

SMOKE-FREE ENFORCEMENT GUIDANCE

DEPARTMENT OF HEALTH, SOCIAL SERVICES & PUBLIC SAFETY

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1. Introduction

Purpose of the Smoking (Northern Ireland) Order 2006

- 1.1. On **30th April 2007**, the Smoking (Northern Ireland) Order 2006 introduced measures to protect the public and employees from exposure to second-hand smoke (SHS). From this date, smoking in most enclosed and substantially enclosed public places and workplaces became unlawful. The smoke-free legislation will be enforced by district councils.

Purpose of the guidance

- 1.2. This document aims to provide guidance to district council officers, including Environmental Health Officers, Technical Officers, Licensing Officers and all others authorised by district councils to act in matters relating to the smoke-free legislation. **It should be read in conjunction with the smoke-free legislation.**
- 1.3. The guidance has been prepared in consultation with the Tobacco Task Group (this is a subgroup of the Northern Ireland Chief Environmental Health Officers Group (CEHOG)), the Police Service of Northern Ireland (PSNI) and the Health and Safety Executive for Northern Ireland (HSENI). It aims to set out the main requirements of the legislation, encourage best practice and ensure that a consistent, pragmatic and practical approach is taken to enforcement across Northern Ireland.
- 1.4. The Department of Health, Social Services and Public Safety (DHSSPS) wishes to create a supportive environment in order to promote compliance with the new legislation. **This guidance seeks to ensure that the approach to enforcement will be non-confrontational and focussed on raising awareness and understanding to maximise compliance by businesses.** Enforcement Officers are encouraged to work closely with businesses to build compliance through education, advice and support. Enforcement action should therefore only be considered when the seriousness of the situation warrants it.
- 1.5. Enforcement officers are expected to follow this guidance unless, in their professional opinion, an alternative approach is warranted. The guidance and protocols may need to be amended in light of future experience and any subsequent legislative changes.

It should be noted that the Smoking (Northern Ireland) Order 2006 does not apply to property used for the purposes of the armed forces of the Crown or the Ministry of Defence Police.

2. Background to legislation

The Evidence

- 2.1. Smoking is the single greatest cause of preventable illness and premature death in Northern Ireland claiming approximately 2300 lives annually¹.
- 2.2. The World Health Organisation's International Agency for Research on Cancer has classified second hand smoke as a Group 1 human carcinogen².
- 2.3. A report by the Scientific Committee on Tobacco and Health (SCOTH)³ indicated that second-hand smoke (SHS), which is the term used to describe the gases and particles in the air that result from smoking tobacco, carries significant health risks. The report suggests that non-smokers have a 24% increased risk of lung cancer as a result of exposure to second hand smoke and a 25% increased risk of heart disease. In addition, research funded by the Scottish Executive and commissioned by NHS Health Scotland⁴, suggests that exposure to SHS increases the risk of suffering a stroke by 29%.
- 2.4. It is estimated that smoke-free controls in Northern Ireland would avert 46 deaths per year due to active smoking and a further 13 from exposure to second hand smoke in the workplace¹. In addition experience in other countries suggests that smoke-free controls cause smokers to reduce the number of cigarettes they smoke and significant numbers to quit.

Tobacco Action Plan

- 2.5. To tackle the death and illness caused by smoking, the DHSSPS published a five-year Tobacco Action Plan in 2003. Its overall aim is to create a tobacco-free society and its key objectives are:
 - preventing people from starting to smoke;
 - helping smokers to quit; and
 - protecting non-smokers from tobacco smoke.

The third of these objectives recognises the fact that the majority of people (74% adult population and 80% of total population) in Northern Ireland do not smoke.

¹ Smoking (NI) Order 2006 Health and Regulatory Impact Assessment, June 2006

² The Health of the Public in Northern Ireland – Report of the Chief Medical Officer 2005

³ Department of Health (2004), Scientific Committee of Tobacco and Health (SCOTH), Second Hand Smoke: Review of Evidence since 1998

⁴ Research funded by the Scottish Executive and commissioned on their behalf by NHS Health Scotland: Passive Smoking and Associated causes of death in Adults in Scotland

- 2.6. Since 2003 a phased public information campaign and smoking cessation services have been further developed in order to progress the first two objectives.
- 2.7. During the period from December 2004 to March 2005, DHSSPS undertook public consultation on 3 options to strengthen existing tobacco control measures and received over 70,000 responses. The overwhelming majority (91%) supported a total ban on smoking in enclosed public places and workplaces. The Health Minister subsequently announced his intention to introduce comprehensive legislative controls in enclosed public places and workplaces in Northern Ireland from April 2007.
- 2.8. Smoke-free legislation came into operation **on 30th April** and will help to address the Tobacco Action Plan's third objective i.e. to protect non-smokers from exposure to tobacco smoke. It is anticipated that it will also help to achieve the Tobacco Action Plan's overall aims and objectives by encouraging smokers to give up and children and young people not to start in the first place.
- 2.9. Evidence from other jurisdictions that have successfully introduced smoke-free legislation indicates improvements in air quality, respiratory health and levels of heart disease within months of legislation being introduced.⁵

⁵ Office of Tobacco Control Press Release: International Studies Confirm Health Benefits of Smoke-free Workplace Laws, 21st October 2004

3. Overview of the legislation and offences

3.1. In Northern Ireland, the legislative framework to introduce smoke-free provision consists of:

- The Smoking (Northern Ireland) Order 2006 (the Order) (S.I. 2006/2957 (N.I.20));
- The Smoking (2006 Order) (Commencement) Order (Northern Ireland) 2007 (S.R. 2007 No 118 (C.7));
- The Smoke-free (Premises, Vehicle Operators and Penalty Notices) Regulations (Northern Ireland) 2007 (S.R. 2007 No. 94);
- The Smoke-free (Exemptions, Vehicles, Penalties and Discounted Amounts) Regulations (Northern Ireland) 2007 (S.R. 2007 No. 138); and
- The Smoke-free (Signs) Regulations (Northern Ireland) 2007(S.R. 2007 No. 134).

Summary

3.2. The Smoking (Northern Ireland) Order 2006

- provides for enclosed and substantially enclosed public places and workplaces, as well as certain vehicles to be smoke-free;
- creates the offences of smoking in a smoke-free premise or vehicle, failing to display no-smoking signage, failing to prevent smoking in a smoke-free premise or vehicle and obstructing an authorised officer;
- places a duty on district councils to enforce the legislation; and
- gives DHSSPS the power to make regulations in a number of areas, including exempting some premises or parts of premises from the legislation.

3.3. The Smoking (2006 Order) (Commencement) Order (Northern Ireland) 2007 (S.R. 2007 No 118 (C.7))

- provides for the coming into operation of the whole of the remainder of the Smoking (Northern Ireland) Order 2006 on 30 April 2007, in so far as it is not already in operation by virtue of Article 1(3) of the Order.

3.4. **The Smoke-free (Premises, Vehicle Operators and Penalty Notices) Regulations (NI) 2007**

Provides further detail about smoke-free premises and vehicles including:

- the definition of 'enclosed' and 'substantially enclosed';
- places a duty on the driver, any person with management responsibilities for the vehicle and any person on a vehicle who is responsible for order or safety on it to cause any person who is smoking to stop smoking; and
- the form and content of fixed penalty notices.

3.5. **The Smoke-free (Exemptions, Vehicles, Penalties and Discounted Amounts) Regulations (NI) 2007**

Provides exemptions from the smoke-free legislation including:

- private accommodation;
- a designated bedroom in a hotel, a guest house, an inn, a hostel or a members' club;
- a designated room used as accommodation for persons aged 16 or over in a residential care home, a nursing home or a hospice;
- a designated room in a research or testing facility whilst it is being used for any specified research or tests;
- a designated room for the use of patients aged 16 or over in residential accommodation in a mental health unit (**only until 29th April 2008**);
- prisons, young offenders centres & remand centres with the exception of social clubs, any premises on which intoxicating liquor is sold, supplied consumed or kept for supply or consumption, premises used solely or mainly for the purposes of physical recreation of persons other than those detained and visitors centres;
- a designated room which is a detention cell within a police station, an exercise area within a police station and interview room in a CARE suite (**all until 29th April 2008**); and
- specialist tobacconists (only for the duration of sampling cigars and pipe tobacco).

They also provide for most public and work vehicles to be smoke-free and specify the amounts and discounted amounts of fixed penalty notices.

3.6 **The Smoke-free (Signs) Regulations (NI) 2007**

Sets out the requirements relating to the display of no-smoking signs in smoke-free premises and vehicles (see Section 6 for full details of requirements).

Definitions

3.7. Some of the key components of the legislation are set out below.

Smoke-free place

3.8. A smoke-free place means any premises, additional smoke-free place (**see paragraph 3.14.**) or vehicle that is smoke-free by virtue of the Order or underpinning Regulations.

