

Report to: **Executive**
Date: **20th March 2007**
Report of: **Executive Member for Health**
Subject: **Funding to support the implementation of the new Smoke Free legislation**
Ward: **All**

1. Purpose of the Report

1.1 This report seeks approval to secure funding to assist in the implementation of new 'Smoke Free' legislation within the district of Easington, which is a statutory function as required by the Health Act 2006 and the Smoke-free (Premises and Enforcement) Regulations 2006.

2. Consultation

2.1 Consultation has been undertaken with:

- Executive Member for Health
- Head of Personnel
- The Council's Monitoring Officer
- This report has been agreed by Management Team

3. Background

3.1 Statistics indicate that, nationally, just over 25% of people smoke, and over 70% of those that do indicate that they want to give up smoking. In Easington 37% of people smoke. The number of smoking related deaths in Easington is significantly worse than the England average.

3.2 The British Medical Journal estimates that there have been 11,000 deaths from exposure to second hand smoke, 700 deaths from specific workplace exposure, and 54 premature deaths each year in UK hospitality (including pubs and clubs) industry employees.

3.3 From 1st July 2007 councils in England, including the district of Easington, will have a statutory duty under the Health Act 2006 and the Smoke-free (Premises and Enforcement) Regulations 2006 to ensure workplaces and vehicles are smoke free.

3.4 The Department of Health (DoH) will provide policy and guidance on how smoke free enforcement should be delivered in England. To assist local authorities to fulfil their commitments to enforcing the provisions of the smoke free legislation the DoH has also made funding available through a grant under Section 31 of the Local Government Act.

4. Position Statement and Option Appraisal

4.1 From 1st July 2007 councils in England, including the district of Easington, must have resources available to fulfil their statutory duties under the new legislation to ensure workplaces are smoke free. Further legislation regarding signage, vehicles and penalties is currently under consultation.

4.2 The legislation will apply in every workplace, where more than one person works (paid or unpaid), that is enclosed or substantially enclosed. The legislation also applies to vehicles and other enclosed or substantially enclosed public places where persons present are likely to be exposed to smoke.

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- 4.3 The new legislation creates three new offences:
- Owners/ Operators of premises and vehicles covered by the new legislation that do not display the required warning signs can be punished by a fixed penalty notice
 - Any person smoking in a smoke free premises or place can be punished by fixed penalty notice
 - Owners/ Operators of premises and vehicles covered by the new legislation who fail to prevent smoking in premises can be punished by prosecution for summary offence. There are currently no proposals for 'escalating' penalties, or provisions for removing liquor licence.
- 4.4 There are approximately 2200 workplaces currently on the councils non-domestic rating system, in addition to 93 Hackney Carriage and 154 Private Hire Vehicles.
- 4.5 Local authority Environmental Health departments will take the lead in the implementation and enforcement of the new legislation. It is envisaged that the authority will have the following responsibilities:
- To appoint and authorise officers to carry out the necessary enforcement measures required to implement smoke free controls throughout premises that are affected by the legislation.
 - To secure compliance by informing and advising businesses both before and after 1st July 2007, in order to ensure a smooth transition when the legislation takes effect.
 - To comply with the law in respect of our own premises
 - To submit returns on enforcement action taken to the DoH, if and when required
- 4.6 In fulfilling its duties the authority will need to:
- Develop a risk based inspection programme, with inspections being prioritised towards high risk premises, with allowances being made for out of hours working
 - Develop an advice and guidance programme for all premises
 - Develop procedures for recording and investigating complaints
 - Establish an enforcement policy for non compliant premises
 - Establish links with 'partner' organisations such as the Primary Care Trust (PCT) smoking cessation service, and FRESH North East.
- 4.7 To assist local authorities to fulfil their commitments to enforcing the provisions of the smoke free legislation the DoH has made the following funding available to the council:
- £9,743 for the remainder of 2006/7
 - £47,422 for 2007/8

A copy of the DoH circular is attached for information. Funding beyond 31/03/2008 has yet to be identified.

