

WIRRAL COUNCIL

Cabinet

4 June 2015

SUBJECT:	Smokefree Policy
WARD/S AFFECTED:	All Wards
REPORT OF:	Fiona Johnstone Director of Public Health
RESPONSIBLE PORTFOLIO HOLDER:	Councillor Chris Jones Portfolio Holder for Adult Social Care and Public Health
KEY DECISION?	Yes

1.0 EXECUTIVE SUMMARY

- 1.1 On the 10th March 2014, Council ratified a decision made by the Families and Wellbeing Committee to adopt the [Local Government Declaration on Tobacco Control](#).
- 1.2 As part of this pledge, the Council committed to action '*to reduce smoking prevalence and health inequalities*'.
- 1.3 A proposal was made to the Chief Executives Strategic Group on 11th February 2014 to revise the Council's existing Smokefree arrangements under the Health and Safety Policy. Under this proposal, smoking would no longer be allowed anywhere on any Council site, as far as its boundary. This would apply to all Council staff, visitors, contractors and where applicable to members of the public. In addition, existing protocols regarding the use of electronic cigarettes would be tightened.
- 1.4 The revised Smokefree policy is a clear statement of the Council's intent to fulfil its pledge with respect to the Local Government Declaration on Tobacco Control.
- 1.5 Rather than these changes be seen as punitive, their underlying purpose is designed to 'nudge' current smokers to re-consider their risk-taking behaviour and create the optimum environment for those that wish to quit.

2.0 BACKGROUND AND KEY ISSUES

- 2.1 In Wirral, 1 in 5 of all deaths can be attributed to smoking, which equates to 670 deaths annually and smoking prevalence is consistent with the England average at 18.4% of persons aged 18 years and older.
- 2.4 Current smoking prevalence among Council staff is unknown. Anecdotal reports suggest that visible smoking on Council sites near to entrances/exits can act as an inhibitor for smokers wishing to quit. Some evidence would suggest that such

stimuli reminds quitters of what they are missing and amplifies their cravings. The new arrangements remove these visible triggers.

- 2.6 The revised arrangements prohibit smoking anywhere on any Council site by all staff, contractors, visitors and the public. This includes the use of electronic cigarettes, as they also provide visual stimulus and could be seen to 'normalise' smoking.
- 2.7 There are issues which are yet to be resolved with regard to policy enforcement and corporate liability. It is acknowledged that whilst these are important considerations, this should not hold up implementation. On balance, the wider responsibility of the Council and the potential impact of smoking-related harm outweigh the consequences of inaction.
- 2.8 Internal/external Smokefree signage has now been manufactured and awaits installation. This report seeks Council/Cabinet approval for full implementation of the new Smokefree arrangements.

3.0 RELEVANT RISKS

- 3.1 Consideration has been given to circumstances where an employee might suffer injury when smoking beyond the curtilage of a Council site, either by accident or by assault from a member of the public. Permission to smoke at work is not a contractual right and in these examples, a smoker accepts the associated risks, both in terms of the health consequences and where they choose to smoke.
- 3.2 Following consultation with colleagues in Legal Services and Health and Safety, the proposed policy changes are not considered to materially affect the level of risk of smoking off-site.

4.0 OTHER OPTIONS CONSIDERED

- 4.1 Other options which were proposed to the Chief Executive's Strategic Group included one to maintain the status quo and another which prohibited employees from smoking in working hours.
- 4.2 The Council's commitment to the Local Government Declaration on Tobacco Control precludes inaction, hence the Chief Executive's Strategic Group decision to revise the Council's Smokefree policy.

5.0 CONSULTATION

- 5.1 The revised Smokefree policy has been consulted on with Trade Unions and some concerns were raised in relation to policy management and enforcement. Representatives were advised that the policy focusses upon the promotion of healthy behaviours and support available to help staff quit with the majority of enforcement being subject to self-policing as seen with the highly effective smoking ban in Public Places introduced in 2007.

