

**Glasgow City Council****Environment, Sustainability & Carbon Reduction City Policy  
Committee****Report by Acting Executive Director, Land and Environmental  
Services****Contact: William Hamilton      Ext: 76624****SMOKEFREE LEGISLATION ENFORCEMENT****Purpose of Report:**

To advise committee on the current strategy for enforcement of Smokefree legislation and the proposals for enforcement of new legislation regarding smoking at hospitals.

**Recommendations:**

The committee is asked to discuss and consider the contents of the report and comment as necessary.

Ward No(s):

Citywide: ✓

Local member(s) advised: Yes  No       consulted: Yes  No ✓**OFFICIAL****PLEASE NOTE THE FOLLOWING:**

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# 1 Background

## Introduction

- 1.1 The prohibition of smoking in enclosed public spaces was introduced by the Smoking, Health and Social Care (Scotland) Act 2005 (the 2005 Act) and the Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006.
- 1.2 The Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 amends the 2005 Act to create three additional offences:
  - a) permitting others to smoke within a designated perimeter outside a hospital building;
  - b) smoking within a designated perimeter outside a hospital building; and,
  - c) failing to display the appropriate warning notices in hospital building and on hospital grounds.

Environmental Health will enforce the amended legislation when Scottish Ministers prepare Regulations to define the no-smoking area in question; and current information suggests that the Regulations will be in force by Autumn 2018.

- 1.3 Environmental Health has been responsible for enforcement of the restrictions on smoking since the introduction in 2005 of the prohibition of smoking in enclosed public spaces. Routine proactive monitoring, reactive investigation and enforcement initiatives have indicated a general culture of compliance within the community in Glasgow; however, there are still some instances of non-compliance.
- 1.4 The Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016 (the 2016 Act) came into force on 5 December 2016. LES Environmental Health and Police Scotland share responsibility for enforcement of this legislation.
- 1.5 In addition to the statutory duty to enforce the legislation, LES Environmental Health plays a role in the 2015 joint Glasgow City Council and NHS Greater Glasgow & Clyde Tobacco Strategy and Action Plan (“Action Plan”). The Action Plan was drafted to meet obligations conferred by the Scottish Government Tobacco Control Strategy (“Tobacco Control Strategy”) “Creating a Tobacco-Free Generation” which was published in 2013 and is a five year plan for action across the key themes of health inequalities, prevention, protection and cessation.
- 1.6 This Tobacco Control Strategy goes beyond simple enforcement and requires that Local Authorities “work with partners in the voluntary sector and local communities”; Objective 3 of the Action Plan incorporated this by committing LES Environmental Health to a programme of engagement with operators of shisha cafes to protect the public from the dangers of second-hand and *sidestream* smoke. Previously, this function had formed part of Environmental

Health proactive monitoring and reactive investigation but, as local intelligence suggested a growing demand within the Glasgow community (particularly within the Black and Minority Ethnic community), it was determined that more focused action was warranted. This engagement programme is detailed in paragraphs 2.7 through 2.12 below.

- 1.7 While the Action Plan is driven by colleagues in the Chief Executive’s Office, Environmental Health will continue to offer advice and guidance when input is requested.

## 2. Smoking in Enclosed Public Spaces

- 2.1 The role of Environmental Health in enforcing the 2005 Act is to support the Scottish Government Strategic Objective of a Healthier Scotland in that it contributes to the Scottish Government National Performance Framework by factoring into the following Scottish Government National Indicators:

- Improve Scotland’s Reputation;
- Reduce Premature Mortality;
- Reduce Emergency Admissions to Hospital;
- Reduce the Percentage of Adults who Smoke.

- 2.2 Through the first three quarters of 2017/18, proactive monitoring has included in excess of 2400 visits to commercial premises with a further 39 reactive investigations following requests for service from members of the public. To date, formal enforcement action has not been required to secure compliance in 2017/18.

- 2.3 For comparison, table 1 below summarises the formal action which was required in the previous five years:

Year	Fixed Penalty Notices for:			Report to Procurator Fiscal
	smoking in prohibited area	permitting smoking in prohibited area	failure to display appropriate signage	
13-14	1	1	0	0
14-15	16	5	0	1
15-16	2	2	0	0
16-17	0	0	0	0
17-18*	0	0	0	0

Table 1: formal action by year

- 2.4 It should be noted that, where a case was reported to the Crown Office and Procurator Fiscal Service (COPFS), the accused in the 2014 case was fined £135 after pleading guilty to one charge.
- 2.5 It can be seen from Table 1 above that formal action to address those permitting others to smoke and for failing to display the appropriate no-smoking signs has decreased; this would suggest that the actions of Environmental Health and national campaigns over this period have successfully informed duty holders of their obligations. The notable exception is 2014/15, when a programme of targeted enforcement was undertaken in relation to premises where persistent non-compliance had been found.
- 2.6 While compliance with the 2005 Act is largely accomplished, contraventions can also be addressed in an informal manner by Environmental Health staff with resolution usually dependent on the attitude of the alleged offender(s) further reducing the requirement for formal action. The transient nature of the offence often creates difficulties for officers to witness the offence being committed which can contribute to the decision to adopt an informal approach.