- 4.8 There will be 'knock on' effects on for the Environmental Health and Licensing Unit and other departments:

Smokers will smoke outside premises potentially giving rise to increases in both noise nuisance and anti social behaviour. The licensing team may be forced to review or enforce licensing conditions for both premises and vehicles. Cleansing teams may have an increased number of requests to deal with associated refuse and litter (e.g. 'butts')

The erection of 'smoking shelters' may require planning permission and/or building

regulations approval. This may give rise to increased numbers of applications for planning, building control, and the commercial enforcement team to deal with.

4.9 Option Appraisal for the implementation of the new legislation

Establishing a risk based inspection programme targeting the top 25% of 'high risk' premises (such as workmen's clubs, pubs, community centres and canteens) would give rise to approximately 750 inspections in addition to mail shots and responding to complaints and enquiries for all affected premises (Approximately 2200 business premises and 250 vehicles). This and the subsequent enforcement action generated would require two additional temporary (1 year) posts to the end of March 2008.

Option 1 - Implement the smoke free legislation with existing staff from the Commercial Enforcement Team.

This option is not favoured, as it will impact on targets that are already demanding, such as the food safety inspection and health and safety inspection programmes. BVPIs 216a, 216b and 217 would also be affected.

Option 2 - Implement the smoke free legislation using consultancy staff.

This option would have the benefit of freeing the Commercial Enforcement team to pursue existing targets. There would, however, be significant downsides to this option in that there would be no designated point of contact at the council to deal with media and business enquiries, the new legislation regime is new to consultancies and therefore the quality of service may be variable, and the possibility of establishing links with organisations such as the PCT would be limited. Consultancy services are likely to be in high demand during the implementation of the new legislation, and their availability may also therefore be limited. Neighbouring authorities have been quoted £18 per hour for enforcement activity only, this would mean that additional staff would be required to promote the new legislation and provide education to business as discussed in options 3 and 4.

Option 3 - Employ additional staff on temporary contracts.

The cost of the additional posts would depend on evaluation by personnel, however the cost to the council over a range of grades would be:

Creation of a 'Smoke Free Enforcement Officer' post with responsibility for co-ordinating and enforcing the provisions of the new legislation would cost £26,991* to £28,827 on grade 6 (The duties are comparable to the environmental coordinators posts, but would require more detailed evaluation by personnel services)

* Based upon pay rates at 1st April 2006.

Creation of a 'Smoke Free Support Officer' would also be required to maintain educational support throughout the year, particularly when the need for enforcement will be high. This post will carry out advice visits, prepare promotional material, produce reports, coordinate mail shots, liase with the PCT and assist in promotional events.

The cost to the council for a 'Smoke Free Support Officer' on grade 2 would be £15,808 to £19,239 for a full time post for one year.

However, the problems recently encountered in recruiting technical staff, the requirement to train staff new to enforcement, and the evaluation of the enforcement officer post would make this option difficult to implement given the timescales involved.

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Total Cost £42,799 to £48,066 per year (depending on grading of posts).

Option 4 - Second a member of the Commercial Enforcement team to the 'Smoke Free Enforcement Officer' post, and engage consultancy support to carry out routine food hygiene and health and safety inspections which would have been allocated to that officer with reactive work such as Infectious disease control being temporarily covered by the remainder of the Commercial Enforcement team, and create a new 'Smoke Free Support Officer' post.

The cost to the council for a 'Smoke Free Support Officer' on grade 2 would be £15,808 to £19,239 for a full time post for one year.

The cost of back filling food safety inspections for one officer for one year would be £18,000 + VAT, based on contract arrangements for 2006/07. This would require additional admin support.

There would be no additional cost to second a member of the Commercial Enforcement team to the 'Smoke Free Enforcement Officer' post.

This option is favourable in that it provides a designated point of contact at the council to deal with media and business enquiries, staff in the Commercial Enforcement team already have enforcement experience, and there is additional flexibility within the team in the event of emergencies, or should demand for the smoke free service drop. The council has previously used one consultancy in this field and had good customer satisfaction levels.