6.0 OUTSTANDING PREVIOUSLY APPROVED ACTIONS

6.1 Not applicable.

7.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

7.1 Not applicable.

8.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

8.1 Not applicable.

9.0 LEGAL IMPLICATIONS

9.1 As previously discussed, there is no additional, foreseeable risk to arise from the revised arrangements.

10.0 EQUALITIES IMPLICATIONS

10.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

(b) No because there is no relevance to equality.

11.0 CARBON REDUCTION AND ENVIRONMENTAL IMPLICATIONS

11.1 Under the new Smokefree arrangements, there is a strong argument for improved workplace environments.

12.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

12.1 Not applicable.

13.0 RECOMMENDATION/S

13.1 A recommendation is made to approve full implementation of the revised Smokefree policy.

14.0 REASON/S FOR RECOMMENDATION/S

14.1 The Council has committed to reducing health inequalities. Smoking is the key risk factor for the majority of diseases that lead to early deaths and hence a major contributor to health inequalities in the borough.

14.2 The Council has pledged to take action locally to reduce smoking-related harms and the revised Smokefree arrangements offer clear evidence of action.

14.3 The argument for full implementation of the new Smokefree arrangements is compelling, while the unresolved issues offer little reason not to proceed. The proposed changes are highly unlikely to result in increased risk of liability for the Council. Reservations about enforcing the policy miss the point of the changes somewhat. The proposed changes represent a step-change in culture and

environment, in much the same way as the Government's ban on smoking in public spaces in July 2007.

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BRIEFING NOTES HISTORY

Briefing Note	Date
Linked to the Local Government Declaration on Tobacco Control which was adopted at a previous Cabinet Meeting	10th March 2014

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Approved at Chief Executives Strategic Group	11th February 2014

APPENDICES

Health and Safety Arrangements Smokefree Policy

Introduction

The evidence about the harmful, life-threatening effects of tobacco is well-documented and overwhelming. The World Health Organisation (WHO) describes tobacco use as 'one of the biggest public health threats the world has ever faced'. WHO cite tobacco use as a risk factor in 6 of the 8 leading causes of death globally and estimate that up to 1 billion deaths will be attributable to tobacco in the 21st Century alone.

However, while the most significant harms caused by tobacco are related to direct use (i.e. smoking), others are related to the indirect exposure of an individual (whether they are a smoker or not) to the tobacco smoke of another. This exposure is known by various terms such as passive smoking, secondary tobacco smoke or **second hand tobacco smoke**. This latter term will be used throughout the rest of this document to describe such exposure.

In recognition of the dangers of second hand tobacco smoke, particularly for individuals working within areas with a high prevalence of tobacco use such as the catering and hospitality industry, the UK Government chose to act. The publication of the Health Act (2006) included statutory legislation, which underpinned and culminated in the subsequent ban on smoking in public places from 1st July 2007. In addition, this placed a statutory obligation on employers to ensure that health and safety arrangements within the workplace complied with the Health Act (2006) and provision was made for a smokefree workplace.

Further information on tobacco and smoking can be gained from Wirral's JSNA (<http://info.wirral.nhs.uk>)

Scope and Purpose

Wirral Council is committed to providing a smokefree environment in all of the Council's premises, workplaces and vehicles (including employee vehicles used on Council business). The term 'Smokefree' is by definition 'free of smoke', implying that smoking is not permitted anywhere throughout Wirral Council owned or occupied premises (which includes all areas up to the perimeter) or in Council vehicles (or employee vehicles used on Council business).

As a responsible employer, Wirral Council is not only committed to compliance with its statutory obligations but seeks to go further and create an environment that maximises opportunities for individuals in the work place to make healthy choices, including smoking cessation. This aspiration also extends beyond its employees to people in the wider community of Wirral.

