



Llywodraeth Cymru
Welsh Government

Enforcement Guidance and Protocols – Smoke-free Premises and Vehicles

Guidance for officers in the enforcement of the provisions in Chapter 1, Part 3 of the Public Health (Wales) Act 2017 and The Smoke-free Premises and Vehicles (Wales) Regulations 2020

This document replaces ‘Enforcement Guidance and Protocols – Smoke-free places’ issued by the Welsh Local Government Association in March 2007, which was issued to support the implementation of the Health Act 2006 (“The 2006 Act”) and the Smoke-free Premises etc. (Wales) 2007 (‘the 2007 Regulations’).

Officers should use this guidance to support implementation of Chapter 1, Part 3 of the Public Health (Wales) Act 2017 (“the 2017 Act”) and the Smoke-free Premises and Vehicles (Wales) Regulations 2020 (‘the 2020 Regulations’).

Contents

1.	Why have additional controls on smoking in public places	3
2.	Background to this legislation	4
3.	Purpose of guidance	5
4.	Overview of the legislation and offences	6
5.	Overall approach	15
6.	Inspections	17
7.	Assessment of compliance	19
8.	Enforcement Action	23
9.	Complaint Protocol	26
	Appendix 1: Definitions	27
	Appendix 2: Exceptions	29
	Appendix 3: Worked scenarios	33

1. Why have additional controls on smoking in public places?

Prior to the implementation of the 2007 Regulations in April 2007, smoking was the greatest preventable cause of illness, disability and premature death in Wales, with an estimated smoking-related 6000 deaths in Wales every year. It was estimated that the implementation of these Regulations, through restricting smoking in enclosed and substantially enclosed public places, including pubs and workspaces would prevent over 400 deaths a year from heart disease, cancer, stroke and respiratory disease among Welsh non-smokers.

The 2007 Regulations have had a big impact on the number of smokers and people exposed to second-hand smoke, however smoking remains the main cause of premature death in Wales. The Welsh Government, through the introduction of the 2017 Act and the 2020 Regulations wants to protect more people from the effects of second-hand smoke and to reduce the number of young people taking up smoking.

The legislation requires hospital grounds, school grounds and public playgrounds as well as outdoor care settings for children to be smoke-free which will reduce children's exposure to second-hand smoke and denormalise smoking in places where children go frequently and in places associated with health care provision. The 2020 Regulations also phase out smoking in hotel bedrooms and self-catering holiday accommodation (by 1 March 2022), smoking rooms in Mental Health Units (by 1 September 2022) and make small changes to who can use designated smoking rooms in adult care homes and adult hospices. In certain circumstances, those working in others' homes will also be able to work in a smoke-free environment as well for those that are receiving goods or services from a dwelling.

Full guidance on the 2017 Act and the 2020 Regulations is provided on the Welsh Government website: gov.wales/smoke-free-law-guidance-changes-march-2021.html

2. Background to the Legislation

Evidence produced in 1998 and 2004 by the Scientific Committee on Tobacco and Health concluded that exposure to second-hand smoke was a substantial public health risk. The 2004/5 Welsh Health Survey also found that three quarters of non-smoking adults in Wales were regularly exposed to second-hand tobacco smoke. Following wide consultations the Welsh Assembly Government, using the powers in Chapter 1 of Part 1 of the 2006 Act enacted the Smoke-free Premises etc. (Wales) Regulations 2007.

Smoking rates in Wales have fallen since the introduction of the 2007 Regulations, and exposure to second-hand smoke has reduced, but more remains to be done to reduce adult smoking prevalence, the number of young people taking up smoking and to further reduce exposure to second-hand smoke.

Chapter 1 of Part 3 of the 2017 Act and the 2020 Regulations bring within legislative scope premises that were not previously smoke-free, these are hospital grounds, school grounds, public playgrounds and outdoor care settings for children. The 2020 Regulations revoke some of previously created exemptions which allowed smoking within premises. Sections 13 and 14 of the 2017 Act also enable additional smoke-free premises to be designated by Regulations, if the Welsh Ministers are satisfied that doing so is likely to contribute towards the promotion of the health of the people of Wales.

3. Purpose of the Guidance

This guidance replaces the guidance issued by the Welsh Local Government Association, and agreed with the Directors of Public Protection Wales, The Welsh Local Government Association, the Chartered Institute of Environmental Health, the Association of Chief Police Officers and the Welsh Assembly Government to support the implementation of the 2007 Regulations. This guidance provides advice on the new requirements in Chapter 1 of Part 3 of the 2017 Act and the 2020 Regulations and explains the enforcement provisions and extension to scope. This guidance, and the protocols it contains will be amended in the light of future experience and any subsequent legislative changes.

To ensure a consistent approach to both interpretation and enforcement of the legislation across Wales, it is expected that all authorised enforcement officers will be guided by and follow this guidance when enforcing the smoke-free legislation, in conjunction with their own local authority's enforcement policy.

The generic term 'enforcement officer' is used and encompasses all local authority officers working in an enforcement capacity in respect of the smoke-free legislation, including Environmental Health Officers, Trading Standards Officers, Licensing Officers and other appropriately qualified officers authorised by the local authority.

4. Overview of the legislation and offences

The legislation covering smoke-free premises and vehicles in Wales consists of:

- i. Chapter 1 of Part 3 of The Public Health (Wales) Act 2017
- ii. The Smoke-free Premises and Vehicles (Wales) Regulations 2020.

The 2017 Act and 2020 Regulations therefore replace the smoke-free regime that was in place in Wales, prior to 1 March 2021.

The follow legislation has been repealed by the 2017 Act and the 2020 Regulations:

- Chapter 1 of Part 1 of the Health Act 2006 (“Smoke-Free Premises, Places and Vehicles”) in relation to Wales. The only part of the Health Act 2006 that will remain in force is Section 13, Power to amend age for sale of tobacco
- The Smoke-free Premises etc. (Wales) Regulations 2007
- The Smoke-free Premises etc. (Wales) (Amendment) Regulations 2015
- The Smoke-free Premises etc. (Wales) (Amendment) Regulations 2016.

Smoke-free Places and Premises open to the public

Workplaces and premises that are open to the public and which are enclosed or substantially enclosed are required to be smoke-free.

Smoke-Free Premises

Smoke-free premises are those premises which are enclosed or substantially enclosed and which are open to the public or used as a place of work by more than one person.

There are two elements to ascertaining which premises will be smoke-free premises for the purposes of the legislation. Firstly, the premises must be open to the public or used as a place of work by more than one person and secondly they must also be enclosed or substantially enclosed.

- **Open to the public:** Premises are open to the public if the public or a section of the public has access to them, whether by invitation or not and whether on payment or not. Unless the premises are also used as a place of work (see below) they are only smoke-free when open to the public. See also the restricted exception in respect of school grounds.
- **Used as a place of work:** Workplaces are smoke-free if they are used by more than one person (even if the persons work there at different times or only work there intermittently), or if members of the public might attend for the purpose of seeking or receiving goods or services from those working there. Such workplaces are smoke-free at all times.
- **Partial use of premises:** If only part of the premises is used as a place of work or is open to the public, the premises are smoke-free only to that extent, except in the case of common parts of dwellings used by occupants and by members of the public or employees which must be smoke-free during the period of dual use.

- **‘Enclosed’ and ‘substantially enclosed’:**
The definitions of ‘enclosed’ or ‘substantially enclosed and ‘not enclosed or substantially enclosed’ are set out on the 2020 Regulations at Regulation 3 (see Appendix 1). Described simply enclosed or substantially enclosed means a premises which has a roof, and with openings less than 50% of the wall area, which can include any other structure that forms part of the perimeter of the structure.

Smoke-free vehicles

Section 5 of the 2006 Act allowed the National Assembly for Wales to make regulations providing for vehicles to be smoke-free, where vehicles means every type of vehicle including trains, buses, vessels, aircraft and hovercraft. Regulation 4 of the 2007 Regulations provided that an enclosed vehicle shall be smoke-free if it is used for the following reasons:

- For the transport of members of the public, or a section of the public (whether or not for reward or hire).
- For work by more than one person (even if the persons who work there do so at different times or intermittently).

The 2017 Act and 2020 Regulations have replaced the requirements in the 2006 Act and the 2007 Regulations. Section 15 of the 2017 Act and Regulations 15, 16 and 17 of the 2020 Regulations set out the details but essentially the requirements that are currently in place will continue. This means that enclosed vehicles used for work purposes by more than one person, or to transport members of the public, are still required to be smoke-free all of the time. ‘No Smoking’ signs are required and the police are still responsible for enforcement.

It will also still be against the law to smoke in a private vehicle carrying a child (person under 18). ‘No Smoking’ signs are not required as it is a private vehicle and the police remain responsible for enforcement.

The new requirements are set out in Regulation 15 2(a). This extends the smoke-free requirements to cover people who are providing paid for or voluntary goods or services to another person in a vehicle. These vehicles were not covered by the previous smoke-free requirements because they are not wholly or mainly used for work or public transport purposes.

