

**10B. SMOKE FREE POLICY – UPDATE REPORT**

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(Report of Head of Legal Services & Monitoring Officer)

**1. Purpose of Report**

Members asked at Executive Committee on the 13th of June 2007 who gets prosecuted for offences relating to smoking under the legislation. There are three offences created by the Health Act 2006:

**1. Offence of smoking in a smoke-free place**

Under Section 7 (2) of the Health Act 2006, a person who smokes in a smoke-free place commits an offence. For the purposes of this Section, a “smoke-free place” can mean premises, places and vehicles. It is a defence for a person charged with this offence to show that he did not know, and could not reasonably have been expected to know, that it was a smoke-free place. This links into the requirement for signage. The penalty for this offence is level one on the standard scale (currently £200.00).

**2. Offence of failing to prevent smoking in a smoke-free place**

Under Section 8 (1) of the Health Act 2006, any person who controls or is concerned in the management of smoke-free premises is under a duty to stop people smoking in those premises. Any person who fails to comply with this duty commits an offence (Section 8 (4)). It is a defence for a person charged with this offence to show that he took reasonable steps to cause the person in question to stop smoking or that he did not know, and could not reasonably have been expected to know, that the person in question was smoking or that, on other grounds, it was reasonable for him not to comply with the duty. The penalty for offences under this section is level four on the standard scale (currently £2,500.00).

**3. Offence of failing to display signs**

There is also an offence of failing to comply with the duty to make sure that no-smoking signs complying with the legislative requirements are displayed in relevant premises (Section 6 (5)). The offence would be committed by any person who occupies or is concerned in the management of smoke-free premises. The penalty for this offence is level three on the standard scale (currently £1,000.00).

Under Regulation 3 of the Smoke-free (Premises and Enforcement) Regulations 2006 (SI 2006/3368), District Councils are designated as enforcement authorities for the purposes of the smoke-free legislation contained in the Act.

Premises are treated as smoke-free if they are used as a place of work – they are smoke-free all the time (Section 2 Health Act 2006).

The Council has a duty as an employer to provide and maintain a safe working environment. In order to comply with this duty, Officers are recommending the provisions in relation to domiciliary visits contained in the draft smoke-free policy.