

GD 24 – No Smoking in the Workplace

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Guidance Document 24 – No Smoking in the Workplace

1. Introduction

This Guidance Note supports the 'No Smoking in Council Premises Arrangement Document (AS24) that forms part of the Health and Safety Policy' and is intended to provide all employees with the supporting information and advice necessary for the successful application and management of the arrangement. Managers note that The Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 ('the regulations') allows little scope for discretion and requires almost all Council premises, vehicles and workplaces to be completely 'tobacco smoke - free'.

The Regulations provide the following exemptions where provisions to control smoking can be considered and are as follows:-

- Residential accommodation.
- Adult hospices.
- Designated hotel bedrooms.
- Designated rooms in offshore installations.
- Designated rooms in psychiatric hospitals and units.
- Private vehicles.
- Designated rooms in adult care homes.
- Detention or interview rooms which are designated rooms.

In the context of North Lanarkshire Council the only exemption to apply will relate to designated rooms in Adult Residential Care Homes. Housing and Social Work Services have produced separate Guidance Notes to cover this and also additional arrangements involving Accommodated Children, Planned Services at Home, and Planned Home Visits where employees may encounter risks from 'passive smoking' or 'secondary smoke'.

There will be a number of examples where management may have questions regarding interpretation of local arrangements and past practices where employees may have enjoyed differing arrangements and these are covered in the attached Appendix 1 - Frequently Asked Questions.

It is important that management in control of arrangements at Council premises and workplaces are clear as to what constitutes 'No Smoking Premises'. Therefore, the following examples which now follow are taken using the format of our previous policy, if only to underline the new and stricter approach necessary to comply with the tobacco smoke-free legislation.

2. Operational Buildings

All office buildings and non-residential properties operated by North Lanarkshire Council are considered as 'tobacco smoke free premises' covering employees, councillors, contractors, all building users and visitors.

This includes Civic Centre, Motherwell, Municipal Buildings, Coatbridge, Fleming House, Cumbernauld, Scott House, Motherwell, Country Parks buildings, other office buildings and Learning & Leisure establishments.

This prohibition will also extend to the use of nicotine based e-cigarettes.

3. Residential Homes, Drop-in Centres, Day Centres etc

With the qualification to follow, these premises are also designated as tobacco smoke-free premises covering employees, councillors, contractors, all building users and visitors.

This prohibition will also extend to the use of nicotine based e-cigarettes.

Domestic premises do not fall within the scope of the regulations and therefore a persons own home (to include private room in, for example, Sheltered Housing Accommodation) is not covered. However, where a resident's own health needs or behaviour may present a danger to others then a Service User's Smoking Risk Assessment will require to be undertaken and control measures put in place.

The position in Adult and Older People Care Homes is that smoking (to include use of e-cigarettes) is not permitted in the residents own bedroom but that certain rooms are designated as smoking rooms.

It should be noted that the communal areas in Sheltered Housing Accommodation are caught by the tobacco smoke-free legislation and designated smoking rooms other than a residents own room are not permitted.

4. Domiciliary or Home Visits

Private residences are not covered by the legislation. Council employees who visit or treat people in their own homes are at risk from passive smoking or secondary smoke if the person being visited is a smoker and smokes tobacco or uses an e-cigarette during the arranged visit.

In these cases the aim is to reduce the risks linked to such exposure and management are advised to consider including the following in their risk assessment:-

1. Prepare a standard letter to be sent to the service user in advance. This could be part of a standard pack sent to new clients or service users in advance of the domiciliary visit asking them, and those who may be with them, not to smoke during the visit, and ideally not to smoke for an hour or so before the visit is scheduled to take place.
2. Identify members of staff who have a pre-existing condition that is made worse by exposure to tobacco smoke, such as asthma, chronic obstructive pulmonary disease (COPD) and cardiovascular disease or who face additional risks e.g. due to pregnancy. Members of staff who have such conditions are at a higher risk and particular care should be taken to prevent or minimise their exposure to tobacco smoke.
3. No member of staff should be asked to make consecutive visits, or even a sequence of visits to houses to which they are likely to be exposed to tobacco smoke. A better option is to alternate the visits, but this should not take the place of steps one and two.