A vehicle or part of a vehicle is enclosed if it is wholly or partly covered by a roof (not including a roof that is completely stowed away so that it does not cover any part of the compartment in which persons may travel. Smoke-free vehicles, other than those described in the 2020 Regulations are smoke-free at all times.

Duty to prevent smoking in a smoke-free vehicle. By virtue of Regulation 17 of the 2020 Regulations, the duty to prevent smoking in a smoke-free vehicle lies with the driver, operator or person who is concerned with the management of a smoke-free vehicle.

Vehicles not covered by the smoke-free requirements

The smoke-free requirements do not apply to private vehicles, except where being used as described in Regulation 15 of the 2020 Regulations. The definition of ‘private vehicle’ can be found at Appendix 1.

Ships or hovercraft in relation to which regulations could be made under the Merchant Shipping Act 1995 (relating to safety and health on ships) are outside the scope of the legislative controls.

The statutory definition of a ship for these purposes is provided in section 313(1) of the Merchant Shipping Act 1995, being ‘ship includes every description of vessel used in navigation’.

The Legislation does not apply to aircraft.

Smoke-free Hospital Grounds

Section 11 of the 2017 Act require that the grounds of all NHS and independent hospitals in Wales are required to be smoke-free. Regulations 11 and 12 of the 2020 Regulations list the specific requirements.

Hospital has the meaning given in section 206 of the National Health Services (Wales) Act 2006.

Hospital grounds include all grounds that adjoin the hospital, are used or occupied by it and are not enclosed or substantially enclosed.

The person in charge of the hospital may designate an area within the hospital grounds where smoking is permitted (the ‘Designated Smoking Area’) and may specify those persons that may use it (‘permitted persons’). See Appendix 1 for definitions of ‘Designated Smoking Area’ and ‘permitted persons’.

The duty to prevent or control smoking in hospital grounds lies with the person who controls or is concerned with the management of the hospital grounds, that person being required to take reasonable steps to stop a person who is smoking there from doing so.

Enforcement of the smoke-free provisions lies with local authorities. See the offences section for offence, defences and penalties.

Smoke-free School Grounds

Section 10 of the 2017 Act require that school grounds are smoke-free. Regulations 10 and 12 of the 2020 Regulations list the specific requirements. All schools in Wales with school grounds are included within the scope of the legislation, including maintained schools, voluntary aided, foundation and independent schools.

School has the meaning given by section 4 of the Education Act 1996. School grounds are those areas that are not enclosed or substantially enclosed and are used exclusively or mainly by the school for educational, sporting or recreational purposes.

School grounds that adjoin or are next to the school will be required to be smoke-free either when the school or the grounds are being used for education or childcare. School grounds that do not adjoin the school, e.g. where separated by a road, will be required to be smoke-free when the grounds or any part thereof are being used for education or childcare.

Where schools provide residential accommodation the person in charge may designate an area within the grounds where smoking is permitted (the ‘Designated Smoking Area’) and may specify those persons who may use it (‘permitted persons’) See Appendix 1 for definitions of ‘Designated Smoking Area’ and ‘permitted persons’.

The duty to prevent or control smoking within school grounds lies with the person who controls or is concerned with the management of the school grounds, that person being required to take reasonable steps to stop a person who is smoking there from doing so.

Enforcement of the smoke-free provisions lies with local authorities. See the offences section for offences, defences and penalties.

Smoke-free Public Playgrounds

Section 12 of the 2017 Act requires that all public playgrounds in Wales are smoke-free. Public playgrounds covered by the requirements are those which have local authority involvement, meaning that the playground is managed or maintained by local authorities or community councils.

The playground must be an outdoor area (not enclosed or substantially enclosed), must be designed or adapted for use by children and must contain one or more pieces of playground equipment, where playground equipment includes a swing, sandpit, seesaw or ramp, etc, but does not include powered equipment, such as equipment powered by a motor.

Public playgrounds are required to be smoke-free at all times within the playground boundary, whether or not children are present. Playground boundaries may be wooden or metal fences or shrubs or any other physical barrier. Where no physical barrier exists the smoke-free area is defined as being within 5 metres of any item of playground equipment.

The duty to prevent or control smoking within public playgrounds lies with the person who controls or is concerned with the management of the public playground, that person being required to take reasonable steps to stop a person who is smoking there from doing so.

Enforcement of the smoke-free provisions lies with local authorities. See the offences section for offences, defences and penalties.

Smoke-free outdoor care settings for children

Section 9 and sections 6(2) and (3) of the 2017 Act require that outdoor care settings that are not enclosed or substantially enclosed must be smoke-free. “Outdoor care settings for children” are the outdoor areas of those premises which are registered under Part 2 of the Children and Families (Wales) Measure 2010, and are premises which provide day care or child minding for a child or children under the age of 12.

Outdoor care settings need only be smoke-free when the premise is in use for day care or child minding purposes. In the case that a child minder provides services from their own home, the outdoor area of the home is required to be smoke-free if one or more children are in the outdoor area.

There is no requirement for ‘No Smoking’ signage to be displayed in outdoor childcare settings, unless the care provider wishes to do so.

Signage

The public are familiar with ‘No Smoking’ signage, used to identify areas that are required to be smoke-free.

The 2020 Regulations establish that there are two groups of ‘No Smoking’ signs.

These are:

- signs which show a graphic of a burning cigarette enclosed in a circle with a bar across the circle which crosses the burning cigarette symbol
- signs which show a graphic of a burning cigarette enclosed in a circle with a bar across the circle which crosses the burning cigarette graphics and ‘appropriate warning text’.

Smoking signs with graphic

There is no requirement as to size, colour or warning text. The only requirement is that the sign contain a legible graphic representation of a burning cigarette enclosed within a circle with a bar across the circle which crosses the cigarette symbol.

Smoke-free places where graphic sign must be displayed

Premises – all smoke-free premises are required to display at least one ‘No Smoking’ sign. There are no prescriptive requirements in the legislation as to where the sign should be displayed, however it must be capable of being seen by persons entering the premises.

The template sign may be downloaded from gov.wales/smoking, and is an example only. Any other designs that satisfy the descriptor above are acceptable.

Vehicles – all smoke-free vehicles used wholly or mainly for work purposes or that carry members of the public are required to display the graphic sign. As with smoke-free premises there are no prescriptive requirements as to where the sign should be displayed it should be in a prominent position so that users of the vehicle can see it.

The template sign may be downloaded from gov.wales/smoking, and is an example only. Any other designs that satisfy the descriptor above are acceptable.

See Appendix 2 for exceptions to the requirement to display ‘No Smoking’ signs.

‘No Smoking’ signs with graphic and ‘appropriate warning text’

There are three locations in which ‘No Smoking’ signs with ‘appropriate warning text’ must be displayed. The signs should be visible to all users, displayed

in a prominent position at or near to the main entrance to the grounds, and where there is more than one main entrance signs should be displayed at or near to all entrances.

The locations where No Smoking signs with appropriate warning text are required are:

1. Hospital grounds
2. School grounds
3. Public playgrounds.

In each case the signage must contain:

- A legible graphic representation of a burning cigarette enclosed in a circle with a bar across the circle that crosses the cigarette.
- The specific appropriate warning text applicable to the premises.

Hospital grounds – ‘It is against the law to smoke in these hospital grounds/Mae ysmegu yn nhir yr ysbyty hwn yn erbyn y gyfraith’

School grounds – ‘It is against the law to smoke in these school grounds/Mae ysmegu yn nhir yr ysgol hon yn erbyn y gyfraith’

Public playgrounds with boundaries – ‘It is against the law to smoke in this playground/Mae ysmegu yn y maes chwarae hwn yn erbyn y gyfraith’

Public playgrounds without boundaries – ‘It is against the law to smoke within 5 metres of this play equipment/Mae ysmegu o fewn 5 metr i’r cyfarpar chwarae hwn yn erbyn y gyfraith’

There are no specific size, design or colour requirements in respect of the signage.

Template signs have been produced for each of the signs which are available on the Welsh Government website gov.wales/smoking.

Offences

Table 1 summarises the main offences under the 2017 Act and the 2020 Regulations, their corresponding defences and the maximum fine if convicted.