Smoke-free premises

3.9. Premises are smoke-free if they are enclosed or substantially enclosed, are open to the public or used as a place of work by more than one person or where members of the public attend for the purpose of seeking or receiving goods or services (Article 3 of the Order).

3.10. Premises includes any building; any structure or installation (whether movable or not); and any tent.

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 e.g. private premises such as stately homes which are open to the public for one day a year and are not a person's workplace will only need to be smoke-free for the period when the public may be present.

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 intermittently), or if members of the public might attend for the purpose of seeking or receiving goods or services from those working there, even if members of the public are not always present. Such workplaces will be smoke-free at all times.

Partial use of premises: if only part of the premises is used as a place of work or open to the public, for example, someone's home as well as their workplace, the premises are smoke-free only to that extent.

Those parts might include the waiting room and the area in which they receive the service.

Enclosed or substantially enclosed: in broad terms, premises are considered to be enclosed or substantially enclosed, if they have a ceiling or roof*, and the aggregate of any openings is less than 50% of the wall area. The full definition is set out in Regulation 2 of the Smoke-free (Premises, Vehicle Operators and Penalty Notices) Regulations (NI) 2007.

*'Roof' includes any fixed or moveable structure or device which is capable of covering all or part of the premises, including for example a canvas awning.

Smoke-free vehicles

- 3.11. Article 6 of the Order allows DHSSPS to make regulations providing for vehicles to be smoke-free. Under the Order a 'vehicle' includes any type of vehicle, train, vessel or other means of transport except an aircraft and any ship or hovercraft in relation to which regulations could be made under section 85 of the Merchant Shipping Act 1995 (c.21) (safety and health on ships), including that section as applied by any Order in Council under section 1(1) (h) of the Hovercraft Act 1968 (c. 59).
- 3.12. Regulation 12 of the Smoke-free (Exemptions, Vehicles, Penalties and Discounted Amounts) Regulations (NI) 2007 provides that an enclosed vehicle and any enclosed part of a vehicle shall be smoke-free if it is used:
- by members of the public or a section of the public (whether or not for reward or hire); or
 - in the course of paid or voluntary work by more than one person (even if those persons who use the vehicle do so at different times, or only intermittently).
- 3.13. A vehicle or part of a vehicle is enclosed where it is enclosed wholly or partly by a roof or top and by any door or window that may be opened. 'Roof' includes any fixed or moveable structure or device, which is capable of covering all or part of the vehicle, including any canvas, fabric or other covering. The definition of 'roof' does not include any fixed or moveable structure or device, which is completely stowed away so that it does not cover all or any part of the vehicle.

Additional smoke-free places

- 3.14. Article 5 of the Order provides the Department with the power to make regulations designating additional smoke-free places that are not already smoke-free under Article 3 of the Order if, in the Department's

opinion, there is a significant risk that persons present in such places would otherwise be exposed to smoke. The Department will keep under review the need to make use of this power.

Offences

3.15. The 2006 Order creates four main offences:

- failure to display no-smoking signs;
- smoking in a smoke-free premise or vehicle;
- failure to prevent smoking in a smoke-free premise or vehicle;
- obstructing an authorised officer.

3.16. Details of the offences under the Order are set out in **Table 1**.

Table 1

Offence	Defence under the Order	Maximum fine
<p>Article 7 of the Order</p> <p>Person who occupies or is concerned in the management of smoke-free premises or the person with management responsibility in relation to a smoke-free vehicle fails to display no smoking sign(s) in accordance with the requirements of the Smoke-free (Signs) Regulations (Northern Ireland) 2007.</p>	<p>Article 7(6) of the Order</p> <p>Person charged with an offence can demonstrate that:</p> <p>(a) he did not know, and could not reasonably have been expected to know that the premise or vehicle was smoke-free; or</p> <p>(b) that he did not know and could not reasonably have been expected to know that no-smoking signs were not being displayed in accordance with the requirements of Article 7 ; or</p> <p>(c) that on other grounds it was reasonable for him not to comply.</p>	<p>Level 3 – £1000</p> <p>Fixed Penalty Notice can be issued (£200 or £150 if paid within 15 days)</p>
<p>Article 8 of the Order</p> <p>Person smokes in a smoke-free place (premise or vehicle).</p>	<p>Article 8(3) of the Order</p> <p>Person can show that he did not know and could not reasonably have been expected to know that it was a smoke-free place (premise or vehicle).</p>	<p>Level 3 – £1000</p> <p>Fixed Penalty Notice can be issued (£50 or £30 if paid within 15 days)</p>
<p>Article 9 of the Order</p> <p>Person with management or control of smoke-free premises or the relevant person in relation to a smoke-free vehicle (see regulation 3 of S.R. 2007 No. 94) fails to cause a person smoking there to stop smoking.</p>	<p>Article 9(4) of the Order</p> <p>Person charged with offence can demonstrate:</p> <p>(a) that he took reasonable steps to cause the person in question to stop smoking; or</p> <p>(b) that he did not know, and could not reasonably have been expected to know that the person in question was smoking; or</p> <p>(c) that on other grounds it was reasonable for him not to comply with the duty.</p>	<p>Level 4 - £2500</p> <p><u>No</u> Fixed Penalty option</p>

<p>Article 12 of the Order</p> <p>Person intentionally obstructs an authorised officer or fails to give any facilities, assistance or information reasonable required by an authorised officer 2 or knowingly or recklessly makes statements to an authorised officer which are false or misleading.</p> <p>All offences relate to an authorised officer of a district council in the exercise of his functions under the Act.</p>	<p>No specific defences specified – however, it will be for the prosecution to demonstrate that:</p> <ul style="list-style-type: none"> • facilities, assistance or information was reasonably required by the authorised officer for the performance of functions under the Order, and was withheld without reasonable cause by the person charged; • false and misleading statements were made knowingly or recklessly by the person charged, and were false or misleading in a material particular. 	<p>Level 3 - £1000</p>
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Note: If a person charged with an offence under Articles 7, 8 or 9 relies on a defence and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

Fixed Penalty Notices for offences under Articles 7 and 8

Article 10 of the Order gives an authorised officer of a district council the discretion to issue a Fixed Penalty Notice (FPN) in respect of an offence under Articles 7 and 8 of the Order. The FPN offers a person the opportunity to discharge any liability to conviction by payment of a fixed penalty. The Smoke-free (Exemptions, Vehicles, Penalties and Discounted Amounts) Regulations (Northern Ireland) 2007 set out the penalty amounts for each of the two offences. The amounts are set out **Table 2**.

Table 2

Offence for which Fixed Penalty Notice is issued	Payment time period	Full Amount (£)	Early payment time period	Discounted amount (£)
Article 7 – person who occupies or is concerned with the management of a smoke-free premise/vehicle fails to display no smoking sign(s)	29 days	200	15 days	150
Article 8 – person smokes in a smoke-free place/vehicle	29 days	50	15 days	30

Note: The 29 day time period begins with the day on which the notice is given. The 15 day early payment time period begins with the day on which the notice is given, unless the 15th is not a working day. If this is the case the 15th day is the next working day following this.

Contents of Fixed Penalty Notices

3.17. Schedule 1 to the Order sets out the FPN scheme that applies.

A FPN must –

- (a) state the alleged offence;
- (b) provide such details of the circumstances surrounding the alleged offence as are necessary to provide reasonable information about it;
- (c) provide details of the amount of the penalty and the period for its payment (see **Table 2**);
- (d) provide details of the discounted amount and the period for its payment (see **Table 2**);
- (e) provide details of the consequences of not paying the penalty or the discounted amount before the end of the period specified in (c) and (d);
- (f) state the person to whom and the address at which payment may be made (this would be the district council on whose behalf the authorised officer was acting when he gave the notice);
- (g) state the method by which payment may be made; and

- (h) state the person to whom and the address at which representations relating to the notice may be made (see 'withdrawal of notices' below).
- 3.18. The form of the FPN is specified in Schedule 1 and 2 to the Smoke-free (Premises, Vehicle Operators and Penalty Notices) Regulations (Northern Ireland) 2007. Separate notices are specified for offences under Article 7 and Article 8. The regulations allow for the forms to be varied if there are changes to the amount of a fixed penalty amount, discounted amount or change to a level on the standard scale. The regulations also allow for district councils to:
- (a) use a notice in a different size or design, provided that the content of the notice is not changed;
 - (b) include additional information about how payments can be made; and
 - (c) include coats of arms, logos or other devices, or any illustration to assist with the completion of the notice.

Request for a court hearing

- 3.19. The penalty notice informs the person to whom it is given of his right for his case to be heard in a court of law and explains how the right can be exercised.
- 3.20. A person has the right to contest the issue of a fixed penalty notice and have the case heard in a court of law. This person is required to complete the necessary section of the fixed penalty notice form and post it to the district council address specified on the notice. The district council must receive this form within the 29 days of the date of issue of the notice. If this is received, a summons will be served on the person on the address specified by them on the request for a court hearing section of the fixed penalty notice form. The summons will advise the person when and where to attend the court.

