

# **DUNDEE CITY COUNCIL**

**REPORT TO:** Personnel Committee - 13 March 2006

**REPORT ON:** Policy on Tobacco and Smoking

**REPORT BY:** Assistant Chief Executive (Management)

**REPORT NO:** 111-2006

## **1 PURPOSE OF REPORT**

- 1.1 To advise members of the Committee of the impact of the Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 on the Council's Policy on Tobacco and Smoking.

## **2 RECOMMENDATIONS**

It is recommended that the Committee:-

- 2.1 approve the amended Policy on Tobacco and Smoking attached as Appendix 1 and the Guidance on the Interpretation and Application in the form of questions and answers attached as Appendix 2;
- 2.2 note the content of the letter issued to all employees attached as Appendix 3.

## **3 FINANCIAL IMPLICATIONS**

- 3.1 None.

## **4 SUSTAINABILITY IMPLICATIONS**

- 4.1 None.

## **5 EQUAL OPPORTUNITIES IMPLICATIONS**

- 5.1 None.

## **6 BACKGROUND**

- 6.1 The Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 come into force on 26 March 2006. Report No. 17-2006 agreed by the Policy and Resources Committee at a meeting on 9 January 2006 remitted the Assistant Chief Executive (Management) to prepare a report on the policy statement for submission to the Personnel Committee.

The Council's Policy on Tobacco and Smoking which was approved by the Personnel Committee at a meeting held on 9 May 2005 prohibits smoking in all premises, vehicles and immediate access to buildings.

The policy therefore complies with the legislation however has been extended to include places which are considered to be wholly or substantially enclosed places eg pedestrian access from Castle Street to City Square.

In addition, guidance in relation to the arrangements for service users in adult residential care homes, has been amended and references to the legislation have been made, where appropriate.

It is proposed that the policy be reviewed by the Assistant Chief Executive (Management) on an annual basis in line with local and national guidance.

The amended policy will be issued to all employees.

In recognition of the importance of the legislation the Assistant Chief Executive (Management) has issued a letter to all employees advising of the forthcoming legislation. The letter is attached as Appendix 2.

## 7 **CONSULTATION**

- 7.1 The Chief Executive, Depute Chief Executive (Finance), Depute Chief Executive (Support Services) and the trade unions have been consulted on this report.

## 8 **BACKGROUND PAPERS**

- 8.1 None.

J C Petrie  
Assistant Chief Executive (Management)

6 March 2006

**DUNDEE CITY COUNCIL****POLICY ON TOBACCO AND SMOKING****POLICY STATEMENT**

Dundee City Council recognises that it has a duty to ensure the health and safety of its employees and others and to protect them from exposure to harmful tobacco smoke. The Council, along with Tayside Health Board and other partner agencies, is also committed to maintaining a clean environment and promoting health for all in the community. To this end, it will not be associated with the advertising or sale of tobacco products and has adopted the following measures in respect of tobacco and smoking. These measures will apply equally to all employees, Councillors, visitors, contractors, service users and members of the public, where appropriate.

Implementation of the policy ensures compliance with the Smoking, Health and Social Care (Scotland) Act 2005.

Fundamental to this policy is the absolute right of employees to breathe air free of tobacco smoke at work and not to be subject to any pressure or persuasion to waive this right.

The policy will take effect from 14 March 2006.

**Council Buildings**

Smoking is not permitted in Council premises. This covers all workplaces, eg offices, schools (including playgrounds, etc), workshops, huts, canteens, garages, etc, and includes immediate access areas, eg walkways, entrances, doorways, etc. It also includes short term lets of premises and facilities to external organisations or individuals, but excludes Council houses and other properties held under a tenancy agreement.

**Vehicles**

Smoking is not permitted in any Council vehicles. This includes contract hire cars and employees' private vehicles while in use on official Council business transporting service users or non smoking employees

**Employees**

All employees have a responsibility to comply with the policy and to respect and protect the health of other workers.

Employees are not permitted to smoke in Council buildings and vehicles as detailed above. They are not entitled to leave their workplaces during paid time for the purpose of smoking. Employees must not smoke while delivering services directly to members of the public or while responsible for service users, eg Social Work clients, pupils, etc. This includes accompanying service users on public transport or in other public places.

Employees who become aware of breaches of the Policy, or who are subject to pressure or persuasion to tolerate smoking, are encouraged to report this to their line manager or the Employee Helpline. Harassment Support Officers may also be approached for help.

Any repeated refusal by an employee to comply with this policy will be regarded as a breach of discipline and dealt with in accordance with the Council's disciplinary procedure.