#### Shisha Initiative

- 2.7 As referenced above, a programme of engagement with operators of shisha cafes was instigated as local evidence suggested that the practice was increasing in popularity among sections of the community. This was found to be the case with the number of premises known to be offering shisha increasing from two in January of 2014 to eight premises known to be in operation and a further five proposed as of December 2017.
- 2.8 Through this engagement, Environmental Health has sought to offer advice and guidance (and, where necessary, enforcement) to secure legal compliance while understanding the cultural significance and function of such establishments. Environmental Health is cognisant of the need to support local businesses by providing advice and guidance to allow them to operate in compliance with the legislation.
- 2.9 However, the principal aim of the engagement was to enable proprietors to operate their business without exposing staff, patrons and others to the harmful effects of tobacco smoke in enclosed areas. By such means, the Council was able to perform its statutory duty while contributing to the Scottish Government Strategic Objective of a Wealthier and Fairer Scotland and the Scottish Government Purpose Target of Economic Growth. This links with the following Scottish Government National Indicators:
- Increase the Number of Businesses;
  - Increase Cultural Engagement.

- 2.10 In addition, it has been noted that enforcement action can result in relocation of the activity to alternate premises. This increases the resource burden on Environmental Health by resulting in repetition of monitoring and enforcement without securing long-term compliance.
- 2.11 Through the programme of engagement, the following results have been achieved through the first three quarters of 2017/18:
- There has been an increase in unsolicited contact from operators of premises requesting advice on proposed changes to their premises with regard to continued compliance with the legislation;
  - Discussions are ongoing between Environmental Health and the operators of four proposed premises to facilitate premises design which would not contravene the legislation;
  - Two existing premises are undergoing remodelling work to allow the businesses to operate in accordance with the legislation.
- 2.12 A joint enforcement initiative was conducted with Police Scotland which included a visit to one premises where persistent non-compliance had been noted; the premises has subsequently changed hands. Discussions are at an early stage with the new operator of the premises who is exploring business models which do not include smoking on the premises.

#### Smoking Outside Hospitals – extended statutory obligations.

- 2.13 The Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 amends the 2005 Act to create the offences of permitting others to smoke outside a hospital building, smoking outside a hospital building and failing to display the appropriate warning notices in hospital buildings and on hospital grounds.
- 2.14 The no-smoking area outside a hospital building is held to be the area lying immediately outside the hospital building, and bounded by a perimeter of a specified distance from the building. While it has yet to be officially confirmed, information received to date suggests that the area within 15 metres of a building on the grounds of a Health Service hospital will form the enforceable 'No-Smoking' area; the 15 metre area would be measured from the outermost point of the building which would include overhangs and canopies and not simply from the ground floor wall.
- 2.15 The perimeter of the no-smoking area around a hospital building and the distance from a hospital entrance will be defined by Regulations to be issued by the Scottish Government; it is anticipated that these Regulations will be in force by the end of the second quarter of 2018.

- 2.16 It should be noted that the amendment to the 2005 Act states that the no-smoking area will be a prescribed distance from a hospital building but only insofar as the area forms part of hospital grounds. Therefore, LES will not be the duty holder where a hospital entrance is onto a public road or pavement.
- 2.17 From discussion with colleagues at NHS Greater Glasgow & Clyde Health Board (NHSGGC) and from preliminary investigations at a number of local hospitals, it is apparent that there is a trend of smoking at hospital entrances despite the existing, unenforceable NHS policy of no smoking on hospital grounds. During a recent visit to the Queen Elizabeth University Hospital it was noted that the design of the building includes overhangs and/or canopies at many entrances which will more than likely be used as impromptu smoking shelters.
- 2.18 Environmental Health is actively involved in two working groups. One is national in scale and includes representatives of the Scottish Government. The other is locally-based and includes representatives of NHSGGC and neighbouring local authorities.
- 2.19 The local working group with NHSGGC is endeavouring to assist colleagues at the Health Board to meet their statutory duty in terms of taking reasonable steps to not permit smoking in the 'No-Smoking' area; however, it is anticipated that Environmental Health will be requested to conduct enforcement activities on hospital grounds. The approach to any such enforcement action will have to be carefully considered due to the likelihood of adverse public reaction and media coverage which may result due to the potential circumstances of an offender on hospital grounds. The resource implication of conducting any such enforcement activities will also require consideration as it will necessitate the redeployment of officers from other duties to conduct monitoring and enforcement at hospitals.
- 2.20 The strategic approach for the enforcement of the Smoking, Health and Social Care (Scotland) Act 2005 (as amended) has yet to be finalised. However, it is proposed that enforcement be conducted during predetermined 'Action Weeks' to be staged throughout the year. This will allow a more efficient allocation of resources while achieving the statutory duty of enforcing the Act. Intelligence, allegations and national priorities will be collated and resources targeted to the appropriate premises to obtain the most effective outcome.

