GUIDANCE NOTE FOR MANAGERS AND SUPERVISORS ON THE MANAGEMENT OF SMOKING AT WORK

Date of issue: January 2013
1.0 Introduction

1.1 Falkirk Council actively promotes health at work and as a Gold Healthy Working Lives Award holder will continue to seek pro-active and innovative measures for encouraging good health practices at work. This Council has promoted a smoke free working environment since the introduction of the Smoking Policy in April 2000. The Smoking Policy introduced a blanket no smoking ban which has been enforced in all Council premises since January 2001. The purpose of this guidance note is to support the enforcement of the new legislation and to supplement the existing Smoking Policy.

1.2 The Smoking, Health and Social Care (Scotland) Act 2005 and the Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 came into effect on 26th March 2006. The ultimate purpose of the new legislation is to save lives and prevent disease caused by passive smoking.

1.3 The few exemptions from the new smoking legislation include residential homes, prisons and hospital wards caring for patients with mental health illnesses.

1.4 The new smoking legislation means that all Council premises except Council Residential Homes for the elderly must be smoke free, including school playgrounds. It applies to all workplaces and also work vehicles. Employees, customers and visitors are not allowed to smoke within any building that is “wholly or substantially enclosed”. For the purpose of the legislation this is an area with a ceiling or roof that - except for doors, windows and passageways - is either wholly enclosed or is enclosed but for an opening which is less than half of the area of its walls. The ban also applies to previously designated “smoking rooms” which must no longer be used. The law also requires that “No Smoking” signs are displayed in all workplace premises or on any vehicles used for business purposes.

2.0 Non Compliance

2.1 Failure to comply with the law will be a criminal offence. Failure to comply includes:

- allowing others to smoke in no-smoking premises;
- failure to display warning notices in no-smoking premises.

3.0 Fines

3.1 An on the spot fine of £50 can be levied by the Council’s Smoking Enforcement/Environmental Health Officers to persons in breach of the Smoking Legislation.

4.0 Compliance

4.1 Each Service requires to have taken steps to ensure that employees, customers, local members and visitors are aware of both the new legislation and the Council’s Smoking Policy, that they understand the restrictions contained within
both sets of criteria and adhere strictly to these guidelines. Service Directors, Managers, and Supervisors are responsible for implementing the Smoking Legislation. Repeated failure of employees to comply with the criteria of the Smoking Legislation, the Council’s Smoking Policy and the recommendations in this guidance note may be dealt with via the Council’s Disciplinary Procedures.

5.0 Enforcement

5.1 Authorised enforcement officers from Development Services; Environmental Health Division have the power to enter any premises in the Falkirk area to determine whether the new smoking legislation is being upheld. They will also assess whether or not those in control of the premises have taken all reasonable steps to prevent people smoking there.

6.0 Signage

6.1 It is a requirement to display “No Smoking” signs, so that they can be seen and read by people in the premises and those approaching the premises. They must be obviously displayed and protected from tampering, damage, removal or concealment. The required “No Smoking” signs should be displayed in such a way as to make employees, service users and visitors aware that they must comply with the new smoking law. The sign must state that the premises is a no-smoking premises and that it is an offence to smoke there or knowingly to permit smoking there. The name of the person to whom a complaint may be made by anyone who observes someone smoking should be written on the No Smoking Sign. It is the responsibility of a manager or person in control of each building to decide on the number of signs and the name and contact number to be displayed and to make sure everyone on the premises is made aware that smoking is not allowed. Signs for vehicles can be obtained on order from the Sign Factory in Bainsford and signs for buildings can be obtained on order from the Print-works at Bankside.

7.0 Council Vehicles

7.1 Signs on Council vehicles must state that the vehicle is no-smoking and that it is an offence to smoke within or around the vehicle, or knowingly to permit someone else to do so. No Smoking signs should be able to be seen and read by persons who are in the vehicle, as well as persons approaching the vehicle. This applies to both light and heavy goods vehicles.