Withdrawal of notices

- 3.21. Notices can be withdrawn if a district council considers that the penalty notice served by an authorised officer, acting on its behalf, ought not to have served the notice. In such cases, the district council may give notice to the person to advise them that the penalty notice has been withdrawn. If the notice is withdrawn, the council must repay to the person any amount, which has been paid by way of penalty in pursuance of the penalty notice.
- 3.22. Councils must make arrangements to consider any representations made by or on behalf of the recipient of a fixed penalty notice and

decide in all the circumstances whether to withdraw that notice (Schedule 1, paragraph 16(4) to the Order).

Dealing with non payments of Fixed Penalty Notices

- 3.23. Should a person fail to pay a FPN, the district council should take action in line with its policy on FPNs. This will likely entail making a report for prosecution. If convicted of the offence the person will be liable to pay a fine, which the court will set, up to the maximum level for that offence.

See Figure 3, page 36 for recommended approach to Fixed Penalty Notices.

4. **Overall approach**

Enforcement by district councils

- 4.1. **Article 11** of the Smoking (Northern Ireland) Order 2006 (the Order) places a duty on district councils to enforce the provisions of the smoke-free legislation. It is likely that authorised officers will be district council officers engaged in enforcement work, including Licensing Officers, Technical Officers, Environmental Health Officers and any other person authorised by the district council to enforce the provisions of the legislation.

Authorisation of officers

- 4.2. For the purpose of the Order an 'authorised officer', in relation to a district council, means any person (whether or not an officer of the council) who is authorised by it in writing, either generally or specially, to act in matters arising under the Order.

Working with businesses

- 4.3. District council enforcement officers have a history of working closely with businesses and building compliance with legislation, utilising tools such as education, advice, advocacy and persuasion to convince people that compliance is the desirable course of action. Enforcement officers revert to formal enforcement only when it is warranted by the seriousness of the situation. In these instances, there will often have been a record of dialogue with the accused, giving them every opportunity to comply with the law.
- 4.4. Enforcement officers currently working in Environmental Health already have wide experience in dealing with tobacco control e.g. underage sales and will be able to bring the same knowledge and skills to the new controls contained in the smoke-free legislation. The profession places a strong emphasis on working with businesses and industry to ensure the health of the public and employees is protected. This should be the approach taken by all authorised officers working with the smoke-free legislation. Providing advice, raising awareness and answering queries from businesses will be integral to all inspections carried out.
- 4.5. It is however recognised that there may be occasions when enforcement is necessary. This guidance seeks to ensure a fair, proportional and consistent approach to enforcement action.
- 4.6. The initial approach should be a non-confrontational one and the focus should be on raising awareness and understanding around the reasons for the smoke-free legislation and to ensure compliance. Significant awareness raising activity, both for business and the general public, has taken place in the run up to the introduction of the legislation. It is

anticipated that, with public support, there will be a high level of compliance.

- 4.7. Guidance material, including sample signage, was distributed to businesses by the Health Promotion Agency prior to the introduction of the legislation. Copies of the guidance for businesses and downloadable signage are available on the “Space to Breathe” website at: www.spacetobreathe.org.uk Additional signage is also available from councils, on request.

Compliance line

- 4.8. A smoke-free compliance line has been operational since **30th April 2007**. Authorised officers are encouraged to promote it whenever possible as it will empower the public, employees and others. It will also ensure that proprietors are aware of their customers/employees desire to see the law implemented and will assist the effective targeting of enforcement action by highlighting non-compliance.

The compliance line telephone number is: 0845 603 2500.

Smoking cessation services

- 4.9. Although the aim of the Order is to protect the public and employees from exposure to second hand smoke (SHS), evidence elsewhere suggests that smoke-free legislation also helps reduce smoking prevalence. A survey carried out in the Republic of Ireland demonstrated that the number of people smoking in 2005 declined to less than 24% from 27% in 2001, following introduction of smoke-free legislation on 29th March 2004.
- 4.10. A smoking cessation helpline has been operational since 2003. It is recommended that authorised officers are encouraged to promote the smoking cessation helpline. This helps to ensure that smoke-free legislation will have maximum impact in improving public health.

The smoking cessation telephone helpline number is: 0800 858585.

Role of other enforcement organisations

Health and Safety Executive NI (HSENI)

- 4.11. HSENI will play a role in ensuring that smoke-free legislation is consistently implemented in those premises where HSENI is the health and safety enforcing authority. In doing so, HSENI will liaise with and refer to the relevant district council, any circumstances where formal action may be deemed necessary. It is anticipated that non-compliance with smoke-free legislation will not be a significant problem

in premises enforced by HSENI and therefore proactive inspection campaigns will not be necessary.

- 4.12. HSENI has agreed that, if non-compliance is detected during the course of routine inspections, its inspectors will, in the first instance, bring this to the attention of the person in control of the premises. If the employer resists acting on the advice of the HSENI Inspector, then the matter will be referred to the appropriate district council. Any complaints received directly to HSENI about the smoke-free legislation will also be referred to the appropriate district council.
- 4.13. It is therefore envisaged that district council staff will not carry out proactive compliance checks in HSENI enforced premises unless they currently visit the premises for other purposes such as a food safety inspection, Industrial Pollution Control (IPC) inspection etc. District council enforcement staff may need to enter such premises on a reactive basis arising from intelligence received, if a referral or a complaint is made to the council.

Police Service of Northern Ireland (PSNI)

- 4.14. The PSNI fully supports the introduction of smoke-free legislation and recognises that district councils are responsible for enforcement. The PSNI will support district councils where necessary, as is already the case in relation to other areas of enforcement such as council bye-laws.

5. **Inspections**

Inspection type

- 5.1. Inspections carried out by enforcement officers will be either proactive or reactive

Proactive inspections:

- 5.2. Proactive inspections will be carried out to advise businesses and confirm compliance with the legislation.

Identifying premises

- 5.3. Proactive inspections will be generated by two means:

(i) Incorporated into other proactive inspections

Smoke-free compliance checks should be incorporated into other proactive compliance inspections when the next programmed inspection is scheduled. Such inspections include, for example:

- health and safety inspections;
- food safety inspections;
- consumer safety inspections;
- licensing inspections; and
- IPC inspections.

Consideration should also be given to engaging other district council departments (such as building control departments, if they have a role in the licensing of premises) in carrying out compliance checks.

(ii) High-risk premises

District councils will wish to identify high risk premises, particularly following the commencement of the smoke-free legislation. High-risk premises are those where smoking may be more likely to occur including cafes, bars, hotels and licensed premises.

The initial focus of inspections should also be with premises:

- which are open to substantive numbers of people. Priority should be given for example to a night club

compared to a small office, as there will be a greater impact in terms of health protection;

- where there is an absence of pre-existing self imposed smoking controls. (Premises such as cinemas and shopping centres which are already known to have policies on smoking in place should not therefore be given priority);
- where enforcement officers do not normally visit as part of their routine inspections under normal legislation (such premises would include halls used for the assembly of members of the public for social or recreational purposes i.e. concert halls, bingo halls, dance halls.)

5.4. Development of a risk-based inspection programme for premises is likely to evolve as familiarisation with the new requirements increase. Such a programme could include factors such as:

- confidence in management;
- history of compliance with the requirements;
- number of complaints received from the compliance phone line or by other means.

Re-active Inspections

5.5. Inspections can also be generated as a result of a complaint or enquiry from the public or via the compliance line **See Section 7, page 30 for Tobacco control complaint protocol.**

Recording inspections

5.6. District councils are required to provide DHSSPS with information on activity and will therefore need to develop a system for recording the outcome of smoke-free inspections in premises. This will assist in building up a compliance history for individual premises. Integrating the activities carried out into existing programmes will ensure that compliance checks are not a burden on businesses or district councils. It will also prevent duplication of inspections by district council officers carrying out different core functions.

Method of inspection

5.7. Inspections can take one of three forms. The options are not mutually exclusive and it is anticipated that officers will choose the most appropriate course of action once all factors have been taken into account i.e. which action will bring the most benefit to the public and ensure the safety of each officer:

(i) **Official inspection**

Officers will enter the premises, announce themselves and show appropriate identification to the person in charge of the premises, prior to assessing compliance with the provisions. (Identification may not be necessary if the smoke-free inspection is integral to another type of compliance inspection i.e. food inspection; and the officer is familiar to the premises and the management concerned);

(ii) **Covert inspection**

Officers will assess compliance by observation within the premises, and subsequently announce themselves and show appropriate identification to the person in charge of premises at the end of the period of surveillance;

(iii) **Covert and leave**

Officers will assess compliance by observation and then leave. They will return the following day to discuss their findings with the manager of the premises.

It is envisaged that the majority of inspections will be type (i) - official inspection. This will ensure that officers are reflecting a non-confrontational enforcement approach in their dealings with businesses.