### **Health**

The City Council, in co-operation with Tayside Health Board and other agencies, will support public health and awareness campaigns in relation to smoking and encourage employees, who wish to give up smoking, by offering smoking cessation classes and any other appropriate help. The City Council will mount educational initiatives to discourage and prevent children and young people from smoking. It will also make sustained efforts using its statutory powers to prevent the sale of tobacco products to children under 16.

### **Environment**

The City Council will set an example and encourage other organisations to provide smoke free environments in all workplaces and premises used by the citizens of Dundee.

### **Legal Position**

The Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 make it an offence to smoke in wholly or substantially enclosed places. Smoking is not permitted in such places.

### **Monitoring and Review of Policy**

The policy will be monitored and reviewed on an annual basis by the Assistant Chief Executive (Management).

**Appendix 2**

1.Q *Can Chief Officers exercise any discretion on the Policy on Tobacco and Smoking?*

A No.

2.Q *Does the ban on smoking cover huts, "buckies", portacabins and other temporary buildings and council vehicles?*

A Yes.

3.Q *What is meant by immediate access areas, eg walkways, entrances, doorways, etc?*

A This is really a matter of common sense. Members of the public and other people entering Council buildings should not have to negotiate their way around smokers or walk through smoke in order to gain entry. Similarly, there should be no concentration of smokers' litter in the immediate vicinity of doorways and entrances. Taking the City Square as an example, it is inappropriate for employees to smoke in the immediate vicinity of their office entrance at any time. However, whilst the Council encourages employees not to smoke at all, for health reasons, someone sitting on one of the seats provided or on one of the stepped areas in their own time, may exercise individual choice.

4.Q *What is the position regarding smoking and the walkway over to Olympia?*

A The walkway is an extended entrance to Council facilities. It is a wholly enclosed space and from 26 March 2006 it will be an offence to smoke in this walkway. Anyone who smokes may be liable to a fixed penalty notice.

5.Q *Can an employee working out of doors smoke?*

A The Council encourages employees not to smoke for health reasons but in these circumstances it is a matter for individual choice, provided the act of smoking does not affect the person's ability to carry out his/her duties and there are no other health and safety restrictions in operation at the time, eg while using flammable liquids, etc.

6.Q *If employees' duties require them to go from one office or location to another, can they smoke on the way, ie in the open air in the street?*

A The Council encourages employees not to smoke for health reasons but in these circumstances it is a matter for individual choice, provided that the journey is necessary and approved by management and the route/time taken is not deliberately extended.

7.Q *Are employees allowed to smoke in school playgrounds?*

A No. It is inappropriate for employees to smoke in areas of the school provided for children's play and recreation.

8.Q *What is the position regarding smoking in yards, gardens, grounds, etc., attached to Council buildings?*

A The Council encourages employees not to smoke for health reasons but in these circumstances, provided there are no particular reasons militating against it, such as the use of school playgrounds by children, or health and safety or fire regulations, employees with outdoor duties or in their own time, may exercise their own individual choice.

9.Q *If a non-smoking employee goes on official business in a car belonging to or leased to and driven by an employee who smokes, what is the position?*

- A The non-smoker has an absolute right to breathe air free of tobacco smoke at work and to be free of any pressure or persuasion to waive this right. Even if travelling with three (or more) colleagues, who are smokers, the non smoker's right is paramount.

Employees who are smokers have a duty not to expose a colleague to any recognised risk and they are not permitted to smoke in these circumstances.

- 10.Q *If an employee is going alone on company business in his/her own car or lease car, can they smoke?*

- A The Council encourages employees not to smoke for health reasons but in these circumstances it would be a matter for individual choice.

- 11.Q *Can employees leave the workplace during their teabreak to have a smoke?*

- A Where permitted, a teabreak is paid working time and is taken subject to there being no disruption of the service, ie phones still have to be answered and situations involving clients, members of the public, etc, still have to be dealt with. Employees must not leave the premises during paid working time for any reason, without specific permission.

- 12.Q *Can an employee on flexitime clock out and in for unpaid smoke breaks during non-core time?*

- A No. The flexitime system permits start and stop times to be varied, subject to adequate cover being maintained and the needs of the service being met. It was never intended to accommodate frequent short duration comings and goings, which would be disruptive to work continuity and service delivery.

