

Report of Rachel McCormack, Team Manager, Health & Safety

Report to Licensing Committee

Date: September 2013

Subject: Shisha Smoking and Smoke Free Legislation

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. The Health Act 2006, prohibits smoking in enclosed workplaces and public places
2. Enforcement of the smoke free legislation falls within the remit of the Health & Safety Team in Environmental Health.
3. In general compliance with smoke free legislation is very good.
4. There is a common misconception that shisha smoking is exempt from the smoke free legislation, and there has been an increase in the number of shisha bars in the Leeds Area.
5. A number of options are available to tackle the issue, from an initial letter to the person in control of the premises, through to prosecution. Work is on-going with other authorities and partners to establish best practice and alternative methods of enforcement.
6. In May of this year, Leeds City Council took 2 successful prosecutions against shisha bar owners.

Recommendations

7. The Committee is asked to note the contents of this report, provide comments and suggestions, ask questions and advise officers if any further information or updates are required.

1 Purpose of this report

- 1.1 The purpose of this report is to brief the Licensing Committee on smoke free legislation, the enforcement approach taken, particular issues with shisha bars and smoking, and on-going work to develop the education and enforcement in this area.

2 Background information

- 2.1 The Government's White Paper Choosing Health: Making health choices easier, published in 2004 proposed action on second hand smoke and set out a clear strategy to tackle smoking as well as to reduce the effects of smoking on others. The Health Act 2006, came into force in July 2007.
- 2.2 The Health Act 2006, prohibits smoking in enclosed workplaces and public places. Premises that are places of work for more than one person, or that are open to the public, or a section of the public, are required to be smoke free at all times in all enclosed and substantially enclosed parts.
- 2.3 Nationally, in general there is good compliance with smoke free legislation. Many 'smoke free' places, such as pubs, shopping centres and offices, provide smoking shelters for smokers to use in order to comply with the legislation.
- 2.4 As shisha bars / cafes are open to the public (and are likely to have more than one employee), the legislation applies.
- 2.5 The legislation defines 'enclosed' and 'substantially enclosed', but basically, the 50% rule applies. If 50% of the walls or more are missing, then it is legal to smoke in the area. If more than 50% of the walls are present then it is illegal to smoke in the area. When determining compliance with the 50% rule, any openings which can be closed – ie windows, doors, patio doors, even curtains are considered to be closed for the purpose of the calculation.
- 2.6 It is possible for a shisha bar / café to comply with the legislation, but they would need to meet the requirements outlined in the paragraph above.
- 2.7 Shisha smoking is traditionally carried out by people from Middle Eastern or Asian community groups, but is becoming increasingly popular among all groups in cities across the UK. It is also particularly attractive to the younger generations.
- 2.8 Shisha smoking, which is also known as hookah, narghile or waterpipe is a way of smoking tobacco, which is sometimes mixed with fruit or molasses sugar, through a bowl and hose or tube. The tube ends in a mouthpiece, where the smoker inhales the substance. As the fruit syrup or sugar makes the tobacco damp, wood, coal or charcoal is burned in the shisha pipe to heat the tobacco.
- 2.9 Enforcing smoke free legislation is one part of the remit of the Health and Safety Team. The team enforces Health and Safety Legislation in approximately 17,000 Local Authority enforced premises, and also deals with animal welfare licensing and associated issues

- 2.10 Local Government Regulation (formerly the Local Authorities Coordinators of Regulatory Services - LACORS), as part of the Local Government Group, is the local government central body responsible for overseeing local authority regulatory and related services in the UK.
- 2.11 Guidance from Local Government Regulation on implementing the Legislation includes a process for dealing with such complaints. This includes warnings to the person in control of the premises. It also states that legal proceedings should only be considered against owners, occupiers, managers or other persons in charge of the smoke free premises after repeated efforts to secure compliance with the legislation or where there have been serious or persistent contraventions.
- 2.12 Complaints of smoking in a smoke free-place, are therefore, usually dealt with via a number of warning letters to the person in control of the premises. Where further complaints are received, consideration is given to making a visit to the premises. Such visits are resource intensive, and would usually be done outside of normal working hours and with support from other partners such as the police.
- 2.13 The team recently prosecuted 2 shisha bar owners, both were found guilty in their absence. One of the cases was taken using witness statements from the police and Licensing colleagues.
- 2.14 Trading Standards are running an education project in Leeds on niche tobacco, which includes shisha smoking. The project is being run in partnership with LCC and NHS Leeds. The Health and Safety Team is supporting this project. The purpose of the project is to raise awareness of the health risks of using niche tobacco to the BME communities of Beeston, Harehills, Hyde Park & Burley.
- 2.15 To date frontline workers, including colleagues from the locality teams and volunteers have been briefed on niche tobacco, its use and the project plan. An intelligence gathering exercise is currently underway to determine the number of premises and extent of the problem.
- 2.16 In the financial year 2012/13, the team received 52 complaints relating to smoking in a smoke free place. To the end of the first quarter this year, the team has received 10.
- 2.17 A representative from the team sits on the Tobacco Control Management Group, which addresses tobacco control through strategic multi-agency partnership working at a senior level. Colleagues in public health take a lead on this work.