### **3. Smoking in a Private Motor Vehicle while a Child is Present**

- 3.1 The Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016 came into force on 5 December 2016. LES Environmental Health and Police Scotland share responsibility for enforcement of this legislation.
- 3.2 It is an offence for an adult to smoke in a private motor vehicle while a child (defined as an individual under 18 years of age) is in the vehicle and the

vehicle is in a public place. An escalating, phased programme of proactive monitoring and enforcement was devised and implemented; Scottish Government direction expected an initial non-enforcement window of 6 months wherein offenders would be warned and provided with information on the new offence rather than facing formal action.

- 3.3 Environmental Health has included confirmation of compliance with this legislation as part of the Roadside Emissions testing which has included an assessment of over 3200 vehicles per year. To better target enforcement, it is proposed that an assessment of compliance be included in future initiatives such as enforcement on vehicle idling at schools as this is deemed to be valuable targeting of resources in an area where adults and children are known to be in the same vehicle.

#### **4. Impact on Resources**

- 4.1 The Scottish Government has informed local authorities of the expectation that funds currently allocated for enforcement of tobacco control legislation will be re-directed to enforce the perimeter around hospital buildings; the funding in question is provided as part of the block grant and it has not been possible to determine Glasgow City Council's allocation of the £2.5m shared between Scottish Local Authorities.
- 4.2 While additional resources will not be provided for this function, it is anticipated that the performance of local authorities will be scrutinised; it should be noted that statutory performance indicators have not been set and LES will have discretion to determine its strategic approach.
- 4.3 It should be noted that after the 2016 Act received Royal Assent but prior to the offence coming into force, the Council had received a Freedom of Information request from national media in relation to the number of fixed penalties issued. It is, therefore, reasonable to assume that there may be media interest in our enforcement activities in the future.
- 4.4 In light of both of these points, it will be necessary to commit resources to monitor compliance and take action (in accordance with the enforcement policy). It will be necessary for officers in LES to:
- Respond to requests for service from members of the public, elected members and strategic partners (NHSGGC);
  - Proactively monitor compliance; and
  - Provide advice and guidance to duty holders
- 4.5 It should be noted that, when responding to requests for service, it is unlikely that officers will be able to witness and address non-compliance through an ad-hoc visit. It may be that co-ordinated monitoring would be required in order

to witness an offence and take enforcement action. To this end, consideration is ongoing to devise a strategy whereby information and guidance can be issued in these circumstances as an alternative to committing resources to monitoring exercises of indeterminate length.

## 5. Challenges

- 5.1 There are potential challenges associated with enforcement of the legislation. However, it is proposed that LES Environmental Health will engage with strategic partners in order to ensure the smooth introduction of the new legislation.
- 5.2 The Service will meet with NHS Greater Glasgow and Clyde as well as neighbouring Local Authorities in order to develop an action plan and/or memorandum of understanding in relation to the monitoring of compliance with the new restrictions as well as on any enforcement action that may be necessary.
- 5.3 LES and our partners are aware of the possibility of adverse comment and publicity associated with this work. It is, therefore, proposed that a communication strategy be produced in order to inform all interested parties and stakeholders

## 6. Policy and Resource Implications

### Resource Implications:

*Financial:* There are no new financial implications arising from this report.

*Legal:* The Smokefree enforcement activity is conducted in terms of the following:

- Smoking, Health and Social Care (Scotland) Act 2005
- Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006
- The Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016

*Personnel:* There are no direct personnel issues arising from this report

*Procurement:* There are no direct procurement issues arising from this report

**Council Strategic Plan:**

The strategy and activity detailed in this report support the following themes in the Strategic Plan 2017 to 2022:

- A Healthier City
- A Well-Governed City that Listens and Responds

**Equality Impacts:**

*Does the proposal support the Council's Equality Outcomes 2017-22*

Yes

*What are the potential equality impacts as a result of this report?*

No significant impact  
Screening undertaken – see link below:  
<https://www.glasgow.gov.uk/CHttpHandler.ashx?id=40279&p=0>

**Sustainability Impacts:**

*Environmental :*

The activity described aims to enhance the environment in enclosed public places, in motor vehicles and areas outside hospitals.

*Social:*

The activity described will impact upon members of the public at work, during leisure periods, when travelling in vehicles and when attending or visiting hospitals

*Economic:*

No impact

**Privacy and Data Protection impacts:**

No impacts

**7 Recommendations**

The committee is asked to discuss and consider the contents of the report and comment as necessary.