Offence	Defence Under Act	Maximum fine
<p>Section 5</p> <p>Person smokes in a</p> <p>(a) smoke-free premises</p> <p>(b) smoke-free vehicle</p>	<p>Section 5(4)</p> <p>It is a defence for a person charged with an offence under this section to show that the person did not know, and could not reasonably have been expected to know, that the premises or vehicle concerned were smoke-free premises or a smoke-free vehicle.</p>	<p>Level 1</p> <p>£100</p> <p>Discounted to £75</p>
<p>Section 6(6)</p> <p>Failing to prevent smoking in a smoke-free premises and vehicles.</p> <p>Person who is concerned with the management of premises which are smoke-free:</p> <ul style="list-style-type: none"> • workplaces (Section 7) • premises that are open to the public (Section 8) • registered day care premises (Section 9(3)) • registered childminder in premises (Section 6 (3) and (4)) • must take reasonable steps to cause a person smoking there to stop smoking. <p>Driver or operator of a smoke-free vehicle and person who is concerned with the management of such a vehicle must take reasonable steps to cause a person smoking in a vehicle to stop smoking.</p>	<p>Section 6(7)</p> <p>The person charged can show that they did not know and could not reasonably have been expected to know that the person in question was smoking.</p>	<p>If found guilty of an offence, a person is liable on summary conviction to a fine not exceeding level 4 (£2,500) on the standard scale.</p>

Offence	Defence Under Act	Maximum fine
<p>Section 17(5) Failing to display a sign. A person who occupies or is concerned in the management of smoke-free premises (or vehicle) must make sure that signs are displayed in those premises (and vehicles) in accordance with regulations under this subsection.</p>	<p>Section 17(6) It is a defence for a person charged with an offence under this section to show:</p> <ul style="list-style-type: none"> (a) that the person did not know, and could not reasonably have been expected to know, that the premises were smoke-free (or, as the case may be, that the place or vehicle was to be treated as smoke-free), (b) that the person did not know, and could not reasonably have been expected to know, that signs complying with the requirements of this section were not being displayed in accordance with the requirements of this section, or (c) that on other grounds it was reasonable for the person not to comply with the duty. 	<p>Level 3 £200 Discounted to £150</p>
<p>Section 6(6) Offence of smoking in a vehicle where a child is present.</p>	<p>Strict liability offence, no defence in the legislation, would be an issue of fact. Note that ignorance of the law is not a defence.</p>	<p>£100, discounted to £75</p>
<p>Section 24 Obstruction of officers Person who:</p> <ul style="list-style-type: none"> • intentionally obstructs officers exercising functions or • without reasonable cause fails to provide authorised officer with facilities they reasonably require for purpose of requirements under Section 23(1) or • fails to comply with a requirement under Section (23)(1)(b) or (d) 	<p>No statutory defence available, however the prosecutor would be required to prove to the necessary standard that:</p> <ul style="list-style-type: none"> • obstruction was intentional • no reasonable causes existed for failing to provide reasonably required facilities. 	<p>Level 3 If found guilty of an offence, a person is liable on summary conviction to a fine not exceeding level 3 (£1,000) on the standard scale</p>

Fixed Penalty Notices

Section 27 of the 2017 Act gives enforcement officers discretion to issue fixed penalty notices in respect of offences under sections 5(1) and 17(5) of the Act.

A Fixed Penalty Notice offers a person the opportunity to discharge any liability to conviction for the offence by payment of a fixed penalty. Enforcement officers may issue a Fixed Penalty Notice if they have reason to believe that a person is committing or has committed an offence under Sections 5(1) or 17(5) of the 2017 Act.

Schedule 1 of the 2017 Act sets out the Fixed Penalty Scheme that applies.

The Fixed Penalty Notice must:

- state the offence to which it relates and give reasonable particulars of the circumstances alleged to constitute the offence
- state the name and address of the enforcement authority on whose behalf the authorised officer was acting when they issued the notice
- state the amount of the penalty and the period within which it may be paid
- state the discounted amount and the period within which it may be paid
- state the consequences of not making a payment within the period for payment
- state the person to whom and the address at which payment must be made (this must be the local council for the area in which the alleged offence was committed, or a person acting on behalf of the council)
- state the methods or methods by which payment can be made
- state the person to whom and the address at which any representations relating to the notice may be made (this must be the local council for the area in which the alleged offence was committed, or a person acting on behalf of that council).

The form of penalty notices in respect of offences under the 2017 Act is specified in Schedule 1 to the 2020 Regulations.

The full amount of the fixed penalty as stipulated in the notice will be payable and must be paid within 29 days beginning on the day that the notice is given. A discounted amount is payable instead of the full amount if payment is made before the end of a period of 15 days beginning with the day on which the notice is given (if the last day does not fall on a working day the period for the payment of the discounted amount is extended until the next working day). ‘Working day’ means any day that is not a Saturday, Sunday, Christmas day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Finance Act 1971. Local authorities should make appropriate arrangements to allow for circumstances where payment offices may be closed during the working days as defined above.

Should a person who has received a Fixed Penalty Notice fail to pay the fixed penalty by the end of the 29 day period the enforcement authority may issue proceedings against that person for the offence to which the Fixed Penalty Notice related. Proceedings for the offence may not be brought before the end of the period for payment of the penalty. If the penalty (or the discounted amount as appropriate) is paid in accordance with the penalty notice before the end of the payment period no proceedings may be brought against that person for the offence to which the penalty related.

The recipient of the penalty notice may ask to be tied for the alleged offence. Such a request must be made by notice and given to the enforcement officer before the end of the period for payment of the penalty in the manner specified in Part 4 of the Fixed Penalty Notice.

Proceedings may then be brought against them by the enforcement authority before the end of the penalty payment

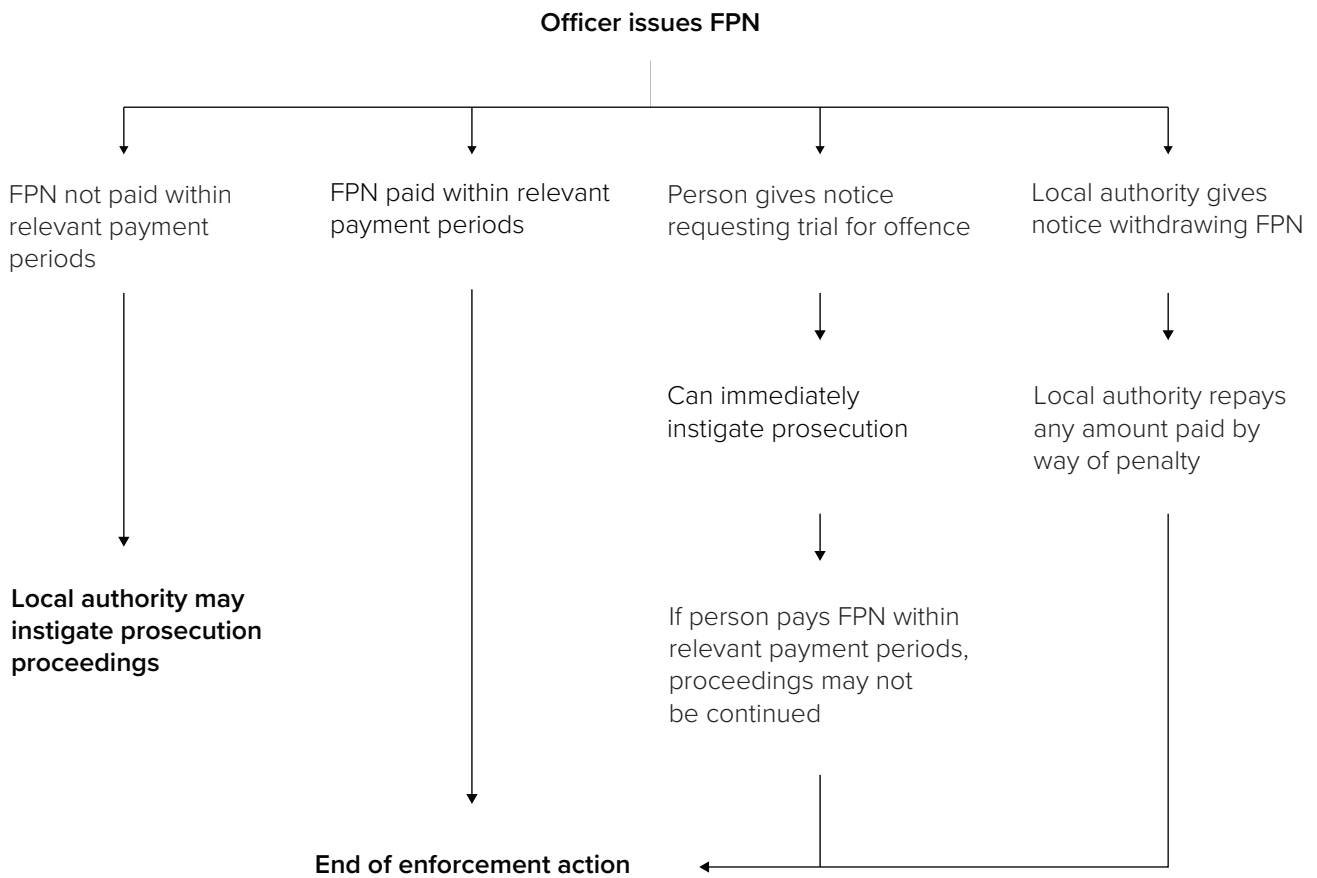
period. However, if the person concerned subsequently changes their mind and pays the discounted or penalty amount before the end of the relevant payment period the proceedings may not be continued.