NOTE: District councils intending to carry out covert operations should be aware of the requirements of the Regulation of Investigatory Powers Act 2000 (RIPA) (2000 c.23) and how it applies to covert surveillance.

Issues to consider

5.8. The personal safety of officers is paramount and this should not be compromised whilst officers are carrying out inspections or taking enforcement action. The personal safety of officers should be recognised by each local authority's existing health and safety procedures.

5.9. In certain circumstances it may be necessary for inspections to be carried out by two officers:

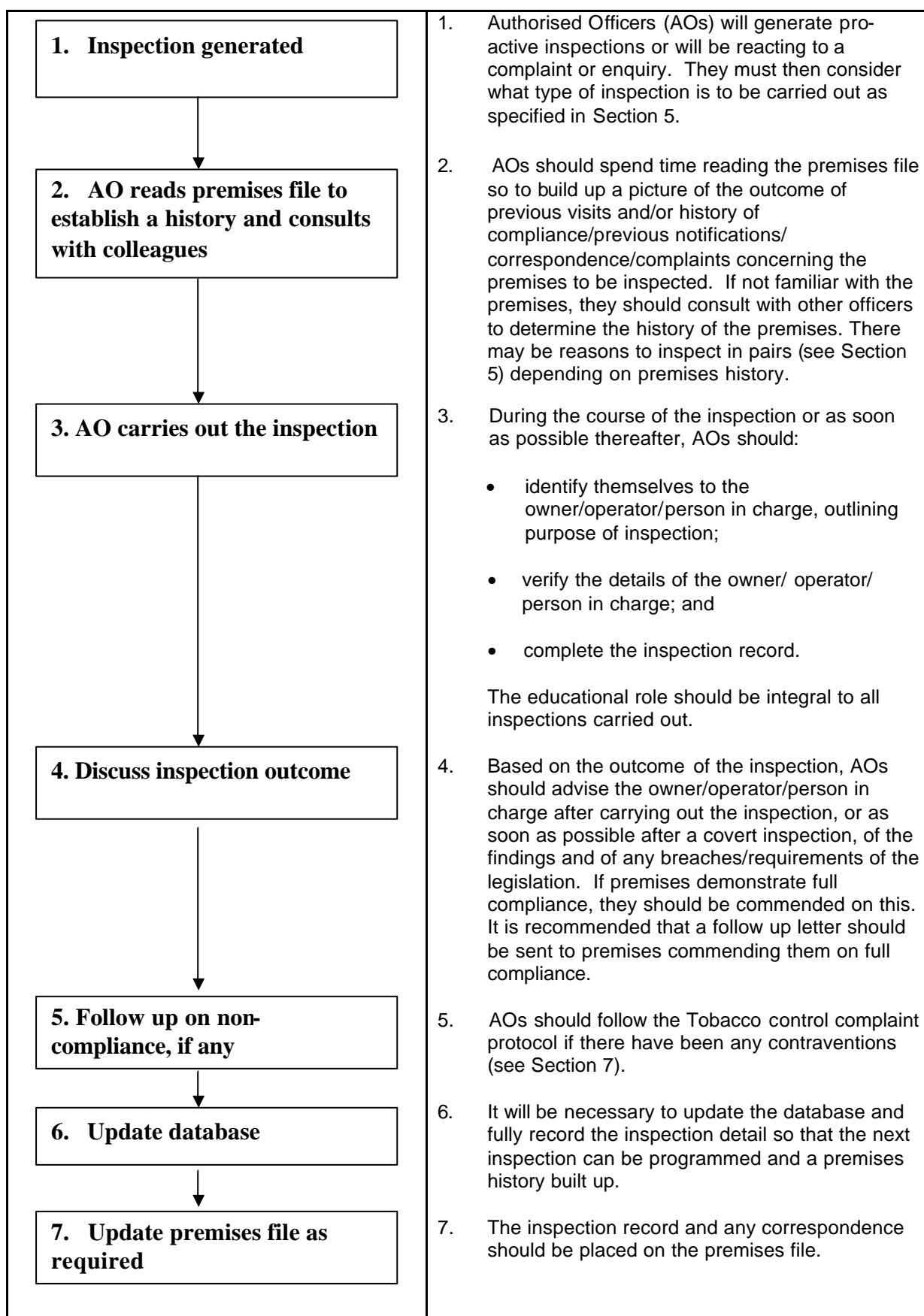
- **Lone working** – If out of hours work is being carried out, inspecting in pairs should be considered as officers may be unable to contact other colleagues in the event of a problem arising;
- **Aggressive persons** – In certain circumstances officers may have to deal with management of businesses that are known to

the council as having an aggressive nature. Where the history of premises indicates this, it may be necessary for two officers to carry out the inspection;

- **Carrying out covert inspections** – when carrying out covert inspections, there will be increased potential for officers to be subject to a threat of violence or abuse. It may be applicable for officers to carry out covert inspections in pairs;
 - **Possible enforcement outcomes** – Two officers may be required in situations where serious or persistent contraventions are anticipated within premises and prosecution is a likely course of action.
- 5.10. Enforcement officers have a responsibility to make their own judgement as to the best course of action to take when inspecting premises and non-compliance is observed. The situation will be more difficult when out of hours work is carried out and/or a covert inspection is taking place. If non-compliance is observed within the premises, officers should approach management only **if it is convenient and without compromising their personal safety**. If there is a perceived threat of violence or abuse, officers should return at a safer time, such as the next working day, to deal with the non-compliance.
- 5.11. When carrying out inspections, officers should attempt to avoid and minimise confrontation. However, where any situation of conflict begins to develop, particularly one where there is a risk of potential abuse and/or violence, officers should primarily ensure their own personal safety and immediately remove/distance themselves from the place/persons of conflict. Where the threat of potential violence remains officers should follow departmental procedures/protocols for dealing with such situations. If officers further assess that the situation has continued to escalate to such a degree that they are in need of immediate assistance, they should contact the PSNI.
- 5.12. Following successful compliance visits immediately following implementation of smoke-free legislation, it is recommended that officers follow up with a letter to the owner/manager advising them that they fully complied with the requirements of legislation and encouraging them to continue do so in the future.

See Chapter 8 (Enforcement Action) and the Worked Scenarios in Annex 1.

Smoke-free Compliance Inspection Protocol



6. Assessment of compliance

Compliance within premises

6.1. **From 30 April 2007**, all those responsible for smoke-free premises and smoke-free vehicles must take reasonable steps to ensure that employees, customers and other visitors do not smoke. Enforcement officers will carry out an assessment to determine whether or not owners, occupiers, managers or any person in control of smoke-free premises have taken 'reasonable steps' to prevent people smoking. These precautions will include a combination of compliance with specific legal requirements (*in italics*) and activities which may be considered good practice (in normal text).

Signage for premises

6.2. *Article 7 of the Order requires the display of no-smoking signs in premises.*

The signs must be flat, rectangular and at least 148mmx210mm in dimensions with the words:

“No smoking. It is against the law to smoke in these premises”

*at each entrance to smoke-free premises **used by members of the public.***

The words: “these premises” may be substituted with words which refer to the particular premises, for example, “this hotel”.

*A no-smoking sign that displays the international no-smoking symbol is the **minimum** requirement at entrances to smoke-free premises which:*

- *are located within other smoke-free premises (for example, a shop within an indoor shopping centre); or*
- ***are for staff only** (providing that the premises displays at least one rectangular sign 148mmx 210mm with words, as set out above).*

The no-smoking symbol consists of a graphic representation of a single burning cigarette enclosed in a red circle at least 75mm in diameter (with a red bar across it:)



Number of signs

- 6.3. *No smoking signs/symbols are legally required at each entrance to the premises.*
- 6.4. Businesses may wish to consider providing additional signage within the premises, so that those remaining in the premises for a prolonged period of time are aware of the smoke-free requirements. To avoid confusion, it is recommended that any additional notices also comply with the above criteria.
- 6.5. In some circumstances, businesses may wish to consider making safety/information announcements to advise members of the public that it is illegal to smoke in the premises.

Protected from damage

- 6.6. Signs should be displayed in such a way that they are protected from tampering, damage, removal and concealment.

Planning permission

- 6.7. Businesses should be advised that the erection of signage to the exterior of a building may require planning permission. The local planning office should be contacted for further advice.

Duty of person who controls/is concerned in management

- 6.8. *Article 9 of the Order places a duty on any person in control or concerned in the management of smoke-free premises (or relevant persons in relation to additional smoke-free places, vehicles etc.) to prevent smoking on the premises.*

Management controls

- 6.9. Officers should consider recommending that those in control of no-smoking premises:
- (i) prepare a written smoke-free policy;
 - (ii) develop a procedure for dealing with people who smoke; (preferably written);
 - (iii) train staff in both the policy and procedure; and
 - (iv) keep a written record of any incident (and outcome) where a responsible member of staff had to approach an individual for smoking on the premises.

