

# Corporate Policy and Strategy Committee

10.00am, Tuesday 1 September 2015

## Smoke Free Policy

**Item number** 7.2  
**Report number**  
**Executive/routine**  
**Wards**

### Executive summary

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This policy is written to replace the Control of Smoking at Work Policy currently in place in the Council.

For the purposes of the policy, restrictions will apply to the use of e-cigarettes (vapourisers); these will be treated the same as cigarettes/ other tobacco products.

The Council also recognises its role in exemplifying Scotland's smoke free ambitions as recommended by the Scottish Government's 'Creating a Tobacco-Free Generation – A Tobacco Control Strategy for Scotland'.

The policy extends smoking restrictions to surrounding areas for Council premises, including entrance areas, car parks, playgrounds and courtyards within the boundary of Council premises. In addition, smoking restrictions will be applied to other outdoor areas within the Council's jurisdiction likely to be frequented by children such as play parks. Smoking restrictions may also be applied at outdoor family events organised by the Council.

### Links

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**Coalition pledges**  
**Council outcomes**  
**Single Outcome Agreement**

## Smoke Free Policy

### Recommendations

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- 1.1 It is recommended that Corporate Policy and Strategy Committee approves the draft Smoke Free Policy.

### Background

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- 2.1 By law, Local Authorities are responsible for ensuring that all its enclosed or substantially enclosed premises are smoke free; maintaining a safe, healthy working environment, protecting the health of clients, staff, visitors and contractors from hazardous environments, and making sure that staff understand their responsibilities to take reasonable care of the health and safety of themselves and others. This restriction applies to vehicles used on Council business.
- 2.2 The 2013 Scottish Government document 'Creating a Tobacco-Free Generation – A Tobacco Control Strategy for Scotland' calls for Local Authorities to extend smoking restrictions to surrounding grounds, and outdoor areas within their jurisdiction focusing on areas frequented by children, by 2015. The aim of the National Strategy is based on evidence that an effectively implemented Smoke Free Policy shows good leadership, and demonstrates an exemplar role in supporting the public health of local communities in relation to preventable diseases and ill health caused by smoking.

### Main report

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- 3.1 Since the introduction of the Smoking, Health and Social Care (Scotland) Act 2005, and the Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006, there has been increased popularity and use of e-cigarettes (vapourisers). Whilst not currently covered by legislation, most organisations' Smoke Free Policies are treating these devices in the same way as cigarettes. The World Health Organisation published a report in August 2014 which warned that, although less harmful than smoking, the background levels from the use of e-cigarettes could be harmful to adolescents and pregnant women.

### Measures of success

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- 4.1 A safer, healthier environment in all Council owned properties and designated external areas under the jurisdiction of the council.

## Financial impact

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- 5.1 There will be an additional cost to provide suitable signage in Council grounds, but at this time, this cost is unknown.

## Risk, policy, compliance and governance impact

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- 6.1 No impact is envisaged.

## Equalities impact

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- 7.1 No impact is envisaged.

## Sustainability impact

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- 8.1 No impact is envisaged.

## Consultation and engagement

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Full consultation with our recognised Trade Unions has been undertaken.

The draft policy has been reviewed by the Corporate Leadership Group (CLG).

## Background reading/external references

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[Creating a Tobacco-Free Generation for Scotland, Scottish Government, March 2013.](#)

Smoke Free Workplaces Guidance for Employers, Human Resource Advice SPDS 01-15. Scottish Personnel & Development Scotland, February 2015.

### **Alastair D Maclean**

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Deputy Chief Executive

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## Links

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**Coalition pledges**

**Council outcomes**

**Single Outcome  
Agreement**

**Appendices**

Appendix 1 - Draft Smoke Free Policy.  
Appendix 2 - Smoke Free Workplaces Guidance for Employers,  
Human Resource Advice SPDS 01-15. Scottish Personnel &  
Development Scotland, February 2015.

# Smoke Free Policy

**Implementation date: 1 December, 2015**

## Control schedule

**Approved by**

**Approval date**

**Senior Responsible Officer** Susan Tannahill, Council Health and Safety Manager

**Author** Ron Young, Council Health and Safety Manager

**Scheduled for review** September, 2016

## Version control

Version	Date	Author	Comment
0.1	June, 2015	Ron Young	
0.2	August, 2015	Susan Tannahill	Scope extended to include contractors; scope of Nicotine Delivery Devices clarified; clarification on scope of external areas to be designated as smoke free.

