

# Enforcement Guidance and Protocols

## Smoke-Free Public Places

Guidance for Officers in the enforcement of provisions of the  
Smoking, Health and Social Care (Scotland) Act 2005

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## **1. Why have controls on smoking in public places?**

Smoking is the biggest single cause of preventable premature death in Scotland, claiming around 13,000 lives each year.

Passive smoking, that is breathing in other people's tobacco smoke, kills and causes diseases. Other people's tobacco smoke is also known as second-hand smoke, or Environmental Tobacco Smoke (ETS). Second-hand smoke is a mixture of over 4,000 chemicals, 200 of which are poisons and 50 are known to cause cancer.

Research has shown that exposure to second-hand smoke increases the risk of:

- Heart disease amongst non-smokers by 25%.
- Lung cancer amongst non-smokers by 24%.
- Respiratory problems in adults and children, as the smoke aggravates asthma and chronic bronchitis.
- Sudden Infant Death Syndrome (cot death) in infants.
- Deafness in children.
- Miscarriage and still birth amongst pregnant women.

In Scotland each year, passive smoking is associated with 865 deaths of life-long non-smokers. The main causes of death are lung cancer, heart disease, respiratory conditions and stroke. Taking into account other diseases known to be related to smoking and including former smokers who have now quit, estimates reach some 1500 – 2000 deaths per year in Scotland.

There is also substantial evidence that ventilation and air filtration systems in enclosed public places, including workplaces, pubs, clubs and restaurants, do not eliminate the health risks associated with passive smoking.

The estimated effect of eliminating exposure to passive smoking in public places is a reduction of over 400 deaths per annum. In addition, research evidence suggests that bans on smoking in public places cause smokers to reduce the number of cigarettes they smoke or encourage them to quit altogether.

## **2. Background to legislation**

The Scottish Voluntary Charter on Smoking in Public Places was launched by the Scottish Executive in May 2000. Although the Voluntary Charter did meet a number of its objectives, various organisations, including ASH Scotland, continued to campaign to have legislation introduced to offer the public the minimum protection from exposure to second-hand smoke.

In January 2004, the Scottish Executive published its tobacco control action plan, "*A Breath of Fresh Air for Scotland: Improving Scotland's Health – the Challenge*". The plan set out a range of measures to strengthen tobacco control, including prevention work, education and communications, controls on sales and the expansion of cessation services. The plan also looked at the possibility of imposing greater controls on smoking in public places in the face of the growing body of evidence that more restrictions would result in a significant improvement to the nation's health.

In 2004, The Scottish Executive carried out an extensive programme of evidence gathering and public consultation on the issue of smoking in public places. Following consideration of the findings, Ministers decided to protect public health by prohibiting smoking in enclosed public places. The Smoking, Health and Social Care (Scotland) Bill was introduced in December 2004 and was passed by the Scottish Parliament on 30 June 2005. The smoking provisions (which are found in Part 1 of, and Schedule 1 to, the Act) will come into force on 26 March 2006. Regulations made under the Act, which set out the list of "no-smoking premises" for the purpose of Part 1 of the Act, will be laid before the Scottish Parliament and timed so as to come into force on the same day as Part 1 of the Act.

These new legal provisions place authorised officers of a council (in practice Environmental Health Officers and authorised Licensing Officers) in a central role as enforcement officers to ensure that controls over smoking in public places are introduced effectively and maintained consistently.

In the Republic of Ireland, 92% compliance has been reported in response to their smoke-free legislation for workplaces since its introduction in March 2004, with only 20 workplace prosecutions in the first year. The Irish public strongly supports the smoke-free legislation. 93% believe the legislation was a good idea, including 80% of smokers (Smoke-Free Workplaces in Ireland: A One Year Review, March 2005). This demonstrates good evidence of the public's support for greater protection from smoke in public places.

### **3. Purpose of guidance**

This document gives guidance to local authorities and individual officers involved in this important area of public health enforcement. The aim of the document is to share best practice and ensure that the legislation is implemented effectively, fairly and consistently across Scotland.

The document has been prepared jointly and agreed by the Royal Environmental Health Institute of Scotland, the Society of Chief Officers of Environmental Health, the Convention of Scottish Local Authorities (CoSLA), the Crown Office and Procurator Fiscal Service, the Association of Chief Police Officers in Scotland (ACPOS) and the Scottish Executive Health Department. The guidance and protocols will be amended in light of future experience and any subsequent legislative changes.

It is expected that all authorised officers will follow this guidance when enforcing smoke-free legislation unless, in their professional opinion, an alternative procedure is warranted.

In this document, the generic term “enforcement officers” is used. This term encompasses all local authority officers who may be engaged in enforcement work associated with these smoking controls and may include Environmental Health Officers, Technical Officers and Licensing Officers.

#### 4. Overview of the legislation and offences

As indicated in Section 2 of this Guidance, the legislation in Scotland which gives effect to the controls on smoking in public places is comprised of:

- The Smoking, Health and Social Care (Scotland) Act 2005 (“the 2005 Act”) – Part 1 and Schedule 1
- The Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 (“the Smoking Regulations”) – made under Part 1 of the 2005 Act.