Through the provision of a smokefree environment, Wirral Council will firstly ensure that no person is put at unnecessary risk from exposure to second hand tobacco smoke. It must be stressed that this element of the policy is concerned with **where** and **when** people smoke, not about **whether** they smoke.

Secondly, Wirral Council will ensure that employees who wish to stop smoking have access to appropriate Smoking Cessation Services, including a full range of Nicotine Replacement Therapies (NRT) (see **Stop Smoking Support for Staff**, p.5), however the use of electronic cigarettes or e-cigs carries a caveat (see **Electronic Cigarettes**, p.3).

Finally, it is hoped that Wirral Council's Smokefree Policy will actively encourage and influence members of our wider community to consider their own health choices around smoking.

Thus, the aim of the policy is to:

- Protect and improve the health of employees
- Protect and improve the health of clients, visitors and contractors
- Protect both smokers and non-smokers from the danger to their health of exposure to second hand tobacco smoke
- Show that the Council is acting as a community leader in promoting the health and well-being of Wirral residents by arranging for Council buildings, grounds and vehicles to be smokefree.

This policy will apply to all Elected Members, employees, clients, visitors, contractors and other persons who enter Wirral Council owned or leased buildings, grounds or vehicles for any purpose. The policy extends to cars leased from Wirral Council during business use. This policy also applies to all products that supply nicotine (electronic cigarettes as well as tobacco cigarettes) for logistical, protective and promotional reasons (see *Electronic Cigarettes*, p.3).

Second Hand Tobacco Smoke

Second hand tobacco smoke adversely affects the health of all employees. It is not for the Council to determine whether anyone smokes but where they smoke and the effect this has on clients, visitors, smoking and non-smoking colleagues, and the wider community.

The Council recognises that some staff maybe exposed to tobacco smoke when working elsewhere outside of the Council's control such as a client's house. Guidance as to how to manage the risk and reduce exposure to second hand smoke is contained within the following guidance document, published by the Royal College of Nursing (2006):

http://www.rcn.org.uk/_data/assets/pdf_file/0006/78702/003043.pdf

Application of the Policy

- Employees are not permitted to smoke anywhere on Council premises, grounds, workplaces and vehicles (including employee vehicles used on Council business).
- Clear signs are located at the entrance to all Council premises to ensure that anyone entering and exiting is aware that smoking is not allowed in the buildings, grounds, or in doorways.
- All council owned vehicles, pool vehicles and employee vehicles used on Council business are required to be smokefree at all times, regardless of whether a smoker is the only person driving/using the vehicle at that time. This is to prevent other colleagues (smokers and non-smokers) from unnecessary later exposure to second hand tobacco smoke. Equally, the legislation applies to the vehicles of paid employees and voluntary workers.
- Where Council employees provide a service within a client's home, then the client will be requested by Council staff to provide a smokefree environment prior to and during the visit. e.g. personal care, assistance with domestic work or maintenance

- Where Council employees work from home, they will be required to provide a smokefree environment if it is intended that another member of staff will be joining them to work collaboratively.
- The Council's Occupational Health Service will provide advice and support for employees. Those who wish to stop smoking can also access support from the NHS Stop Smoking Service LIVEWELL on 0151 630 8383.

Electronic Cigarettes

A number of new electronic devices have been developed which resemble cigarettes and mimic tobacco smoking. These electronic cigarettes (also known as e-cigarettes or e-cigs) produce a vapour containing nicotine which is inhaled in the same way as real cigarettes. The relative benefits/harms associated with the use of electronic cigarettes is presently inconclusive, however their use within the smokefree environment is similarly prohibited for the following reasons:

- There are obvious visual similarities between the use of real and electronic cigarettes which could be a 'trigger' for individuals who are trying to quit.
- It would be difficult to implement this policy if electronic cigarettes were allowed as it is not easy to distinguish those who were using e-cigarettes from tobacco cigarettes.
- As the safety of e-cigarettes is unknown, a precautionary approach to protecting the health of employees should be taken.
- This policy helps to de-normalise smoking, to protect and promote health of employees and the public. Allowing e-cigarettes to be used on Council premises would undermine this.

