



## Policy and Resources Committee – 05 December 2016

### Public Health Act 2006 The Smoke-free (Private Vehicles) Regulations 2015

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#### Purpose of report

This report is to consider the proposal to authorise suitably qualified and experienced enforcement officers to enforce the provisions of the Smoke-free (Private Vehicles) Regulations 2015, made under the Public Health Act 2006.

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#### 1.0 Background

- 1.1 The Smoke-free (Private Vehicles) Regulations 2015 (the Regulations) extends the provisions of the Health Act, 2006 (the Act) to require Local Authorities to take action against those found to be smoking in private vehicles where a child or children are present. A full copy of the Regulations can be found at the following link <http://www.legislation.gov.uk/uksi/2015/286/regulation/6/made>. A copy of the Act can be seen at the following link <http://www.legislation.gov.uk/ukpga/2006/28/section/10>. Copies of these documents can be provided upon request.
- 1.2 The Smoke-free (Premises and Enforcement) Regulations, 2006, also enacted under the Act, already requires commercial vehicles to be smoke-free in certain conditions. This authority has taken action against licenced taxi drivers in the past who have been found to repeatedly breach this requirement. A copy of these Regulations can be found at the following link <http://www.legislation.gov.uk/uksi/2006/3368/regulation/3/made>

#### 2.0 Proposal

- 2.1 The Regulations require that private vehicles carrying a child is smoke free, and that Local Authorities are required to take enforcement action against anyone found to be smoking whilst a child is present in the vehicle.
- 2.2 Primary responsibility to detect and enforce lies with the Police as they have powers to stop and search moving vehicles, although it is expected that local authorities will work alongside police authorities to undertake targeted interventions.
- 2.3 The guidance that accompanies the Regulations also foresees officers working with schools and community groups to raise awareness of the law and the reasons behind this. These Regulations combine with other no smoking and smoke-free requirements to increasingly reduce the exposure of people to smoke and the effects of passive smoking in workplaces and other public enclosed areas.

#### 3.0 The Health Act 2006

- 3.1 The overarching objectives of the Act is to enable the provision of information to empower individuals to chose for themselves on matters affecting their health, and to

facilitate the enforcement of offences under the Act deemed to significantly and adversely affect the health of the population.

- 3.2 The provisions made by these Regulations include those for authorising enforcement officers, but also strongly advocate the provision of information, guidance and education to schools and community groups, and subject to resources, such action will also be a consideration of the service.
- 3.3 The Regulations permit the enforcement authority to issue Fixed Penalty Notices (FPN) or to proceed to prosecuting the offence. Guidance suggests that FPNs should be used for initial offences whilst prosecution should be used for repeat offenders or those who refuse to accept the FPN. Enforcement Officers may also issue a verbal warning if they feel appropriate, although the actions should be recorded and should only be as part of a recognised and graduated scale of enforcement. FPN accepted but not paid within the permitted time of 29 days shall be referred for prosecution for the offence of smoking, rather than non-payment of the FPN.

#### **4.0 Equality and Diversity Implications**

- 4.1 An equality impact assessment (EIA) has been completed. There are a number of positive implications identified in the EIA, including improving the health of children, and potentially offers financial benefits to people suffering socio-economic exclusion if the new law can also encourage them to cease smoking.

#### **5.0 Legal Implications**

- 5.1 There is an expectation that as Local Authorities share the enforcement obligations for the Regulations, competent enforcement officers are authorised to enforce.
- 5.2 Failing to permit the authorisation of competent officers is likely to expose the Council to a challenge as to how it is meeting this objective.
- 5.3 Officers considered for authorisation will be expected to be suitably trained before they are authorised.

#### **6.0 Risk Management**

- 6.1 By adopting the proposal to authorise enforcement officers, the Council is meeting its obligation regarding the Regulations made under the Act.
- 6.2 Failing to permit the authorisation of competent officers is likely to expose the Council to a challenge as to how it is meeting this objective.

#### **7.0 Resource and Financial Implications**

- 7.1 By adopting this proposal, it is unlikely that there will be any additional resource or financial implications as a result of the recommendations of this report.
- 7.2 Subject to the degree of enforcement found to be necessary after adopting this proposal, future financial and resource implications may need to be reviewed, but the expectations are that this role will be minimal for local authorities.

#### **8.0 Constitutional Implications**

- 8.1 In order for officers to begin taking action under the new requirements and to use the

powers provided, The Council's constitution requires members to adopt this proposal to allow the Council to authorise enforcement officers.

**9.0 Customer Service Implications**

9.1 There are no foreseeable additional Customer Service implications as a result of the recommendation of this report.

**10.0 Corporate Outcomes**

10.1 The Corporate Outcomes are:

- Good Quality of Life – by adopting this proposal, the Council is encouraging a cleaner and healthier quality of life, especially for children who may be exposed to second-hand smoke
- Strong Community Leadership – by adopting this proposal, it shows that the Council is prepared to actively encourage health improvements in its communities

**11.0 Recommendation**

11.1 The Committee is recommended to;

1. Consider the Equality Implications relating to this report (see section 4 of the report).
2. Resolve to recommend to Council that provision is made in Part 3.2 of the Constitution (Scheme of Delegation) to authorise the following officers to enforce the provisions of the Smoke-free (Private Vehicles) Regulations 2015:
  - a. Environmental Health Officers
  - b. Environmental Health Technical Officers
  - c. Environmental Protection Officers
  - d. Licensing Enforcement Officers
  - e. Health Protection Officers
  - f. Waste Management Officers

<b>Legal</b>	Power: Public Health Act 2006				
	Other considerations: The Smoke-free (Private Vehicles) Regulations 2015				
<b>Background Papers:</b> Implementation of smoke-free legislation in England: The Smoke-free (Private Vehicles) Regulations 2015					
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