An employee who considers their health is being undermined by exposure to 'passive smoking', 'secondary smoke' or 'e-cigarette vapour', in the course of the domiciliary visit is entitled not to enter the private residence, or to leave it at any time should they be so exposed to a risk to their health or wellbeing. This entitlement should be highlighted in the standard letter.

Employees who consider that such a course of action is necessary must report the action taken to their line manager immediately.

5. Counselling and Stressful Interviewing Sessions

The medical evidence concerning the dangers from 'passive smoking' or 'secondary smoke' is now acknowledged as being irrefutable. Consequently, Council employees will not be exposed to this in circumstances involving counselling or interviewing a service user in Council premises which are 'No Smoking Premises'. This effectively alters previous guidance and no discretion in the matter is now permissible as this would constitute the criminal offence of 'allowing others to smoke in no smoking premises' and could attract a fixed penalty fine (see later).

6. Transport

Vehicles used for business purposes are included in the regulations and a smoking ban will be applied in the same manner as before and apply to all vehicles in the Council vehicle fleet - 'from limousine to lorry' - without exception.

- Smoking/E-cigarettes will not be permitted in any Council vehicle, either by employees or by any non-employees being transported.
- Smoking/E-cigarettes will not be permitted in any leased vehicle or contractor's vehicle under contract to the Council carrying personnel, councillors or service users on Council business. This should be clearly specified in the terms of the contract.
- In the context of North Lanarkshire Council the smoking ban includes light and heavy goods vehicles and hired public transport such as buses and taxis - but excludes employees own private or leased cars, provided no other employee, councillor or service user is being carried as a passenger.

7. Workshops, Depots, Garages, Mobile Library, Toilets, Locker Rooms and Bothies

These are included in the smoking ban and are clearly 'wholly' or 'substantially enclosed' premises as defined in the regulations.

8. Meetings

These are included in the smoking ban and meetings indoors are clearly taking place in 'wholly' or 'substantially enclosed' premises. This prohibition includes the use of e-cigarettes.

9. Shared Buildings Leased to the Council

These are included in the smoking ban as the regulations apply equally to all employers using 'wholly' or 'substantially enclosed' premises as defined in the regulations. This prohibition will also include the use of e-cigarettes

10. Civic Receptions

These events are also included in the smoking/e-cigarette ban as such receptions indoors are clearly taking place in 'wholly' or 'substantially enclosed' premises. Outdoor Receptions / Gala Events / Beer Festivals which take place within a tent, marquee or stall are also included within the meaning of premises as defined in the regulations and are included in the smoking ban.

11. Site Accommodation

There can be a variety of temporary accommodations located at a site for the purpose of allowing Council employees, on-site organisations, contractors / sub contractors etc. to undertake their duties. On occasions a site can be given over completely to a contractor.

Temporary site accommodation including huts, caravans, "portacabins", bothies etc. are included in the smoking/e-cigarette ban as the applicable regulations indicate that such temporary accommodation units are clearly 'wholly' or 'substantially enclosed' premises as defined in the regulations.

12. Unauthorised Breaks to Smoke/Use of E-cigarettes

An audit of the 'Smoking in Council Premises Policy' (now Section 24 – No Smoking in Council Premises Policy) revealed that in some premises smokers were absenting themselves informally from their workstations to smoke and some not using the flexitime equipment to record such break time.

This will be regarded as an unauthorised absence and treated accordingly.

13. Authorised Breaks in relation to Smoking/Use of E-cigarettes

- a) It is intended to continue with some variation or flexibility within the authorised break time. For example employees must use a minimum of 30 minutes at lunchtime, but may at an earlier or later time that day, use the balance of their own authorised break time (30 minutes) to have a break (s) should they wish to leave the building to smoke - subject to prior agreement with their line manager and the exigencies of the service. This would not normally exceed one break in the morning and one in the afternoon.
- b) A similar facility will be permissible to employees in the flexible working hours scheme and the employee will require to book out / in of the system at relevant times. Management are advised that subject to the exigencies of the service they allow this variation as one morning break and one afternoon break - or two breaks in either morning or afternoon and that the breaks total no more than 30 minutes of the employees own authorised break time. Where adopted, such a flexible approach will

require to be adopted equally to all employees, irrespective of the reason for the request to vary the authorised break.