Part 1 of the 2005 Act contains the offences (set out below) which will apply in relation to smoking in “no-smoking premises”. The reference to premises includes vehicles.

##### “No-smoking premises”

“No-smoking premises” are those premises which are wholly or substantially enclosed and which are one of the premises or classes of premises which are set out in regulations. The 2005 Act stipulates<sup>1</sup> that there are four basic kinds of premises (set out in Appendix I) that can be prescribed in the regulations as “no-smoking premises”.

There are therefore two elements to ascertaining which premises will be “no-smoking premises” for the purposes of the legislation. The premises must firstly be one of the classes of premises specified in regulations made under the 2005 Act and they must also be “wholly or substantially enclosed”-

- **premises set out in regulations:** the list of no-smoking premises is set out in Schedule 1 to the Smoking Regulations (see Appendix II). There are only a few exemptions from that Schedule 1 list of no-smoking premises, mainly on humanitarian grounds, and these are set out in Schedule 2 to the Smoking Regulations (see Appendix III).
- **“wholly or substantially enclosed”:** the legal definition of ‘wholly or substantially enclosed’ is set out in the Smoking Regulations at regulation 3(3) (see Appendix I). Put simply, it means premises which have a roof, and walls on more than 50% of the perimeter of the premises.

##### Offences

The 2005 Act provides for four main offences:

- permitting others to smoke in no-smoking premises (section 1);
- smoking in no-smoking premises (section 2);
- failing to display warning notices in no-smoking premises (section 3); and
- failing, without reasonable cause, to give one’s name and address on request by an enforcement officer (section 7(3)).

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<sup>1</sup> Section 4(4)



The following table summarises the four offences, their corresponding defences under the 2005 Act and maximum fine if found guilty.

Offence	Defence under Act	Maximum fine if found guilty
Section 1 of Act Person with management or control of no-smoking premises knowingly permits another to smoke there.	Section 1(3) of Act Accused can demonstrate that they took all reasonable precautions and exercised all due diligence to avoid commission of offence or there was no lawful or practicable means by which the accused could prevent person from smoking there.	Level 4 (£2,500)
Section 2 of Act Person smokes in no-smoking premises.	Section 2(2) of Act Accused can demonstrate they did not know and could not reasonably be expected to have known premises were no-smoking.	Level 3 (£1,000)
Section 3 of Act Person having management or control of no-smoking premises fails to conspicuously display no-smoking signs as required.	Section 3(1) of Act Accused can demonstrate that they (or any employee or agent of theirs) took all reasonable precautions and exercised all due diligence to avoid commission of offence.	Level 3 (£1,000)
Section 7(3) of Act Person who enforcement officer believes is committing or has committed any of above offences or believes to have information relating to such an offence, and fails without reasonable excuse to supply the officer with their name and address when required to supply it.		Level 3 (£1,000)

#### Fixed penalty for offences under sections 1, 2 and 3

Schedule 1 to the 2005 Act sets out the Fixed Penalty Notice scheme that applies to the Act. A fixed penalty notice offers a person the opportunity to discharge any liability to conviction for the offence by payment of a fixed penalty.

Enforcement officers may issue a Fixed Penalty Notice if they have reason to believe that a person is committing or has committed an offence under section 1, 2 or 3<sup>2</sup>.

A Fixed Penalty Notice must<sup>3</sup>:

- identify the offence to which it relates and give reasonable particulars of the circumstances alleged to constitute that offence.
- state the amount of the penalty and the period within which it may be paid.
- state the discounted amount and the period within which it may be paid.
- state the person to whom and the address at which payment may be made (this must be the local council for the area where the alleged offence was committed, or a person acting on behalf of the council).
- state the method or methods by which payment may be made.
- state the person to whom and the address at which any representations relating to the notice may be made.
- state the consequences of not making a payment within the period for payment.

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<sup>4</sup>. 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)<sup>5</sup>.

The Smoking Regulations set out at regulation 4 the current amounts which will be applied for each of the offences. The amounts are currently as indicated below in relation to each of the offences:

Offence for which Fixed Penalty Notice is issued	Full Amount	Discounted amount
Section 1 offence - person having management or control of no-smoking premises fails to prevent others from smoking in those premises.	£200	£150
Section 2 offence - smoking in no-smoking premises.	£50	£30
Section 3 offence - person having management or control of no-smoking premises fails to conspicuously display warning notices in those premises.	£200	£150

When a person has received a fixed penalty notice they can give notice in writing requesting a hearing by the council in respect of the offence for which they have received the notice<sup>6</sup>. If the person requests such a hearing then the payment period is suspended between the date of the person requesting a hearing until the decision is notified. The procurator fiscal must also be notified of the request for a hearing. If the Council decides that the fixed penalty notice was not warranted then it can

<sup>2</sup> Paragraph 1(1) and (2) of Schedule 1

<sup>3</sup> see paragraph 3 of Schedule 1 to the 2005 Act

<sup>4</sup> see paragraph 4 of Schedule 1 to the 2005 Act

<sup>5</sup> see paragraph 5 of Schedule 1 to the 2005 Act

<sup>6</sup> see paragraph 7 of Schedule 1 to the 2005 Act

withdraw the notice<sup>7</sup>. Otherwise, the person will be required to pay it still and the time for payment will start to run again up to the 29 day limit.