Smoke-free policy and procedures

- 6.10. A sample smoke-free policy is available from the Health Promotion Agency space-to-breathe website. Such policies can be adapted by individual businesses and organisations for their use.
- 6.11. The procedures for dealing with people who smoke in smoke-free premises should cover the following:
- draw the person's attention to the 'no- smoking' signs and explain that he/she is committing an offence by smoking. Politely ask him/her to stop smoking;
 - direct the person to the nearest place where he/she is able to smoke legally;
 - advise the person smoking that his/her actions could result in the person in control of the premises being prosecuted and receiving a fine up to £2500. The smoker may also receive a £50 fixed penalty notice or be prosecuted, receiving a fine up to £1000;
 - refuse the person service;
 - if the person continues to smoke, ask him/her to leave the premises;
 - if he/she refuses, implement normal procedures for anti-social/illegal behaviour on the premises;
 - if the person smoking or any other person(s) threaten physical violence and/or abuse, immediately notify and/or seek assistance from premises/building security or door staff;
 - where no premises/building security is available and the threat of a potentially violent situation remains, contact the PSNI for assistance; and
 - maintain a detailed written record of all such incidents and outcomes.

Staff training

- 6.12. Officers should advise employers and managers of no-smoking premises to ensure that all staff, including new members of staff are trained in relation to the no-smoking policy and procedures. All staff working in no-smoking premises should be made aware of the member of staff or management present who is the responsible person for

dealing with persons smoking. Regular staff training should reinforce any policy on an on-going basis.

Record of incidents

6.13. Officers should advise of the need to record incidents, in order to assist any future defence of 'reasonable steps.' Each premise should keep a record of:

- date and time of incident;
- where the person was smoking;
- what action was taken by staff (including name of staff member);
- outcome; and
- name of person smoking (if known) .

Businesses should also be encouraged to contact their local Environmental Health Department after any incident – if sufficient details have been obtained.

Ashtrays

6.14. Ashtrays and other such receptacles should not be present in no-smoking premises. It is good practice to keep one ashtray, for example, behind the bar in a pub, to enable a lit cigarette to be extinguished.

Smoking Shelters

6.15. There is no requirement under smoke-free legislation for employers, including members of the hospitality industry, to provide smoking shelters. The Department acknowledges that many employers are choosing to provide such facilities. A variety of structures and alterations are being presented to the Planning Service for consideration. Finding an appropriate solution may prove difficult and, indeed, may not always be possible. Solutions may present challenges where premises are effectively "land locked" or where the proposed structure is within a conservation area or on a listed building.

It is the responsibility of the person proposing the construction of a smoking shelter to ensure that his/her plans do not breach the legislation and that they meet requirements such as planning, licensing and building control etc.

Advice to Employers

- 6.16. Officers should be aware of the need to offer advice to employers on a range of issues that are likely to arise following the introduction of smoke-free legislation. These include the legal position regarding the provision of tables and chairs outdoors, noise control, compliance with liquor licensing legislation and bye-laws (consumption of alcohol outside premises), the potential for an increase in litter arising from discarded smoking materials/packaging and health and safety issues.

Compliance within smoke-free vehicles

Signage

- 6.17. *Smoke-free vehicles must display at least one no-smoking sign in a prominent position in each compartment of the vehicle. The minimum requirement for a smoke-free vehicle is the display of a no smoking symbol.*
- 6.18. *The no-smoking symbol consists of a graphic representation of a single burning cigarette enclosed in a red circle at least 75mm in diameter (with a red bar across it).*



Operators Management Policy

- 6.19. Officers should consider recommending that operators prepare a written smoke-free policy outlining the company's arrangements for complying with the legislation. This will vary depending on the exact nature of the business. It is important that the policy is communicated to all staff

(Private Hire Operators should also prepare a written smoke-free policy outlining the company's arrangements for smoke-free legislation. The booking policy should place the onus on the hirer to be responsible for party members who smoke.)

Public transport vehicles

- 6.20. DOE, DRD and *Translink (Citybus, NI Railways and Ulsterbus)* have been consulted regarding the implementation of smoke-free legislation on public transport vehicles i.e. buses and trains.

- 6.21. In the event of reported or observed incidents of smoking on public transport vehicles, authorised officers of district councils will be required to assess whether or not the relevant person(s) have taken 'reasonable steps' to prevent people smoking on such vehicles.
- 6.22. Where regular safety and/or information announcements are made to passengers it is considered good practice to include advice that it is illegal to smoke on the vehicle.

Driver Intervention and Safety

- 6.23. In relation to buses and coaches, it is acknowledged that the driver of the bus will be on the 'front-line' when dealing with potential problems of individuals smoking on buses and 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/cab.
 - Where there is the potential for conflict between road/rail safety and 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 should, if possible, be resolved informally. The driver and/or 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 behaviour.
 - All incidents should be recorded and forwarded to the supervisor for logging.

School contracts

- 6.24. Bus operators who have contracts with Education Authorities should log any incidents in the same way, including details of the school attended by the pupil. The same procedure for unruly or antisocial behaviour should be applied. Consideration may be given to contacting the school and possibly to the withdrawal of the service from a pupil who refuses to comply.

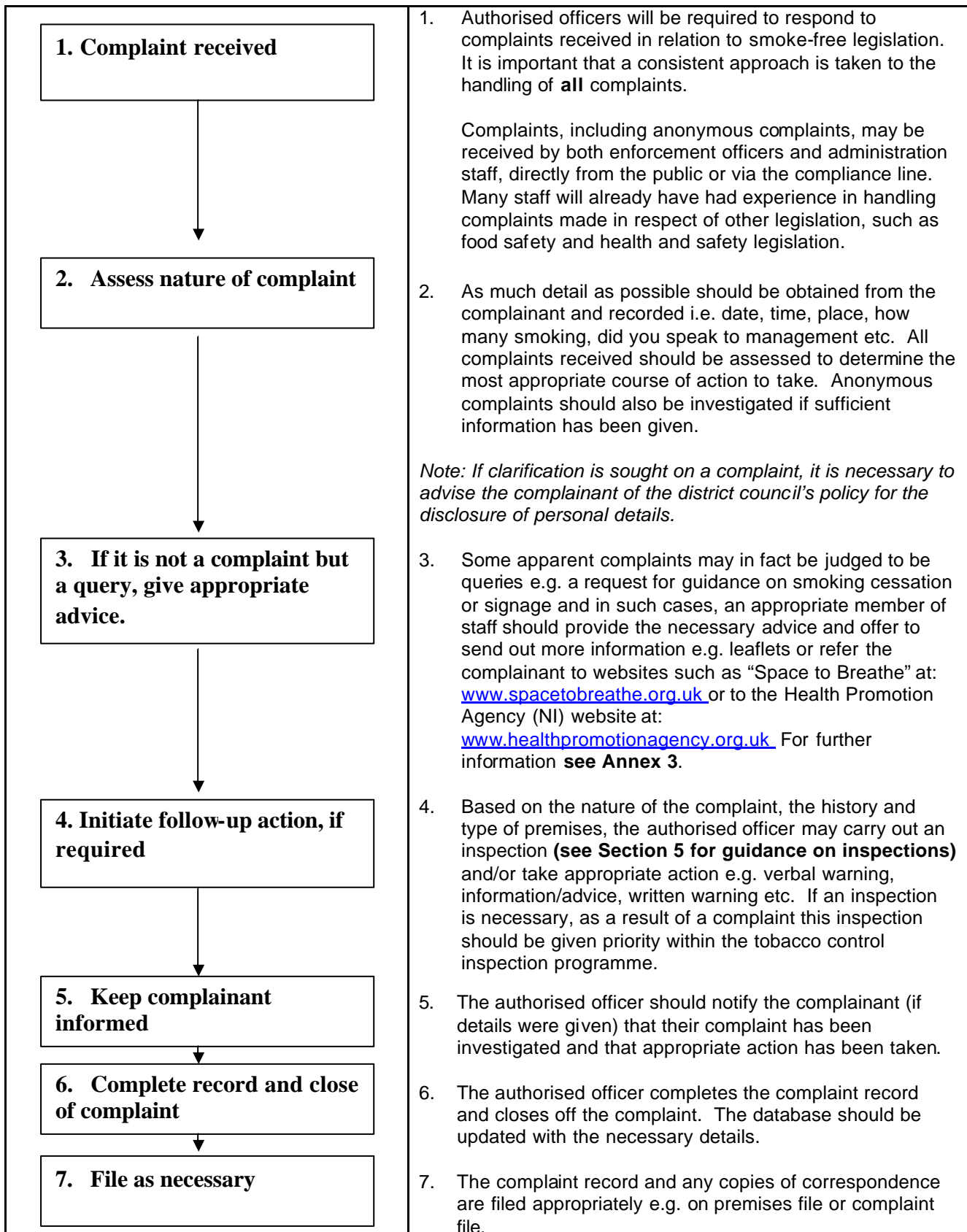
Complaints received by district councils

- 6.25. If a district council receives complaints from the public about smoking on public transport, the authorised officer should make informal contact with the operator to discuss the problem.
- 6.26. At this stage the operator's smoking policy should be discussed and the arrangements being made to secure compliance.
- 6.27. Any remedial action required should be provided to the operator in a letter of confirmation.

