necessary, carry out an inspection of the premises.

Where it is appropriate to do so in line with guidance, we will obtain the appropriate permissions to carry out an investigation under The Reporting of Investigatory Powers Act 2000 (RIPA). However, it is unlikely that RIPA will apply to the investigations carried out under smokefree legislation.

## 6. **Complaint Investigation**

The identity of the complainant will not be revealed during the investigation of any complaint.

The response to complaints received about non-compliance with the legislation will be prioritised taking into account the following factors:

- The number of complaints received about a particular premises
- The number of people likely to be affected if the complaint is about smoking in no smoking premises
- Where the nature of the complaint suggests to the enforcing officer a degree of complicity between the various parties in the alleged offence.
- Whether the alleged offender has been previously warned regarding non compliance.

All complaints will be acknowledged within three working days, provided the complainant has given contact details.

Any enforcement action will take place in line with this policy.

The complainant will be advised of the outcome of the investigation, provided they have given this Service a contact telephone number, e-mail address or home address.

If the officer feels that no action is required, or the complaint is not justified, then the complainant will be advised accordingly.

If preliminary investigations reveal that the complaint is not within the scope or remit of this Enforcing Authority, then the complaint will be referred to the appropriate enforcement agency and the complainant advised of this action.

## **7. Enforcement Action**

All action taken will be fair, proportionate and consistent and decided upon with reference to this Enforcement Policy and the Enforcement Concordat.

Regulatory officers have the following enforcement options available to them:

- Verbal warning;
- Written warning;
- Fixed penalty notice or legal proceedings against an owner, occupier, manager or any other person in charge of no-smoking premises for failing to display no-smoking signage (section 6(5))
- Legal proceedings against an owner, occupier, manager or any other person in charge of no-smoking premises for failing to prevent smoking in a smokefree place (section 8(4) offence) – fixed penalty is not available for this offence.

None of these offences are indictable and therefore simple cautions cannot be given, neither can injunctions be obtained.

There are no formal appeal provisions against the service of a FPN. However, Part 4 of the FPN, as set out in the Smoke-free (Vehicle Operators and Penalty Notices) Regulations 2007, relates to the making of a request for a court hearing.

Part 1 also allows for a named contact in the council to be identified, to whom the recipient can direct questions about the service of the FPN, for Charnwood Borough Council. That person is the Environmental Health Manager.

An authorised officer will issue verbal advice where no offences of the legislation are identified but recommendations on good practice are given.

A 'Report of Visit' form will be issued on the first occasion that offences are identified, unless there is blatant disregard for the legislation. It will provide details of the offences identified, the remedial work required and the time period for compliance.

**Figure 1** sets out the enforcement flowchart for the offence of failure to display correct no-smoking signage. This is recognised as a technical infringement and we will continue with the educational approach for longer than might normally be the case, before taking enforcement action. Existing smokefree businesses may not realise the need to display signs. It may also be the case that the signage has been removed or vandalised and not been replaced, rather than never provided in the first place. However where advice has been given and a proprietor is clearly not complying, then a FPN should be served.

**Figure 2** sets out the enforcement flowchart for the offence of smoking in a smokefree place. Before any action is taken against an individual the authorised officers must be

satisfied that it is a smokefree premises and the appropriate signs are in place and that the owner, occupier, manager or any other person in charge can demonstrate that all reasonable steps have been taken to prohibit individuals from smoking on their premises and to detect and deal with illegal smoking when it occurs.

Liaison with the Police will be carried out as part of a pre-arranged programmed activity focussing on premises which have demonstrated that all reasonable steps have been taken and that, despite these efforts, certain individuals continue to smoke in smokefree places.

If an authorised officer experiences a situation where the person they wish to serve with a FPN does not provide their name and address on request, then the officer should advise the person that such a refusal constitutes an offence of obstruction under the Health Act 2006, for which they may be prosecuted. A detailed description of the individual may enable subsequent identification and the serving of an FPN at a later date. There is no restriction on the time lapse between the commission of the offence and the service of the notice but if there is any delay, it will need to be justified.

**Figure 3** sets out the enforcement flowchart for the offence of failing to prevent smoking in a smokefree place. Legal proceedings will be initiated against owners, occupiers, managers or other persons in charge of smokefree premises or vehicles only after repeated efforts to secure compliance with the legislation or where there have been serious or persistent contraventions.

