

Select Committee for the Environment: 6th March 2008

Report of the Director of the Urban Environment

The Health Act 2006: Progress with Smoke Free Enforcement

Purpose of Report

1. To update Committee on progress with the enforcement of the smoke free regulations made under the Health Act 2006.

Background

2. New legislation requiring virtually all enclosed and substantially enclosed workplaces, public places, work vehicles and public transport to be smoke free was implemented in England on 1st July 2007.
3. Environmental Health Officers within the Food and Occupational Safety service are responsible for enforcing the new legislation in approximately 11,000 premises in the borough including approximately 5,000 premises where health and safety is currently enforced by the Health and Safety Executive (HSE) as HSE have not been given enforcement powers for the new legislation. Enforcement in council owned buildings, public transport, common parts of residential premises (e.g. flats and sheltered housing) and in workplace vehicles is also the responsibility of Council Environmental Health Officers.
4. Considerable preparation with affected businesses was undertaken in the lead up to 1st July with publicity, provision of information and assistance, meetings or seminars being held with businesses such as licensed premises, taxi operators, care homes, bingo halls and betting shops in order to help them prepare for the changes.
5. Advising businesses and carrying out enforcement of the smoke free legislation contributes to the Council Plan themes of Safety, Environment, Caring and Quality Service Matters. One of the three strategic objectives of the Health and Wellbeing Partnership (H&WBP), set out in the Dudley Community Strategy, is to create a 'Smoke Free Generation' which will allow people in Dudley to live, play, socialise and work in a smoke-free environment. Tobacco control is also a key strand of the "Closing the gap- tackling health inequalities in Dudley" strategy aimed at reducing health inequalities in the borough. The current Local Area Agreement has targets set for the inspection of premises for smoke free compliance.

Smoke free work carried out since July 2007

6. From 1st July to 31st December 2007, 1432 premises and 79 vehicles in the borough were inspected for smoke free compliance, including pubs, clubs, shops, restaurants, offices, factories and taxis. There has been a high rate of compliance by businesses and members of the public with the new law, a situation which has been reflected nationally and due in part to the extensive preparations undertaken prior to July 2007. In Dudley, 97.8% of premises inspected comply with the requirement to be smoke free and 95% with the requirement to display no smoking signs.
7. Over 200 complaints and enquiries have been received from businesses and members of the public with 35 business owners having been issued with written warnings about failing to prevent smoking on their premises. In addition the proprietor of one licensed premises has been prosecuted and fined £1,000 for allowing customers to smoke in the premises. Thirteen individuals have also been issued with written warnings about smoking in a smoke free place and one fixed penalty notice has been served. Warnings have been issued to 12 businesses about failing to display no smoking signs and one public house proprietor has been issued with a fixed penalty notice for failing to display no smoking signs.
8. Officers continue to carry out smoke free inspections on a priority risk based programme as well as at all premises visited for environmental health purposes. Advice and guidance, including education and assistance to comply, is provided before enforcement action is taken.
9. Officers continue to educate businesses and members of the public by providing talks and presentations on the smoke free regulations and work closely with the Dudley Stop Smoking Service in relation to referrals to the service from businesses wishing to assist their employees to give up smoking.

Finance

10. The majority of the cost of providing the smoke free enforcement service to date has been met from a grant from the Department of Health of £163,000. This enabled the employment of one officer for six months to lead on implementing the legislation and 2 FTE (full time equivalent) temporary smoke free environment officers to be employed from July 2007 to March 2008. There is sufficient funding from the grant to enable one of the smoke free environment officer posts to be extended until March 2009. There is no further funding to enforce the legislation from March 2009 and further work will need to be met from within existing budgets. The Council will be tasked with continuing to inspect premises and enforce the smoke free legislation from within existing budgets in 2009-10 and beyond.

Law

11. The Health Act 2006 makes provision for prohibiting smoking in certain premises, places and vehicles. The Act also contains powers to make smoke free regulations. The specific requirements are contained in several separate sets of regulations. There is a duty under Section 10 of the Health Act 2006 for the local authority to enforce the provisions of the Act and regulations made under it.

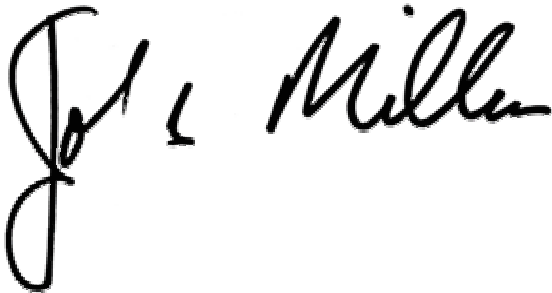
12. Those who do not comply with the law will be liable to a fixed penalty notice (FPN) or prosecution for the offences of:
- smoking in a smoke free place or vehicle- £50 FPN or £200 in court
 - failing to display a no smoking sign- £200 FPN or £1000 in court
 - allowing smoking in a smoke free place or vehicle- £2500 in court.
- Unlike fixed penalty fines in other areas, e.g. littering and dog fouling, the income from fixed penalty notices issued under the smoke free regulations cannot be kept by the Council.

Equality Impact

13. This report does not conflict with the Council's policy on equal opportunities.

Recommendation

14. It is recommended that progress with delivery of the smoke free enforcement service be noted by members.

A handwritten signature in black ink, appearing to read 'John Millar'. The signature is written in a cursive style with a large initial 'J'.

John Millar
Director of the Urban Environment

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List of Background Papers

The Health Act 2006