Should a person who has received a fixed penalty notice fail to pay the fixed penalty by the end of the 29 day period then there are two options available to the authorities. The first option is that proceedings can be brought against the person<sup>8</sup>, in which case they should be reported to the Procurator Fiscal for prosecution. In that case, the fixed penalty notice will be treated as withdrawn<sup>9</sup> and the person will instead (if prosecuted) be liable to pay a fine, which the court will set, up to the maximum level for that offence. The other alternative is that, instead of prosecution, the unpaid fixed penalty may be enforced again on the person by the council by means of sheriff officers<sup>10</sup>. Further guidance on this issue can be found in section 6, page 12.

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<sup>7</sup> see paragraph 8 of Schedule 1 to the 2005 Act

<sup>8</sup> see paragraphs 6 of Schedule 1 to the 2005 Act

<sup>9</sup> see paragraph 9 of Schedule 1 to the 2005 Act

<sup>10</sup> see paragraph 10 of Schedule 1 to the 2005 Act

## 5. Overall approach

Enforcement officers working in the field of Environmental Health have a history of working closely with businesses and building compliance with legislation, utilising tools such as education, advice, advocacy and persuasion to convince people that compliance is the desirable course of action. Enforcement officers revert to formal enforcement only when it is warranted by the seriousness of the situation. In these instances, there is often a long history of dialogue with the accused, giving them every opportunity to comply with the law.

Enforcement officers currently working in Environmental Health bring the same approach and skills to the new controls on smoking in public places. The Profession places a strong emphasis on working with businesses and industries to ensure the health of the public and workers is protected. However, it is recognised that there may be occasions where enforcement is necessary. In these instances, this guidance should ensure a fair, proportional and consistent approach to each enforcement action.

The initial approach should be a non-confrontational one and the focus should be to raise awareness and understanding around the reasons for the introduction of a ban, and to ensure compliance with the new legislation. It is anticipated that, with public support, there will be a high level of voluntary compliance from all businesses. There was significant awareness raising activity, both for businesses and the general public, in the run up to the legislation taking effect.

The Scottish Executive will set up a smoke-free compliance line and officers should promote it whenever possible as it empowers the public, employees and others; ensures that proprietors are aware of their customers/employees desire to see the law implemented; and enables the effective targeting of enforcement action by highlighting non-compliance. Further details will be provided before the smoke free laws come into effect.

Enforcement officers are also encouraged to promote the smoking cessation phone line whenever possible so that the smoking ban can have maximum impact in improving public health. There has been a 15% decrease in the number of smokers in New York in the two years since a ban was introduced there.

## 6. Inspections

Inspections carried out by enforcement officers will either be proactive, e.g. to advise businesses and to confirm compliance with the legislation, or reactive, i.e. in response to a complaint.

Local authorities should devise a method to generate a list of premises for proactive inspections. In addition, local authorities are likely to incorporate some inspections as part of other proactive compliance work, e.g. health and safety and food hygiene inspections.

The initial focus of inspections should be on premises:

- Which are open to substantive numbers of people (for example, a greater impact can be gained in terms of health protection from visiting a nightclub, compared to a small office).
- Where there is an absence of pre-existing self imposed smoking controls (i.e. there would initially be limited value in visiting places such as cinemas, offices and shopping centres, which already have no-smoking policies).
- Where enforcement officers do not usually visit as part of their routine inspections under other legislation.

Development of a risk based inspection programme for premises is likely to evolve as familiarisation with the new requirements improves. Such a programme could include factors such as:

- Confidence in management.
- History of compliance with the requirements.
- Number of complaints received from the Compliance Phone Line.

Enforcement officers may carry out a number of different types of inspections in relation to smoking controls - examples are listed below. Please note that the following options are not mutually exclusive and it is anticipated that officers should choose the most appropriate course of action once all factors have been taken into account, i.e. which action will bring the most benefit to the public and ensure the safety of each officer.

- a. Official inspection - officers announce themselves and show appropriate identification to person in charge of premises, prior to assessing compliance with the provisions.
- b. Covert – officers will assess compliance by observation within the premises, and subsequently announce themselves and show appropriate identification to person in charge of premises, at the end of the period of surveillance.

- c. Covert and leave – As above, but the officers wait until the following day to discuss their findings with the manager of the premises.

Any covert inspection should comply fully with each local authority's policy in relation to the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA).

The personal safety of officers should not be compromised by enforcement action, and this should be recognised by each local authority's existing health and safety procedures. In certain circumstances, for the health & safety of officers, it may be appropriate for inspections to be carried out by two officers. When dealing with each circumstance, enforcement officers should make their own judgement as to the best course of action. For example, in a situation where a covert inspection is being carried out, if officers perceive a threat of violence or abuse, they should not engage with the manager at that stage, but return at a safer time, such as the next day.