Complaints made to the Operator/Incidents recorded

- 6.28. If the operator has logged a number of incidents/complaints about a particular service, then his/her own 'inspectors' should be assigned to the service to monitor and resolve the problem.
- 6.29. If this fails to resolve the matter, the local district council should be contacted.
- 6.30. If the incidents follow a pattern i.e. certain routes at the same time of day, then the district council may arrange for surveillance on the route to try and identify the alleged offender(s). CCTV footage may assist in this.
- 6.31. If there is a risk of violence, authorised officers should ensure that details of any such planned operations are provided in advance to their local police districts. This will ensure that local police are aware of all local council operations being conducted within their area.

7. Tobacco control complaint protocol



8. Enforcement Action

- 8.1. Enforcement action taken should be fair, proportional, consistent and in line with the Council's enforcement policy.
- 8.2. The following enforcement options are available to officers:
- (i) verbal warning;
 - (ii) written warning;
 - (iii) fixed penalty notice on any person who occupies or is concerned in the management of smoke-free premises (or any person with management responsibilities for smoke-free vehicles) for an offence under Article 7 (failure to display signage);
 - (iv) fixed penalty notice on individual smoking in a smoke-free place (including a vehicle) for an offence under Article 8; and
 - (v) prosecution proceedings – This is available for all offences and is the only formal enforcement option available for offences under Article 9 (failure to prevent smoking in a smoke-free place).

It is necessary to refer to the Council's enforcement policy when formal enforcement action is being considered.

See Figures 1(a), 1(b), 2 and 3 for more information about enforcement options and recommended approaches.

Powers of authorised officers

- 8.3. For details of the powers available to authorised officers, please see **Annex 2**.

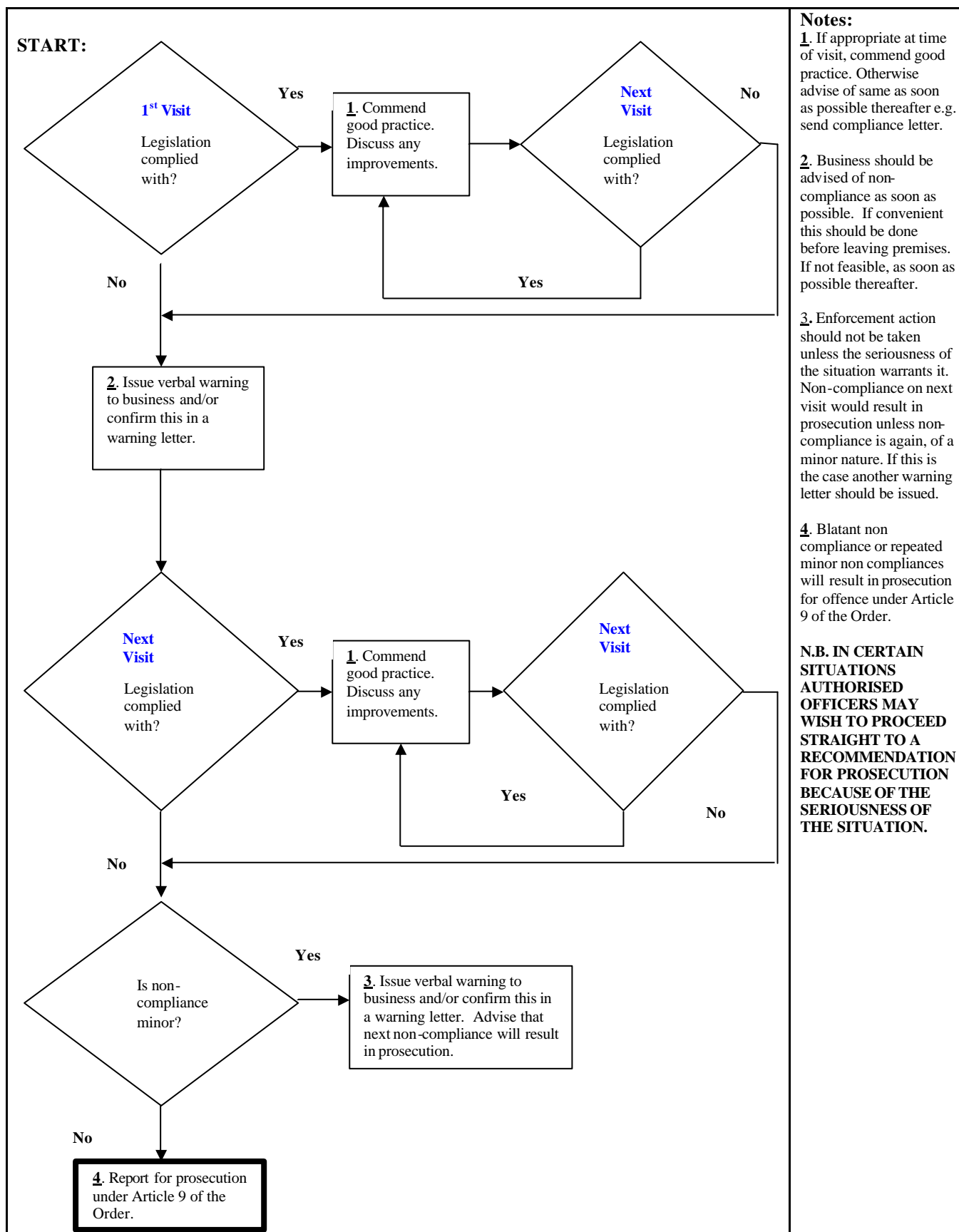
Issues to consider

- 8.4. Officers should be wary of serving Fixed Penalty Notices (FPNs) on individual smokers in a random manner, due to the personal safety risk to the officer. If deemed necessary, district councils should consider targeting individuals as part of a pre-arranged programmed campaign. District councils should ensure that details of any such planned operations are provided in advance to their local police districts. This will ensure that local police are aware of all local council operations being conducted within their area. The campaign should focus on premises, which have demonstrated that all reasonable precautions have been taken and that these actions have failed to control certain

individuals. Such campaigns could target premises where there have been complaints received from the public.

- 8.5. If officers experience a situation where the person on whom they wish to serve a FPN does not provide his/her name and address on request, the officer should advise the person that such a refusal may constitute an offence under Article 12 of the Order by failing to provide information reasonably required by an authorised officer. In practical terms it may be difficult to prosecute such an offence unless admissible evidence of the person's identity can be obtained by other means. In circumstances where the inability to identify offenders is undermining compliance, consideration should be given to arranging for police support. The officer's personal safety is the fundamental consideration and must take priority over establishing the identity of an offender. Similar instructions/guidance that the Council provides to other enforcement officers may be useful in this regard. Such instructions/protocols may exist for uncooperative offenders under other council byelaws, e.g. dog fouling, littering, noise, street traders and alcohol etc. If enforcement officers believe that a situation has escalated to such a degree that they are in need of immediate assistance they should contact PSNI.
- 8.6. Officers must be aware of all relevant requirements of the Police and Criminal Evidence (NI) Order 1989 (S.I. 989/1341 (N.I. 12)) and associated guidance, when pursuing formal enforcement action.

Figure 1(a) Recommended approach to enforcement for offences under Article 9 – failure to prevent smoking

