

PORTFOLIO HOLDER DECISION

HEALTH ACT 2006 - APPLICATION OF FUNDING AWARDED FOR SMOKE FREE LEGISLATION

1. Purpose of the report

- 1.1 To bid for a temporary Environmental Health Technician to carry out duties under the provisions of the Health Act 2006. To bid for an element of overtime to carry out enforcement duties in out of hours situations and to bid for the funding of street cigarette litter bins where the consequent smoking related litter is causing a significant problem to the street scene section. This bid is directed at the funding awarded by the Department of Health to assist Local Authorities to enforce the smoke free provisions of the Act. The funding allocated to this Authority for the 2007/2008 year is £69,450.00.
- 1.2 It is proposed that the officer will be appointed on band 6 which is the current band for Environmental Health technicians for a 6 month temporary contract with a review at the end of that period to consider need to extend until 31st March 2008 when the funding runs out. The work plan will be designed to meet the needs of what is very new legislation and will have to include a significant amount of evening visits to both enforce and react to complaints.
- 1.3 There will also be a need to include an element for overtime, mileage and necessary equipment such as mobile phones.
- 1.4 The duties of this officer will include enforcement of the smoke free regulations, assessment of noise caused as a consequence of the legislation and an element of Clean Neighbourhood and Environment Act enforcement (litter).
- 1.5 Evidence from the experience in other countries indicates that as a consequence of the legislation there is a considerable amount of smoking related litter that accumulates outside certain types of premises such as Public Houses that are entered directly off of the street. This will have a significant effect upon the street scene in general and the street scene service in particular. The provision of bins will considerably reduce that burden.

2. Background

- 2.1 The Background to the legislation can be found in the briefing note submitted to the CMT on 29th March 2007 which is attached to this report.
- 2.2 The funding from the Department of Health has been allocated to a budget but would remain unavailable to the Environmental Health Service until the Cabinet is able to consider the bid on 2nd July 2007.
- 2.3 The legislation comes into force on 1st July 2007 by the time there have been interviews and an appointment it would not be until August or even September when a person can be in post. This will miss the most intensive period of enforcement and will certainly miss the important period of guidance and advice which is currently being undertaken by the existing Environmental Health team. This is significantly reducing the resources that we can apply to our core functions such as Food safety and Health and Safety.

3. The Requirement

- 3.1 The appointment of an Environmental Health Technician to undertake the enforcement of the Smoke free legislation on a 6 month fixed term contract with an option to review and continue the contract until the funding terminates on 31 March 2008.
- 3.2 The appointment will be on band 6 (£35,450 pro rata inclusive of on costs) for a 6 month fixed term contract with the option to review.
- 3.3 The contract will require an additional element for mileage and phone costs of £4000.00.
- 3.4 The Environmental Health Service will also require an element for overtime which may result from the complaints arising as a consequence of the legislation. This will involve both areas of the service that is Environmental Health (commercial) and Environmental Protection it is not possible to be precise but is estimated at £5000.00.
- 3.5 To allocate an element of the funding to the provision of street cigarette litter bins. It is not possible to be precise in respect of this amount but it will be allocated in accordance with need and at the discretion of the Street Scene Manager. It is estimated to be £ 3000.00. This calculated as 15% of the total number of public houses in the New Forest and where there are accesses directly off of the street.

4. Financial Implications

- 4.1 None other than those in the report.

5. Environmental and Crime and Disorder Implications

- 5.1 The post will positively impact on Environmental crime which must be included in any assessment of Crime and Disorder in the District. Experiences in Ireland and Scotland have shown immense public benefit from Smoke free status. Many restaurants have seen an increase in customers created by the healthier environment. However, there does need to be an awareness of the potential for street litter in the form of cigarette butts surrounding smoking shelters.

There has been a minor increase in Anti Social Behaviour in areas that have a Smoking Ban – this has been associated with activities outside licensed premises. This post will help mitigate these effects.

6. Equality and Diversity implications

- 6.1 Like our enforcement duties we will strive to be fair, independent and objective when enforcing the legislation. In particular, all officers will ensure that their decision takes into account any relevant issues relating to ethnic or national origin, sex, religion and belief, political views or the sexual orientation of the offender or complainant, victim, witness, etc. We are unaware of any specific issues in this geographical area that may affect one group more than others.