- c) Managers are required to ensure that such breaks are not exceeded and a periodic check of the breaks taken should be made in the interests of fairness to all employees.
- d) Employees who take these permitted breaks in order to smoke should ensure they do not smoke anywhere other than in authorised areas.

After an appropriate length of time North Lanarkshire Council will undertake a review of this aspect of the policy with a view to exploring further the expectations outlined within the Scottish Executive Guidance for NHS, Local Authorities and Care Service Providers. This may include a consideration not to allow any smoking breaks during working hours, demonstrating actions of an exemplar employer driving forward positive health and well-being gains.

14. No Smoking Signage

Managers are advised that it is a requirement by law to display no smoking signs in or on any premises that are affected by the ban, so that they can be seen and read by people in the premises and approaching the premises. They must be obviously displayed and protected from tampering, damage, removal or concealment.

The minimum signage requirement for premises is a no smoking notice which:

- Is at least 230mm by 160 mm in size;
- States that the premises are no smoking premises and it is an offence to smoke there or knowingly permit smoking there;
- Displays the international no smoking symbol, at least 85 mm in diameter;
- Displays the name or job title of the person to whom a complaint may be made by anyone who observes someone smoking.

It should also be noted that all vehicles in the Council fleet are required by law to display no smoking signs in such a way that the signs can be seen and read by people who are in the vehicle, as well as people approaching the vehicle in question. There are no legal requirements on the size of these signs but they must still meet certain requirements.

The minimum signage requirement under the law for any relevant vehicles is a no smoking notice which:

- States that the vehicle is no smoking and that it is an offence to smoke there or knowingly to permit smoking there;
- Displays the international no smoking symbol;
- Displays the holder of a particular post (e.g. the manager) to whom a complaint may be made by anyone who observes someone smoking.

Managers should be aware that their own Service Health and Safety Officer has been provided with an electronic sample of the approved signage. Should a manager wish they may download and use additional copies of the signage from The Scottish Executive web site at www.clearingtheairscotland.com or download from the Council's own website www.northlanshire.gov.uk and be satisfied that the signs when displayed comply with the above requirements.

15. Assistance for Employees Wishing to Stop Smoking

North Lanarkshire Council recognises that smoking tobacco is an addiction, and for certain individuals a chronic one. So far as it reasonably can, and within the exigencies of the service, the Council will seek to provide health education advice and support for those employees finding initial difficulties in trying to break the smoking habit.

This may include the following measures:

- Allowing access during working time to smoking cessation classes for employees who wish to give up the smoking habit. Smoking cessation classes will be run within Council establishments in partnership with NHS Lanarkshire. Locations will be decided by geographical demand and the classes will be run according to resource availability from NHS Lanarkshire;
- Flexibility in start / finish times to permit attendance at the smoking cessation classes;
- Access via the Council intranet system to smoking cessation advice/information and support;
- Provision of support material/leaflets via employee notice boards and information campaigns.

Appendix 2 details where help and support can be sought from external sources.

16. Fixed Penalty Fines and Enforcement

Managers and employees should be aware that failure to comply with the law is a criminal offence. Individuals may be fined a fixed penalty of £50 for smoking in no smoking premises. The manager in control of any no smoking premises could be fined a fixed penalty of £200 for either:

- Allowing others to smoke in no smoking premises; or
- Failure to display warning notices in no smoking premises.

Refusal to pay or failure to pay may result in prosecution and a fine of up to £2,500.

Managers are further advised that the law will be enforced by Environmental Health Officers, who will have the power to enter no smoking premises to determine whether the law is being upheld. They will also assess whether or not those in control of the premises have taken all reasonable precautions to avoid people smoking. Inspections carried out by enforcement officers will either be pro-active (to advise employers or managers, and to confirm compliance with the law) or re-active (in response to a complaint). Inspections may also be incorporated within other health and safety and food hygiene inspections.

17. Smoking Outwith the Premises

As well as the prohibition of smoking in 'wholly' or 'substantially enclosed' public places, Scottish Executive Guidance seeks to encourage Local Authorities to prohibit smoking in situations where work is undertaken outside buildings, for example outdoor areas such as nursery gardens, swing parks, parks, grounds etc. Employers should, they say, give careful consideration to the appropriateness of having one set of requirements for those who work

indoors and another for those who do not. The Council does not intend to extend the prohibition on indoor smoking to all outdoor areas at this moment.

