

SMOKING LEGISLATION

Agenda Item 7b

Contact Details:- Helen Krischock	Lee Crabb
Designation:- HR Manager	Chief Environmental Health Officer
Ext. No:- 2711	2227
E Mail Addresses:- helen.krischock@braintree.gov.uk	lee.crabb@braintree.gov.uk

Background Papers:-	Smoking Report / Health Act 2006
Financial Implications:-	HR – None / Env Services -None
Equalities Implications:-	HR – Equalities Impact Assessment on new Policy completed Env Services - None
Legal Implications:-	HR – None / Env Services - None
Options:	Support Management Board's decision
Risks:	None

EXECUTIVE SUMMARY

New Smoking Legislation comes into force on 1st July 2007. After that date it will be unlawful to smoke in enclosed public spaces, including places of work.

A Smoking Report went to Management Board on 24th April 2007.

Recommendations from the Report:

1. Continue to allow smokers time to smoke.
2. Authorise a temporary designated smoking area at Causeway House and Millennium Tower until the future of office accommodation is decided once the Housing transfer process is complete.
3. Agree that smokers should not be allowed to smoke around entrances or exits and within 10M from main buildings.
4. Allow staff paid time off if attending non smoking programmes or counselling.
5. Review the situation regularly.
6. Communicate to staff that failure to adhere to the Council's Smoking Policy could result in disciplinary action being taken.

The alternative to these recommendations is a total smoking ban on Council premises.

It was proposed at Management Board, that smoking be allowed in designated outside areas only, until July 2008, when a total smoking ban will be introduced.

DECISION

That Cabinet support recommendations made by Management Board on 24th April 2007.

SMOKING REPORT

NEW SMOKING LEGISLATION

1ST JULY 2007

- Part 1 Smoking Policy
 From HR Services by M Lawrence
- Part 2 Smoking Policy
 From Environmental Services by Lee Crabb
- Appendix A Braintree District Council's New Smoking Policy.

PART 1

MANAGEMENT BOARD REPORT

SMOKING POLICY – BY MERYL LAWRENCE

PURPOSE OF THE REVIEW

To review the Smoking Policy in accordance with legislative requirements from The Health Act 2006 (Part 1) coming into force in England on 1st July 2007.

BACKGROUND

On 1st July 2007 a Law comes into force under the Health Act 2006 (Part 1), which introduces a total ban on smoking in enclosed public spaces. This means that all workplaces will be smoke free as well as pubs, clubs, nightclubs, hotels and restaurants.

The ban was introduced to protect people (smokers and non smokers) from the harmful effects of smoking and passive smoking.

IMPACT OF LEGISLATION

Braintree Council already has in place a Smoking Policy that bans smoking on its premises, in lease cars carrying passengers and cabs of official vehicles but allows for smoking in designated smoking rooms. The main impact of the Legislation will be that:

- The smoking rooms in Causeway House and Millennium Tower will close by 1st July 2007.
- The public will not be able to smoke in BDC's public halls.
- Staff using their own cars for business purposes will not be able to smoke if carrying passengers.
- Tradesmen and visiting officers to private homes can request that their visit be conducted in a smoke free area.

CONSULTATION AND COMMUNICATION

Consultation

All staff in the Council were contacted and invited to participate in a Smoking Discussion Group that first met on 28th September 2006. This enabled representation from smoking and non-smoking groups. Take up was not particularly high but some staff forwarded comments for consideration.

The core of the Smoking Discussion Group consisted of:

Meryl Lawrence – HR Officer, Kathy Brown – Health Safety and Emergency Manager, Kryshia Fuller – Leisure Services, Sarah Kiely, Kathy Carpenter, Lesley Day – Unison, Trevor Mason, John Murphy, Doug Rigby – GMB for Street Scene and Waste Management.

The following committees were sent a copy of this report.

HEALTH SAFETY AND WELFARE COMMITTEE MEETING RESPONSE

To follow.

EMPLOYMENT AND EQUALITIES MEETING RESPONSE

1 comment received in support of total ban

1 comment received regarding tradesmen and visiting officers to private homes in that they can request their visit be conducted in a smoke free area.

Question - Can tradesmen and visiting officers really request this? I understand that the private home becomes the workplace for tradesmen / officers but can we legally insist upon this?

Answer – Tradesmen and Visiting Officers have the right to conduct their business in a smoke free environment. They can request to work in a smoke free environmental but cannot legally insist upon it.

Communication

Staff were informed about the forthcoming legislation via ongoing emails, there is a dedicated Smoking Page on iconnect and posters were distributed for operational staff and tradesman on notice boards at Lakes Road.

ISSUES ARISING FROM THE LEGISLATION

Smoking Room – Causeway House

It had been proposed to close the Smoking Room at Causeway House in December due to office moves. However the Unions objected to this at the September Group meeting because:

- a) It would force smokers outside in the winter months.
- b) The moves could not be justified.