There is no right of appeal against the issue of a Fixed Penalty Notice, other than the right to ask to be tried for the offence alleged. If however an enforcement authority considers that a penalty notice issued by an enforcement officer ought not to have been given it may, by notice, withdraw the penalty notice. In doing so the authority must repay any amount of money which has been paid by way of penalty, and proceedings may not be brought or continued against the recipient of the notice for the offence for which it was issued.

Figure 1: summary of the Fixed Penalty Notice process

Authorised officer has reason to believe offence under section 17(5) signage or section 5 (1) smoking in a non-smoking place or vehicle of the Public Health (Wales) Act 2017 has been committed, and

Exercises discretion to deal with the offence by way of issuing a Fixed Penalty Ticket to the person concerned.



5. Overall approach

Local authority enforcement officers have a history of working closely with businesses and promoting compliance with legislation, utilizing tools such as education, advice, advocacy and persuasion to promote the idea that compliance is the best course of action. Enforcement officers only revert to formal enforcement when the seriousness of the offending behaviour or circumstances means that such action is warranted and appropriate. In such instances there will usually have been previous dialogue with the accused person giving them every opportunity to comply with the law.

The same approach and skills have been and will continue to be used in respect of the control over smoking in public places. The purpose of the legislation is to protect the health of employees and the public. Since the coming into force of the (now repealed) 2007 Regulations compliance rates have been high, however it is recognised that there may be occasions when enforcement is necessary. In such instances this guidance should ensure that a fair, consistent, transparent and proportionate approach is taken to each enforcement action.

The initial approach should be a non-confrontational one and the focus should be on raising awareness and understanding around the reasons for the ban and to ensure compliance with the legislation. Experience has shown that there is significant public support for the for the legislation and high levels of compliance from businesses. Awareness raising activity with businesses and the general public took place in respect to the introduction of the 2007 Regulation and will take place around the implementation of the 2020 Regulations.

The main purpose of the non-smoking provisions in the 2006 and the 2017 Acts is to protect the health of employees and the public from the harmful effects of second-hand smoke. Experience of the implementation of control over smoking in public places suggest that such action prompts some smokers to attempt to stop smoking. Enforcement officers are therefore encouraged to promote quitting smoking wherever possible in order to ensure that the ban on smoking in public places can have maximum impact in improving public health. The smoking cessation service is able to offer:

- One to one confidential advice from specially trained councillors.
- Guidance on stopping smoking and help with associated problems.
- Information leaflets on how to get started, planning and preparing to quit.
- Information on accessing support from **helpmequit@wales.nhs.uk** delivered by Public Health Wales. This offers free guidance, advice one-to-one counselling and group therapy and can be contacted directly on 0808 252 8307.

Role of other enforcement organisations

Health and Safety Executive

The HSE works constructively with local authorities to promote the effectiveness of the Welsh Government smoking policies. HSE inspectors will assist local authorities by:

- drawing any obvious breaches of the legislation to the attention of employers; and

- if appropriate, notifying local authorities of any flagrant breaches.

HSE will continue to encourage employers to adopt non-smoking policies that give priority to the needs of non-smokers who do not wish to breathe tobacco smoke.

Police Forces

The police do not take the lead in enforcing the smoke-free regulations, other than in respect of regulation 15(3)(b) of the 2020 Regulations – vehicles being used for social, domestic or other private purposes where a child is present, but the police forces in Wales will support local authorities should there be any anticipation of, or any occurrence of disorder during enforcement activity.

6. Inspections

Inspections carried out by enforcement officers will either be proactive to advise businesses and to confirm compliance with legislative requirements or reactive, in response to complaints or enquiries.

Local authorities should devise a method to generate a list of premises for proactive inspections. In addition, local authorities should incorporate some inspections as part of proactive compliance work, e.g. health and safety inspections or food hygiene inspections or visits.

The initial focus of inspections should be on premises:

- Which are open to substantive numbers of people (for example, a greater impact can be gained in terms of health protection from visiting a night club, compared to a small office).
- Where there is an absence of self-imposed controls, i.e. there is limited value in visiting premises which already have no-smoking policies in place.
- Where enforcement officers do not usually visit as part of their routine inspections under other legislation.

Development of a risk based approach has evolved as the result of the implementation of the 2007 Regulations and should be extended to the implementation of the 2020 Regulations, based on:

- Confidence in management.
- History of compliance with other requirements.
- Complaints received.

Enforcement officers may carry out a number of different types of inspections in relation to smoking controls – see examples below. It should be noted that the options listed are not mutually exclusive and officers should choose those options that are most appropriate in each case, being the action that will bring the most benefit to public health and ensure the safety of the enforcement officer.

- **Official inspection** – officers announce themselves and show appropriate identification to the person having control, of the premises prior to assessing compliance with the legislative requirements.
- **Covert observation** – officers assess compliance by observation within the premises and subsequently announce themselves and show appropriate identification to the person having control of the premises at the end of the period of observation.
- **Covert observation and leave** – as above, but with enforcement officers discussing the findings of the visit with the person having control of the premises at a later date, e.g. the following day.

It should be noted that none of the offences under the 2006 Act or the 2017 Act satisfy the Protection of Freedoms Act 2012 Serious Offences Test (carries a prison sentence of at least 6 months on conviction) hence Directed Surveillance under the Regulation of Investigatory Powers Act (RIPA) 2000 may not be approved.

The personal safety of officers should not be compromised by enforcement action; this should be formally recognised in each local authority's existing health and safety policy. In certain circumstances, e.g. during night time hours, or for the safety of officers it may be appropriate for inspections to be carried out by two officers. Each enforcement visit should be judged on its own particular facts and circumstances and enforcement officers should engage in continuous risk assessment during the visit.

Enforcement officers should be conscious of local authority policy in respect of observation of places used by children, such as playgrounds. Such safeguards as are necessary must be put in place to protect the safety and privacy of children and the safety of enforcement officers.

The recommended approach can be explained by reference to the formal enforcement options available, detailed in Figure 2, and the worked scenarios in Appendix III. Where enforcement action is warranted it is anticipated that the officer would deal with this by issuing a Fixed Penalty Notice where this is an available option. Issuing of proceedings will be reserved for the more serious or persistent offences and those concerning failing to prevent smoking in a smoke-free place. Where proceedings are considered this will probably follow a history of non-compliance and will be an escalation of action.

7. Assessment of Compliance

Compliance at smoke-free premises

Enforcement officers will carry out an assessment to determine whether or not owners, occupiers, managers or any other person in control of or managing smoke-free premises have taken ‘reasonable steps’ to prevent people smoking. The precautions will include a combination of compliance with specific legal requirements (**in bold text**) and activities that would be considered *good practise* by organisations in demonstrating that they are taking reasonable steps (*in italics*).

Welsh Government has made advice and guidance available on the implications of the 2017 Act and 2020 Regulations requirements and how compliance may be achieved. Copies of the guidance and template signage is available at gov.wales/smoking and specific inquiries may be directed to TobaccoPolicy@gov.wales

Officer will assess compliance based on the following issues:

Signage for premises

- **‘No Smoking’ signs to be displayed in a prominent position at or near each entrance to a smoke-free premises.**
- **Signage either to be graphic of burning cigarette or graphic of a burning cigarette with appropriate warning text, as appropriate.**

For the avoidance of confusion it is recommended that any additional notices throughout the premises follow the same design as those required to

achieve compliance, complying with the same criteria.

Hospital buildings, Mental Health Units and Schools display signage at the exits from buildings into smoke-free grounds advising users that the grounds into which they are about to enter are smoke-free.

In some circumstances it may be appropriate to make regular use of safety/information announcements advising members of the public that they may not smoke in the premises, e.g. railway and bus station, airports.

Ashtrays

Ashtrays and other similar receptacles should not be present in a smoke-free premises, but can be made available outside the premises to allow smokers to extinguish cigarettes before entering.

Management Controls

Maintenance of records – persons in control of hospital grounds and school ground with residential accommodation should keep records of the location of Designated Areas (DAs), and of those groups of persons designated as ‘permitted persons; who may use the DAs. Any changes made to the DAs or permitted persons should be also recorded.

It is recommended that those in control of smoke-free premises:

- *Develop a smoke-free policy (preferably in written form).*
- *Develop a procedure for dealing with people who smoke (preferably written).*

- *Communicate the policy to staff and the public where appropriate and make the written version available to them.*
- *Issue press releases and put information about smoke-free requirements in places to which the public have access (hospital grounds, shared user school grounds, public play areas) explaining the policy.*
- *Keep a written record of any incident and its outcome where a member of staff confronts an individual smoking in the premises.*

Smoke-free policy and procedures

It is strongly recommended that owners and persons having control of premises establish and implement a written policy with associated procedures to demonstrate their compliance with the law.