Figure 1 Enforcement Flowchart – Failure to display correct no-smoking signage

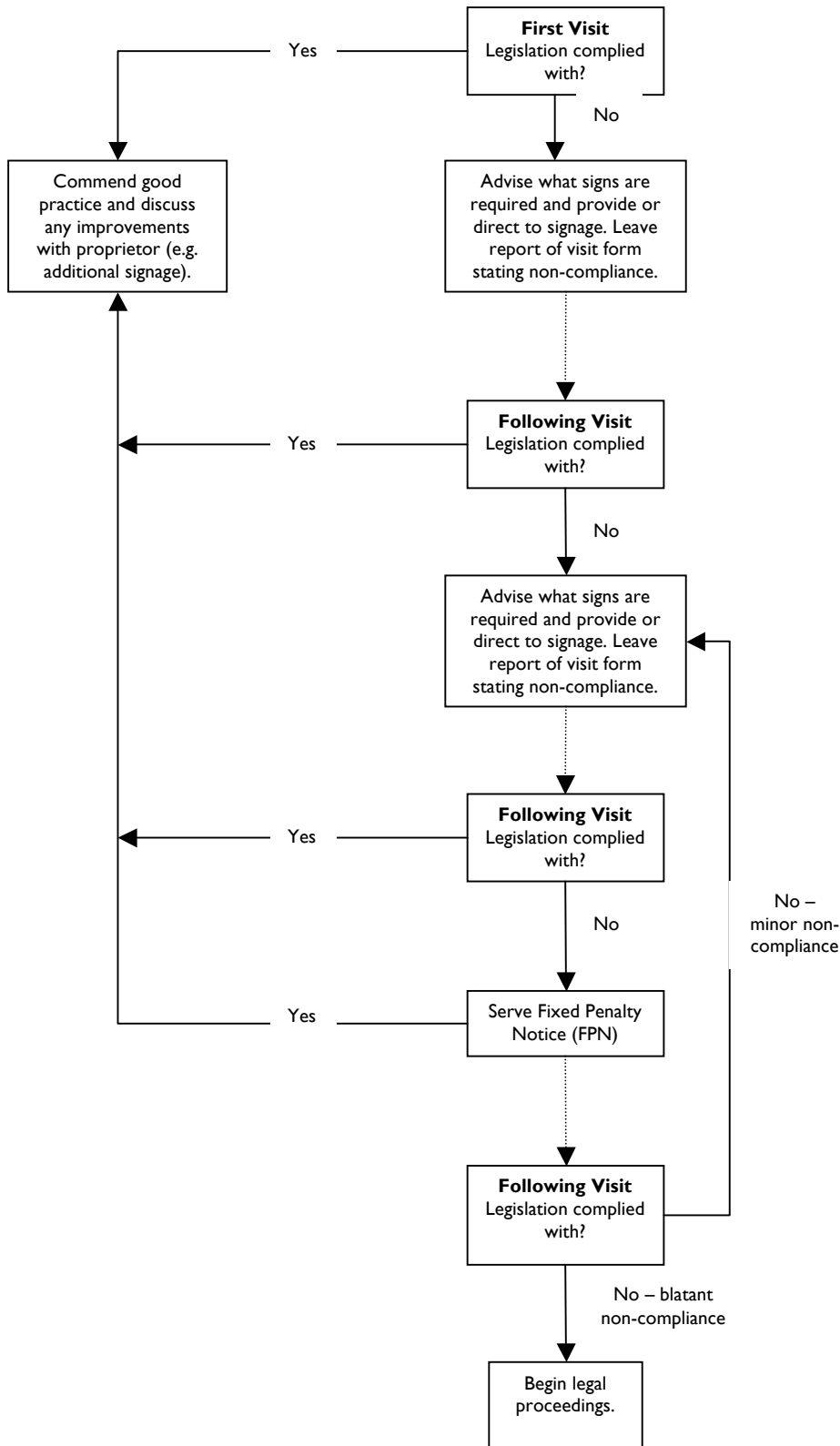


Figure 2 Enforcement Flowchart – Smoking in a smokefree place