7. Other Options Considered

7.1 Funding this post by using the current vacancies in Environmental Health Commercial was considered but rejected because of the severe restriction it would place upon the Environmental Health Commercial service to plan the replacement the posts. It was also rejected in the light of the affect the introduction of the Smokefree legislation has been having upon our core services.

8. The Recommendation

8.1 That the Environmental Health Service has access to the Department of Health Funding to:

- a) Appoint an Environmental Health Technician on a 6 month fixed term contract on Band 6 (£35,450.00 pro rata) with the option to review to extend until the 31st march 2008
- b) To allocate the necessary element for mileage and phone costs of £4000.00
- c) To allocate an element of £5000.00 to cover the overtime costs associated with the introduction and enforcement of the Smoke free legislation of both Environmental Health (commercial) and Environmental Protection
- d) To allocate an element of £3000.00 to the provision of street cigarette litter bins.

Portfolio Holder's Endorsements

I agree the recommendation as set out in **paragraph 8.1 (a, b, c)** of this report.

Signed CLLR M D HOLDING

Date of decision..... 24th May 2007

I agree the recommendation as set out in **paragraph 8.1(d)** of this report

Signed..... CLLR M THIERRY

Date of notice of Decision..... 30th MAY, 2007

Date on which notice given of this Decision - 30 May 2007

Last date for call-in - 6 June 2007

HEALTH ACT 2006 - SMOKE FREE THE IMPLICATIONS

1. INTRODUCTION

- 1.1 December saw the introduction of the Health Act 2006. The Act contains many issues but the principle one for the Local Authority is that of the requirement to enforce Smoke free legislation in the workplace which includes enclosed public spaces and work vehicles.
- 1.2 The introduction of the Smoke free provisions of the Health Act 2006 followed the successful implementation of Smoke free legislation in several countries including Scotland and the Republic of Ireland. Its implications will be wide-ranging; locally every business in the New Forest will be affected by it.
- 1.3 The legislation is designed to protect workers and members of the public from the serious risks of second-hand smoke. As a result, people working in bars, restaurants, pubs and other workplaces will enjoy breathing fresher air.
- 1.4 In the run up to the new legislation which will come into force on 1st July 2007 there is likely to be lots of questions raised by the public about how it's going to affect businesses. We have put together as many possible questions as we can anticipate in the FAQ section of the web pages as a starting point.

2. WHAT THE NEW LAW WILL DO

- 2.1 Smoking will be prohibited in all enclosed or 'substantially enclosed' public spaces and workplaces by making it an offence to:
 - Smoke in Smoke free premises
 - Permit others to smoke in Smoke free premises
 - Fail to display warning notices in Smoke free premises
- 2.2 Definitions as to what constitutes 'enclosed' and 'substantially enclosed' are found in the Smoke-free (Premises and Enforcement) Regulations 2006 which were published in late December 2006. In simple terms, this means premises that are either fully enclosed (walls, ceilings, etc.) or are 50% enclosed as the "substantial criteria".

3. WHICH PREMISES ARE AFFECTED

- 3.1 Smoke-free legislation will affect all premises which:
 - The public has access to, e.g. pubs, clubs, restaurants, cafes, etc.
 - Are being used wholly or mainly as a place of work.
 - Are being used wholly or mainly for providing education, health, or care services.
- 3.2 Work also covers voluntary work. An example would be an event in a village hall staffed by volunteers and if the public attended it will be both a workplace and a public space.

4. WHAT ABOUT VEHICLES?

- 4.1 All vehicles for public transport, e.g. buses, trains and taxis will be affected by the legislation.
- 4.2 Where a vehicle is used as a workplace by more than one person, regardless of whether they are in the vehicle at the same time, it will be required to be Smoke free at all times. This will protect shift and other workers using the same vehicle from the hazards of second-hand smoke.

5. ARE THERE EXEMPTIONS?

- 5.1 There are a few exemptions which include premises which are used as full time places of residence for extended periods, e.g. private dwellings, residential premises and adult care homes will be exempt. Designated rooms in hotels, hostels and bed and breakfast accommodation since they are places where people live even though they are not private homes. N.B. common areas in Houses in Multiple Occupation (HMOs) will not be exempt.
- 5.2 Where smoking cannot take place outside for safety reasons, then designated smoking rooms/areas may be allowed. However, these must not be used for any other purpose. Such exempted places will include prisons and oil rigs!