Enforcement officers should also consider whether inspections should be carried out by individual officers, or by two officers, in terms of possible enforcement outcomes. The recommended approach in this guidance can be explained with reference to the formal enforcement options available, detailed in Figure 1. Where enforcement action is warranted, in most cases it is anticipated that the officer would deal with this by issuing a Fixed Penalty Notice. Enforcement action, via the submission of a report to the Procurator Fiscal would be reserved for more serious or persistent offences.

If a Fixed Penalty Notice is served, and the recipient does not make payment within the prescribed timescale, the enforcement officer theoretically has two options:

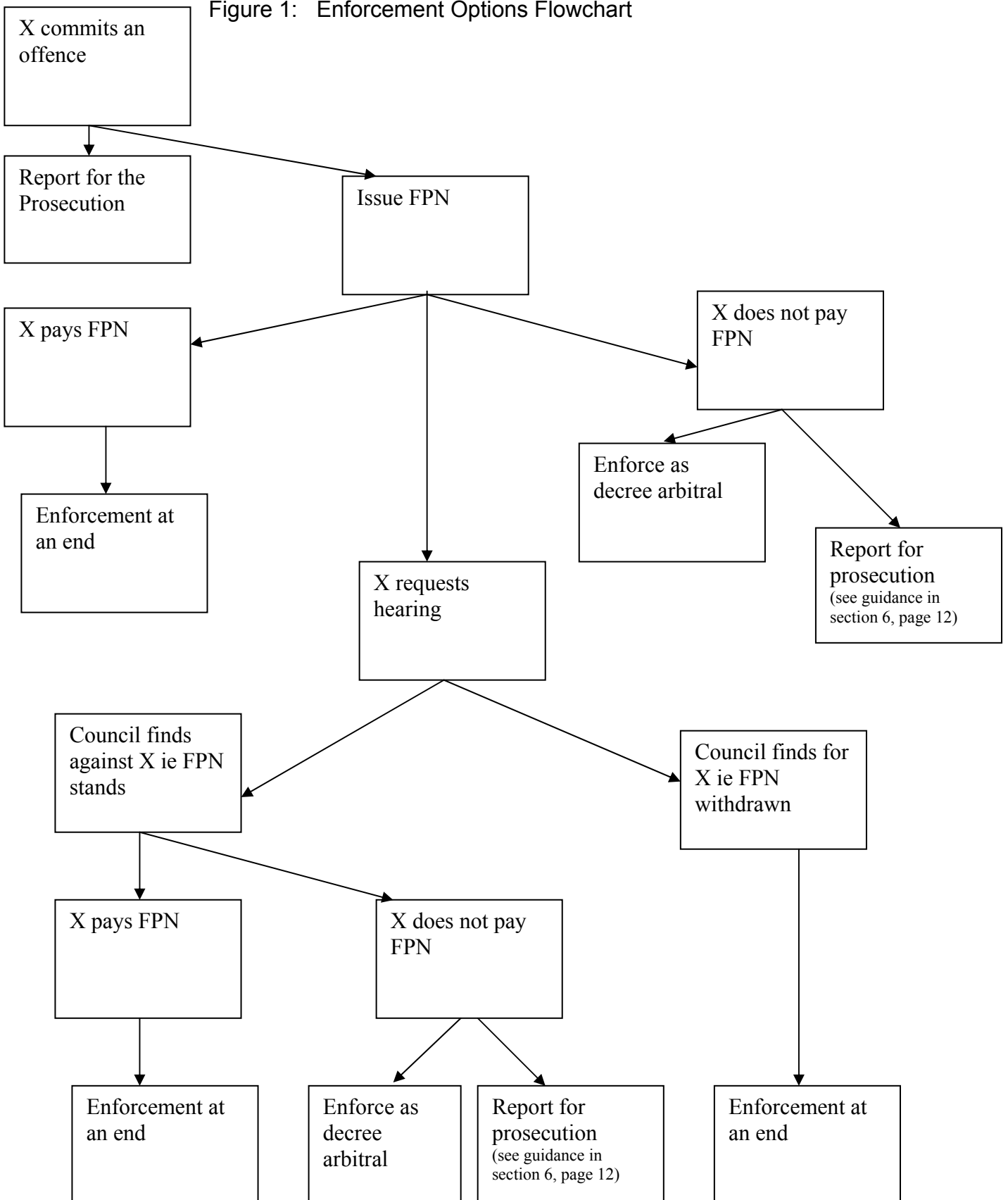
- a) submit the matter to the Procurator Fiscal, as a report, recommending prosecution, or
- b) use powers under this legislation to have the matter dealt with by decree arbitral (i.e. recover the fixed penalty amount, using Sheriff Officers)

It is recommended that enforcement officers should use the decree arbitral process, rather than reporting the matter to the Procurator Fiscal, as this is a quicker and more effective use of resources, compared to the time consuming alternative process of submitting reports to the Procurator Fiscal, and subsequent Court action.

