



**SELBY DISTRICT COUNCIL  
ENVIRONMENTAL SERVICES**

**ENFORCEMENT POLICY FOR THE REGULATION  
OF SMOKING IN SMOKE FREE PREMISES AND  
VEHICLES**

‘To improve the quality of life of those who live and  
work in the district’

This document sets out an enforcement  
policy consistent with the Central and Local  
Government Enforcement Concordat which  
Selby District Council has adopted

# **ENFORCEMENT POLICY FOR THE REGULATION OF SMOKING IN SMOKE FREE PREMISES AND VEHICLES**

## **1.0 Introduction**

- 1.1 The Council has a statutory duty to enforce the smoke free provisions of the Health Act 2006. In general terms, smoking is prohibited in all enclosed and substantially enclosed premises to which the public have access and work premises and vehicles used by more than one person.
- 1.2 This policy is consistent with the approach taken by all North Yorkshire local authorities and the City of York, in order to promote a consistent approach in the sub region.

## **2.0 Statement of Objectives**

- 2.1 It is the Council's policy to protect people who visit or work in enclosed or substantially enclosed public places, work premises and vehicles from exposure to second hand smoke in Selby District.

## **3.0 Achieving the Objectives**

- 3.1 All enforcement officers shall carry out enforcement duties in line with this policy. They will be made aware of the policy and any amendments to it.
- 3.2 The policy shall be reviewed and amended annually, or as and when relevant new legislation or guidance is produced regarding smoke free enforcement activities. The policy will have regard to Statutory Codes of Practice and Local Authorities Co-ordinators of Regulatory Services (LACORS) technical guidance.
- 3.3 The Council will work in partnership with other Council's, departments and other enforcement agencies where necessary to ensure that the objectives of this policy are achieved.
- 3.4 The decision to take enforcement action shall be based on the assessment of risk to public health posed by the contravention.

## **4.0 Decision Making**

- 4.1 The Head of Service - Environmental Health & Leisure must authorise any prosecution.
- 4.2 The recommendation to prosecute must be agreed by the Principal Environmental Health Officer (Commercial) and made in writing to the Head of Service - Environmental Health & Leisure and shall only proceed with his written authority.
- 4.3 Only competent enforcement officers, duly authorised by the Council, shall initiate enforcement action.
- 4.4 The Solicitor to the Council will institute proceedings and prosecute on behalf of the Council in respect of any offence against any legislation for which the Council is the Enforcing Authority.

## **5.0 Principles of Enforcement**

- 5.1 Enforcement officers will seek to achieve the principles of proportionality in applying the law and securing compliance, consistency of approach, targeting of enforcement action and transparency about how the Council operates and what those regulated may expect.
- 5.2 *Proportionality* means relating enforcement action to risks. Those whom the law protects and those on whom it places duties expect that action taken by the Council to achieve compliance should be proportionate to the risk to public health and the seriousness of any breach of the law.
- 5.3 *Consistency* of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.
- 5.4 *Targeting* means ensuring that enforcement action is targeted primarily on those whose activities give rise to the most serious risks or where the risks are least well controlled. Action will be focused on those who are responsible and who are best placed to control the risks.
- 5.5 *Transparency* means helping duty holders and members of the public to understand what they should expect from the Council as an enforcing authority. It also means making clear to duty holders not only what they have to do but also, where this is relevant, what they don't. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.

## **6.0 Enforcement Strategy**

- 6.1 The Council will have a graduated approach to enforcement. Advice and education will be offered at a local level, building upon the significant national campaign supported by the Department of Health and associated partners.
- 6.2 The Council will discharge its duties in conjunction with existing routine inspection programmes, complaints and local based intelligence. The Council has an extensive knowledge and experience of the district and relevant premises.
- 6.3 Response to complaints will be prioritised taking into account the number of complaints received, the number of people likely to be affected, the nature of the complaint and whether the alleged offender has been previously warned regarding non compliance.
- 6.4 In the first instance the Council will seek to ensure that owners, occupiers, managers or persons in control of premises comply with the relevant smoke free provisions.
- 6.5 The Council may also pursue action in relation to individuals who fail to comply with the smoke free provisions in a smoke free place where owners, occupiers, managers or persons in control of premises have taken all reasonable steps to ensure compliance with the smoke free provisions, including the use of appropriate signage.

## **7.0 Enforcement Options**

7.1 Enforcement officers will seek to achieve consistency, balance and fairness in enforcement actions and it shall be the responsibility of the Principal Environmental Health Officer (Commercial) to ensure that this is the case.

7.2 Through the North Yorkshire Food Liaison Group the Council shall seek to ensure, as far as possible, that enforcement action is consistent with neighbouring local authorities and national guidance. Enforcement issues will be raised, as necessary, with the Liaison Group.