## Committee decisions affecting this policy

Date	Committee	Link to report	Link to minute
1 Sept	Corporate Policy and Strategy Committee		

# Smoke Free Policy

## Introduction

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- 1.1 The scope of this policy is designed to include employees, elected members, visitors, clients, contractors and members of the public.
- 1.2 It is widely recognised that smoking is the largest single cause of serious ill health and premature death in Scotland. Similarly, the health effects of people breathing in other people's tobacco smoke, i.e. passive smoking, have emerged as an important health concern.
- 1.3 E-cigarettes (vapourisers) are increasingly being used by smokers who view them as a 'healthier' alternative to cigarettes or tobacco. For the purposes of this policy, smoking includes the use of e-cigarettes.
- 1.4 Whilst the Council supports the view that whether people smoke or not is a matter of personal choice, where they smoke is restricted by the Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006. Smoking is therefore not permitted in enclosed areas including Council premises and vehicles used on Council business.
- 1.5 The Council recognises its role in exemplifying Scotland's smoke free ambitions. Smoking is therefore not permitted in surrounding areas for Council premises including entrance areas, car parks, playgrounds and courtyards within the boundary of Council premises. In addition, smoking restrictions will be applied to other outdoor areas within the Council's jurisdiction likely to be frequented by children such as play parks. Smoking restrictions may also be applied at outdoor family events organised by the Council.

## Policy Aims and Objectives

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- 2.1 The Council, as an employer, is committed to ensuring, so far as is reasonably practicable, the health, safety and welfare of all employees, and others, whilst at work and will ensure that a working environment free from tobacco smoke is maintained in all enclosed Council workplaces.
- 2.2 The Council recognises its role in exemplifying Scotland's smoke free ambitions as recommended by the Scottish Government's 'Creating a Tobacco-Free Generation – A Tobacco Control Strategy for Scotland'.

- 2.3 In seeking to achieve the aims in 2.1 and 2.2, the purpose of this policy will be to:
- (a) comply with the Smoking, Health and Social Care (Scotland) Act 2005 and the Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006;
  - (b) support the 2013 Scottish Government recommendation that Local Authorities consider scope for extending smoking restrictions to outdoor areas within their jurisdiction (including vehicles parked on the grounds of Council property);
  - (c) promote the health of all employees by means of discussion and support on key issues surrounding smoking, and encouraging and supporting employees who currently smoke to change their smoking behaviour;
  - (d) reduce the risks associated with passive smoking by prohibiting smoking in all Council owned premises and designated outdoor areas within their jurisdiction;
  - (e) to prohibit smoking in any Council owned or hired fleet vehicle; and
  - (f) whilst private cars are exempt under the legislation, smoking shall not be permitted in privately owned or leased cars during authorised journeys on Council business.
- 2.4 Managers should also be aware that they could individually face a fixed penalty fine for either:
- allowing others to smoke in no smoking premises; or
  - failing to display warning notices in no smoking premises.
- 2.5 This policy will apply to all Council employees and does not make any provision for smoking rooms or areas for use by employees. There is no entitlement to smoke breaks.

### **Operating the Policy**

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- 3.1 Directors will be responsible for implementing, operating and monitoring this policy in respect of all Council workplaces and vehicles that fall within their control, including supporting smoking restrictions in designated outdoor areas.
- 3.2 Directors will ensure that:
- (a) All employees are informed of the policy and how it will be implemented and applied;

- (b) All employees are informed that failing to adhere to the controls set out in the policy will be viewed seriously and will be dealt with in accordance with the Council's Disciplinary Procedures;
- (c) All employees are reminded that unauthorised absence from work (e.g. leaving the workplace without permission) is viewed as misconduct;
- (d) All potential employees are informed of the non-smoking obligations which will be placed on them should they be offered employment with the Council (e.g. job information packs and selection interview);
- (e) No-smoking signs must be prominently displayed in all Council premises that are affected by the smoking restrictions, so that they can be seen by people in the premises and approaching the premises;
- (f) No-smoking signs must also be displayed in all Council owned or hired fleet vehicles;
- (g) Managers will need to ensure that action is taken if any cases of persons smoking are reported to them (e.g. reminding employees of the content of this policy);
- (h) Managers will need to ensure that suitable records are kept as appropriate to demonstrate compliance with the legislation (e.g. record of complaints and action taken); and
- (i) No smoking signs must be prominently displayed in outdoor areas where smoking restrictions apply, i.e. surrounding areas for Council premises including entrances, car parks, playgrounds and courtyards within the boundary of Council premises. In addition, other outdoor areas within the Council's jurisdiction likely to be frequented by children such as play parks. Smoking restrictions may also be applied at outdoor family events organised by the Council.