8.0 Areas where employees or visitors can smoke

8.1 It is the aim of the smoking policy to avoid having people smoking at public entrances and exits. If you would like to provide outdoor smoking areas for your employees and visitors, you should do so in consultation with your employees and also consider seeking legal and local planning advice to ensure your proposals comply with legislation. The Health, Safety & Care Team is also available to provide advice and guidance on this issue. If you are planning to provide an outdoor smoking area, please remember the legal definition of a “wholly or substantially enclosed area” as previously described. The Council already has outdoor smokeshelters for employees at various Falkirk Council
buildings and these have been altered to comply with the new smoking legislation and it is important, if you are considering erecting a smokeshelter, that you discuss the legal requirements of this with the Health, Safety & Care team.

8.2 Where an outdoor smoking area is not being created and employees and visitors require to leave premises to smoke, you might wish to consider providing external stubbing-out bins to keep litter to a minimum. Employees should only smoke during break times as agreed with their line manager and as long as there is no disruption to the service.

9.0 Support for employees to quit smoking

9.1 Falkirk Council offers support and advice to help smokers cut down or give up smoking. The types of support available include:

- Taking part in a free “Smoking Cessation Programme” either with a self support group through their own G.P. or through the Council’s free in-house programme run in liaison with Forth Valley Health Board and finding out more about Nicotine Replacement Therapy products;

- De-stressing / Relaxation techniques;

- Reflexology, Aromatherapy, Hypnotherapy or Acupuncture;

- Achieving Personal Success Training Course – motivational course providing skills and techniques to assist with giving up smoking.

Any employees who are interested in any of the above should contact Health, Safety & Care Team for more information on 506246/506009 or the Employee Development Team on 501289.

10.0 What to do if someone ignores the smoking ban in a Council Premises or vehicle

10.1 The majority of people will respect the new law on smoking. However, it is important that you and your premises managers know what to do if someone does continue to smoke on our premises:

- The person’s attention should be drawn to the ‘No Smoking’ signs and they should be reminded that they are committing an offence. Politely ask them to stop smoking. They can be directed outside until they finish smoking. You may also want to consider installing cigarette bins outside the building to minimise litter;

- The person smoking should be advised that it’s also an offence for a premises manager, etc. to let anyone smoke;

- It should be explained to the smoker that the Council has a smoke-free policy in line with the legislation to ensure a safe working environment for all staff and customers;
If the person smoking is an employee:

- If the warning has been ignored, you or your premises manager should immediately ask the employee to leave the premises and, where relevant, inform them where they can smoke;

- If the employee refuses, your premises manager should be advised to contact the relevant line manager who should consider implementing normal disciplinary procedures for breach of Council Policy/illegal behaviour in the workplace;

- A record of all such incidents and outcomes should be kept.

If the person smoking is a service-user:

- Explain that employees are obliged to refuse to provide a service if they continue to smoke in Council premises;

- If the service-user carries on smoking, ask them to leave the premises (and, where relevant, inform them where they can smoke);

- If he/she refuses, implement the normal procedure for anti-social/illegal behaviour in the premises, which may mean you ask for police assistance to escort them from the building;

- Maintain a record of all such incidents and outcomes. In cases where physical violence or intimidation is threatened or encountered, seek the assistance of the police.

11.0 Employees Exposure to Passive Smoking - Home Visits

11.1 The Smoking Legislation does not apply to an individual's home, but the Health and Safety at Work Act, 1974 and the Safety & Health of Pregnant Workers Act (Directive 92/85/EEC), places a legal duty on all employers to secure the health, safety and welfare of employees. This involves undertaking an appropriate level of Risk Assessment to control the risks associated with the effects of passive smoking when employees are required to carry out work in the homes of service users.