Therefore, as enforcement officers should use the decree arbitral process for taking further action against non payment of Fixed Penalty Notices (rather than prosecution reports), there would be no need (in enforcement terms) for inspections to be carried out by two officers, where the issue of Fixed Penalty Notices is to be the likeliest type of formal enforcement action.

Inspections requiring two officers would be reserved for those situations where serious or persistent contraventions are anticipated, which would necessitate corroboration of evidence, for a report to the Procurator Fiscal. This would probably be in relation to inspections of premises with a history of contravention, and where action has escalated, in terms of the enforcement approach advocated in section 8.

Figure 1: Enforcement Options Flowchart



## 7. Assessment of Compliance

Enforcement officers will require to carry out an assessment to determine whether or not owners, occupiers, managers or any person in control of no-smoking premises have taken “all reasonable precautions” to avoid people smoking. These precautions will include a combination of compliance with **specific legal requirements (in bold text)** and *activities which would be considered good practice by organisations in demonstrating that they are taking all reasonable precautions (in italics)*.

All businesses and organisations should have received guidance from the Scottish Executive on the implications of the new legislation and how to comply. Sample signs were included. A copy of the guidance and signage can be accessed at [www.clearingtheairsotland.com](http://www.clearingtheairsotland.com) Further copies can be obtained from the Scottish Executive Tobacco Control Division at St Andrew’s House, Edinburgh, EH1 3DE.

Issues for officers to assess are:

### **Signage for premises**

**“No smoking” signs must be conspicuously and permanently displayed to be visible to and legible by persons in and persons approaching no-smoking premises.**

The minimum signage requirement for premises<sup>11</sup> is a no-smoking notice which:

- is at least 230mm by 160 mm in size;
- states that the premises are no-smoking premises and that it is an offence to smoke there or knowingly to permit smoking there;
- displays the international “No Smoking” symbol (at least 85mm in diameter);
- displays the name of the person to whom a complaint should be made in the event of non-compliance; and
- is displayed in such a manner that it is protected from tampering, damage, removal or concealment.

Any additional notices<sup>12</sup> required to make sure everybody on the premises is made aware that smoking is not allowed are required to:

- state that the premises are no-smoking premises and that it is an offence to smoke there or knowingly to permit smoking there; and
- display the international ‘no smoking’ symbol, at least 85 mm in diameter.

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<sup>11</sup> see section 3(1) of the 2005 Act and regulation 2(1) of the Smoking Regulations

<sup>12</sup> see section 3(1) of the 2005 Act and regulation 2(2) of the Smoking Regulations



## Signage for Vehicles<sup>13</sup>

No-smoking signs should be displayed in or on any vehicles that are affected by the ban in such a way that the signs can be seen and read by persons who are in the vehicle, as well as persons approaching the vehicle in question. The reference to vehicles includes trains, buses, taxis, private hire cars and any vessel, boat or hovercraft. There's no legal requirement on the size of these signs but they must:

- state that the vehicle is no-smoking and that it is an offence to smoke there or knowingly to permit smoking there;
- display the international no-smoking symbol; and
- display the holder of a particular post (e.g. the manager) to whom a complaint may be made by anyone who observes someone smoking.

## Ashtrays

*Ashtrays and other such receptacles should not be present in a no-smoking premises.*

## Management Controls

*It is recommended that those in control of no-smoking premises:*

1. *Develop a smoke-free policy, (preferably written).*
2. *Develop a procedure for dealing with any people who smoke (preferably written).*
3. *Train staff in both the policy and written procedure.*
4. *Keep a written record of any incident (and outcome) where responsible member of staff confronts an individual for smoking on the premises.*

## Smoke-free policy and procedures

*It is strongly recommended that owners and managers establish and implement a written policy and procedures to demonstrate their compliance with the law. A sample smoke-free policy was provided as part of the Scottish Executive's guidance to businesses. This can be adapted by individual businesses and organisations for their use, if they wish.*

*The procedures should contain items similar to the following:*

- *Draw the person's attention to the "No Smoking" signs in the area and inform them that he/she is committing an offence by smoking. Politely ask them to stop smoking.*

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<sup>13</sup> see section 3(1) of the 2005 Act and regulation 2(3) of the Smoking Regulations

- *Direct them to the nearest place where they are able to smoke legally.*
- *Advise the person smoking that their actions could result in the person in control of the premises receiving a Fixed Penalty Notice of £200 or being prosecuted and receiving a fine of £2,500.*
- *Refuse the person service.*
- *If the person continues to smoke, ask them to leave the premises.*
- *If he/she refuses, implement normal procedures for anti-social/illegal behaviour on the premises.*
- *Maintain a written record of all such incidents and outcomes.*
- *If physical violence is threatened by the person smoking, notify and/or seek assistance from the Police.*

*The policy should identify members of management and/or staff who have responsibility for its implementation and review.*

#### *Staff training*

*Employers and managers of no-smoking premises should ensure that all staff, including new members of staff, are trained in relation to the no-smoking policy. All staff working in no-smoking premises should be aware of which member of staff or management present is the responsible person for dealing with any persons smoking. Regular staff training should reinforce any policy on an on-going basis.*