Following these objections it was decided to delay the closure to 1st March 2007. This would allow smokers to shelter in the winter and the outcome of the Housing Transfer Ballot would determine the office move.

An update received at the end of February, confirmed that the office moves had been postponed and the Smoking Room would now close at the end of June.

Smoking Breaks

Staff who have smoking breaks do so with the agreement and trust of their Manager on the understanding that the breaks are not too frequent and lengthy in nature. (Employers are not legally obliged to allow staff to have smoking breaks).

One member of staff raised a concern in the 2006 Staff Survey that this was unfair to non-smokers who are not allowed frequent breaks. The loss of productivity each day puts an extra burden on the remaining non-smoking staff.

Figures from 'Smoke Free Essex', the Health Authorities Tobacco Alliance claim that:

- It is estimated that the average smoker has a ten minute smoking break per hour amounting to 1hr 10 minutes per day and 5 hours 50 minutes of working time lost each week.

However, following consultation with staff through the Discussion Group, staff did not consider these figures reflect the average BDC smoker.

Smokers have requested that they continue to be allowed time to smoke. Some staff find smoking a way to cope with stress and tension, and have commented that there may be potential health risks for smokers who have to withdraw from smoking during the day. The group felt that their breaks were equal to non-smokers who have unofficial breaks as a method of getting away from their computers or after dealing with a stressful client.

Designated Smoking Areas

To promote a healthy image to our customers and the general public, it is proposed that staff and Members should not congregate outside buildings or in the street near Council buildings to smoke. (Employers are not legally obliged to provide a designated smoking area or install smoking shelters).

Smoking shelters start at around £1500 +VAT + fitting. These were initially proposed by the Unions but during discussions outlining the cost involved and the uncertainty surrounding the future office space due to the Housing transfer, it was agreed that providing smoking shelters was not an acceptable way forward.

Until the future of the existing Council offices are decided, it is proposed that staff have a temporary external designated smoking area. It has been suggested to use the first parking space behind the outbuilding in the rear car park of Causeway House and an unused disabled car parking bay at Millennium Tower. These areas are away from Council property where smoke cannot rise through windows and ventilators. Both areas are within very limited view of the general public and are not too far from main buildings.

However, through subsequent consultation, the Causeway House venue cannot now be an option as this building houses flammable material. It is now suggested to use the vacant space by the oak tree alongside the hedge in the first part of the car park.

SMOKING SURVEY

On 19th January 2007, a Smoking Survey was emailed to all staff with hard copies distributed to operational staff and tradesmen. The survey aimed to highlight how many staff the new Legislation would affect. Staff were also given the opportunity to make comments. 186 responses were submitted.

The results showed:

	No of Respondents
Smokers	43
Non Smokers	143
Smokers using Causeway House Smoking Room	23
Smokers using Lakes Road Smoking Room	5
<u>Comments from the Survey</u> <ul style="list-style-type: none"> • 2 people said the ban would encourage them to stop smoking. • 16 people said it would not encourage them to stop. • 21 members of staff said that there was <u>no support</u> BDC could offer that would help them give up smoking. • 3 suggested drop in/advice centre at BDC may help. 	

EERA SMOKING SURVEY

EERA conducted a survey at our request, with 20 other authorities, to research what policies are already in place and what impact the legislation will have on them. The findings are as follows:-

Current Policies	Number of Authorities
Just sufficient to cover legislation	1
Smoking allowed outside	5
Smoking allowed outside but smoking time comes off flexi	1
Total smoking ban on all sites, entrances, exits, car parks and within 10M of buildings.	9
Looking to implement ban on all sites, entrances, exits, car parks and within 10M of buildings.	4

Note: The authorities concerned who have a total ban have had this in place for some time (between 1-2 years) and not as a result of the new legislation.

STAFF SUPPORT

Support is available for staff who want to give up smoking. Information has been posted on iconnect detailing various organisations where you can get help, obtain nicotine patches, attend smoking classes, and seek counselling.

CONCLUSIONS

Staff have been kept informed and up to date about the new legislation and given the opportunity to contribute to the change process.

Throughout the consultation, no negative comments were received from non-smoking staff against smokers/smoking breaks. (Please note that the complaint in the staff survey came from only 1 member of staff). However, they do request that smokers do not smoke near buildings and open windows.

Smokers accept the changes the legislation enforces on the Council and simply request that they continue to be allowed time to smoke in working hours at a designated outside area.

There are only a small percentage of BDC staff who smoke. Continuing to allow staff time to smoke does not seem to represent a major issue and is positive to employee relations. Staff Side are of the firm opinion that allowing this practice to continue would assist in maintaining morale and encourage trust between managers and their staff.

