

Report of	Meeting	Date
Director Streetscene Neighbourhood and Environment (Introduced by the Executive Member for Community Safety)	Executive Cabinet	29 March 2007

SMOKEFREE IMPLEMENTATION

PURPOSE OF REPORT

- To inform Members of the impact of the new Smokefree Legislation and seek approval to appoint a temporary officer to assist in enforcement action during the initial implementation phase.

CORPORATE PRIORITIES

- Place – Smokefree implementation will be a significant contributor to improving the local environment.
Performance – Smokefree implementation and enforcement is essential to ensuring Chorley Council is a performing organisation.

RISK ISSUES

- The issue raised and recommendations made in this report involve risk considerations in the following categories:

Strategy		Information	
Reputation	✓	Regulatory/Legal	✓
Financial		Operational	✓
People		Other	

- Reputation – failure to successfully implement smokefree legislation and to address internal issues with regard to smoking in the work place could have an adverse effect on our reputation as a performing organisation.

Regulatory/Legal – The smokefree legislation provides powers for the Council to take enforcement action, therefore properly and duly authorised officers are necessary to prevent enforcement action being undertaken ultra vires.

Operational – Failing to utilise the Department of Health funding for the implementation of this legislation will mean resources are stretched and overburdened in other areas of the Directorates work.

BACKGROUND

5. The health effects of direct smoking have been well documented and make a significant contribution to the number of deaths caused by heart, circulatory and lung disease. In recent years studies have shown that indirect or second hand smoke has very similar health effects to that of direct smoking and in particular affects workers who are exposed to lengthy periods of secondary smoke.
6. The Health Act 2006 introduced the legal framework to make enclosed workplaces and public spaces smoke free from the 1 July 2007. Several statutory instruments have been or are currently before Parliament to define the extent of the smoke free requirements and to fix the penalties for contraventions.

These are : The Smokefree (Premises and Enforcement) Regulations 2006
 The Smokefree (Exemptions and Vehicles) Regulations 2007
 The Smokefree (Signs) Regulations 2007
 The Smokefree (Penalties and Discounted Amounts) Regulations 2007

7. Similar legislation has been operational in Ireland since 2005 and introduced in Scotland in June 2006. Feedback from enforcement agencies indicates that provided the new legislation is effectively communicated to employers and public and that properly resourced enforcement is available then in general there has been compliance with the requirements.
8. A direct effect of the legislation will be the desire for significant numbers of people to give up smoking and it is essential that partnership work with other health professionals is supported to signpost potential 'quitters' to the smoking cessation services available as well as having trained officers within Chorley Council to provide 'brief interventions'.

ENFORCEMENT

9. In order to provide effective and legitimate enforcement of the new smoke free legislation the Council will need to include the Health Act 2006 within the delegated powers provisions of the Constitution. This will enable the Director of Streetscene Neighbourhood and Environment to authorise officers within the Directorate to undertake enforcement work. The legislation creates three new offences:
 - a) Failing to display the correct signs on a building which indicates it is a no smoking premises – this offence can be dealt with initially by way of a fixed penalty notice.
 - b) Smoking in a prohibited building or place – this offence can be dealt with by way of a fixed penalty notice.
 - c) Allowing smoking to take place in prohibited buildings or places under your control – there is no fixed penalty provision here and the offender would be subject to summary action in a Magistrates Court.
10. Members will be aware that similar legislation has been operating in Ireland and Scotland over the past 18 months and the experience in respect of enforcement there has been the need for dedicated officers to handle the volume of enquiries about the effect of the legislation and investigate complaints and allegations of offences. It is proposed to appoint a Smokefree Enforcement Officer to undertake enforcement work and to ensure that the buildings and places affected by the legislation are compliant.

COMMUNICATION

11. The effective communication of the new legislation and its implications are essential to ensure smokers, employers, employees and persons having control of affected buildings and premises are fully aware of their rights and responsibilities. This activity has already commenced in Chorley, with the use of local media and business newsletters. In addition we have organised and run a seminar and workshop on the new legislation for local business and working in partnership with the Central Lancashire Primary Care Trust have provided signposting to their 'Stop Smoking' services.

FUNDING

12. Central Government have provided funding for the implementation phase and first year of enforcement activity in recognition of the fact that there will be a hiatus of activity during this time and that existing resources would not be sufficient to manage this period. Chorley Borough Council have been allocated £42, 000 in 2007/8 and it is proposed that this funding is utilised to create a temporary post of Smokefree Enforcement Officer. This post will be assigned to the Councils Public Health Team where the existing work and contact with business will be augmented. Due to the nature of the enforcement work and the type of premises where enforcement is likely, it is anticipated that a significant amount of time will need to be resourced in the evenings and weekends. In addition the funding will be utilised to provide information and additional workshops for business to enable them to fully understand their responsibilities under the new legislation.

COMMENTS OF THE DIRECTOR OF HUMAN RESOURCES

8. The forthcoming legislation will affect the Council as a service provider, an enforcer and as an employer. Under the Health and Safety at Work Act 1974 an employer must 'provide and maintain a safe working environment, without risk to health'. By eliminating exposure to second hand smoke we are actively protecting the health and safety of staff, which will result in a healthier workforce. The Council's Smoking Policy is currently being reviewed in light of the new legislation.

In order that we can comply with the legislation additional resources will be required initially.

COMMENTS OF THE DIRECTOR OF FINANCE

9. The grant allocation of £42,000 is presently not factored into the Council's 2007/08 budget. However, the impact will be cost neutral to the Council as the grant will be spent on creating the additional post and ancillary costs of implementing enforcement.

RECOMMENDATIONS

13. It is recommended that the Council's Constitution be amended to include reference to the Health Act 2006 in order that the Director of Streetscene Neighbourhood and Environment has delegated powers under the Act and can appoint duly authorised officers to undertake enforcement activity.
14. It is recommended that approval be given to create a temporary post of Smokefree Enforcement Officer on salary scale SO1 effective up to 31 March 2008.

REASONS FOR RECOMMENDATIONS

15. To ensure that the Council is properly equipped and effectively resourced to deliver the implementation of the new smoke free legislation.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

16. None

JOHN LECHMERE
DIRECTOR OF STREETSCENE NEIGHBOURHOOD AND ENVIRONMENT

There are no background papers to this report.

Report Author	Ext	Date	Doc ID
Simon Clark	5732	12 March 2007	ADMINREP/REPORT