7.3 This policy, Statutory Codes of Practice and LACORS technical guidance shall inform enforcement decisions where appropriate.

7.4 In considering the mode of enforcement action officers will consider all the facts and include:

- seriousness of the offence
- past history
- confidence in management
- consequences of non-compliance
- the likely effectiveness of the chosen enforcement route.

7.5 Where enforcement officers propose to take enforcement action that appears to be inconsistent with the view of other local authorities or contrary to LACORS advice, the matter will be considered at the North Yorkshire Food Liaison Group.

## **8.0 Informal Action**

8.1 Informal action includes advice, verbal warnings, request for action, letters and inspection reports left at the premises following an inspection.

8.2 Informal written communications shall:

- contain all necessary information to enable the recipient to understand what work or action is required and why it is necessary
- indicate the regulation contravened and the necessary remedy(ies) to achieve compliance
- clearly identify and list under a separate heading any recommendations for good practice to show that they are advice and not a legal requirement. This element also applies to verbal advice
- give a timescale for compliance where the contravention may lead to a significant risk to health

8.3 Follow up visits may be made to check items of non-compliance with legislation where the contravention may lead to a significant risk to health.

## **9.0 Formal Statutory Action**

- 9.1 The Council will provide advice and guidance. However, failure to respond to advice and guidance will result in formal action being considered by the Council.
- 9.2 Before deciding whether to prosecute a number of factors will be considered in line with the Code for Crown Prosecutors and any other national guidance concerning the taking of enforcement action.
- 9.3 The Council's approach to achieving compliance will be as follows:
- 9.4 Failure to display no-smoking signage
- 9.4.1 The manager or occupier of smoke-free premises/vehicles will be approached where appropriate signage is not in place. Advice on the signage requirements will be given and a timescale to take corrective action will be verbally agreed.
- 9.4.2 Where it has been found that appropriate signage has not been installed in an agreed timescale (or extended timescale as agreed with the local authority), a verbal and written warning will be issued and a date for compliance specified.
- 9.4.3 If appropriate signage is still not installed by the specified compliance date, the Council will consider serving a Fixed Penalty Notice (FPN).
- 9.4.4 The Council will consider taking legal proceedings where appropriate signage is still not in place following the service of a FPN, or where a previously issued FPN has not been paid.
- 9.5 Failure to prevent smoking in a smoke-free premises or vehicle
- 9.5.1 Where smoking is occurring in a relevant a smoke-free premises/vehicle the management or person in control of that premises/vehicle will be approached. They will be offered advice and issued with a verbal and written warning.
- 9.5.2 Where this advice is not acted upon and it is established that smoking is still taking place in a premises/vehicle, a final written warning will be issued.
- 9.5.3 Legal proceedings will be considered against the manager or person in control of a premises/vehicle if they continue to allow smoking after receiving a final written warning.
- 9.6 Smoking in a smoke-free premises or vehicle
- 9.6.1 The Council's aim is to achieve compliance with the legislation by ensuring that the management or person having control of a premises/vehicle prevents smoking where legally required.

- 9.6.2 Where reasonable steps have been taken to prevent smoking by the management or person having control, the Council may approach individuals who are smoking and give them a verbal warning.
- 9.6.3 Where this verbal warning is ignored and an individual continues to smoke, the Council will consider serving a FPN.
- 9.6.4 The Council will consider taking legal proceedings where it becomes aware of an individual who has previously received a FPN and continues to flout the law. The Council will normally prosecute those who fail to pay a FPN.

## **10.0 Local Authority Run Premises**

- 10.1 The findings of inspections of local authority-run premises will be communicated, in writing, to the relevant manager. Employees who fail to comply with the Corporate Smoking Policy will be subject to the Council's existing disciplinary and grievance procedures.

## **11.0 Equal Opportunities**

- 11.1 The Council is committed to promoting equality of opportunity for all people and recognise that some members of the community may have specific needs, which require further advice and assistance. If enforcement action is being considered, every effort will be made to ensure that there is no discrimination and the gravity of the situation is fully explained. Officers shall comply with the Council's Equalities Policy.

## **12.0 Rights of Appeal**

- 12.1 The mechanism for appeals against FPN's will be printed on, attached to, or enclosed with the Notice.

## **13.0 Complaints Procedure**

- 13.1 The Council has adopted a formalised complaints procedure that is easily accessible in a leaflet available, from the Council upon request (01757 705101). Details are also available on the Council's website [www.selby.gov.uk](http://www.selby.gov.uk). Statutory rights of appeal will be explained by the officer concerned where disputes cannot be resolved.