There has been no obvious abuse of the system that has been in place, nor is there likely to be, particularly as the proposed designated outside areas are within view of office buildings. There may also be a gradual decline in numbers of staff smoking as time progresses. If smokers cannot smoke during the day, there is the possibility that sickness figures may rise as smokers try to cope with withdrawal symptoms.

The authority does and will offer encouragement and a strong support network for smokers who may want to consider, now or in the future, to give up smoking.

Recommendations:

7. Continue to allow smokers time to smoke.
8. Authorise a temporary designated smoking area at Causeway House and Millennium Tower until the future of office accommodation is decided once the Housing transfer process is complete.
9. Agree that smokers should not be allowed to smoke around entrances or exits and within 10M from main buildings.
10. Allow staff paid time off if attending non smoking programmes or counselling.
11. Review the situation regularly.
12. Communicate to staff that failure to adhere to the Council's Smoking Policy could result in disciplinary action being taken.

The alternative to these recommendations is a total smoking ban on Council premises.

SMOKE - FREE LEGISLATION - BDC COMPLIANCE GUIDE

Briefing Note For Management Board by Lee Crabb

Background

New legislation will be introduced on July 1st 2007 to prevent smoking in enclosed public places.

The introduction of the new law aims to protect the general public from the harmful effects of passive smoking.

Smoke-free premises

Are defined as any public place where there is a roof and the area is wholly enclosed by walls (50% or more of the space is enclosed). It includes temporary structures such as tents and marquees.

Duties to prevent smoking in smoke-free premises

It is the duty of those who control or manage premises to ensure that any person in that premises does not smoke. Failure to do so is an offence. It is, however, a defence to show reasonable steps were taken to prevent smoking taking place.

Signage requirements for smoke-free premises

Smoke-free premises are required to display a no-smoking sign that meets minimum requirements **at or near each entrance to the premises**.

The requirement will be for an **A5 size** sign showing the international no smoking symbol at least 70mm in diameter with the following wording underneath:

“No Smoking, it is against the law to smoke in these premises”

Smoke-free vehicles

Regulations also provide for any work vehicle to be smoke-free - if they are enclosed (a vehicle is enclosed where it is wholly or partly covered by a roof) and used:

- for the transport of members of the public or a section of the public (whether or not for hire or reward); or
- for work by more than one person (even if the persons who work there do so at different times, or only intermittently), even if they are all smokers

However, smoking will be permitted in vehicles that are for the sole use of the driver.

Private vehicles including **hire vehicles** for private use are not subject to any of the regulations.

Duties to prevent smoking in smoke-free vehicles

There is the same duty to prevent smoking in smoke-free vehicles as the duty set out for those concerned in the management of smoke-free premises. In effect, the regulations define ‘operator’ in relation to a smoke-free vehicle to mean any person with management responsibilities for the vehicle. There is also a responsibility placed on the driver and any person on board the vehicle who is responsible for the safety of it to prevent the activity of smoking in it.

-Signage requirements for smoke-free vehicles

The operator of the vehicle will be under the duty to provide at least one no smoking sign, displaying the international ‘**no smoking**’ symbol at least **70mm in diameter, in a prominent position in each compartment of the vehicle.**

Exemptions

There are very few exemptions to the regulations. Briefly they are:

- Residential accommodation
- Designated hotel rooms
- Designated rooms in adult care homes or hospices
- Performers, where a performance requires a person who is taking part in a performance to smoke
- Private vehicles
- Specialist tobacconists where the premises are being used by customers to sample cigars or pipe tobacco
- Designated rooms in offshore installations
- Research and testing facilities where research is being conducted into tobacco related issues

Enforcement and penalties

Enforcement officers in Environmental; Health will work closely with local businesses to build compliance through education, advice and support. Any enforcement action that is taken should be fair, proportional and consistent.

An ‘authorised officer’ has the right, on production of their written authority, to enter, at any reasonable hour, any premises or vehicle subject to the regulations in order to carry out an inspection. They are further authorised to request the production of any substance or product (ash trays, waste bins etc) to inspect or take and retain samples from it.

Penalties

Enforcement officers may issue a fixed penalty notice..

Offence	Fixed penalty	Maximum fine in court
Failure to display correct signs	£200 reducible to £150 if paid within 15 days*	Level 3 (£1,000)
Smoking in a smoke-free place	£50 reducible to £30 if paid within 15 days*	Level 1 (£200)
Failing to prevent smoking in a smoke-free place	A fixed penalty for this offence is only available in Scotland. This is £200 reducible to £150 if paid within 15 days*	Level 4 (£2,500)

*Fixed penalties must be paid within 29 days of the date of the notice. The discounted amount will be due if it is paid within 15 days of the day of the notice. If the 15th day is not a working day, ie a Sunday or Bank Holiday, the due date will be the first working day after this.