Exemptions

The Health Act (2006) makes provision for several exemptions in respect of the smoking ban in public places, only one of which is applicable to this policy. This particular exemption relates to residential care settings [as defined in section 3, Care Standards Act (2000)] where the workplace may also be a place of residence. i.e. a resident's bedroom.

In such instances, the residential care home is permitted to allow either individual bedrooms or a single room to be designated as a smoking area(s) for residents aged 18 years and above. In the case of the latter, the single room can **only** be used as smoking room and not for any other purpose, such as doubling up as a games room, library, sitting room, etc. All other communal areas of the residential care home setting must comply with the Health Act (2006) and there remains a legal obligation on the residential care home to ensure a smokefree environment is maintained in these communal areas.

Where this is relevant, the residential care home is required to maintain an up-to-date list of designated smoking rooms, which must be made available for inspection on request. In addition, any such room:

- **MUST** clearly indicate it's designation as a smoking room with the appropriate signage.
- **MUST** be completely enclosed on all sides (except for windows and doors) by solid floor-to-ceiling walls.
- **MUST** have mechanically closing doors that comply with all aspects of other legislation, such as fire regulations.
- **MUST NOT** be part of the same ventilation system that is used in the communal areas of the residential care home.

While the Health Act (2006) permits this exemption, there is no legal obligation for residential care homes to offer designated smoking rooms.

Artistic Licence

The smokefree environment also extends to any Council premises which host public performances such as theatre shows or concerts. Where public performances take place on Council premises, in which the act of smoking must be portrayed in order to maintain artistic integrity, the use of an electronic cigarette may be used as a substitute. This only applies to the actual live performance and electronic cigarettes cannot be used during rehearsals or at any other time. This is the only exemption which is applicable to the use of electronic cigarettes.

Signage

- All smokefree premises and vehicles must display no smoking signage [compliant with the Smokefree (signs) Regulation (2012) legislation] in a prominent position at every entrance so that people entering the premises or vehicles can see them clearly. The signs must make clear to staff and members of the public that the premises and vehicles they are entering/exiting are smokefree.
- Every Council owned or managed premises must display at least one A5 sign at each entrance used by the public. At entrances that are used by staff only it is sufficient to display a no-smoking sign that displays the international no-smoking symbol, no less than 70mm in diameter.
- All Council vehicles must display signs in a prominent position in each compartment of a smokefree vehicle wholly or partially covered by a roof, including the driver's compartment.
- Smokefree signs for premises are available at the smokefree England website on www.smokefreeengland.co.uk

Smoking Shelters

Wirral Council is not required to make any outdoor provision for smoking, or to provide facilities such as smoking shelters.

Availability of the Policy

The Smokefree Policy will be:

- made available on the intranet, the council website and in public waiting areas
- made clear at recruitment
- included in new staff induction

Non Compliance

It is the responsibility of everyone to observe the Council's smokefree policy and to remind others of their responsibility. Failure to comply with the policy by Council staff may result in disciplinary action under the Council's disciplinary policy and procedure.

Stop Smoking Support for Staff

Developed by experts and ex-smokers and delivered by professionals, the NHS Stop Smoking service 'Livewell' provides advice, support and encouragement to help stop smoking for good.

Everyone is different and there are different support options available. Options include one-to-one, group or telephone support.