3 Main issues

- 3.1 Health Act 2006, ie smoke free legislation applies to shisha bars / cafes.
- 3.2 Shisha is a glass-bottomed water pipe in which fruit-flavoured tobacco is covered with foil and roasted with charcoal. The tobacco smoke passes through a water chamber and is inhaled deeply and slowly.
- 3.3 As the tobacco is flavoured and the smoke passes through water before it is inhaled, there is a common misconception that shisha is not as harmful as cigarettes. However, traditionally shisha tobacco contains cigarette tobacco, so

like cigarettes it contains nicotine, tar, carbon monoxide and heavy metals such as arsenic and lead. Therefore, a regular shisha smoker can expect the same health problems faced by a cigarette smoker, such as heart disease, cancer respiratory disease and problems during pregnancy. As with other tobacco products, regular shisha smokers are likely to find it addictive.

- 3.4 Even when a tobacco free shisha is used, there is still a risk from the carbon monoxide and any toxins in the coal or charcoal used to burn the shisha. There is also a risk to anyone nearby from passive smoking and carbon monoxide etc.
- 3.5 According to research carried out by the World Health Organisation (WHO), the volume of smoke inhaled in an hour-long shisha session is estimated to be the equivalent of smoking between 100 and 200 cigarettes. The estimated findings go on to show that, on average, a smoker will inhale half a litre of smoke per cigarette, while a shisha smoker can take in anything from just under a sixth of a litre to a litre of smoke per inhale.
- 3.6 The sale of shisha is not a licensable activity. The premises is only licensable where there are other licensable activities, such as the sale of alcohol or late night refreshment taking place.
- 3.7 In Leeds, enforcement of the smoke free legislation falls to the Health and Safety team in the Environmental Action Service. Enforcement of the smoke free legislation is one small part of the remit of the team.
- 3.8 Recent discussions have taken place with colleagues in Bradford and Leicester, to discuss best practice and alternative ways of tackling the issue. Work is ongoing to develop and improve the Leeds approach.
- 3.9 The Health and Safety Team has been gathering some information on shisha premises in the area. Part of the Trading Standards Niche Tobacco Education Project in Leeds, involves intelligence gathering to assist in determining the numbers of premises involved. Once this information is gathered, further work will be done to determine the best way to tackle the issue. This will involve working with other agencies and partners to priorities premises for action. As part of this consideration will be given to further outreach and education work.
- 3.10 Some premises have been identified for multi-agency visits. These visits are being planned and co-ordinated by the Health and Safety Team and other partners.
- 3.11 Electronic shisha is also available in the form of electronic cigarettes and electronic shisha pipes. The vapour from an electronic cigarette or e-shisha pipe is produced by a battery powered element that heats the 'e-liquid' to create the flavoured 'vapour'.
- 3.12 The use of electronic shisha and electronic cigarettes is not covered by the Health Act 2006.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 As part of the Trading Standards Niche Tobacco Education Project Tobacco frontline works and community groups have been educated in relation to niche tobacco use and its associated health risks. This has included colleague from the Locality Teams.
- 4.1.2 The Health and Safety Team also works with partners, such including Licensing colleagues and the Police to share information and intelligence on shisha premises. In appropriate cases, multi-agency visits are requested and co-ordinated.
- 4.1.3 Relationships are also being built and strengthened with not only neighbouring Local Authorities, but Local Authorities throughout the UK who face the same issues. This is to share best practice and try and achieve some consistency in enforcement.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 Shisha smoking is traditionally used by people from Middle Eastern or Asian community groups, but is becoming increasingly popular among all groups in cities across the UK.
- 4.2.2 Trading Standards is working with community centres, Imams from mosques, youth centres, community leaders, children's centres, as well as primary and secondary schools.

4.3 Council policies and City Priorities

- 4.3.1 Investigation of breaches of smoke free legislation, including in shisha establishments fits in with the priority to be the best city for health and wellbeing, by contributing towards helping protect people from the harmful effects of tobacco. While there is generally compliance with the legislation, shisha smoking is on the increase and has a significant public health implication.

4.4 Resources and value for money

- 4.4.1 Planning multi agency visits to premises outside normal working hours is resource intensive. When prosecutions are taken fines are generally low and do not discourage premises owners from operating. This is an issue for local authorities throughout the country.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 Not applicable

4.6 Risk Management

- 4.6.1 As many of these premises open outside normal working hours for the team, there is a potential risk when visiting the premises. However, this will be controlled by working with partner agencies to gather as much intelligence as possible about the premises prior to a visit. In appropriate cases, multi agencies visits will be arranged.

- 4.6.2 Planning, coordinating and carrying out multi agency visits is resource intensive.
- 4.6.3 Shisha smoking is a real risk to public health, so work is required through a combination of outreach and education work, along with enforcement.

5 Conclusions

- 5.1 General compliance with smoke free legislation is good.
- 5.2 Shisha is a growing issue, with significant health implications.
- 5.3 Work is on-going with partners to gather intelligence and develop a plan to address the matter going forward. As part of this, consideration will be given to further outreach, educational work and publicity around the matter.

6 Recommendations

- 6.1 The Committee is asked to note the contents of this report, provide comment and suggestions, ask questions and advise officers if any further information or updates are required.

7 Background documents

- 7.1 Project plan for the Trading Standards Niche Tobacco Education Project (attached).