

# **Enforcement Policy for the Smoking (Northern Ireland) Order 2006**

## **Introduction**

This document outlines the key principles for enforcement of the provisions of the Smoking (Northern Ireland) Order 2006 and subsequent regulations made thereunder.

## **Aim of the Policy**

This policy sets out the principles which will enable Ballymoney Borough Council's Authorised Officers to provide an effective and fair service and to ensure consistent and open enforcement.

Ballymoney Borough Council will adhere to the principles of good enforcement as provided by the Enforcement Concordat.

This policy is written for Ballymoney Borough Council officers, the public and any business representatives who enquire about our policy and procedures. It applies to all contacts, whether formal or informal, between businesses, individuals and Council Officers.

## **Human Rights**

When enforcing the provisions of the legislation Ballymoney Borough Council will have regard to the protection of any individual's human rights as provided for by the Human Rights Act 1998.

## **Arrangements for effective enforcement**

Ballymoney Borough Council will:

- (i) Perform its statutory duty to enforce the provisions of The Smoking (Northern Ireland) Order 2006 and Regulations made thereunder.
- (ii) Make adequate arrangements to enable it to perform this duty effectively by ensuring that Officers appointed by the Council who are authorised to take enforcement action under the Order are competent.

## **Legislation**

The 2006 Order provides for four main offences:

- Failure to display no-smoking signs
- Smoking in a smoke-free premises/vehicle
- Permitting others to smoke in a smoke-free place
- Obstructing an authorized officer

The Smoking (NI) Order 2006 places responsibility with District Councils to enforce the provisions of smoke-free legislation. Authorised Officers may therefore be appropriate Local Authority Officers engaged with enforcement work including Licensing Officers, Technical Officers, Smoke-free Enforcement Officers, Environmental Health Officers and any other person appropriately Authorised by Ballymoney Borough Council to enforce the provisions of this legislation.

## **Enforcement Role**

Authorised Officers will assess whether premises comply with the legislation. Authorised Officers will do so by determining whether owners, occupiers, managers, or persons in control of premises comply with their legal duty to cause any person smoking there to stop smoking.

Authorised Officers will work closely with businesses, building compliance with legislation through education, advice and presentation. Enforcement action will be taken forward only when the seriousness of the situation warrants it. The approach to enforcement will be non-confrontational focused on raising awareness and understanding to ensure compliance. Any enforcement action undertaken must be fair, proportional and consistent. Enforcement action will be considered against individuals smoking in no-smoking premises where the owner, occupier, manager or any other person in charge can demonstrate that they have taken all reasonable precautions against these individuals smoking on their premises.

## **Principles of Enforcement**

The Smoking (Northern Ireland) Order 2006 and Regulations made thereunder will be enforced in accordance with the principles of:

Proportionality in applying the law and securing compliance

Consistency of approach

Targeting of enforcement action, and

Transparency about how the Council operates and what those regulated by Council may expect from us

## **Proportionality**

Proportionality means relating enforcement action to the risk and costs. Considerations include:

- The degree of any risks posed,
- The seriousness of any breach of the law,
- The burden which would be placed on the business in taking the action, compared with the benefit of the risk reduction,
- The views of the business operator,
- Relevant good practice as detailed in recognised guidance,
- How the public interest would best be served.

## **Consistency**

This means officers of the Council taking a similar approach in similar circumstances to achieve similar ends. Businesses and the public expect consistency from officers when providing advice on compliance or when enforcement action is required. To achieve consistency regard will be had to the Enforcement Guidance and other recognised guidance when providing advice or considering enforcement action.

## **Transparency**

Transparency means enabling businesses and individuals to understand what is expected of them and what they should expect from the Council's officers.

In line with government policy on deregulation and good enforcement practice, Council Officers will explain the following to any person upon whom enforcement action is contemplated;

- The reasons why enforcement action is contemplated
- The suggested remedial action, distinguishing between what is a statutory requirement and what is good practice
- The intention to take formal enforcement action
- An explanation regarding any immediate action
- The rights of appeal available

## **Targeting**

This means making sure that contacts are targeted primarily on those whose activities give rise to the most risks; the Council will have regard to complaints about premises where smoking appears to be permitted. Any intervention will primarily be focused on the owner or person in control of the premises who has a legal duty to cause anyone smoking there to stop. Council will take a risk-based approach when programming inspections.

## **Complaints**

All complaints will be assessed and appropriate action taken.

## **Inspection**

Proactive inspections will be generated by two means:

Smoke-free compliance checks will be incorporated into other proactive compliance inspections when the next programmed inspection is scheduled. Such inspections include, for example

- Health and safety inspections
- Food safety inspections
- Consumer safety inspections
- Licensing inspections
- IPC inspections
- Other Council departments may also carry out compliance checks (e.g. Building Control Officers)

Ballymoney Borough Council will endeavor to inspect premises on a risk-based approach. Such factors may include:

- Premises which are open to substantive numbers of people (for example, a night club will generally be considered a higher risk than a small office. Intervention in larger premises will have a greater impact in terms of public health protection.)
- Where there is an absence of pre-existing self imposed smoking controls. (Premises such as cinemas and shopping centers which are already known to be smoke free and self enforcing should generally be considered lower risk)
- Where complaints have been received regarding premises. (Any premises complained of should generally be considered higher risk)

## **Inspection Type**

There are two main types of inspection:

- (a) Official and open inspection – officers will enter the premises, announce themselves and show appropriate identification to the person in charge of the premises prior to assessing compliance with the legislation.
- (b) Covert inspection – officers will not announce themselves and will assess compliance by observation within the premises. Officers will either announce themselves and show appropriate identification to the person in charge of premises at the end of the period of observation or officers will leave and subsequently contact the owner of the premises at a later time to discuss relevant findings and any proposed course of action.

Officers will choose the most appropriate course of action once all factors have been taken into account i.e. which action will best suit the detection of offences, which intervention will bring the greatest public health benefit and which action will best ensure the safety of each officer:

### **Regulation of Investigatory Powers Act 2000 (RIPA)**

Ballymoney Borough Council will have regard to the requirements of the Regulation of Investigatory Powers Act 2000 when carrying out planned covert surveillance visits.

### **Enforcement Action**

The following enforcement options are available to the Council:

- Verbal warning
- Written warning
- Fixed Penalty Notice on owner, occupier, manager or any other person in charge of smoke-free premises (or designated person in vehicle/place) for offence under Article 7
- Fixed Penalty Notice on individual smoking in smoke-free premises (inc Vehicle) for offence under Article 8
- Report for prosecution

When considering enforcement action Ballymoney Borough Council will have regard to the Enforcement Guidance issued by the Department of Health and Social Services and Personal Safety (DHSSPS).

Where the Borough Council is in control of, or is concerned with the management of premises, an individual or a vehicle subject to the Regulations, details of the non compliance will be brought to the attention of the manager, Head of Service, and the Corporate Management Team. In the event where non compliance is deemed to warrant formal action, the matter will be dealt with under this procedure together with the Councils Disciplinary Procedure. The matter will also be drawn to the attention of the Chief Executive and the Council at the earliest opportunity

The Council will use its discretion, taking into account all relevant factors, when deciding which enforcement option is appropriate.