The service will provide:

- a free, personal quit plan, tailored to your needs
- prescription stop smoking medicines to help beat cravings, from nicotine patches and gum, to nasal sprays, inhalators and tablets
- motivational tips on how to stay on track
- the chance to use a carbon monoxide monitor, to see recovery in action
- the support option that fits with current lifestyle.
- Contact the NHS Stop Smoking Service 'Livewell':
- Visit the website
- Text QUIT with your name and postcode to 80039*
- E-mail wsupport@wirralct.nhs.uk
- Tel. 0151 630 8383
- Ask a health or social care professional.
- Contact the NHS Smoking Helpline: 0800 169 0 169 or go to:
- www.gosmokefree.co.uk - Open Mon – Fri, 8.30am – 6:00pm
- Signers for hearing impaired employees are available on request.

Wirral Council will support staff that wish to stop smoking to access up to 12 free sessions through work time appointments with the Wirral NHS Stop Smoking Service 'Livewell'

Sale of Tobacco/Illicit Tobacco

All sales of tobacco and illicit tobacco products are strictly forbidden on local authority premises.

To report the sale of availability of illicit/illegal tobacco you can call Crimestoppers anonymously on 0800 555 111 or by the following weblink:

www.get-some-answers.co.uk

Or you can contact your local Trading Standards Department in the Council, without prejudice.

Trade Unions/Health & Safety Representatives

To be confirmed.

Smokefree Policy Management Implementation Guidance

This guidance has been prepared to aid in circumstances where staff or managers encounter members of the public, visitors, clients, contractors or Council staff smoking within any part of Council premises.

Wirral Council have committed to the Local Government Declaration on Tobacco Control, a link to which can be found here:

<http://www.smokefreeaction.org.uk/declaration/files/Declaration.pdf>

It is the responsibility of everyone to observe the Council smokefree policy and to remind others of their responsibility. Failure to comply with the policy by Council staff may result in disciplinary action under the Council's disciplinary policy and procedure.

Non-employees must also observe this smokefree policy, which applies to the building premises and grounds. Departmental Chief Officers, Complex Managers, sponsors/hosts of Council events have a duty to inform non-employees' of the legal duty to comply with Council policy. Wirral Council staff have a duty to observe and comply with the smokefree policy of any organisation they visit.

Any person who smokes on Wirral Council premises should be reminded that it is Council policy that all Council premises are smokefree and they should be asked to extinguish the smoking material or leave the premises. Any refusal to immediately refrain from smoking, or any continued violation of the policy may result in removal from the building or withdrawal of service provision.

Further signage could be displayed where appropriate - for example in toilets, storerooms and corridors - to help facilitate compliance. The signage must be prominently displayed and not obstructed or tampered with. It is good practice to ensure that the signage is inspected, and replaced if necessary, on a regular basis.

Enforcement

Owners, managers and people in control of smokefree premises and vehicles have a legal responsibility to ensure that they are and remain smokefree from 1 July 2007.

Local Councils in England have responsibility for enforcing the smokefree laws; officers have legal powers of entry to premises to ensure compliance with the law, and have a number of methods of carrying out inspections, including announced and covert visits.

Offences and penalties

- Smoking in a smokefree place: It is an offence for an individual to smoke in a smokefree place. The employee may also be subject to a fine.
- Failing to display adequate no-smoking signs: It is an offence for a person in control of smokefree premises to fail to display appropriate no-smoking signs. The employee may also be subject to a fine. It is also an offence to allow signs to be obscured or tampered with.
- Obstructing an authorised officer: It is an offence to intentionally obstruct an authorised officer, or to fail to give assistance when requested to do so or to give false or misleading information.

Associated Documents

- CIEH Achieving Smoke Freedom Tool Kit: A guide for local decision makers
- The National Institute for Health and Clinical Excellence (NICE) Guidance:
 - Brief interventions and referral for smoking cessation (PH1)
 - Workplace interventions to promote smoking cessation (PH5)
 - Smoking cessation services (PH10)
 - Preventing the uptake of smoking by children and young people (PH14)
 - School-based interventions to prevent smoking (PH23)
- Stop Smoking Interventions in Secondary Care Guidance (Department of Health, 2009)

BACKGROUND PAPERS/REFERENCE MATERIAL

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