However there should be no smoking in the immediate vicinity of 'wholly enclosed' or 'substantially enclosed' Council buildings and workplaces (see definition to follow) and this should be particularly so where children are present, for example school playgrounds, crèches, pre-school groups etc.

Where smoking is anticipated to take place outside there is a need to examine, by means of a risk assessment, any provisions made to facilitate smoking. A fire risk assessment should take place to ensure smoking cannot take place in a manner that puts others at risk from fire, whilst more general risk assessments should consider the health risks to others or damage to the environment.

Managers and those in control of premises are advised that the legal definition of 'wholly' or 'substantially enclosed' premises is set out in an appendix to the regulations. However, a simple interpretation is that it is an area with a ceiling or roof that - except for doors, windows and passageways - is either wholly enclosed (whether permanently or temporarily); or is enclosed but for an opening which is less than half the area of its walls. If there is any doubt about whether particular premises comply with the smoke-free legislation, then further advice should be sought.

At this stage employees, councillors, contractors, all building users and visitors to Council premises are to be actively discouraged from smoking directly outside Council premises. Smoking is not permitted outside any entrance door to Council premises thus removing the need for people to pass through or inhale 'secondary tobacco smoke'.

The Council has decided not to provide smoking shelters at any Council premises. However, where it is deemed absolutely essential and does not contradict Service policy then local managers may nominate a suitable area outside a building away from entrances and exits that may be used by smokers at authorised breaks. The provision of such an area can only be made after a written risk assessment has been made and the area identified is confirmed as being appropriate under the regulations.

Where local managers have undertaken written risk assessments it is accepted that at authorised breaks to smoke some employees may use their own parked private vehicles.

After an appropriate period of time the Council's stance on smoking outwith Council premises will be reviewed in order to further examine the issue in the light of the guidance from the Scottish Executive.

18. Breach of the Smoking Ban

Managers and those in control of premises should treat any refusal to abide by the prohibition of smoking in Council premises in the same way as they would treat anti-social behaviour in our premises.

If someone does continue to smoke then you should:

- Draw the person's attention to the 'No Smoking' signs and remind them that they are committing an offence. Politely ask them to stop smoking.
- Advise the person that it is also an offence for you as a manager or person in control of the premises to let anyone smoke.

- Explain to them that the Council has a smoke-free policy to ensure a safe working environment for all staff and users of the premises. Further explain if necessary that the council has also prohibited the use of e-cigarettes within a workplace.

If the person smoking is an employee :

- If your warning has been ignored, immediately ask them to leave the premises (and where relevant inform them where they can smoke).
- If the person refuses, implement the normal disciplinary procedure for antisocial / illegal behaviour in the workplace.
- Maintain a diary record of all such incidents and outcomes.

If the person smoking is a client or service user:

- Explain that staff are advised to refuse service if they continue to smoke.
- If the client or service user carries on smoking, ask them to leave the premises (and, where relevant, inform them where they can smoke). This is not of course applicable in a client or service users own home).
- If he/she refuses, implement the normal procedure for antisocial / illegal behaviour in the premises.
- Maintain a diary record of all incidents and outcomes.

In any case where physical violence or intimidation is threatened or encountered seek the assistance of the police.

19. National Compliance Phonenumber

Managers and all employees are advised that a national compliance phone line has been introduced with calls charged at local rates. This will allow the public to report anyone smoking in enclosed public places.

The National Compliance Phonenumber **0845 130 7250** and it is open 7 days a week on a 24 hours basis.

Frequently Asked Questions

This appendix has been prepared to help managers or others in control of Council premises answer some of the more common issues raised in relation to this topic.

1. I am frequently asked to define what is meant by 'wholly' or 'substantially enclosed premises'

This is an area with a ceiling or roof that – except for doors, windows and passageways – is either 'wholly enclosed' (whether permanently or temporarily); or is 'substantially enclosed' but for an opening which is less than half of the area of its walls. In this context you will appreciate that a council vehicle is wholly enclosed and even with its doors open when parked is still substantially enclosed.