## **Employee Responsibilities**

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- 4.1 In line with the Council's Health and Safety Policy, all employees are reminded of their responsibilities to act in the course of their employment with due care for their own safety and welfare and that of others who could be affected by their acts or omissions.
- 4.2 It is the responsibility of employees who smoke to adhere to the controls set out in this policy.
- 4.3 Failure to comply with the law is a criminal offence and employees will be individually liable for any penalty that may result.

## **Promoting Health**

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- 5.1 The Council is committed to promoting the health of all employees regardless of whether they work indoors or outdoors and will seek to work in partnership with health professionals in encouraging and supporting employees who currently smoke to change their smoking behaviour.
- 5.2 The Council will seek to ensure that employees are provided with support by:
- (a) Making available on request general information regarding health and smoking, including sources of help, for employees who wish to reduce or stop smoking; and
  - (b) Working with health partners for the provision of voluntary smoking cessation help, encouraging employees who wish to stop smoking to access group or one to one support sessions where these are considered appropriate.

## **Visitors to Council Premises**

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- 6.1 In order that the Council fulfils its legal obligations, visitors, including contractors, will be required to conform to the smoking controls applying to employees.
- 6.2 Anyone found smoking will be informed that they are committing an offence and will be asked to extinguish their smoking material immediately or leave the premises.

## **Special Arrangements**

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### **Meetings and Events**

- 7.1 Any organisation or person granted the use of Council premises for meetings or events will be informed that smoking is not permitted in any part of the building.

### **Residential Care Homes**

- 7.2 Residential Care Homes are regarded as being the homes of those residents there. In these special circumstances the legislation allows for the provision of a specific room(s) to be designated as places where residents can smoke. Such rooms must be adequately ventilated with appropriate signs 'for resident use only'.

### **Day Care Centres**

- 7.3 In accordance with the legislation, there is no provision for smoking rooms in Day Care Centres. Therefore, clients attending such centres will be informed that smoking is not permitted in any part of the building.

## **Community Education Centres**

- 7.4 In the case of Community Education Centres, the Management Committees will need to adopt the position that smoking will not be permitted, in compliance with the legislation

## **Working in the Community**

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- 8.1 It is recognised that a significant number of employees work away from Council premises, providing services to people in their own homes that are not covered by the legislation, or in other indoor workplaces where the Council does not have control.
- 8.2 Mindful of the Council's statutory duties regarding service provision, e.g. Domiciliary Care, managers will need to apply the principles of risk management when assessing and controlling the risks to employees, to ensure that an appropriate level of service continues to be provided.
- 8.3 The risk management process should include consideration of the following:
- a) Identification of client homes occupied by smokers;
  - b) Encouraging clients not to smoke prior to and during times when Council employees are in their homes;
  - c) Opening windows to ventilate the home;
  - d) Employees with particular health conditions that could be affected by tobacco smoke; and
  - e) Where practicable, avoiding consecutive visits to homes where employees are likely to be exposed to tobacco smoke.
- 8.4 All such risk assessments should be recorded and reviewed periodically to ensure that they remain valid.

## **Review**

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- 9.1 This policy will be reviewed by the Council in the light of experience and changes in circumstances.



February 2015

**HUMAN RESOURCE ADVICE SPDS 01-15**

**SMOKE FREE WORKPLACES GUIDANCE FOR EMPLOYERS**

The following guidance is intended to provide reference for employers in consideration of their own specific circumstances. The purpose of this guidance is to support Local Authorities in the development of Smoke Free Policies, as recommended by the Scottish Government's "Creating a Tobacco-Free Generation – A Tobacco Control Strategy for Scotland".

## 1. Introduction

Smoking is the biggest single preventable cause of ill health and early death in our communities. Smoking causes the premature deaths of more than 13,000 people in Scotland every year. Most people who die because they smoke will develop one of the three diseases most widely associated with the habit – lung cancer, chronic obstructive lung disease or coronary heart disease. Tobacco smoke contains over 4,000 chemicals in the form of particles and gasses, and about 60 are known or suspected to cause cancer.

Second hand smoke has been shown to be a hazard to health. Those exposed to second hand smoke are at increased risk of lung cancer and heart disease. In addition, second hand smoke can trigger or aggravate respiratory conditions such as asthma or bronchitis. It can also irritate eyes, cause coughs and headaches and generally make non-smokers feel ill.