The procedures should contain items similar to the following:

1. *Draw the persons attention to the 'No Smoking' signs in the area or at the main entrance to it and inform them that they are committing an offence by smoking. Politely ask them to stop smoking.*
2. *Direct the person to the nearest place where they can lawfully smoke.*
3. *Advise the person smoking that their actions could result in the person in control of the premises being prosecuted and receiving a fine of up to £2,500.*
4. *Refuse the person service, where a service is provided.*
5. *If the person continues to smoke ask them to leave the premises or grounds.*
6. *If the person refuses to leave implement normal procedures for anti-social behaviour/illegal behaviour on the premises.*

7. *Maintain a written record of the incident and the outcome.*
8. *If physical violence is threatened seek assistance from the Police. Members of staff are not expected to go beyond their employer's normal procedures for antisocial behaviour or compromise their personal safety.*

The policy should identify members of management and /or staff who have responsibility for its implementation and for its review.

Staff

Employers and managers of smoke-free premises should ensure that all members of staff, including new members of staff are aware of the non-smoking policy. All staff working in smoke-free premises should be aware of which member of staff or management is the responsible person for dealing with any persons smoking.

Persons in control of hospital or school grounds should ensure that all persons are aware of which groups of persons are designated as 'permitted persons' and should keep membership of that group under review.

Record of Incidents

In order to sustain a defence of 'reasonable steps' and to evidence the same having been taken each premises should keep a documented record of incidents and outcomes. Outcomes may be simple requests to leave or could be banning from premises.

Prosecution of owners, manager or persons having control should only be considered after repeated failure to comply with the legislation. This should be reserved for serious and persistent contraventions, and an educational and non-confrontational approach should be used wherever possible.

Compliance on smoke-free vehicles

The duties for achieving compliance in smoke-free vehicles are broadly similar in wording to those for smoke-free premises, but the practical steps involved in achieving and assessing compliance are different. Enforcement officers will have to carry out an assessment to determine whether or not the driver, owner or relevant person has taken ‘reasonable steps’ to prevent people smoking in the vehicle.

As above these steps include a combination of compliance with specific legal requirements (**in bold text**) and activities which would be considered good practice by organisations in demonstrating that they are taking reasonable steps (*in italics*). Officers are advised to assess compliance based on the following issues.

Signage for vehicles

No-smoking signs should be displayed in a prominent position in each compartment of the vehicle that is wholly or partly covered by a roof, including the drivers compartment.

These signs must be the graphic signs.

Operator Management Policy

Operators should provide a smoke-free policy outlining the company’s arrangements for complying with the legislation. This will vary depending on the nature and size of the business.

Private Hire Operators should advise customers at the time of booking that smoking is not permitted in the vehicle. Drivers of Hackney Carriages and drivers using private vehicles to provide a service (care workers, hospital volunteer drivers etc) should ask customers /users trying to enter the vehicle to extinguish cigarettes before doing so, and refuse entry if necessary. The driver should follow the company policy for unruly or antisocial behaviour if the refusal persists. If the customer/user lights up during the journey the driver should stop when safe to do so and ask them to extinguish the cigarette or leave the vehicle.

Where regular safety and /or information announcements are made to passengers these should include advice that it is illegal to smoke in the vehicle.

Driver intervention and safety

In relation to buses and coaches it is acknowledged that the driver of the bus will be in the ‘frontline’ when dealing with potential problems of individuals smoking on buses and in dealing with complaints from fellow passengers. Train staff, particularly those concerned with safety and order will have a similar role.

- The driver should not be expected to leave the driver’s compartment.
- Where there is potential for conflict between road/rail safety and the discharge of smoke-free duties, safety must prevail.

- If a passenger tries to board the vehicle and is smoking the driver and/or other relevant person should ask the boarder to extinguish the cigarette and refuse boarding if necessary.
- Any incidents on the vehicle may be resolved informally. The driver and other relevant person should take reasonable steps to require the passenger to stop smoking or leave the vehicle, in line with the company's procedure for dealing with unruly or antisocial passengers.

All incidents should be recorded and forwarded to the person managing the company smoking procedure for logging. Where CCTV is used and has recorded the incident the CCTV footage should be retrieved and stored.

School contracts

Bus/coach operators who have contracts with Education Authorities should log any incidents in the same way as private operators. The same procedure for unruly or antisocial behaviour should be applied.

Consideration should be given to withdrawal of the service from a pupil who refuses to comply, particularly where this is a repeated occurrence.

8. Enforcement Action

The following enforcement options are available to enforcement officers:

1. Verbal advice.
2. Written warning.
3. Fixed Penalty Notice – Section 5(1) and 17(5) of the 2017 Act offences (see offences section).
4. Instigate prosecution. This enforcement option can be applied to all offences but is the only enforcement option with respect to offences under Section 6 of the 2017 Act (see enforcement section).

All action taken must be fair, proportionate and consistent.

Enforcement action should be pragmatic and based on enforcement resources available. For this reason initial activity should focus on the owner of the premises or the person having control of the premises, since that person is responsible for ensuring compliance. If owners or persons having control self-regulate their premises it is likely that individuals who use the premises will comply.

For consistency it is recommended that each local authority follows the enforcement approach in Figure 2 (below).

Local authorities should only consider taking action against individuals smoking in a non-smoking premises (e.g. served a Fixed Penalty Notice) where the person in control or concerned with the management of the premises can demonstrate that they have taken reasonable steps to prevent individuals smoking on their premises. (For guidance on 'reasonable steps' see Part 7). Officers should be wary of serving Fixed Penalty Notices on individual smokers in a random approach due to potential risks to officers own health and safety from taking such a course.

If necessary local authorities should consider targeting individuals as part of a pre-arranged campaign organised in liaison with the police or with security staff engaged by the premises e.g. hospital security staff. Such campaigns should be organised in advance to ensure that the campaign coincides with availability of police or security staff resources who will be available to give support if required. The campaign should focus on the premises that have demonstrated that all responsible precautions have been taken but that these actions have failed to control certain individuals. Such campaigns should target premises where complaints have been received from the public, since failure to address the issue of persistent breaching of the regulations will lead to a loss of confidence in enforcement and will undermine the purpose of the legislation.

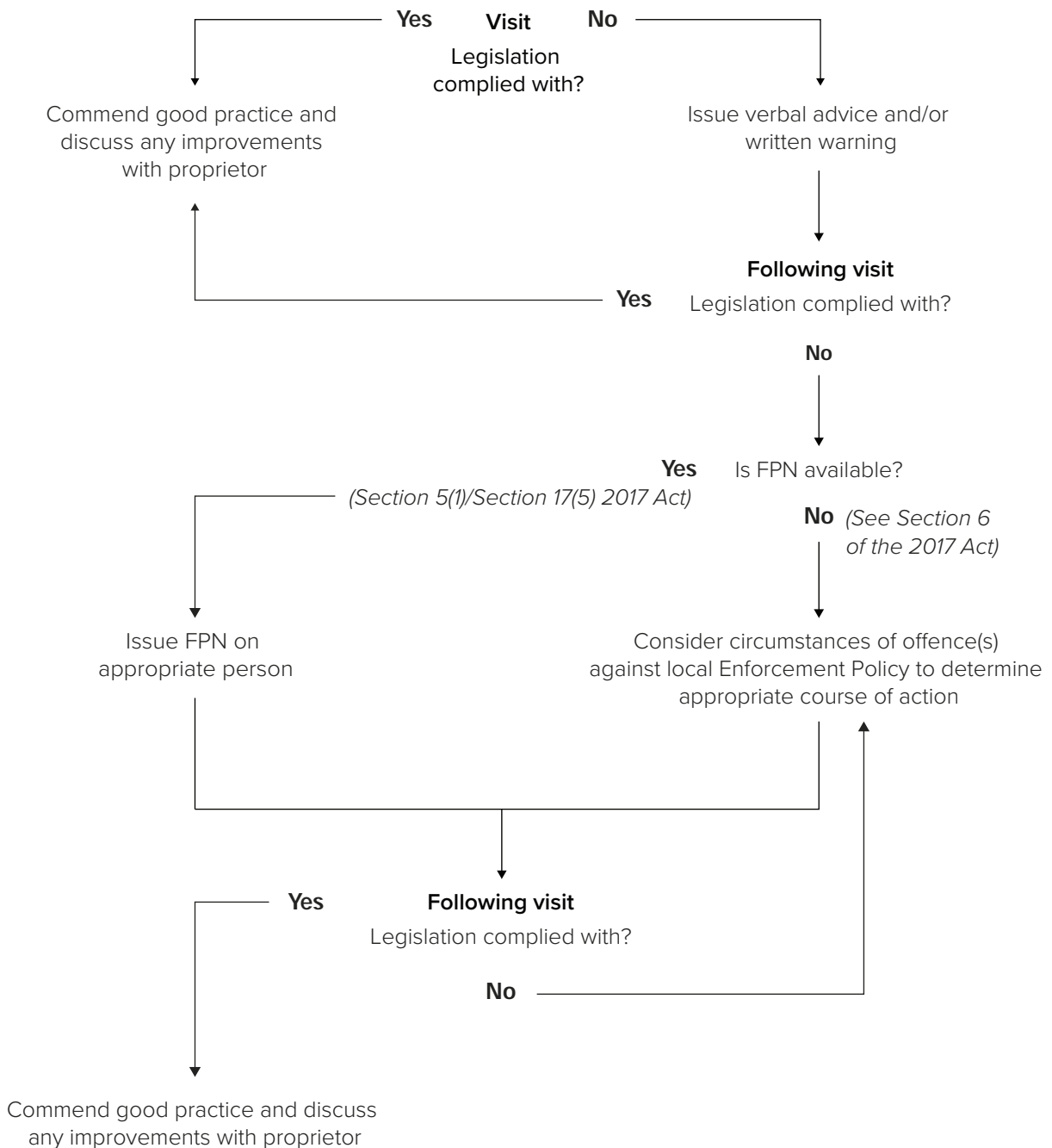
In the event of officers wishing to serve a Fixed Penalty Notice on an individual who refuses to provide their name and address on request the officer should advise the person that refusal may constitute an offence under Section 24 of the 2017 Act, depending on the offence for which the Fixed Penalty Notice is being served, by failing to provide the officer with information that they require. In practical terms it may be difficult to prosecute such an offence unless admissible evidence of the person's name and address can be obtained by other means. In circumstances where the inability to identify offenders in undermining compliance consideration should be given to arranging police support.