2. I have staff within the Civic Centre, Motherwell and in the Motherwell Theatre and Concert Hall who intend to shelter in the tunnel area to smoke at authorised breaks - is this permissible?

While it may seem harsh this provides a good example of 'substantially enclosed' given in the equation above. The tunnel is part of the premises and therefore this area may not be used as a smoking shelter as it is substantially enclosed.

3. My staff work in a Library and have always had a place used at lunchtime which is a designated or segregated areas for smoking. Is this still permissible?

No. Only a complete ban on smoking in 'wholly enclosed' areas will reduce exposure to passive smoking. This means that the provision of smoking rooms or segregated areas inside workplaces will no longer be allowed.

4. My staff keep reminding me that our workplace is well ventilated. Does that not provide protection from passive smoking?

No. There is no safe level of exposure to second-hand smoke. Ventilation systems improve comfort by removing the smell and visibility of the smoke. They do not remove toxic carcinogens from the air.

5. I am a Cemeteries Manager and we have a small burial ground which is serviced by only a couple of employees who both smoke in the bothy at break times. Does this law still apply to them?

Yes. If your workplace is 'wholly' or 'substantially enclosed' (like a bothy), then smoking is banned.

6. I am employed as a driver. Can you clarify the position concerning all vehicles used for business purposes?

Light goods and heavy goods vehicles and public transportation vehicles (e.g. taxis, buses, trains and ferries) are all affected by the new law. If you use your own or leased car for business purposes and are the sole occupant, it will be exempt. Limousines used to transport people / guests / bridal parties etc. are caught by the legislation and must carry the appropriate signage and no person including the driver may smoke in the vehicle.

7. Will the new 'smoke free' law affect private clubs on Council leased / maintained premises and managed by others, e.g. bowling greens / clubs,

rugby clubs, snooker clubs, golf clubs, working men's clubs etc?

Yes. Premises which are being used by and for the purposes of a club or other unincorporated association, and which are 'wholly' or 'substantially enclosed', are affected by the new law. Members and staff of private clubs deserve the same protection from the health effects of second-hand smoke as much as anyone else.

8. I manage a day centre for the elderly. Will this be affected by the new law?

Yes! This is caught by the regulations and the exemption for designated rooms in adult care homes relates only to residential homes.

9. Who will enforce The Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006?

Environmental Health Officers have the power to enter all 'no-smoking premises' in order to establish that the smoke-free legislation is being enforced in accordance with the law. Environmental Health Officers can also give out fixed penalty notices to people whom they believe are committing, or have committed, an offence under the legislation. Environmental Health Officers have powers to enter no-smoking premises in order to check whether an offence has taken place or is being committed. These officers of the Council will, in general terms, have access to premises to which the public has access.

10. What penalties will there be for those who break the law?

Those in control of no-smoking premises could be liable to a fixed penalty fine of £200 if they do not take reasonable action to prevent someone smoking on the premises, or if they do not provide adequate 'No Smoking' signs. Individuals who smoke in no-smoking premises will be liable to a fixed penalty fine of £50. Refusal to pay or failure to pay may result in prosecution and a fine of up to £2,500.

11. Will fixed penalty notices be applied at the time of the offence, or at a later date?

No enforcement action will be taken if the relevant Council policy is being adhered to. Any action necessary will be taken at a later date.

12. Is North Lanarkshire Council obliged to provide external smoking shelters for any of its employees, clients or visitors to its premises who smoke?

No. Employers cannot be compelled to provide these. It is also this Council's policy not to provide external smoking shelters. However the legislation does allow some leeway for employers to provide external smoking shelters but these must pass strict tests by the legislation enforcers, for example building control, planning consent etc. and may be difficult, and costly to achieve.

13. My Service organises Outdoor Events such as Gala Days so can we still use a marquee or will there be restrictions?

The definition of premises includes any tent, marquee or stall and they would therefore be caught by the legislation, if 'wholly' or 'substantially enclosed'.