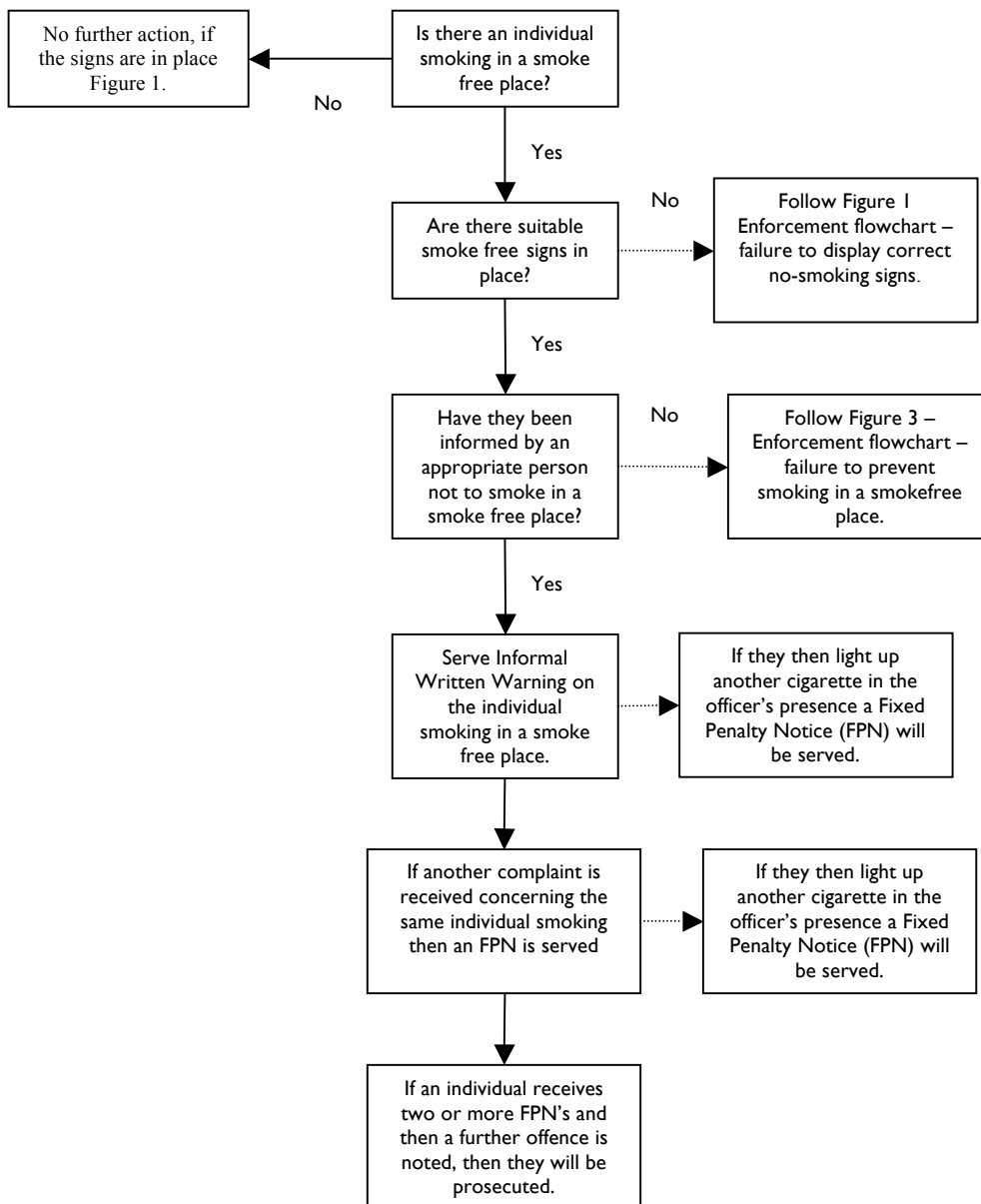
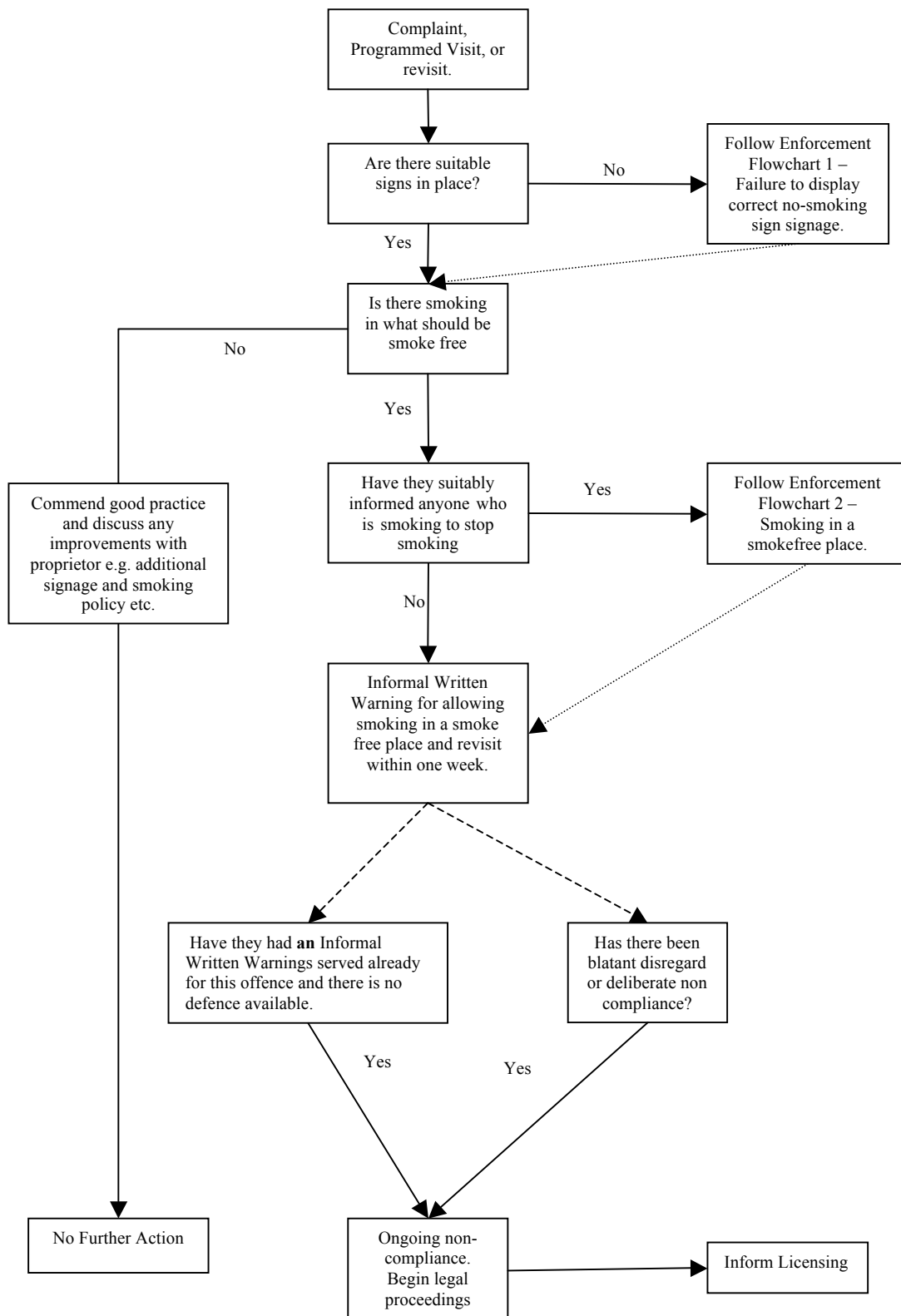