If the person served with the Fixed Penalty Notice seeks to leave, the officer may consider following the person (so far as is practicable and consistent with the officers own safety) to their home, car or other

location where they can be identified. However, the more pragmatic view that once a person has left a premises this has resulted in the successful cessation of the smoking activity should prevail and no further action need be taken.

In carrying out enforcement, officers should attempt to minimise confrontation. In the event that a public order situation is developing and immediate help is required, enforcement officer should contact the police for assistance.

Figure 2: Recommended approach to enforcement



Enforcement approach to smoke-free vehicles

The same principles as described in respect of premises apply in relation to smoke-free vehicles. The following specific guidance is provided for enforcement officers.

Complaints received by local authorities

If the local authority receives complaints from members of the public about smoking in smoke-free vehicles the enforcement officer should make contact with the vehicle operator to discuss the problem.

At this stage the vehicle operators smoking policy and arrangements being made to secure compliance should be discussed. Any measures agreed or requiring attention should be provided to the operator in a letter of confirmation.

Complaints/incidences recorded by the vehicle operator

If the operator has logged a number of incidents/complaints about a particular service the operators own 'Revenue Protection Inspectors' should be assigned to the service to monitor and resolve the issue. If this fails the relevant local authority should be contacted.

In the event that the incidents follow an identifiable pattern e.g. certain times of day the local authority may arrange enforcement activity on the route at that time to identify the offender/s. CCTV footage, if available may be of assistance. Enforcement Officers may wish to liaise with local police or with British Transport Police if there is a possibility of disorder or violence.

Formal Action

The Enforcement Officer will consider the service of a Fixed Penalty Notice on an operator/driver when informal action has failed and there is a continuing breach of the legislative requirements. Fixed Penalty Notices may be served on passengers when the authorised officer has observed an offence. In certain circumstances instigating prosecution proceedings may be considered depending on the nature of the circumstances surrounding the offence.

Where drivers/operators have followed the approach to compliance outlined in Part 7 enforcement officers may be of the view that they have taken reasonable steps to secure compliance. Subject to the specific circumstances of the case any formal action would then be targeted at the smoker.

9. Complaint protocol

The aim of this protocol is to provide guidance on how to deal with smoking related complaints received by the local authority. Complaints, including anonymous complaints may be received by enforcement officer or administrative staff who should take relevant details then refer the case to the relevant enforcement officer. If clarification is sought the enforcement officer should advise the complainant of the local authority's policy with respect to disclosure of personal details.

Investigation of the complaint

1. The enforcement officer will assess the nature of the complaint.
2. If the complaint is judged to be a query the enforcement officer should give advice and sign post more information, such as the local authority enforcement policy or leaflets about the ban.
3. Based on the nature of the complaint, the history and type of premises the enforcement officer may carry out an investigation and/ or take other appropriate action, e.g. verbal warning, information/advice etc.
4. Investigations raising from complaints should be given priority in smoke-free enforcement programmes.
5. The enforcement officer should notify the complainant, where the complainants' identity is known, that their complaint has been investigated and appropriate action has been taken.
6. The enforcement officer should complete the complaint record and sign it off and update the appropriate data base.
7. The complaint record and any copies of correspondence should be retained in accordance with the local authority's policy on data protection and retention.

Appendix 1: Definitions

For the purposes of enforcement of Chapter 1 of Part 3 of the Public Health (Wales) Act 2017 the following terms are defined as:

‘Smoking’ (see Section 4 of the 2017 Act): references to smoking are to smoking tobacco or anything which contains tobacco, or to smoking any other substance; and smoking includes being in possession of lit tobacco or of anything lit which contains tobacco, or being in possession of any other lit substance in a form in which it could be smoked.

‘Enclosed’ ‘substantially enclosed’ and ‘not enclosed or substantially enclosed’ (Chapter 1 of Part 3 of the 2017 Act, Regulation 3 of the 2020 Regulations)

Premises, or parts of premises, are enclosed if they have a ceiling or a roof and except for doors and windows and passageways they are wholly enclosed either permanently or temporarily.

Premises, or parts of premises, are substantially enclosed if they have a ceiling or roof and any openings in the walls have a total area which is less than half the area of the walls, including other structures which serve the purpose of walls and constitute the perimeter of the premises. In calculating the total area of any openings no account is to be taken of openings in which there are doors, windows or other fittings which can be opened and shut.

Premises or parts of premises are ‘not enclosed or substantially enclosed’ if they are not enclosed or not substantially enclosed as described above.

A vehicle, or part of a vehicle, is enclosed if it has a roof and except for doors and windows and is wholly enclosed either permanently or temporarily.

‘Roof’ includes any fixed or moveable structure or device capable of covering all or part of the premises or vehicle as a roof.

‘Smoke-free Premises’: these are enclosed or substantially enclosed and are:

- open to the public, or
- used as a place of work by more than one person or where members of the public might attend for the purpose of seeking or receiving goods or services from the person or persons working there.

‘Open to the public’: (see Section 8 of the 2017 Act): premises are ‘open to the public’ if the public or a section of the public has access to them, whether by invitation or not and whether for payment or not.

‘Workplaces’: (see Section 7 of the 2017 Act): includes voluntary work.

‘Smoke-free vehicles’: (see Regulation 15 of the Smoke-free Premises and Vehicles (Wales) Regulations 2020) means vehicles or parts of vehicles that are enclosed and that are used:

- For transport of members of the public or a section of the public (whether or not for reward or hire, or
- For work purposes by more than one person (even if the persons who use it for such purposes use it at different times, or only intermittently).

- Wholly or mainly in the course of paid or voluntary work and is used by more than one person (even if persons who do use it do so at different times or intermittently), or to transport members of the public. The vehicle must be smoke-free at all times.
- In the course of paid or voluntary work when more than one person is present in the vehicle and one of those is present for the purpose of receiving goods or services from the person using the vehicle, or
- For social, domestic or other private purposes and more than one person is present in the vehicle and one of those persons is a child. The vehicle must be smoke-free only when being used as described.

‘Private vehicle’: (see Regulation 15 of the 2020 Regulations) – means a vehicle which is used wholly or mainly for the private purposes of the person who owns it or has a right to use it which does not derive from a payment or undertaking to pay for the use of the vehicle or its driver for a particular journey.

‘Hospital’: (see Regulation 11 of the 2020 Regulations) – has the meaning given by section 206 of the National Health Service (Wales) Act 2006 and Mental Health Unit falls within the same definition.

‘Mental Health Unit’: is further defined as meaning an establishment or part of an establishment the main purpose of which is the provision of treatment or nursing (or both) for person suffering from a mental disorder as defined by section 1(2) of the Mental Health Act 1983.

‘Adult Care Home’: is aligned to the Regulation and Inspection of Social Care (Wales) Act 2016 which provides that a ‘care home service’ is the provision of accommodation, together with nursing or care at a place in Wales, to persons because of their vulnerability or need.

‘Adult Hospice’: (see Regulation 6 of the 2020 Regulations) means an establishment the whole or main purpose of which is to provide palliative care for persons aged not less than 18 years who are resident there and are suffering from progressive disease in its final stages.

‘Designated Area’: (see Regulations 10(2) and 11(2) of the 2020 Regulations) means an area in which smoking is permitted and which is not therefore to be treated as being smoke-free for the purposes of the Regulations.

‘Permitted person/s’: (see Regulations 10(3) and 11(3) of the 2020 Regulations) means persons or descriptions of persons specified by the person in charge or the person having control of a smoke-free hospital or school ground who may smoke within a ‘Designated Area’, but may not include a child.

Appendix 2: Exemptions

Section 16 of the 2017 Act enables smoking to take place inside certain places.

Regulations 4-11 of the 2020 Regulations detail the premises or parts of premises which are exempt from the smoke-free requirements in the legislation.