#### *Record of incidents*

*In order to assist any future defence of “due diligence”, each premises should keep a documented record of:*

- *Date and time of incident.*
- *Where person was smoking.*
- *What action was taken by staff (including name of staff member).*
- *Outcome.*
- *Name of person smoking (if known).*

*Businesses should be encouraged to contact their local Environmental Health section after any incident.*

Individuals who smoke on premises should only be targeted for enforcement action once the person having management or control of the premises has demonstrated that they have made all reasonable attempts to stop the person from smoking. Individuals can be served with a Fixed Penalty Notice by the enforcement officer. However, all efforts should be made to encourage the person to stop smoking or leave the premises, prior to taking enforcement action.

Owners, occupiers, managers or other persons in charge should only be reported to the Procurator Fiscal after repeated failure to comply with the legislation. Again, this should be reserved for serious or persistent contraventions, and an educational and non-confrontational approach should be used whenever possible.

## 8. Enforcement Action

The following enforcement options are available to officers:

- a. Verbal warning.
- b. Written warning.
- c. Fixed Penalty Notice on owner, occupier, manager or any other person in charge of no-smoking premises (for a section 1 or section 3 offence).
- d. Fixed Penalty Notice on individual smoking in no-smoking premises (for a section 2 offence).
- e. Prosecution report.

All action taken should be fair, proportional and consistent.

Enforcement action must be pragmatic and based on enforcement resources currently available. For this reason, initial enforcement activity should focus on the owner/proprietor as they are likely to have management and control of the premises. If owners/proprietors self regulate their premises, then it is likely that individuals using these premises will comply.

It is recommended that each local authority follows the approach to enforcement in Figure 2.

Local authorities should only consider taking action against individuals smoking in no-smoking premises (i.e. serving Fixed Penalty Notice) where the owner, occupier, manager or any other person in charge can demonstrate that they have taken all reasonable precautions against these individuals smoking on their premises. (For guidance on “all reasonable precautions”, see section 7)

Officers should be wary of serving Fixed Penalty Notices on individual smokers in a random approach, due to risks to the officers` own health and safety from taking this action. If necessary, local authorities should consider targeting individuals as part of a pre-arranged programmed campaign, organised in liaison with Police officers. Enforcement officers are advised to ensure they organise any campaign well in advance with their local police contact, to ensure the campaign coincides with availability of police resources, to give support if necessary. The campaign should focus on premises which have demonstrated that all reasonable precautions have been taken and these actions have failed to control certain individuals. Such campaigns could target premises where there have been complaints received from the public.

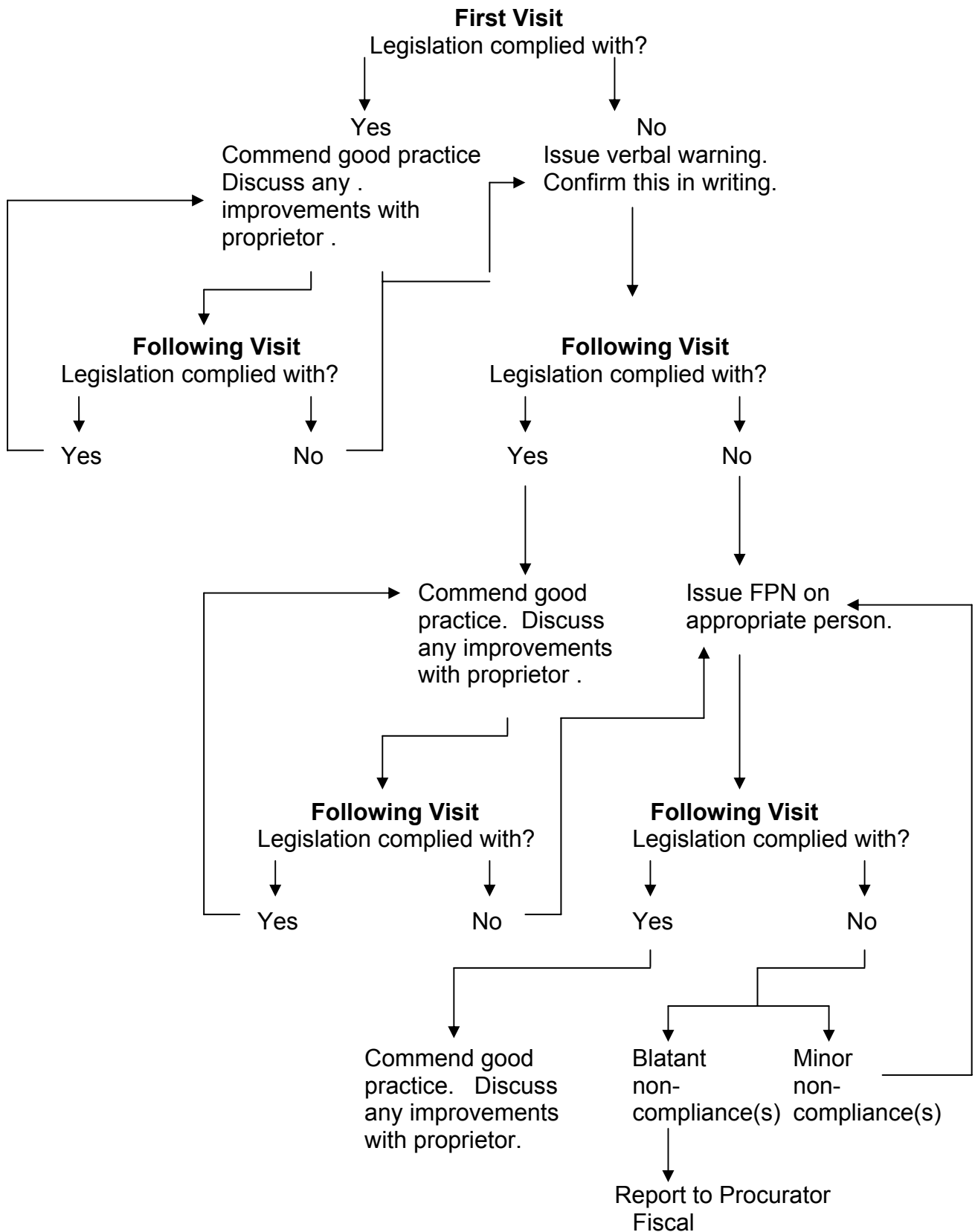
If officers experience a situation where the person they wish to serve a Fixed Penalty Notice on does not provide their name and address on request, the officer should advise the person that such a refusal is an offence under the Smoking, Health and Social Care (Scotland) Act 2005.