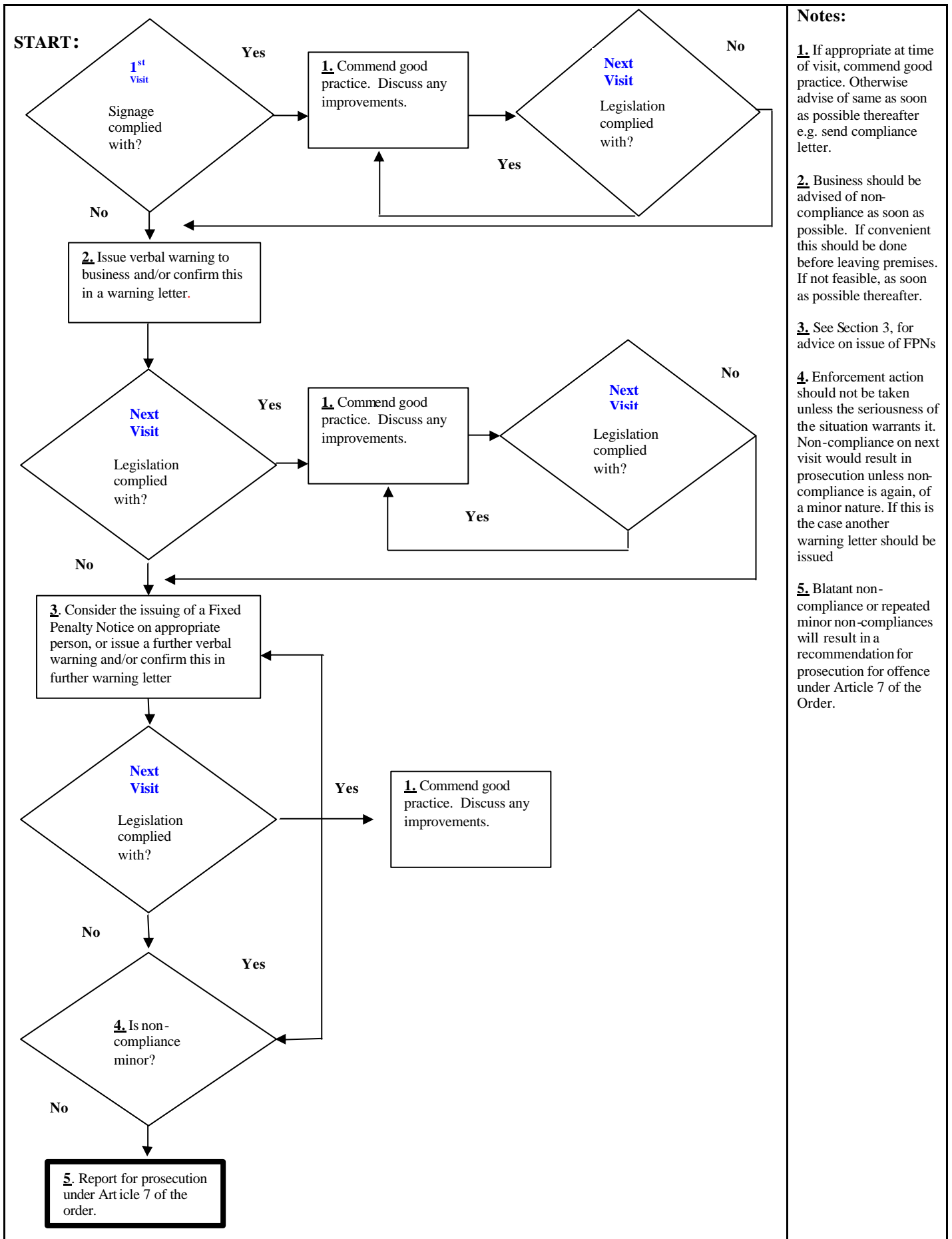


Notes:

1. If appropriate at time of visit, commend good practice. Otherwise advise of same as soon as possible thereafter e.g. send compliance letter.
2. Business should be advised of non-compliance as soon as possible. If convenient this should be done before leaving premises. If not feasible, as soon as possible thereafter.
3. Enforcement action should not be taken unless the seriousness of the situation warrants it. Non-compliance on next visit would result in prosecution unless non-compliance is again, of a minor nature. If this is the case another warning letter should be issued.
4. Blatant non compliance or repeated minor non compliances will result in prosecution for offence under Article 9 of the Order.

N.B. IN CERTAIN SITUATIONS AUTHORISED OFFICERS MAY WISH TO PROCEED STRAIGHT TO A RECOMMENDATION FOR PROSECUTION BECAUSE OF THE SERIOUSNESS OF THE SITUATION.

Figure 1(b) – Recommended approach to enforcement for offences under Article 7 - signage



- Notes:**
- 1.** If appropriate at time of visit, commend good practice. Otherwise advise of same as soon as possible thereafter e.g. send compliance letter.
 - 2.** Business should be advised of non-compliance as soon as possible. If convenient this should be done before leaving premises. If not feasible, as soon as possible thereafter.
 - 3.** See Section 3, for advice on issue of FPNs
 - 4.** Enforcement action should not be taken unless the seriousness of the situation warrants it. Non-compliance on next visit would result in prosecution unless non-compliance is again, of a minor nature. If this is the case another warning letter should be issued
 - 5.** Blatant non-compliance or repeated minor non-compliances will result in a recommendation for prosecution for offence under Article 7 of the Order.

Figure 2 – Recommended approach to enforcement for offences under Article 8 – a person smoking in a smoke-free place

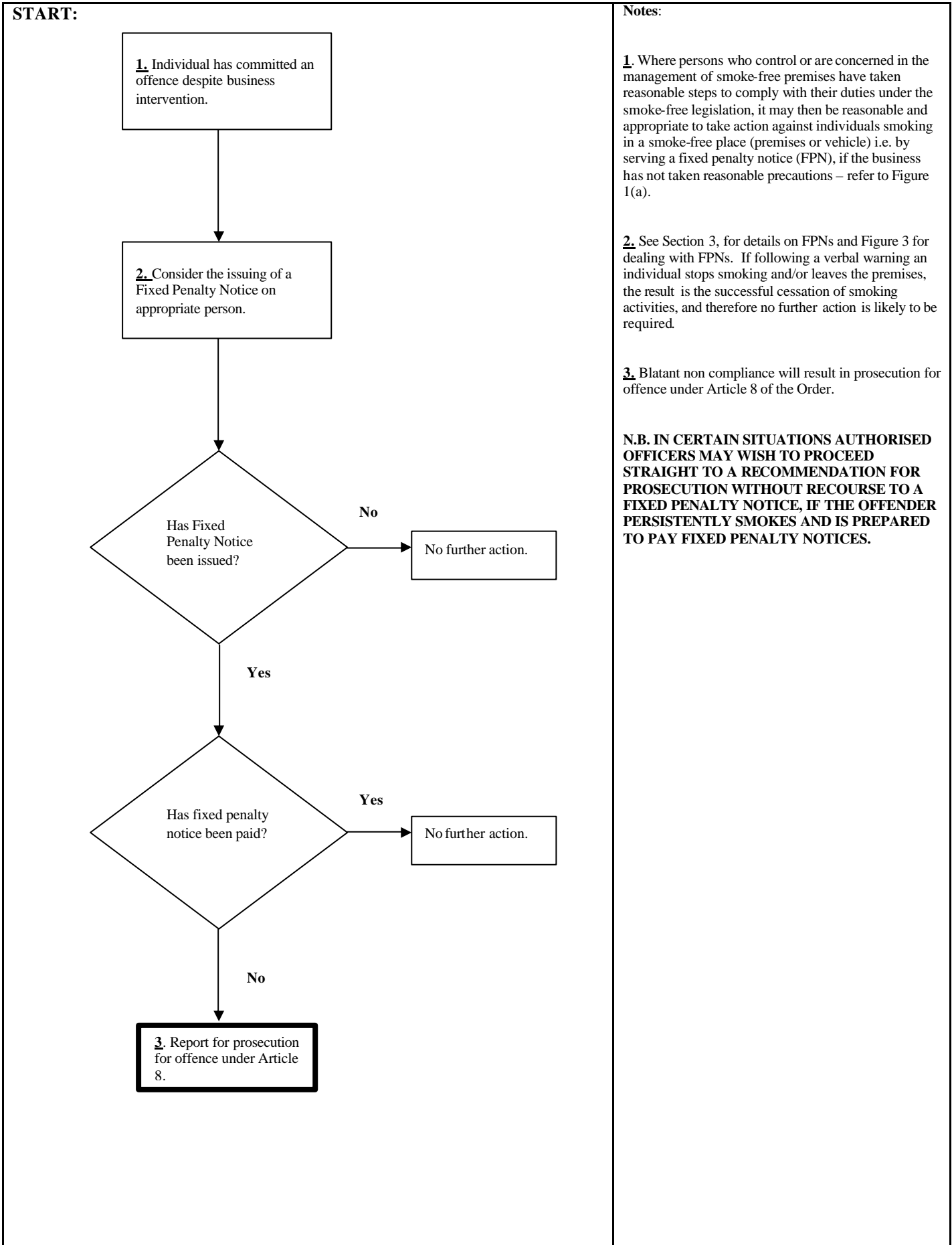
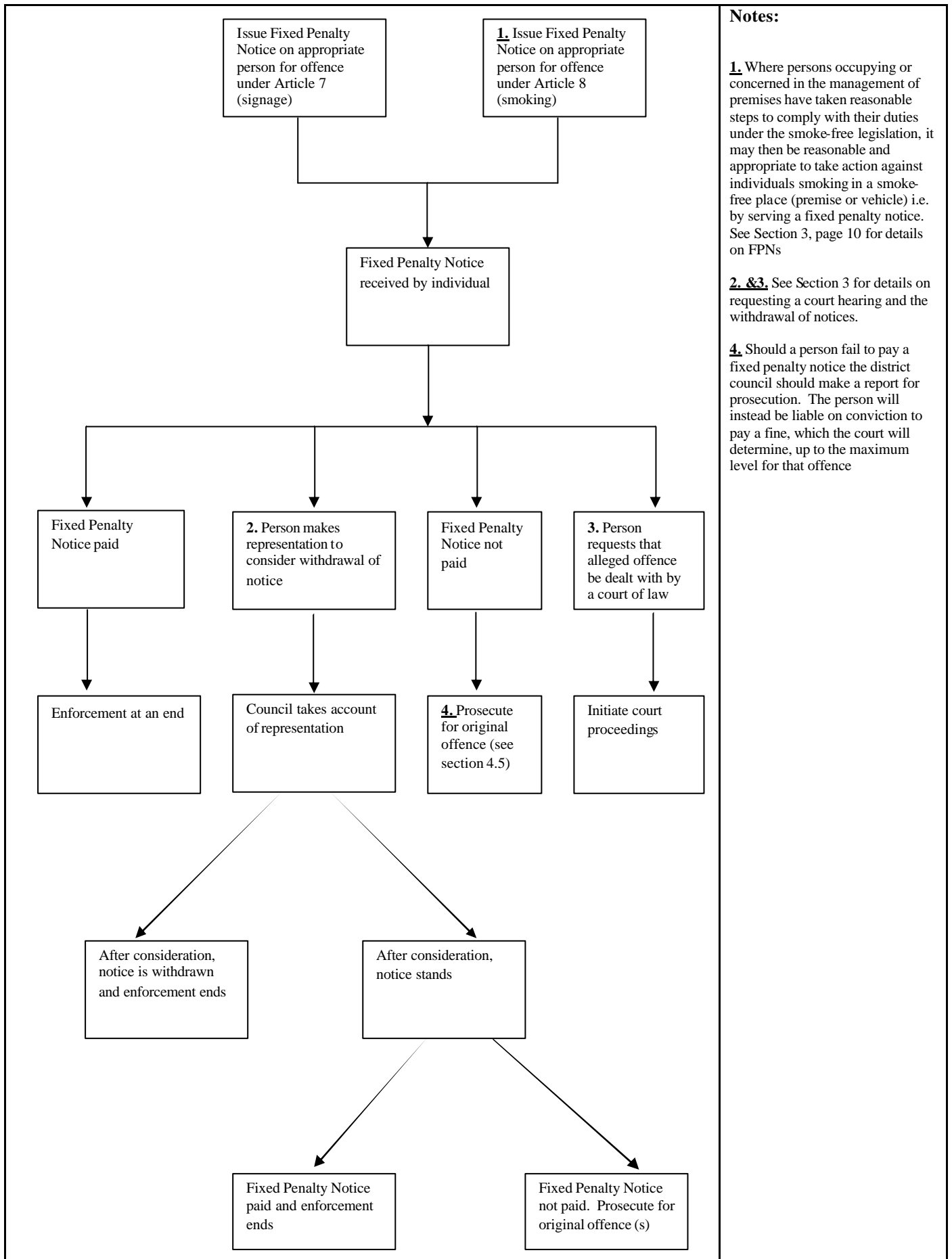