It would be expected that other members of Commercial Enforcement team cover remaining reactive work, though some areas of work that have a lower priority may suffer. Admin work generated by agency staff would need to be covered by secretarial officers within the Environmental Health and Licensing Unit or by the Smoke Free Support Officer.

Total Cost £33,808 to £37,239 for one year.

Any staff that are identified as 'at risk' within the local authority will be considered for slotting in to the Smoke Free Support Officer position prior to going to advert.

All Options would also require additional funding to support promotional activities (venues for seminars etc), production of leaflets and partnership working such as workplace smoking cessation services with the PCT.

- Production of promotional leaflets £1,000
- Purchase of promotional material (linked to pride in Easington?) (e.g. 2000 personal ashtrays £2400)
- Hiring of venues throughout the year £1500
- Joint initiatives with smoking cessation service
- Legal expenses

Total £7,000+

5. Policy, Legal, Financial and Risk Implications

5.1 Legal Implications

From 1st July 2007 councils in England, including the district of Easington, will have a statutory duty under the Health Act 2006 and the Smoke-free (Premises and Enforcement) Regulations 2006 to ensure workplaces and vehicles are smoke free.

5.2 Financial Implications

To assist local authorities to fulfil their commitments to enforcing the provisions of the smoke free legislation the DoH has made the following funding available to the council:

- £9,743 for the remainder of 2006/7
- £47,422 for 2007/8

As none of the options considered exceed the amount of funding from the DoH, there will be no additional financial burdens on the council. Funding arrangements beyond 2007/08 are yet to be determined and the enforcement arrangements will require re-evaluation at that time.

Given the short time remaining in 2006/7 the funding for this year may need to be carried forward to 2007/8.

5.3 Risk Implications

A risk assessment has been completed and the necessary actions required to manage the identified risks have been or will be implemented. Failure to secure funding and therefore appoint enforcement staff will impair the council's ability to successfully implement the new regime.

5.4 Communications

The 'Smoke Free Enforcement Officer' post would be, in liaison with the Council's Communications and Marketing Officer, the designated point of contact at the council to deal with media and business enquiries in relation to the smoke free legislation.

6. Corporate Implications

6.1 Corporate Plan and Priorities

There are no implications outside normal service delivery.

6.2 Equality and Diversity

There are no implications outside normal service delivery.

6.3 E Government

There are no implications outside normal service delivery.

6.4 Procurement

There are no implications outside normal service delivery.

6.5 *Service Plan*

The smoke free inspection and advice programme will be built into the Environmental Health and Licensing Unit's service plan, and will contribute to authority's key objective: 'Building a Healthy Community'.

6.6 *Performance Management and Scrutiny*

Performance in relation to the smoke free legislation will be reported to Service Delivery Scrutiny Committee as part of the Environmental Health and Licensing Managers report.

6.7 *Sustainability*

There are no implications outside normal service delivery.

6.8 *Expenditure related to 'Well Being' Powers*

There are no implications outside normal service delivery.

6.9 *Human Resource Implications*

The head of personnel and payroll will be consulted regarding the creation and evaluation of any new posts.

6.10 *Crime and Disorder*

There are no implications outside normal service delivery.

6.11 *Human Rights*

There are no implications outside normal service delivery.

6.12 *Social Inclusion*

There are no implications outside normal service delivery.

7. Recommendations

1. It is recommended that the council adopts option 4 as the appropriate course of action in that a member of the CE team will be seconded to the 'Smoke Free Enforcement Officer' post, duties such as food hygiene inspections will be back filled with consultancy staff, and new 1 year temporary 'Smoke Free Support Officer' post will be created.
2. It is further recommended that costs be met from the grant from the DoH, with an appropriate cost centre, coded to show the smoke free legislation, being created to control the cost of the implementation of the new regime.
3. Those monies allocated for 2006/7 be carried forward to 2007/8.

Documents/ Legislation referred to and background papers used in the preparation of this report:

Health Act 2006

Smoke-free (Premises and Enforcement) Regulations 2006

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Department Of Health Local Authority Circular – LAC (2006) 17, 21 December 2006 ‘Funding to support the implementation of Smokefree legislation’.