- 13.Q *What is the position regarding employees (eg Home Helps, Housing Officers, Maintenance Trades, Environmental Health Officers, etc) whose duties require them to call on clients or members of the public who are smoking in their own homes?*

- A This is a complex and delicate area, but all reasonable steps must be taken to safeguard the right of employees to breathe air free of tobacco smoke at work. It is appropriate for employees faced with such situations to raise the problem for discussion with their managers. In the case of services delivered at pre-arranged times, service users, who smoke, could be advised that services will be subject to their agreement to provide a smoke free working environment for the employees concerned. This would involve adequate ventilation of their homes prior to and refraining from smoking during service deliverers visits. However, many visits are not pre-arranged and in some situations, the householder or client may be unwilling to co-operate. Where smoke filled homes are an obstacle (whether by accident or design) progress might have to be made via correspondence or by prevailing on individuals to attend meetings at Council offices. Departments affected may have to develop alternative ways of pursuing their business in order to protect their employees.

- 14.Q *What is the position on smoking in respect of clients or service users, who effectively live in Council premises and require care or support from employees, eg in residential accommodation for young or elderly people?*

- A The Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 allow an exemption for adult residential care homes in that a designated room can be provided for residents to use for smoking. Employees and visitors are not permitted to smoke in such rooms. So, where a designated smoking room has been provided in residential care facilities for the elderly, then that room will remain available for use, by residents only, to smoke. In adult residential care facilities where there is not currently a smoking room for residents, the Council does not intend to provide a smoking room. There is no requirement under the regulation for residential accommodation to include a smoking room.

The smoking prohibition will in all instances apply to the employee areas and communal areas of residential accommodation.

Residential care facilities for young people are not exempt from the regulations and as such smoking is prohibited.

15.Q *If an employee is subjected to passive smoking by a colleague or colleagues and pressured to keep quiet, what should he/she do about it?*

A Under the Council's policy, employees have the right to breathe air free of tobacco smoke at work and not to be subject to any pressure or persuasion to waive this right. Deliberate breaches of the policy with no regard for the health and comfort of others should be reported to Management or the Helpline. (Write to or telephone the Council Helpline on extension 4800, anonymously if preferred.) Assistance and support may also be sought from the trade unions and the Council's network of Harassment Support Officers. Complaints can also be made to Environmental Health and Trading Standards regarding alleged non compliance. The circumstances of the complaint will be investigated to establish if there has been a breach of The Smoking Prohibition in Certain Premises (Scotland) Regulations 2006.

16.Q *Will an employee refusing to comply with the Policy on Tobacco and Smoking be disciplined?*

A Provided that the Policy is treated sensibly, there is no reason to anticipate conflict. However, an employee who wilfully disregards any workplace policies or rules agreed by the Council and/or refuses to carry out the reasonable instructions or requirements of management, will be subject to disciplinary proceedings. Any employee who smokes in a Council premises or vehicle may also be issued with a fixed penalty notice by Environmental Health and Trading Standards Enforcement Officers

17.Q *What assistance, if any, will be available to employees, who wish to stop smoking?*

A The Employee Support Adviser in the Personnel Department can provide advice and assistance to smokers wishing to stop. The Personnel Department pages on the Council Intranet also provide information on hospital based services, voluntary/community support groups and health centres and GP practices in Dundee that offer services to those registered at these practices.

The Health Board can provide smoking cessation classes by arrangement and/or training for nominated employees to enable them to conduct smoking cessation classes within their own organisations (this might be attractive to departments with larger numbers of smokers wishing to quit).

**Appendix 3**

If calling please ask for

Our Ref

Your Ref

Date

Dear Colleague

On 26 March 2006 the law on smoking in Scotland will change. Smoking will no longer be allowed in certain wholly or substantially enclosed public places. The law has been introduced to protect people from the harmful effects of passive smoking.

As you will be aware the Council's Policy on Tobacco and Smoking already prohibits smoking in all Council premises, vehicles and immediate access to Council buildings. The new legislation extends to public areas that the Council is responsible for, such as the escalators at Tayside House and the pedestrian access from Castle Street to the City Square, recessed doorways, etc.

Compliance with the new law will be monitored by enforcement officers of the Environmental Health and Trading Standards Department. The Council is therefore expected to be an exemplar in terms of adherence to existing policy and the law.

Any person who fails to comply with the law will be committing a criminal offence and will be liable to a fixed penalty fine and possible criminal prosecution. An employee who fails to comply with the Council's Policy on Tobacco and Smoking in a place for which the council is responsible will also be liable to disciplinary action.

The Council is committed to ensuring all employees have the right to work in a smoke free environment. Smokers who want to stop will find information about assistance on the Personnel pages on the Intranet or by contacting the Personnel Department on Tel. 434054. Other sources of support are Smoke line 0800 848484, [www.hebs.com/tobacco](http://www.hebs.com/tobacco), the Public Health Department of your local NHS Board, NHS Tayside information number 0845 6009996, or your local GP surgery.

Yours sincerely