By law Local Authorities are responsible for ensuring that all its enclosed or substantially enclosed public places are smoke free, maintaining a safe, healthy working environment, protecting the health of clients, staff, visitors and contractors from hazardous environments, and making sure that staff understand their responsibilities to take reasonable care of the health and safety of themselves and others.

The 2013 Scottish Government document 'Creating a Tobacco-Free Generation – A Tobacco Control Strategy for Scotland' <sup>1</sup> requires “*all Local Authorities to have a well implemented Smoke Free Policy, covering buildings and grounds by 2015.*” The aim of the National Strategy is based on evidence that an effectively implemented Smoke Free Policy shows good leadership and demonstrates an exemplar role in supporting the public health of local communities in relation to preventable diseases and ill health caused by smoking.

This guidance note provides information on Scotland’s smoke-free legislation, including specific advice for those premises which are permitted exemptions and what steps employers should consider to meet the requirements of a Smoke Free Policy covering both buildings and grounds.

## 2. Legislation

This section sets out the legal requirements placed upon employers and managers of organisations in Scotland.

### Smoking Legislation

The Smoking, Health and Social Care (Scotland) Act 2005 and The Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 Legislation have been implemented in Scotland since 26<sup>th</sup> March 2006. Both pieces of legislation can be viewed at [www.clearingtheairscotland.com](http://www.clearingtheairscotland.com).

### What the law means in practice

The law prohibits smoking in certain public places which are 'wholly or substantially enclosed', including the majority of workplaces. It will be an offence to smoke in no smoking premises or to knowingly permit smoking in no smoking premises.

Vehicles used for business purposes are also affected by the law. These include light and heavy goods vehicles, and public transport such as taxis, buses, trains and ferries.

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<sup>1</sup> <http://www.scotland.gov.uk/Publications/2013/03/3766/downloads>

## **How those in control of 'no-smoking' premises should comply with the smoke-free legislation**

The minimum recommended action, including for those no smoking premises within an NHS, Local Authority or other care setting is:

- To display the required no smoking signs in such a way as to make staff, customers and visitors aware that the premises are no-smoking premises and they must therefore comply with the law;
- Develop and implement a smoke-free policy to ensure that infringements by employees, customers, members etc are dealt with under agreed procedures;
- Inform anyone smoking that they are committing an offence;
- Ask anyone smoking to extinguish their smoking material immediately or leave; and
- Consider if it is appropriate to refuse service to individuals who are contravening the law, depending on the nature of the service being provided.

### **No smoking signage for premises**

Businesses and organisations are required by the law to display no smoking signs in or on any premises that are affected by the ban, so that they can be seen and read by people in the premises and approaching the premises. They must be obviously displayed and protected from tampering, damage, removal or concealment.

The minimum signage requirement for premises is a no smoking notice which:

- Is at least 230mm by 160mm in size;
- States that the premises are no smoking premises and that it is an offence to smoke there or knowingly to permit smoking there;
- Displays the international no smoking symbol, at least 85 mm in diameter; and
- Displays the name of the person to whom a complaint may be made by anyone who observes someone smoking.

It's up to the manager or person in control of the premises to decide on the number of notices required to make sure everybody on the premises is made aware that smoking is not allowed. If you decide that you need more than one no smoking notice, the additional notices need to:

- State that the premises are no smoking premises and that it is an offence to smoke there or knowingly to permit smoking there; and
- Display the international no smoking symbol, at least 85mm in diameter.

### **No smoking signage for vehicles**

You are also required by the law to display no smoking signs in or on any vehicles that are affected by the ban in such a way that the signs can be seen and read by persons who are in the vehicle, as well as persons approaching the vehicle in question. There is no legally required size of sign but they must still meet certain requirements, as follows.

The minimum signage requirement under the new law for any relevant vehicles is a no smoking notice which:

- states that the vehicle is no smoking and that it is an offence to smoke there or knowingly to permit smoking there;
- displays the international no smoking symbol; and
- displays the holder of a particular post (e.g. the manager) to whom a complaint may be made by anyone who observes someone smoking.

Copies of sample signage can be downloaded from [www.clearingtheairscotland.com](http://www.clearingtheairscotland.com)

You may, of course, develop your own signs, provided they comply with the above requirements.

### **Premises exempted under the legislation**

There are few exemptions to the law. The list includes certain premises which may be the responsibility of the NHS, local authorities or care services providers, as follows:

- Designated rooms in adult care homes (an establishment providing a care home service exclusively for adults);
- Designated rooms in adult hospices (a hospice providing care exclusively for adults);
- Designated rooms in residential psychiatric hospitals and residential psychiatric units (a hospital, or hospital unit, the whole or main purpose of which is to treat persons with a mental disorder within the meaning of section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003) <sup>8</sup>.

