



Chester-le-Street
District Council

Report to: Council

Date of Meeting: 27 September 2007

Report from: Head of Legal and Democratic Services

Title of Report: Allocation of Functions and Responsibilities to Council and consequential delegation of Council powers under the Smokefree Legislation to Officers

Agenda Item Number: **14**

1. PURPOSE AND SUMMARY

- 1.1 The purpose of this Report is to draw the attention of Members to a statutory instrument which comes into effect on 2 October 2007 which makes it a Council function to deal with smokeless legislation enforcement rather than a function of the Executive of a Council and to introduce the necessary consequential changes in the Council's Constitution.
- 1.2.1 The Council is therefore recommended to agree the changes set out in the statutory instrument as regards smokeless legislation to be incorporated into the Constitution and to confirm that the Scheme of Delegation in the Constitution includes delegation of the Council's powers in respect of smokefree matters to the Director of Development Services and the Head of Planning and Environmental Health.

2. CONSULTATION

- 2.1 The Council was not consulted on The Local Authorities (Functions and Responsibilities)(England) (Amendment no.4) Regulations 2007 which were made on 5 September 2007, laid before Parliament on 11 September 2007 and which come into force on 2 October 2007.

3. CORPORATE PLAN AND PRIORITIES

3.1 This report supports priority 2 working in partnership to deliver the community strategy

4. IMPLICATIONS

4.1 Financial implications and value for money statement

4.1.1 It is anticipated that enforcement can be met within the existing budget.

4.2 Legal

4.2.1 The Health Act 2006 and associated provisions provide for the prohibition of smoking in certain premises, places and vehicles.

4.2.2 These provisions require enforcement.

4.2.3 The Local Authorities (Functions and Responsibilities) (England) (Amendment No.4) Regulations 2007 comes into force on 2 October 2007 and amends the licensing and registration functions list of matters which are not to be the responsibility of an authority's executive as regards functions relating to smoke free legislation.

4.3 Personnel

4.3.1 It is anticipated that staffing levels can be met from existing resources.

4.4 Other Services

4.4.1 Additional work may occur for Planning Services in respect of further applications for shelters (though such applications will attract additional fee income).

4.5 Diversity

4.5.1 Cultural issues do have some bearing on those who smoke and those who are affected from the harmful effects of smoking

4.6 Risk

4.6.1 The Council is committed to improving the health of people and enforcement of the smokefree legislation is part of this clear and longstanding commitment.

4.7 Crime and Disorder

4.7.1 In order to prevent or reduce crime and disorder, the Council needs a Constitution which is responsive to the needs of the Community.

4.8 Data Quality

4.8.1 Every care has been taken in the development of this Report to ensure that the information and data used in its preparation and the appendix attached is accurate, timely, consistent and comprehensive. The Council's Data Quality Policy has been complied with in producing this Report.

4.9 Other Implications

4.9.1 None

5. BACKGROUND, POSITION STATEMENT AND OPTION APPRAISAL

5.1 The Health Act 2006 and associated provisions banned smoking in certain premises, places and vehicles as from 6 a.m. on Sunday 1 July 2007.

5.2 The main provisions require virtually all enclosed or substantially enclosed places to which members of the public have access in the course of their daily work, business and leisure to be covered by smokefree legislation, including pubs, cafes, nightclubs, offices, work vehicles and common parts of housing and factories.

5.3 Premises (and vehicles) where the smoke-free prohibition applies will be required to display in a prominent place prescribed signage at the entrance to the premises (or area of premises).

5.4. The smokefree provision in the Health Act relates to the smoking of tobacco and the smoking of any other substance, including the use of pipes and cigars. The provision has also been extended to cover water pipes used for smoking.

5.5 The Department of Health has published regulations covering the definition of 'enclosed' and 'substantially enclosed' premises; enforcement authorities and signage.

5.6 It should be noted that the legislation does not apply to open space and therefore would not apply to parks and other open spaces. However, the prohibition would apply to buildings within them.

5.7 The Department of Health sees this legislation as the most important legislation with regard to public health since seat belts were made compulsory in the 1970s.

5.8 Smoking is now the most significant contributory factor to the differences in life expectancy between social classes as men and women from deprived socio-economic groups are more likely to smoke. National smoking prevalence rates are 26%.

- 5.9 Children and non-smokers in particular are vulnerable from second-hand smoke (passive smoking). It is widely acknowledged that progress to end health inequalities, and increase the life expectancy of poorer and more vulnerable people in our communities, depends on action to cut the number of smokers and reduce the harm smoking causes to others.
- 5.10 The Council in its role as an enforcing authority needs to have in place proper arrangements for delegation in respect of smokefree legislation including enforcement and authorizations.
- 5.11 I therefore suggest an amendment to Part 3A of the Council's Constitution to insert the new 'FA. Functions relating to smoke-free premises' as introduced by the statutory instrument and to delegate those Council powers to the Director of Development Services and also to the Head of Planning and Environmental Health with consequential amendments to Part 7 of the Council's Constitution to add 'smokefree matters including enforcement' on page 3 under the heading of the Director of Development Services' in the Functions column opposite the Environmental Health entry to be placed immediately after and beneath the entry relating to private sector renewal. If this addition is agreed, then the existing Part 3H will operate to permit the Director of Development Services and/or the Head of Planning and Environmental Health to make any necessary authorizations.

6. RECOMMENDATIONS

- 6.1 That the Council is recommended to agree the changes set out in paragraph 5.11 to this Report and that those changes be incorporated into the Council's Constitution with effect from and including 2 October 2007.

7. BACKGROUND PAPERS / DOCUMENTS REFERRED TO

- 7.1 None

AUTHOR NAME	Christopher Potter
DESIGNATION	Head of Legal and Democratic Services
DATE OF REPORT	13 September 2007
VERSION NUMBER	1

AUTHOR CONTACT DETAILS **Ext. 2011**