Dwellings or parts of dwellings (Regulation 4)

More dwellings used as places of work some of the time, will be required to be smoke-free. These places only need to be smoke-free in the parts that are being used as a workplace and whilst they are being used as a workplace. Dwellings or parts of them are treated as being smoke-free if:

1. They are used as a work place. If the whole dwelling is a work place all of it must be smoke-free, if only part of it is a work place the part that is a work place must be smoke-free, but smoking can take place in the other parts of the dwelling.
2. If a service is provided to a person living in a dwelling (e.g. a plumber attends or a carer visits to provide services) the dwelling only needs to be smoke-free in the parts that are being used as a workplace and whilst they are being used as a workplace. For example, a plumber is fixing a tap in the kitchen of a person's home. The kitchen is required to be smoke-free as well as any other areas of the dwelling that the plumber needs to access to do their job. Smoking could take place in another part of the home as long as it is not in the area where the plumber needs to work.

3. Where a member of the public visits a dwelling to seek or received goods or services, that part of the dwelling in which the goods or services are delivered or received must be smoke-free. This includes e.g. offices or studios where the service is given/received but also other areas that are visited by the member of the public – e.g. toilets, waiting areas, stairs etc. For example, a hairdresser works from a room in her home converted into a hairdressing salon. The salon and any other areas visited by customers (the entrance hall and bathroom for example) are required to be smoke-free during the hairdresser's working hours. Others areas of the dwelling do not need to be smoke-free, even if customers are in the salon. Outside of working hours, smoking can take place anywhere in the dwelling, including in those areas used as a workplace by the hairdresser.
4. The requirement to be smoke-free only applies to enclosed or substantially enclosed areas of the dwelling, and does not apply to e.g. the garden.

Self-contained holiday and temporary accommodation (Regulation 5)

From 1 March 2022 – Self-contained residential accommodation, e.g. cottages, caravans, chalets etc. must be smoke-free when being used as holiday or temporary accommodation.

If a premises is usually used by the owner as residential accommodation, but is also rented out intermittently as holiday or temporary accommodation it does not have to be smoke-free when used by the

owner as a dwelling as but is required to be smoke-free when used as holiday or temporary accommodation.

Hotels, guesthouses, inns, hostels and members' clubs (Regulation 9)

From 1 March 2021 – 28 February 2022 (inc.) – smoking bedrooms can continue to be provided in hotels, guesthouses, inns, hostels and members' clubs, subject to two conditions:

1. The person in charge designates the bedroom as a smoking bedroom and keeps a record of all bedrooms so designated.
2. The room meets the following requirements. ('The structural condition') It
 - Has a ceiling and, except for doors and windows is completely enclosed on all sides by solid floor to ceiling walls.
 - Does not have a ventilation system that ventilates into a smoke-free part of the premises.
 - Does not have doors which do not mechanically close immediately after use if they open into a smoke-free area, and
 - Is clearly marked as a room in which smoking is permitted.

From 1 March 2021 this limited exemption is removed and all bedrooms in hotels, guest houses, inns, hostels and members clubs must be smoke-free.

If part of a hotel, guesthouse, inn, hostel or members' club is also used as a dwelling (e.g. stewards accommodation, hotel staff accommodation) that part does not have to be smoke-free.

Adult Care Homes and Adult Hospices – Regulation 6

Up to 1 March 2021 as an exemption to the smoke-free requirements a person in charge of an adult care home or hospice may designate a smoking room inside the home or hospice.

The exemption remains, however Regulation 9 imposes two conditions:

1. The person in charge of the adult care home or adult hospice designates the smoking room as only for the use of residents who are over the age of 18. A record of all of the rooms that have been so designated must be kept, and the designation may be withdrawn at any time.
2. The structural condition – see hotels, guesthouses etc above.

Smoking may also take place in the grounds of the adult care home or adult hospice if the manager consents.

Mental Health Units – Regulation 8

An exemption to the smoke-free requirements is provided for these Units so that a person in charge of a Mental Health Unit may designate a room as a room in which smoking is permitted in the unit.

The exemption remains until **1 September 2022**, after which date all Mental Health Units will be required to be smoke-free.

Regulation 8 imposes two conditions with respect to designated smoking room in Mental Health Units which apply for the period 1 March 2021 – 31 August 2022. They are:

1. The person in charge of the Unit may designate the smoking room as only for use by patients of the Unit over the age of 18 years. A record of all

rooms so designated must be kept, and the designation may be removed at any time.

2. The structural condition – see hotels, guesthouses etc. above.

A designated smoking place may be put in place in the grounds of the mental Health Unit, this being subject to the manager's wishes and the policy of the organisation that runs the unit.

Research and Testing Facilities – Regulation 7

Up to 1 March 2021 as an exemption to the smoke-free requirements a person in charge of a research and testing facility may designate a room within the facility as a room in which smoking is permitted.

The exemption remains in place after 1 March 2021, subject to 3 conditions:

1. The person in charge of the facility designates the room as one in which smoking is permitted, and keeps a record of all rooms that have been so designated.
2. The room is used for tests and research which relate to:
 - Emissions from smoking.
 - Developing products for smoking with lower fire hazard.
 - Fire safety testing of materials involving products for smoking.
 - Development of smoking or pharmaceutical products that could result in the manufacture of less dangerous products for smoking; or
 - Smoking cessation programmes.
3. The structural condition – see hotels, guesthouses etc above.

School Grounds – Regulation 10

Schools that provide residential accommodation may designate an area in the school grounds where smoking is permitted.

The person in charge of the school must keep a record of all areas that have been designated as smoking areas, and of 'permitted persons'. The designated area may be amended or withdrawn at any time.

A designated area must fulfil the following conditions ('the designated area conditions'):

- The person in charge of the premises specified who can use the designated area. These people are 'permitted persons', and must be over the age of 18 years, and can include staff and visitors to the school.
- The designated area may not exceed 8.25 m sq.
- The designated area must be at least 10m away from any smoke-free building.
- The designated area must be clearly marked as an area in which a permitted person may smoke.

Any structure provided within a designated area must not be enclosed or substantially enclosed.

There are no specific requirements as to marking of designated area, other than the requirement that they must be clearly marked.

Dwellings in school grounds, e.g. caretakers accommodation are exempt from the requirement to be smoke-free.

Hospital Grounds – Regulation 11

Hospitals may designate an area in the hospital grounds where smoking is permitted. They may decline to do so if that is local policy.

The person in charge of the hospital premises must keep a record of all areas that have been designated as smoking areas, and of ‘permitted persons’. The designated area may be amended or withdrawn at any time.

A designated area must fulfil the following conditions (‘the designated area conditions’):

- The person in charge of the premises specified who can use the designated area. These people are ‘permitted persons, and must be over the age of 18 years.
- The designated area may not exceed 8.25 m sq.
- The designated area must be at least 10m away from any smoke-free building.
- The designated area must be clearly marked as an area in which a permitted person may smoke.

Any structure provided within a designated area must not be enclosed or substantially enclosed.

There are no specific requirements as to marking of designated area, other than the requirement that they must be clearly marked.

Dwellings within hospital grounds are exempt from the requirement to be smoke-free, other than in common parts and share facilities.

Appendix 3: Worked Scenarios

The following scenarios are provided to assist enforcement officers in applying this guidance to practical situations. Each case should always be considered on its own merits, but it is to be expected that enforcement officers will follow the approach set out in this guidance and in these scenarios unless, in their professional opinion, an alternative procedure is warranted.

Scenario 1

You have received a complaint that the owner of a local pub is allowing his patrons to smoke in the pub. He has also been seen smoking while serving behind the bar. You visit the premises and speak to the owner. He advises you that he completely disagrees with the ban but denies letting his customers smoke. No-one is smoking at the time of your visit, but there are full ashtrays evident. You issue a written warning to the owner.

Following the complaint you return to the premises and at the time customers are smoking in the premises.

Considerations

- You have already spoken to the owner and issued him with a written warning.
- It is the first time you have witnessed an offence in the premises.
- A number of customers were smoking in full view of the owner.
- The owner is extremely resistant to the ban.

Enforcement Action

The owner has previously received a written warning and was clearly aware

of the breach of the ban. It is unlikely that he would be able to support a defence of having taken reasonable steps to stop smoking taking place. Consideration should be given to instigating legal proceedings against him.

Speak to the customers, advise them of the smoke-free premises legislation and that they are committing an offence. Ask for their names and advise them that if they are witnessed smoking in a smoke-free premises again they could be issued with a Fixed Penalty Notice or prosecuted.

Scenario 2

You visit a betting shop in your area. It is part of a national chain of betting shops. There is an elderly man sitting in the shop watching the dog racing and smoking a pipe. You ask the manager why he has not asked the customer to stop smoking, and he advised that he was unaware that the smoke-free legislation applied to pipes as well as cigarettes.

Considerations

- Has the national chain issued the correct advice to its shops?