Figure 3 – Recommended approach to Fixed Penalty Notices



Notes:

1. Where persons occupying or concerned in the management of premises have taken reasonable steps to comply with their duties under the smoke-free legislation, it may then be reasonable and appropriate to take action against individuals smoking in a smoke-free place (premise or vehicle) i.e. by serving a fixed penalty notice. See Section 3, page 10 for details on FPNs

2. & 3. See Section 3 for details on requesting a court hearing and the withdrawal of notices.

4. Should a person fail to pay a fixed penalty notice the district council should make a report for prosecution. The person will instead be liable on conviction to pay a fine, which the court will determine, up to the maximum level for that offence

9. Checklist for Service Managers

	Yes	No
(1) Are copies of the Order and underpinning regulations available for use of all enforcement staff?	<input type="checkbox"/>	<input type="checkbox"/>
(2) Are copies of the enforcement guidance available for staff?	<input type="checkbox"/>	<input type="checkbox"/>
(3) Are staff aware that a pragmatic, practical and consistent approach should be taken to enforcement?	<input type="checkbox"/>	<input type="checkbox"/>
(4) Have you developed a system for generating a list of high risk premises for compliance visits?	<input type="checkbox"/>	<input type="checkbox"/>
(5) Do you have a readily available supply of awareness raising material available for staff to distribute as part of compliance visits?	<input type="checkbox"/>	<input type="checkbox"/>
(6) Have you developed a system for recording the outcome of smoke-free inspection visits?	<input type="checkbox"/>	<input type="checkbox"/>
(7) Have you considered the personal safety of staff as an aspect of the Department's current health and safety arrangements	<input type="checkbox"/>	<input type="checkbox"/>

Annex 1

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 individual merits, but it is 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 whilst 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 ash trays evident. You issue a written warning to the owner. Following another complaint, you return to the premises and this time four 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 prosecution proceedings against him.

Speak to the customers; advise them of the smoke-free legislation and that they are committing an offence. Ask for their names and advise them that if they are witnessed smoking in smoke-free premises again they could be issued with a fixed penalty notice or be 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 related 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 then 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 legislation and that he is committing an offence. Ask him to extinguish the pipe or to go outside to smoke.

Scenario 3

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

Considerations:

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

Enforcement Action:

Speak to the management of the nightclub. Advise them that they will need to take stricter action against persistent offenders; for example, if a 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 premise.

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 any cooking is undertaken). When you arrive one of the kitchen staff is smoking in the lobby to the kitchen.

Consideration:

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

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 is their first noted contravention, a verbal warning would normally be sufficient.

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 board. The resident advises that although the driver has on occasion asked for the passengers to stop smoking, often they 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 and not to tackle them 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 compliant 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 operator's own inspectors, or the use of surveillance by the local authority (by enforcement officers or using CCTV) to identify offenders.

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

Annex 2

Powers of Authorised Officers – as specified in Schedule 2 of the Order

Authorised Officers have the following powers, as specified in Schedule 2 of the Order:

1. An authorised officer has a right to do any of the following, on production (if required) of his written authority-
 - (a) at any reasonable hour, enter any premises (other than premises used only as a private dwelling house not open to the public) which he considers it is necessary to enter for the purpose of carrying out functions under the Order,
 - (b) there carry out such inspections and examinations as he considers necessary for this purpose,
 - (c) if he considers it necessary for that purpose, require the production of any substance or product, and inspect it, and take and retain samples of or extracts from it,
 - (d) take possession of any substance or product on the premises, and retain it for as long as he considers necessary for that purpose,
 - (e) require any person to give him such information, or afford him such facilities and assistance, as he considers necessary for that purpose.
2. An authorised officer may, if considered necessary to carry out his functions arrange for any substance, product, sample or extract in relation to (c) or (d) to be analysed.
3. An authorised officer may make such purchases and secure the provision of such services as he considers necessary for the purpose of the proper exercise of his functions under the Order.
4. A person may not be required under paragraph 1 to give any information which he would be entitled to refuse to give in proceedings in the High Court on grounds of legal professional privilege.
5. (1) A lay magistrate may exercise the power in sub-paragraph (3) if he is satisfied on a complaint in writing substantiated on oath –
 - (a) that for the purpose of the proper exercise of the functions of a district council under the Order there are reasonable grounds for entry into any premises (other than premises used only as a private dwelling house not open to the public), and
 - (b) of either or both the matters mentioned in sub-paragraph (2).

- (2) The matters are –
 - (a) that admission to the premises has been, or is likely to be, refused, and that notice of intention to apply for a warrant under Schedule 2 of the Order has been given to the occupier or a person who reasonably appears to the district council to be concerned in the management of the premises,
 - (b) that an application for admission, or the giving of such notice, would defeat the object of the entry, or that the premises are unoccupied, or that the occupier is temporarily absent and it might defeat the object of the entry to await his return.
- (3) The lay magistrate may by warrant signed by him authorise any authorised officer to enter the premises, if need be by force.
- (4) Such a warrant continues in force until the end of the period of one month beginning with the date on which the lay magistrate signs it.
6. An authorised officer entering any premises by virtue of paragraph 1, or of a warrant under paragraph 5, may take with him such other persons and such equipment as he considers necessary.
7. If premises which an authorised officer is authorised to enter by a warrant under paragraph 5 are unoccupied, or if the occupier is temporarily absent, then on leaving them that officer must leave the premises as effectively secured against unauthorised entry as he found them.
8. If by virtue of paragraph 1(d) an authorised officer takes possession of anything, he must leave on the premises from which it was taken a statement giving particulars of what he has taken and stating that he has taken possession of it.
9. In Schedule 2 of the Order “premises” includes any place or vehicle.

Annex 3

Smoke-free resources – some useful web links

DHSSPS

Lead Government Department for public health policy in NI including smoke-free legislation.

<http://www.dhsspsni.gov.uk/index/phealth.thm>

Health Promotion Agency NI

Comprehensive publications catalogue including free resources available (e.g. posters, leaflets etc) and link to the Space to Breathe website which provides a wide range of information about smoke-free legislation in Northern Ireland.

<http://www.healthpromotionagency.org.uk/index.html>

Investing for Health Partnerships

Useful contacts for smoking cessation services etc. See also respective Health & Social Services Boards.

<http://www.investingforhealthni.gov.uk>