If the person to be served with a Fixed Penalty Notice seeks to leave, local authority officers may consider following that person (so far as is practicable, and consistent with the officers` own safety), to their home, car, or other location where they can be

identified. However it is recommended that as the person has left the premises, this has resulted in the successful cessation of smoking activities, and therefore no further action need be taken.

In carrying out enforcement, officers should attempt to minimise confrontation. However where a public order situation is developing and immediate help is required, enforcement officers should contact the police, for assistance.

Figure 2: Enforcement policy



## 9. Complaint Protocol

The aim of this protocol is to provide guidance on how to deal with tobacco related complaints received by the Environmental Health section of each local authority. The complaint, including anonymous complaints, may be received by enforcement officers or administrative staff who would take initial details and then refer the complaint to the relevant enforcement officer. If clarification is sought, the enforcement officer should advise the complainant of their local authority's policy with regard to disclosure of personal details.

### Investigation of Complaint

- a. The enforcement officer would assess the nature of the complaint.
- b. If the complaint is judged to be a query, the enforcement officer should give advice and offer to send more information, e.g. leaflets or refer to the "Clearing the Air" website ([www.clearingtheairscotland.com](http://www.clearingtheairscotland.com)).
- c. Based on the nature of the complaint, the history and type of premises, the enforcement officer may carry out an inspection (see page 6 for guidance on inspections) and/or take other appropriate action, e.g. verbal warning, information/advice, etc.
- d. Inspections arising from complaints should be given priority in tobacco control inspection programmes.
- e. The enforcement officer notifies the complainant that their complaint has been investigated and appropriate action has been taken.
- f. The enforcement officer completes the complaint record, closes off the complaint and updates the appropriate database.
- g. The complaint record and any copies of correspondence are filed appropriately, e.g. in the premises file.

## Appendix I – Definitions

For the purposes of the Act, the following terms are defined as:

**‘No-smoking premises’**<sup>14</sup> - these are the premises which are wholly or substantially enclosed and which are set out in Schedule 1 to the Smoking Regulations (listed at Appendix II), subject to any exemptions as set out in Schedule 2 (listed at Appendix III).

(Note that the kinds of premises which can be defined within the regulations as no-smoking premises are limited under the 2005 Act<sup>15</sup> to one of 4 categories of premises, namely -

- premises to which the public or a section of the public has access;
- premises which are being used wholly or mainly as a place of work;
- premises which are being used by and for the purposes of a club or other unincorporated association; or
- premises which are being used wholly or mainly for the provision of education or of health or care services.

**‘Smoke’**<sup>16</sup> – means smoke tobacco, any substance or mixture which includes it or any other substance or mixture; and a person is to be taken as smoking if the person is holding or otherwise in possession or control of lit tobacco, of any lit substance or mixture which includes tobacco or of any other lit substance or mixture which is in a form or in a receptacle in which it can be smoked.

**‘Premises’**<sup>17</sup> includes –

- (i) any building or part of a building;
- (ii) any structure or part of a structure, whether moveable or otherwise;
- (iii) any installation on land or offshore;
- (iv) any tent, marquee or stall; and
- (v) any vehicle.

**‘Wholly enclosed’**<sup>18</sup> –

- (i) for premises other than a vehicle or part of a vehicle, having a ceiling or roof and, except for doors, windows and passageways, wholly enclosed, whether permanently or temporarily; or
- (ii) for premises that are a vehicle, or part of a vehicle, having a top or roof and, except for doors, windows and passageways, wholly enclosed, whether permanently or temporarily.