A 'designated room' means a room which:

- a. has been designated by the person having the management or control of the no smoking premises in question as being a room in which smoking is permitted;
- b. has a ceiling and, except for doors and windows, is completely enclosed on all sides by solid floor-to-ceiling walls;
- c. has a ventilation system that does not ventilate into any other part of the no smoking premises in question (except any other designated rooms) and
- d. is clearly marked as a room in which smoking is permitted.

It is important to note that there is no legal obligation on the proprietors of those premises, to which an exemption applies under the law to provide designated areas for smoking if they do not wish to do so.

### **Rationale for Health and Care Sector exemptions**

There are a number of issues which make it desirable to exempt adult care homes, psychiatric units/hospitals and hospices from the scope of the legislation, not least that these are effectively the homes of their residents.

However, safety and other considerations mean that in many such establishments smoking is not permitted in residents' own rooms, the places which most closely equate to their private place of residence. For this reason, particular consideration must be given to the impact of second-hand smoke on non-smoking residents and employees. In such circumstances, managers should

undertake a risk assessment to minimise and/or eliminate any risk. It is important to note that day care centres are covered by the legislation, i.e. not exempted premises.

## Penalties and enforcement

Failure to comply with the law is a criminal offence. Individuals may be fined a fixed penalty of £50 for smoking in no smoking premises. The manager or person in control of any no smoking premises could be fined a fixed penalty of £200 for either:

- Allowing others to smoke in no smoking premises
- Failing to display warning notices in no smoking premises.

Refusal to pay or failure to pay may result in prosecution and a fine of up to £2,500.

The law will be enforced by Environmental Health Officers, who have the power to enter no smoking premises to determine whether the law is being upheld. They will also assess whether or not those in control of the premises have taken all reasonable precautions to avoid people smoking. Inspections carried out by enforcement officers will either be pro-active (to advise employers or managers, and to confirm compliance with the law), or re-active (in response to a complaint). Inspections may also be incorporated within other health and safety and food hygiene inspections.

## Other Legislation

When considering development of a Smoke Free Policy the following pieces of legislation are also relevant:

- Health and Safety at Work Act 2009
- Smoking, Health and Social Care (Scotland) Act 2005
- The Workplace (Health, Safety & Welfare) Regulations 1992
- Smoking, Health and Social Care (Scotland) Act 2005
- The Workplace (Health, Safety & Welfare) Regulations 1992
- Employment Rights Act 1996
- The Disability Discrimination Act 1995
- The Pregnant Workers Directive
- Control of Substances Hazardous to Health (COSHH) Regulations 2002.

### 3. Development of Smoke Free Policy for Buildings and Grounds: points for consideration

To support the 2013 Scottish Government recommendation that “*all Local Authorities to have a well implemented Smoke free Policy, covering buildings and grounds by 2015*”, current policies should be reviewed to consider how to support this strategy and extending (if not already addressed) to surrounding grounds for Council owned premises. This should include excluding smoking from all vehicles parked on Council grounds.

Since the introduction of The Smoking, Health and Social Care (Scotland) Act 2005 and The Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 there has been increased popularity and use of e-cigarettes and electronic nicotine delivery devices. These are not currently covered by legislation. A number of organisations have banned the use of e-cigarettes and other electronic nicotine delivery devices on their premises. These products themselves are not regulated and as such have not been subject to independent tests, meaning that the impact on health arising from their use is unknown. The World Health Organisation published a report in August 2014 which warned although less harmful than smoking, the background air levels could be harmful to adolescents and pregnant women. Although the UK government are set to review the use of e-cigarettes or electronic nicotine delivery devices in 2018 for use for medicinal purposes, at this stage most organisations Smoke Free Policies, are treating these devices in the same way as cigarettes.

#### 4. Checklist

- Review and amend existing smoking/substance abuse policies or consider introducing a new policy to deal with smoking, e-cigarettes and other electronic nicotine delivery devices.
- Extend current Smoke Free Policy to include smoking in the surrounding grounds, including all vehicles parked on the grounds.
- The scope of the policy should include employees, elected members, visitors, clients and members of the public.
- Address criticisms by promotion of in-house or external services to support individuals to stop smoking.
- Ensure appropriate risk assessment process is in place for premises exempt under the legislation or for those working in the community in client homes.
- Be clear in your policy what action may be taken if policy is breached and this will include cross referencing to other policy frameworks, as appropriate.