Figure 3 Enforcement Flowchart – Failure to prevent smoking in a smokefree place



## **8. Fixed Penalty Notices (FPNs)**

A FPN will be issued when an offence has been identified and a warning letter has already been issued, or where there appears to have been blatant or systematic non compliance with the law.

A Fixed Penalty Notice (FPN) is a notice offering a person the opportunity to discharge any liability to conviction for the offence by payment of a fixed penalty.

The format of the FPN will comply with the Smokefree (Vehicle Operators and Penalty Notices) Regulations 2007.

The FPN will be served on the occupier or manager for a section 6(5) offence i.e. failure to display no smoking signs, and on the individual smoking for a section 7(2) offence i.e. smoking in a smokefree premises or vehicle.

Officers will ensure that any FPN is properly served and this will generally be on the spot, however if justified, this can be delayed and served at a later date i.e. if officer safety is compromised.

The full amount of the fixed penalty as stipulated in the notice, will be payable and must be paid within 29 days, beginning with the day on which the notice is given.

However, a discounted amount is payable instead of the full amount if payment is made before the end of the period of 15 days beginning with the day on which the notice is given (if the last day does not fall on a working day, the period for payment of the discounted amount is extended until the next working day).

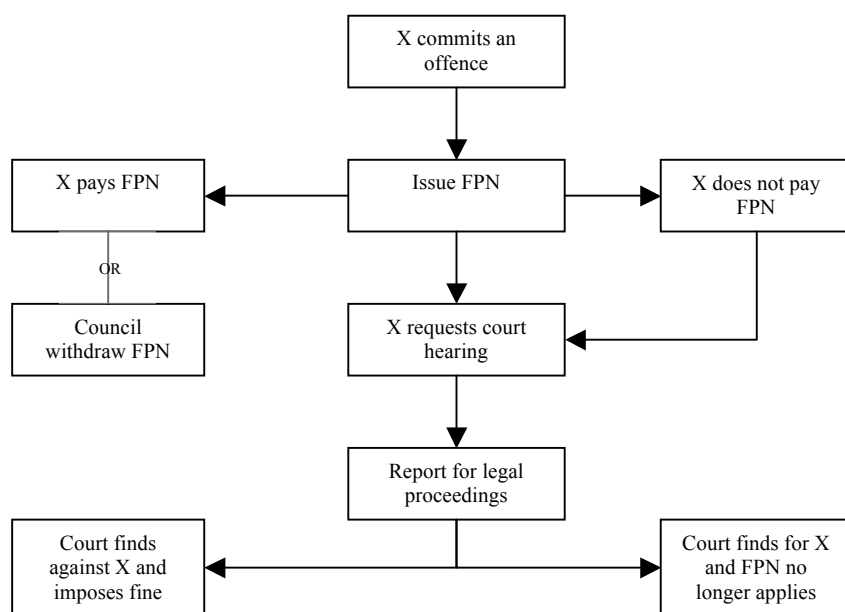
If a person on whom a FPN has been issued fails to pay the amount set out at the end of the 29 day period, then the council may institute legal proceedings for the offence to which the penalty notice relates.

Where a person has received a FPN, they can give notice in writing to the council requesting a Court hearing in respect of the offence for which they have received the notice. Legal proceedings may then be brought against them before the end of the penalty payment period. If the person changes their mind and then pays the discounted or penalty amount, then the proceeding may not be continued.

There is no right of appeal against the service of a notice but the person on whom the notice is served, may ask questions or put information that they feel are relevant to the issue of the notice. Should such information suggest, for example, that a notice has been incorrectly issued, then the council may give notice in writing to the person and withdraw the FPN. If any monies have already been paid, these must be repaid.

It is believed that enforcement, including issuing FPNs, against children under the age of 16, is not warranted.

Figure 4 - FPN flowchart - Applicable to offences relating to failure to display correct no-smoking signage and smoking in a smokefree place.



## 9. Prosecution

A prosecution will be considered in the following situations;

- There appears to have been blatant or systematic non compliance with the law; or
- There have been repeated offences in an establishment, or in various branches of a multiple concern; or
- A FPN has not been paid within the appropriate time period.

The following factors will also be taken into consideration;

- Whether there has been a blatant disregard for the law, particularly where the economic advantages of breaking the law are substantial and the law abiding are placed at a disadvantage to those who disregard it;
- The general record and approach of the offender;
- Whether it is desirable to be seen to produce some public effect, including the need to ensure remedial action and, through the punishment of offenders, to deter others from similar failures to comply with the law;
- Whether the evidence available provides a realistic prospect of conviction;
- Whether an enforcement officer has been obstructed in the lawful course of their duties;
- Whether or not the offender has taken all necessary steps to prevent a recurrence of the problem;
- The ability of any important witnesses and their willingness to co-operate.

The statutory limitation of six months will still apply for undertaking summary proceedings. This time period begins from when the offence occurred, not from when the FPN is served.



## **10. Complaints**

The council will also hear and investigate any complaints or representations alleging unfair or inconsistent treatment by an authorised smokefree officer. These should be raised firstly with the Environmental Health Manager and then if not resolved, through the council's formal complaints procedure.