14. Is my Service obliged to provide external stubbing - out bins for staff who smoke outside?

No. However, where an outdoor smoking area has been approved by management following a written risk assessment having been undertaken and staff and / or service users require to leave the premises to smoke, you might want to consider providing external stubbing-out bins at entrances or exits to keep litter to a minimum. However, people should not be permitted to stand smoking beside such stubbing-out bins. You may also wish to provide employees and others with 'butt boxes', which can be obtained from our own Environmental Health Division of Regeneration and Environmental Services. These can be carried by smokers in a jacket or coat pocket and used to contain their spent cigarette butt and so reduce littering the pavement.

15. Can you provide me with an explanation of what is the aim of the regulations?

The new regulations aim to protect workers and the general public from the harmful effects of passive smoking. Breathing other people's smoke is called passive, involuntary or second-hand smoking. The non-smoker breathes 'sidestream' smoke from the burning tip of the cigarette and 'mainstream' smoke that has been inhaled and then exhaled by the smoker. Second-hand smoke (SHS) is a major source of indoor air pollution.

16. What do the regulations do?

The new law bans smoking in 'no-smoking premises' by:

- creating an offence of permitting others to smoke in no-smoking premises.
- creating an offence of smoking in no-smoking premises.
- creating an offence of failing to display warning notices in no-smoking premises.
- setting out the powers of enforcement officers to enter no-smoking premises.
- creating an offence of failing without reasonable cause to give one's name and address on request by an enforcement officer.

17. How do I advise staff who make Home Visits and complain of being exposed to tobacco smoke?

It is now acknowledged that they are potentially at risk, and particularly so if they are undertaking such home visits frequently or continuously. You are advised to consult the Guidance Note GD24 section 4 "Domiciliary or Home Visits".

18. Are there any exemptions to the regulations?

Yes there are only a few exemptions have been made, mainly on humanitarian grounds. These are:

- residential accommodation;
- designated rooms in adult care homes;
- adult hospices;
- designated rooms in psychiatric hospitals and units;
- designated hotel bedrooms;
- designated detention or interview rooms;
- designated rooms in offender accommodation premises;
- offshore installations;
- private vehicles.

Nothing in the new law, however, obliges an employer or manager of exempted premises to permit smoking or to provide a smoking area.

19. As an Office Manager am I still able to let staff use their own car in which to smoke?

Yes - but with stricter control than may presently be being applied. Private vehicles are exempt from the regulations and, for the moment we shall adopt the approach that office staff, like any other Council employee, may use their car to smoke at approved break times but only if a written risk assessment has examined associated hazards. Please refer to the Guidance Note GD24 section 17 "Smoking Outwith the Premises".

20. What about 'Yard Areas' such as Bellshill Transport Depot?

A yard or a compound e.g. a fenced-in enclosure in which a building or premises stands may, for the moment, be considered as an open area and therefore not 'wholly', or 'substantially enclosed' premises. Subject to management undertaking a risk assessment of all the factors involved then smoking may be permitted. However, such examples will be subject to review as explained in paragraph 18 (1) of the Guidance Note on 'No Smoking in Council Premises Policy'.

Taking the example of Bellshill Transport Depot then smoking will not be permitted in garage areas, offices, "portacabins", workshops, amenity areas etc. Remaining outdoor areas where there are considered risks from petrol / oil spillage or pedestrian / traffic management issues, will be subject to management undertaking a written risk assessment. Alternatively, management may declare the yard or compound 'no smoking premises'. At authorised break times smokers may stand outside the yard, or compound but beyond the entrance gate and back from traffic / people entering the premises.

Smoking Cessation

NHS Scotland run Smoking Cessation classes with advice and information available as follows:

Lanarkshire stop smoking service Monday – Friday 8am – 6pm and Saturday 9am – 12 noon.

Tel: 08452-177-707 or text 81066 or visit the website at

www.nhslanarkshire.co.uk/Services/StopSmoking/Pages

or alternatively contact the helplines below:

QUITLINE: 0800 00 22 00 9.00 a.m. - 9.00 p.m. Monday - Sunday

SMOKELINE 0800 84 84 84 12 p.m. - 12 a.m. 7 days a week

You may also find helpful information on smoking at the following websites:

www.ash.org.uk

www.bhf.org.uk

www.givingupsmoking.co.uk

www.quitsmoking.com

www.nosmokingday.org.uk

www.ashscotland.org.uk

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