**‘Substantially enclosed’**<sup>19</sup> –

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<sup>14</sup> see section 4(2) of the 2005 Act

<sup>15</sup> see section 4(4) of the 2005 Act

<sup>16</sup> see section 4(1) of the 2005 Act

<sup>17</sup> see regulation 3(3)(a) of the Smoking Regulations

<sup>18</sup> see regulation 3(3)(b) of the Smoking Regulations

<sup>19</sup> see regulation 3(3)(c), (d) and (e) of the Smoking Regulations



(i) for premises other than a vehicle or part of a vehicle, having a ceiling or roof and, except for doors, windows and passageways, substantially enclosed, whether permanently or temporarily; or  
(ii) for premises that are a vehicle, or part of a vehicle, having a top or roof and, except for doors, windows or exits, substantially enclosed, whether permanently or temporarily,  
and in determining whether premises are 'substantially enclosed', no account is to be taken of openings in which there are doors, windows or other fittings that can be opened or shut;

Premises shall be taken to be 'substantially enclosed' if –

(i) the opening in the premises has an area; or  
(ii) if there is more than one, both or all those openings have an aggregate area, which is less than half of the area of the walls, including any other structures serving the purpose of walls, which constitute the perimeter of the premises.

(iii) where an opening is in, or consists of the absence of, such walls or other structures or a part of them, their area shall be measured for the purposes of paragraph (iv) as if it included the area of the opening; and

**'Has access'**<sup>20</sup> - means has access whether on payment or otherwise, and whether as of right or by virtue of express or implied permission.

The Smoking Regulations also contain<sup>21</sup> various other definitions of terms or phrases which are used within those regulations, for example:

**'Designated room'** - a room which:

(a) has been designated by the person having the management or control of the no-smoking premises in question as being a room in which smoking is permitted;  
(b) has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid floor-to-ceiling walls;  
(c) has a ventilation system that does not ventilate into any other part of the no-smoking premises in question (except any other designated rooms); and  
(d) is clearly marked as a room in which smoking is permitted.

**'Designated hotel bedroom'** means a room which –

(a) is set apart exclusively for the sleeping accommodation of travellers;  
(b) has been designated by the person having the management or control of the hotel as being a room in which smoking is permitted;  
(c) has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid floor-to-ceiling walls;

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<sup>20</sup> see regulation 3(3)(f) of the Smoking Regulations

<sup>21</sup> see regulation 1(1) of the Smoking Regulations

(d) has a ventilation system that does not ventilate into any other part of the hotel (except any other designated hotel bedrooms); and  
(e) is clearly marked as a bedroom in which smoking is permitted.

**Appendix II – “No-smoking premises” (as set out in Schedule 1 to the Smoking Regulations)**

1. Restaurants.
2. Bars and public houses.
3. Shops and shopping centres.
4. Hotels.
5. Libraries, archives, museums and galleries.
6. Cinemas, concert halls, theatres, bingo halls, gaming and amusement arcades, casinos, dance halls, discotheques and other premises used for the entertainment of members of the public.
7. Premises used as a broadcasting studio or film studio or for the recording of a performance with a view to its use in a programme service or in a film intended for public exhibition.
8. Halls and any other premises used for the assembly of members of the public for social or recreational purposes.
9. Conference centres, public halls and exhibition halls.
10. Public toilets.
11. Club premises.
12. Offices, factories and other premises that are non-domestic premises in which one or more persons work.
13. Offshore installations.
14. Educational institution premises.
15. Premises providing care home services, sheltered housing or secure accommodation services and premises that are non-domestic premises which provide offender accommodation services.
16. Hospitals, hospices, psychiatric hospitals, psychiatric units and health care premises.
17. Crèches, day nurseries, day centres and other premises used for the day care of children or adults.
18. Premises used for, or in connection with, public worship or religious instruction, or the social or recreational activities of a religious body.
19. Sports centres.
20. Airport passenger terminals and any other public transportation facilities.
21. Public transportation vehicles.
22. Vehicles which one or more persons use for work.
23. Public telephone kiosks.

Note that most of the above are defined terms and so, in order to properly interpret the list, reference must be made to the interpretation provision in regulation 1(1) of the Smoking Regulations.

**Appendix III – Exemptions (as set out in Schedule 2 to the Smoking Regulations)**

Those premises or parts of premises which are exempt from the legislation are:

1. Residential accommodation.
2. Designated rooms in adult care homes.
3. Adult hospices.
4. Designated rooms in psychiatric hospitals and psychiatric units.
5. Designated hotel bedrooms.
6. Detention or interview rooms which are designated rooms.
7. Designated rooms in offshore installations.
8. Private vehicles.
9. Designated laboratory rooms.
10. HM Submarines and ships of the Royal Fleet Auxiliary.

Note that all of the above are defined terms and so, in order to properly interpret the list, reference must be made to the interpretation provision in regulation 1(1) of the Smoking Regulations.