## **11. Working with others**

Authorised officers under the smokefree legislation will be working closely with others, on the following issues;

### **11.1 Leicestershire and Rutland Primary Care Trust**

Charnwood Borough Council are working in partnership with the Leicestershire and Rutland Primary Care Trust, to provide businesses with advice on how to help employees give up smoking.

### **11.2 Health and Safety**

This may involve problems concerning the appropriate design, safety and proper use of smoking shelters, workplace transport issues and the ingress of smoke into the workplace.

There are two enforcing authorities in England for health and safety purposes and their individual enforcement responsibilities are set out in the Health and Safety (Enforcing Authority) Regulations 1998. Authorised officers for smokefree may also be authorised under the Health and Safety at Work etc. Act 1974 and may be able to deal with health and safety issues arising at those businesses in which Charnwood Borough Council has responsibility for enforcement or the matter will be referred to an appropriate officer. If there are any health and safety concerns identified within premises that are Health and Safety Executive (HSE) enforced, the matter will be passed on to the HSE, without undue delay.

Inspectors of the Health and Safety Executive (HSE) will bring smokefree 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 no-smoking signs. Should the employer resist acting on this advice, the HSE inspector will then bring the matter to the attention of Charnwood Borough Council. The HSE will also forward on any complaints they receive about smokefree issues.

### **11.3 Charnwood Borough Council Officers**

Officers from Charnwood Borough Council may also be involved in the following related issues to smokefree.

#### **11.3.1 Noise and Statutory Nuisance**

This may include noise and nuisance issues from smokers congregating outside premises or within smoking shelters

The Environmental Protection Act 1990, allows for the service of abatement notices in situations where a statutory noise nuisance has been identified coming from premises.

The Clean Neighbourhoods and Environment Act 2005 has extended the provisions of the Noise Act 1996, to deal with night-time noise (occurring between 11pm and 7am) emanating from licensed premises, including clubs, public houses and restaurants. This

legislation provides for the issue of warning notices and service of fixed penalty notices on the person responsible for the noise, should a prescribed, permitted level of noise be exceeded.

Charnwood Borough Council **does not** operate an emergency, or out of hours call out service to deal with environmental health complaints. Telephone complaints made to the council outside usual office hours, will be fully recorded by the **Lifeline** service (01509 634979) and referred through to the appropriate authorised officer, on the next normal working day for the council.

### **11.3.2 Statutory Nuisance from Smoke and Odour**

This may be resulting from smoking shelter usage

Odour and smoke nuisance are covered by sections 79-81 of the Environmental Protection Act 1990. There is no fixed level which constitutes a nuisance and in order for an odour or smoke to be classed as a statutory nuisance, it must be seriously affecting an individual's use or enjoyment of their property.

### **11.3.3 Statutory Nuisance from Artificial Lighting**

This may be from smoking shelters or artificial lights in external yards or gardens.

The Clean Neighbourhoods and Environment Act 2005 have added artificial lighting to the list of statutory nuisances, defined within Section 79 of the Environmental Protection Act 1990.

All complaints received by smokefree authorised officers relating to artificial lighting, odour, noise and tobacco smoke issues, will be investigated in accordance with Charnwood Borough Council's enforcement policy on statutory nuisance.

### **11.3.4 Litter**

New powers and duties to deal with litter, including cigarette waste, are contained within the Environmental Protection Act 1990, as amended by The Clean Neighbourhoods and Environment Act 2005.

Fixed Penalty Notices may be issued to persons found dropping cigarette waste in the street, by the Council's street wardens.

### **11.3.5 Planning and Building Control**

The erection of a smoking shelter or similar structure may require planning permission under current Town and Country Planning legislation and also may need further approval under the Building Regulations 2000 (as amended).

Planning applications received for smoking shelters are subject to consultation and comment by officers within the Commercial and Environmental Protection sections of the Housing and Health Directorate, prior to planning /building control approval being granted.

Where authorised smokefree officers are concerned that a smoking shelter may not comply with planning or building control requirements, then the Council's Planning Enforcement team shall be alerted to the problem, without undue delay.

### **11.3.6 Licensing**

In certain circumstances, the regular movement of customers outside licensed premises, in order to use smoking shelters or gardens, may have implications for establishments with licences granted under the Licensing Act 2003. Where a smokefree authorised officer becomes aware of concerns or issues which may affect a premise's licence, then the matter shall be referred to the Council's Licensing section without delay.