Enforcement Action

Advise the manager that if he allows smoking of any kind in the premises again he may be prosecuted. Confirm this advice in writing. Contact the company head office and/or the relevant local authority to ensure that appropriate guidance is being issued.

Speak to the customer, advise him of the smoke-free premises legislation and that he has been committing an offence. Ask him to extinguish the pipe or to go outside the premises of smoke.

Scenario 3

You are carrying out a proactive visit to a local night club. During the evening you see a few people lighting up but as soon as they are seen by the door supervisors they are asked either to put out their cigarettes or to go outside. There are two men in particular who persistently smoke until they are approached by door supervisors. They put their cigarettes out but almost every hour exactly the same things happens again.

Considerations

- Are the management doing everything reasonably possible?
- What is the re-entry policy of the night club?
- It appears that the two men are lighting up when they think that they can get away with it.

Enforcement Action

Speak to the management of the night club. Advise them that they will need to take stricter action against persistent offenders; for example, if the customer is found smoking more than once they should be asked to leave. Put this advice in writing.

If after monitoring (on the same night or on future visits) the situation does not improve, consider prosecuting the management for allowing smoking in a smoke-free premises. Do not put your own health and safety at risk, but where appropriate advise the individual customers of the legislation and that they are committing an offence. However, the primary focus of enforcement action should be with the management of the nightclub.

Scenario 4

You undertake an unannounced food hygiene inspection of a local rugby club on a Saturday afternoon (which is the only time that any cooking is undertaken). When you arrive one of the kitchen staff is smoking in the lobby to the kitchen.

Considerations

- Who is in control of the premises?
The rugby club is a private members club run by a committee but managed by a steward.
- There may be contraventions of other legislation, such as food hygiene legislation.

Enforcement Action

The management of the premises should be made aware of the law and advised in writing that prosecution proceedings may be considered following any further non-compliance. The employee should be advised of the smoke-free premises legislation and that they are committing an offence. As it would be their first noted contravention a verbal warning should be sufficient, though this should be recorded on the premises.

Scenario 5

You receive complaints from a local resident that every time she catches the 10.00pm bus home from the town centre there are always people smoking on it. The resident advises that although the driver has on occasion asked the customers to stop smoking they often ignore him.

You speak to the bus company and they advise that they are finding the issue difficult to deal with. Their current policy is to ask the passengers to put out their cigarettes but not to tackle the directly for fear of their own health and safety.

Considerations

- The balance of road safety and the drivers' health and safety against the need for legislative compliance.
- Are complaint no-smoking signs clearly displayed in all compartments?

Enforcement Action

Speak to the bus company in order to devise a solution. This might include the use of the vehicle operators' Revenue Protection Inspectors, or the use of overt surveillance by local authority enforcement officers or surveillance using CCTV to identify offenders.

If surveillance and/or further investigation indicates that the vehicle operator and the driver are taking reasonable steps to prevent smoking on the vehicle, consider targeted action against the passengers breaching the legislation. It may be necessary to involve the police in such action to ensure the safety of the local authority officers and other passengers on the bus.

Scenario 6

You receive complaints from a mother about the state of a local outdoor playground and skate park. The complaint is of rubbish, including bottles and cigarette waste. Says that her children, aged 8 and 10 use the playground and skate park during the day, but that at night it is used by older children and young people who smoke and drink while using it, leaving their waste in the park when they leave.

The grounds maintenance staff finish work at 5.30pm, although the park area in which the playground and skate park is situated is open at all times.

Considerations

- Are compliant 'No Smoking' signs in place? Have they been maintained?
- Are there other anti-social behaviour considerations?

Enforcement Action

Speak to parks maintenance staff about ensuring that refuse bins are available and emptied regularly, and that the maintenance of 'No Smoking' signage is included in routine maintenance.

Speak to the police and ask that officers on foot patrol visit the playground and skate park at random times during the evenings to ensure that smoking (and other anti-social behaviour) is not taking place.

If the police report that smoking is a regular occurrence consideration should be given to attendance by enforcement officers, with the police if necessary, targeting those individuals smoking, issuing warnings, or where warnings have already been issued consideration should be given to the issue of Fixed Penalty Notices.

Scenario 7

The local councillor for the ward in which a large general hospital is based has reported receiving numerous complaints about people smoking in the hospital grounds. He reports that people have been seen:

- Smoking at the entrance to the A&E department,
- In the Memorial Garden, and
- Patients and staff have been seen smoking outside the main door and rear door to the hospital.

He wants action taken swiftly, as he considers people smoking in the grounds, particularly staff in hospital uniforms, sends out a very bad message.

Considerations

- What steps did the person in control of the hospital put in place to address the ban on smoking in the grounds of the hospital?
- Are there compliant designated smoking area/s in the hospital grounds? Who are the permitted persons who may use them?
- Is there signage at the exit doors to the premises advising that smoking is not permitted in the grounds? Is there 'No Smoking' signage in areas where smoking is seen to be taking place?
- What steps are being taken by the hospital to enforce the requirement that smoking may not take place other than in any designated areas? Have any actions been recorded and what was the outcome of those actions?
- Are there steps that could reasonably be taken, but which have not been? Is there any reasons for them not being taken?

Enforcement action

Speak with the person in control of the hospital about the issue. Ascertain whether more can be done to enforce the 'No Smoking' requirements, e.g. more visible presence of security staff, letters to all staff about not smoking and offering smoking cessation advice etc, including advice on the smoke-free status of the hospital and grounds on all appointment letters. Ensure that the person in control is aware that by failing to stop smoking activity in the grounds an offence is being committed and that prosecution could be considered. Confirm the meeting in writing, and specifically confirm any actions that the hospital has agreed to take.

If smoking activity persists it may be necessary for enforcement officers to attend the site and to warn smokers that

they are committing an offence, and where it is considered appropriate to issue Fixed Penalty Notices. This should be handled with sensitivity, particularly when the smoker is an in-patient of the hospital.

If the smoking activity persists, and officers can demonstrate that the hospital is not taking reasonable steps to stop it, or that there are reasonable steps that could be taken and have not, prosecution should be considered.

Scenario 8

The owner of a home care company complains to you that one resident to whom care services are provided smokes while the carers are present in his home. The carers attend three times a day to provide assistance and are now reluctant to attend. The care company wrote to all of the residents to whom services were provided and advised them that they should not smoke while carers were present, and that services would be withdrawn if they did so. The resident has been asked not to smoke while care staff are there and has said that he will not but continues to do so. The owner of the care services wishes to withdraw services, but there is no other provider who can provide the service and the resident cannot live independently without help.

Considerations

- Does the resident understand the law, and that he should not smoke when carers are present?
- Does he understand the implications for him if he continues to do so – i.e. withdrawal of a vital service with the possible impact that will have on his ability to continue to live independently?

Enforcement action

This is not a case for enforcement action in the traditional sense. The care company having notified the resident of the law and what he had to do to comply with it would be within their rights to withdraw the service they provide to protect the health of their employees, but the consequences of them doing so would be significant for the resident.

The enforcement officers should seek assistance from the residents' family members, if he has any, or from social services or his GP to advise and support the resident. He may be willing to try to stop smoking, but if he is not and cannot manage to live independently if no care services are provided, alternative arrangements will need to be made. In such circumstances the case should be passed to the appropriate agency for resolution. It is not a case where enforcement action is available or appropriate.

Scenario 9

(After 1 March 2022) The owner of a cleaning company has received complaints from the owner of the property that holiday makers have complained to him that the premises is not clean when they take it over. She reports to the enforcement officer that some of the users of the property appear to smoke in the premises, which is the root cause of the problem. The property is rented out, and on turn around day the cleaning company go into the premises and clean it prior to the next holiday makers arriving. There is often the detritus of smoking (cigarette packets, cigarette ends and ash) in the bins, the premises and particularly its soft furnishings smell of smoke and saucers etc. appear to have been used ash trays. The owner of the property manages it himself through Facebook, and notes on the booking page

that users 'should' not smoke while in the premises. The complainant is reluctant to give up the cleaning contract and feels she is unfairly taking the blame for the action of smokers show should not be smoking in the premises.

Considerations

- Does the owner of the property understand that people smoking in his property are breaking the law?
- Has the owner taken all reasonable steps to advise that users should not smoke inside the premises?
- Does the owner take any action against smokers who have smoked in the property e.g. require them to pay for extra cleaning, refuse to take subsequent bookings etc?

Enforcement

Ascertain whether smoking does take place within the property through monitoring.

Provide advice about steps that could be taken by the owner of the property to prevent users smoking in the property, e.g. strengthen the comment on the Facebook booking page, use signage, advise users that they will be responsible for cleaning costs of they smoke etc. and that they will be committing an offence if they smoke inside the property.

If action is considered proportionate monitor the premises and if smokers are seen within the premises advise them that they should not smoke, or, if the owners had taken sufficient steps to make this clear to them issue Fixed Penalty Ticket.

If Fixed Penalty Tickets are issued advise the owner of the property that this has been done, as he may wish to refuse subsequent bookings from that party.