11.2 Managers are responsible for ensuring these assessments are carried out and for developing safe working practices to eliminate or control the risks as far as is reasonably practical. Risk Assessments require to be reviewed and periodically checked with the employee/s involved and a record kept to ensure that these risk assessments are workable.
12.0 Risk Reducing/Control Measures

12.1 Services may wish to consider the option of providing information to service users to clarify the position on staff exposure to service users smoking. Services may also wish to include this in any update to their service leaflets. This should include a statement asking people not to smoke whilst an employee is in their house and, where an appointment has been made, not to smoke during, or for an hour before, any appointment. In circumstances where a service user smokes during an appointment the employee should be provided with the advice attached as Appendix A. As a Manager, you should follow the guidance detailed below.

1. Service users, including relatives and visitors, should be asked to refrain from smoking whilst employees are in the home and, ideally, not to smoke an hour before the appointment is due to take place. If this is not possible the service user should be asked to smoke in a room where the employee will not be working.

2. If the service user etc. refuses, the room should be ventilated by opening a window or by using an extractor fan.

3. If a service user refuses to refrain from smoking and objects to the room being ventilated, the service should not be withdrawn unless there is a direct immediate risk to the employee’s health which is beyond acceptable levels of risk. In these circumstances, the service user should be advised that employees cannot be expected to make consecutive visits to houses in which they are likely to be exposed to tobacco smoke. In these circumstances the employee should report this matter to you as soon as possible. You should record the incident and undertake an appropriate Risk Assessment as soon as possible. The Health and Safety Adviser should be provided with a copy of the risk assessment.

4. Where an employee has a particular health issue which increases the normal acceptable level of risk to employees carrying out single appointments, the employee should be removed from the situation and an alternative employee asked to attend. You should then avoid returning the employee with the relevant health issues into the same situation in the future. You should keep a record of any such issues to avoid such an incident occurring in the future.

5. The attached Appendix A (Working in Individual’s Homes – Guidance for Employees) - should be issued to employees where appropriate.

13.0 Additional Support

13.1 The Council’s Health, Safety & Care Team are available for further support and advice on Smoking issues. Contact Frances Allison, Senior H.R. Adviser; (Health, Safety & Care) on 506009. A National Compliance Line is available for further advice and guidance on: 0845 130 7250.
14.0 Review of this Guidance Note

14.1 This guidance note will be reviewed regularly by the Head of Human Resources.
APPENDIX A

FALKIRK COUNCIL

WORKING IN INDIVIDUAL’S HOMES – GUIDANCE FOR EMPLOYEES

Dealing with environmental tobacco smoke (passive smoking).

The Smoking in Enclosed Public Places legislation came into force on 26 March 2006. The legislation does not apply to an individual’s home. The Council does however have a responsibility under the Health and Safety at Work Act 1974 and the Safety & Health of Pregnant Workers Act (Directive 92/85/EEC) to secure the health, safety and welfare of employees. This involves an appropriate level of Risk Assessment.

Risk Reducing/ Control Measures

- If a prior appointment is being made request that the service-user does not smoke during, or for an hour before, any appointment.

- In circumstances where a service user smokes during an appointment you should:

  Politely ask service users, including relatives and visitors, to refrain from smoking whilst you are in the home. If a repeat appointment is required, ideally service users should be asked to refrain from smoking for an hour before the appointment is due to take place. If either of these are not possible or unacceptable to the service user, you should politely ask the service user to smoke in a room where you will not be working.

- If the service user etc. refuses, the room should be ventilated by opening a window or by using an extractor fan (if available).

- If the service user refuses to refrain from smoking and objects to the room being ventilated, the service should not be withdrawn unless there is a direct immediate risk to your health. In these circumstances, you may leave the premises but you must report the matter to your manager as soon as possible who will record the incident, undertake an appropriate risk assessment and/or write to the service-user reminding them of their responsibilities of ensuring that employees are not exposed to environmental tobacco smoke.

- Where you have a particular health issue e.g. bronchial condition which may be exacerbated above the normal acceptable level of risk if you are continually being exposed to passive smoking, you must bring this to the attention of your manager at the earliest opportunity. Your manager will then take steps to assess the level of risk and every effort will be made to reduce the risk to you. This may involve assigning you to different appointments/areas of work.