6. PENALTIES

6.1 In general:

- Smoking in a Smoke free place could lead to a fine of £200.00 with a fixed penalty option of £50.00 (with discounts for early payment).
- Failure to prevent smoking in a Smoke free place, a fine of £2500.00.
- Signage offences – a fine of £1000.00. Fixed penalty option of £200.00 (with discounts for early payment).

6.2 Enforcement

- 6.2.1 Enforcement will be in accordance with the Council's enforcement policy. The details of the manner in which this will be carried out are yet to be decided. It will require an immense amount of awareness raising during the next few months. Experience in Liverpool, where Smoke free has been a live issue for many years, has shown that many workplaces, particularly, think that this is a piece of legislation that only applies to the hospitality trade.
- 6.2.2 There will be some proactive visits following the commencement date; after that we will be required to require visits to investigate complaints. We will also need to ensure that the required authorisations are in place for visiting and enforcement officers to use the provisions of the Act. This will need to include other visiting officers such as the private sector housing service, who would need to be authorised to enforce the common area aspects of HMOs.

6.3 Who will enforce?

The principle burden of enforcement will fall upon the Commercial and Environmental Health sections of Environmental Health, although the Health Act does not specifically mention this function being located in any particular service of Local Government. However, this service already has the responsibility of enforcing Health and Safety legislation; also, all the enforcement advice and training has been, and will continue to be, directed at this service by both the Chartered Institute of Environmental Health and the Department of Health.

The Local Authority will have the power to authorise officers under the provisions of section 10(5) of the Act whether or not they are an officer of the Council.

7. HOW WILL IT AFFECT THIS AUTHORITY?

7.1 The Local Authority will need to be fully compliant with the requirements of the Act and associated regulations. A complete review will need to be undertaken in-house to ensure compliance. This should be instigated earlier rather than later. However, initial discussions with the corporate Health and Safety manager have indicated that we have already instigated a Smoke free environment throughout. There will nevertheless be a need to use the appropriate legal signage; this will include all buildings and vehicles.

7.2 It is likely that there will be enquiries from business owners in respect of the construction of smoking shelters. This will need the co-operation of the planning service and building control. There is already an agreement between Environmental Health and NFDC Planning to obtain advice. This will need to be extended to the National Park Authority.

7.3 There will be a need to ensure that our vehicle fleet users are compliant, e.g. lease car users, etc. In addition, the essential car users will need to be informed of their responsibilities in respect of the carrying of work passengers.

7.4 There will also be implications for a wide range of other services, including Licensing, Tourism, Planning and Leisure. Some areas of Scotland have seen considerable increases in planning applications for Smoking Shelters outside premises.

7.5 The other secondary issue that seems to have occurred in areas of Scotland and Ireland is an increase in the number of complaints that have been received concerning tobacco related litter and noise outside premises. Smokers, who would have previously been inside, are congregating, in sometimes large numbers, outside the premises. In the case of pubs in particular, this has led to other concerns relating to them failing to comply with the premises licenses issues under the Licensing Act. There has also been some increase in drinking in streets as a result.

8. WHAT HAS BEEN DONE IN PREPARATION FOR THE CAMPAIGN?

8.1 Information was posted on the New Forest Website in early December 2006. This included a section on frequently asked questions (FAQ's).

8.2 An information leaflet has been published by the Hampshire and IOW Smoke Free Alliance which is being distributed, at present, via the Environmental Health routine inspection programmes. Leaflets have also been made available throughout the various centres around the District.

8.3 Early contact has been made with the planning service via the Head of Planning

- The Environmental Health Manager (Commercial) has attended service planning training for the campaign.
- The Corporate Health and safety Manager has been made aware of the need to comply with the requirements of the Act.
- The Health Policy and Development Management has been kept fully involved, particularly in respect of the need to include the 'Quitters' smoking cessation programme within the campaign.
- The Tourism Officer, Anthony Climpson, has been briefed and further discussions are being held to progress some joint working initiatives.
- A key officer meeting with Environmental Health, the Fleet Manager, the Transport Manager, the internal Health and Safety Manager and Human Resources to discuss the framework for internal NFDC policy.
- An enforcement policy has been drafted

9. WHAT NEEDS TO BE DONE?

9.1 The introduction of this legislation falls roughly into three action areas:

a) there is the period in the run up to 1/07/07 when the activity necessarily will be to ensure that the message is being communicated to business; a number of seminars have been arranged across Hampshire to make business aware of the forthcoming legislation. Environmental Health are organising 5 additional sessions around the District to ensure that businesses have an opportunity to be more aware of the requirements on them.

b) there will be a period of high level enforcement for approximately two months following the commencement date.

c) thirdly, following this intense period of enforcement, there will be the need to react to complaints and notifications.