Implementation and communication

It is important for employers to make sure that everyone affected by the changes is made aware of the new regulations, including where and how they apply. A smoking policy document is one way to achieve this. It should be concise and simple to understand and as a minimum should contain:

- Statement of purpose, why the policy is necessary
- Names or position of person responsible for policy implementation
- Where the policy applies and to whom
- Duty to prevent smoking in unauthorised areas
- Penalties for non-compliance
- Disciplinary actions that may be taken in the event of non-compliance if available sources of support to help smokers who want to stop

Employers' check list

- Identify all premises and vehicles affected
- Write and implement policy
- Brief managers and staff
- Consider providing assistance to help workers stop smoking
- Allocate responsibility for in-house monitoring
- Obtain and fix appropriate signs
- Amend employee handbooks and terms and conditions as necessary
- Update visitor information

Mailing to all businesses and other supporting resources

In mid-January, 700,000 priority businesses were mailed a pack containing a generic smoke-free poster and a brochure setting out the broad detail of the smoke-free regulations.

In April, a full guidance pack (including two A5 and two symbol only adhesive signs) will be mailed to all employing, actively trading businesses registered with companies house.

All environmental health teams will receive a 'starter pack' of resources in early April consisting of:

- Sample guidance packs
- 1000 'Your guide to the new smoke-free law' (guidance leaflet for businesses)
- 500 'How will the new smoke-free law affect' you (leaflet for individuals)
- 250 A5 smoke-free premises adhesive signs
- 250 A5 smoke-free premises window sticker signs
- 250 'symbol only' adhesive signs
- 250 'symbol only' window sticker.

BRAINTREE DISTRICT COUNCIL SMOKING POLICY
--

OBJECTIVE

To comply with the Health Act 2006 (Part 1) and the Health and Safety at Work Act etc 1974, Braintree District Council aims to provide and maintain a safe working environment for its employees. It protects all employees and elected Members, smokers and non-smokers, from the health risks associated with 'passive smoking'. It has eradicated smoking on Council premises and all enclosed public spaces to ensure we provide a healthy working environment.

POLICY STATEMENT

Smoking will not be permitted in any Council Office or building (ie Causeway House, Town Hall Centre, Braintree Museum, Witham and Halstead Area Offices, Millennium Towers, in vehicles with shared usage - cabs of official vehicles, lease cars carrying passengers and employees using their own vehicles on Council business and claiming mileage allowance with shared usage. Designated smoking rooms will close.

SCOPE OF POLICY

1. The smoking ban applies to all employees and elected Members whilst in working hours and/or participating in evening meetings, on business in any Council office or visiting a tenant's home or client's premises.
2. Visiting staff to a smoking client's home may request that their meeting is conducted in a non smoking environment and that smoking does not take place whilst work is being carried out in a property. If employees are required to work in an atmosphere polluted by passive smoke, they should consult with their line manager and the pollution should form part of a risk assessment.
3. Tenants, clients, elected Members and members of the public are covered by the smoking ban when visiting Council buildings or in vehicles with shared usage.

GUIDELINES FOR APPLICATION

1. Management will provide external smoking points with disposal facilities for cigarette ends. These will be within easy reach of employees, out of public view, a sufficient distance from buildings to prevent smoke drifting back into a non smoking area.

2. Management will allow employees who smoke reasonable breaks from work to smoke, away from the premises and providing this does not prevent them from satisfactorily carrying out their duties and responsibilities or have a significant effect on service delivery. Where this is in question, Management will consult with the HR Department and Trade Unions before taking any decision to remove or limit this facility for one or more employees.
3. Advice and counselling facilities will be available to staff who wish to stop smoking. Details are available from the HR Team at Causeway House and are available on the HR site, on the intranet and from posters displayed in offices and satellite operational bases. Information on the health risks associated with smoking will be available to employees. Staff will be allowed time off with pay to attend smoking cessation programmes.
4. Adequate signs will be displayed in all premises to advise employees and elected Members, of the smoking restrictions and the location of designated external smoking points. Designated smoking points are only available to staff/Members and not the general public.

CONTRACTUAL OBLIGATIONS

1. Appointing Officers should ensure that all prospective employees are aware of the Authority's Smoking Policy and this information should be communicated in applicant information packs, on the intranet, internet and confirmed to applicants on appointment.
2. All induction and in-service training courses should include information on the Smoking Policy.
3. The Smoking Policy represents an 'incorporated term' in the contract of employment of all employees.

ENFORCEMENT

1. All staff and elected Members are expected to comply with the Smoking Policy.
2. Management should fully investigate any suspected or actual abuse of the policy and ensure that its provisions are fully applied as indicated.
3. Staff who smoke in a designated non-smoking area will be subject to the disciplinary procedure.
4. Persistent and willful refusal by employees to comply with the Policy may result in the authority invoking the formal disciplinary procedure, which could lead to dismissal.