9.2 The first two action areas will require an action plan and an enforcement policy. This plan will need to take account of the Department of Health support details yet to be published. However there is a great deal of scope to produce our own pack which will incorporate the basic principles of the legislation; the enforcement framework, information in respect of 'quitters' (the service for those wanting to give up smoking) and a priority planning list for business.

9.3 If the initial information campaign is to be maintained corporately, there is a need to identify roles and responsibilities across the services. Perhaps a similar approach to Clean Neighbourhood Act. It would be helpful if other services can use any opportunity they have to make businesses aware of the outline of the legislation.

- 9.4 A major problem with the enforcement of this legislation is the complete lack of involvement of the Health and Safety Executive. Much of the action areas will be within premises that are not currently visited by the Authority for any enforcement activity, for example public sector buildings and large industrial plants, such as Esso. We do not hold the necessary data bases for much of this information, a great deal is held by the Health and Safety Executive. The Department of Health has been asked for further information and assistance in respect of this issue, however, this has not been possible due to the licence agreement they hold with the database holder. The possibility of authorising the HSE officers operating within the NFDC area will be explored in the spirit of the Joint Warranting project currently being run in Hampshire.

10. FINANCIAL IMPLICATIONS

- 10.1 Funding has been made available initially for the first two years. This equates to £14,162 from January until March 2007 and the remainder £69,475 from April 2007 until April 2008. The funding is not ring-fenced.
- 10.2 Initial enquiries with agencies in Scotland and Ireland have suggested that generally in pubs and clubs the legislation has been self enforcing in the initial stages, but there are problems arising as time has gone by. Problems have arisen from litter and noise around smoking shelters. In addition this has sometimes led to drinking in the street. Having considered the issues, there is clearly a need for some additional enforcement in this area. Central Government are expecting the Anti Smoking lobby to be extremely vocal on enforcement of the ban. This subject has already generated much media attention, including questions as to how New Forest District Council intends to enforce the legislation.
- 10.3 Bearing in mind that no resource exists currently for enforcing the Gambling Acts, or the Licensing Act, it is suggested that an additional post is funded within the Licensing and CCTV Service of Environmental Health. This post would be responsible for general enforcement of the Licensing issues and Smoke free. This would be a cost effective and integrated way of approaching the problem, as a high percentage of the Smoke free complaints are likely to be in the hospitality sector. This officer would also be able to assist with other investigations without compromising the "Chinese wall" that needs to exist between Licensing and other parts of Environmental Health Service as a statutory consultee. The post would also be responsible for investigating any noise or litter relating to smoking shelters, Gambling Act enforcement, etc.
- 10.4 The post, if created, would be an Environmental Health Technician on a Band 6 at a cost of £29,000 including on-costs.

11. ENVIRONMENTAL IMPLICATIONS

- 11.1 Experiences in Ireland and Scotland have shown immense public benefit from Smoke free status. Many restaurants have seen an increase in customers created by the healthier environment. However, there does need to be an awareness of the potential for street litter in the form of cigarette butts surrounding smoking shelters.

12. CRIME AND DISORDER IMPLICATIONS

- 12.1 There has been a minor increase in Anti Social Behaviour in areas that have a Smoking Ban – this has been associated with activities outside licensed premises. This experience also shows an increase in littering.

13. EQUALITIES

- 13.1 Like all our enforcement duties we will strive to be fair, independent and objective when enforcing the legislation. In particular, all officers will ensure that their decision takes into account any relevant issues relating to ethnic or national origin, sex, religion and belief, political views or the sexual orientation of the offender or complainant, victim, witness, etc. We are unaware of any specific issues in this area that may affect one group more than others.

14. RECOMMENDATIONS

- 14.1 That CMT approve the use of Smoke free funding for an additional Environmental Health Technician.
- 14.2 That CMT note the impact that this legislation will have on the District Council.

Further Information

Derek Jordan
Environmental Health Manager (Commercial)