



**Republic of Zambia  
Ministry of Health**

# **Manual on the enforcement of smoke-free laws**

**For the training of environmental health officers on the  
Public Health (Tobacco) Regulations, 2008 and the  
Local Government (Prohibition of smoking in Public  
Places) Regulations, 2008.**

## **ACKNOWLEDGEMENTS**

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## **PREFACE**

This manual has been produced because of Government's commitment in recognizing the fundamental rights and freedoms to life, right to highest attainable standard of life and right to the healthy indoor smoke free environments. The major challenge at hand is that there are no safe levels of exposure to second hand smoking from indoor environments and this includes dangerous effects that are associated with second hand smoke.

Many countries, including Zambia, since the start of negotiations of the WHO Framework Convention on Tobacco Control have enacted and enforced national or local smoke free measures to protect against exposure to conditions that are injurious or harmful human health.

Exposure to tobacco causes several diseases in non-smokers, including cancers, coronary heart diseases, sudden infant death syndrome, asthma attacks and respiratory illness. This serious threat to human health creates the need to implement and enforce effective measures to prevent public exposure to second hand smoke and protect people from hazards caused by that exposure.

The main purpose of this manual is to provide guidelines to enforcement officers and all concerned parties to assist them with fulfilling their implementation and enforcement duties. This will help ensure the success of the measures enacted by the government to protect the public from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke.

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## **1. INTRODUCTION**

This Manual on the enforcement of smoke free laws is intended to assist Health Inspectors / Environmental Health Officers and other authorized officers with enforcing smoke-free provisions according to the Local Government (Prohibition of Smoking in Public Places) Regulations, 2008 issued under Statutory Instrument No. 39 of 2008, read in conjunction with the Public Health Act, Chapter 295, as amended, and the Public Health (Tobacco) Regulations, 1992 issued under Statutory Instrument No. 163 of 1992.

The manual highlights the hazards and health harms resulting from exposure to tobacco smoke (also known as second hand smoke). It also provides the legal context for smoke-free laws and addresses the role of information, education, and communication (IEC) about these laws. IEC is very cardinal and becomes a useful tool as members of the public, once equipped with information, can become pressure groups and agents of change.

Roles of the Ministry of Health, Health Inspectors / Environmental Health Officers and other enforcement officers are outlined. The manual also addresses public and private partnerships in carrying out the inspection and enforcement mandate and identifies roles and responsibilities.

The manual contains guidelines for conducting inspections and investigations for compliance with smoke-free requirements. Sanctions against owners and operators of public places as well as those against smokers who violate the law also are outlined. The manual provides a holistic approach for ensuring public places are smoke-free as required by law.

## **2. HAZARDS AND HEALTH EFFECTS OF EXPOSURE TO TOBACCO SMOKE**

### **2.1 Tobacco smoke**

Exposure to tobacco smoke is a serious public health hazard. Tobacco smoke contains 4000 chemicals and at least 60 are known or suspected human carcinogens. The chemicals found in tobacco smoke, such as lead, carbon monoxide, cadmium, formaldehyde, polonium 210 (a component of nuclear waste) and many others, are highly toxic. Studies have shown that tobacco smoke causes cancers and numerous other diseases and illnesses.

### **2.2 Health harms from tobacco smoke exposure**

Exposure to tobacco smoke in human beings causes disease and can lead to death. The diseases include lung and other cancers, heart disease, stroke, respiratory infections, and many others. Exposure can be life threatening for persons with heart conditions and asthma. Children exposed to tobacco smoke are at risk of pneumonia, bronchitis, asthma induction or exacerbation, frequent ear infections, and sudden infant death syndrome, among other illnesses.

### **2.3 No safe level of exposure**

There is no safe level of exposure to tobacco smoke and even brief exposure to tobacco smoke can be harmful. Yet, exposure is entirely preventable. Effective protection is provided by 100% smoking bans in enclosed public and workplaces and other appropriate public spaces. It is important to note that smoking areas or rooms in the same building do not provide effective protection, even if they have separate ventilation. Smoke pollution leaks into other areas, even when the most rigorous environmental and design standards are used for the room.

Some workers, such as restaurants, bar, and other service workers, have especially high rates of exposure to tobacco smoke and accompanying tobacco-related disease risks. For example, studies have shown that food service workers can have a 50% increase in lung cancer risk. In places without a comprehensive smoking ban, exposure is often two times greater in restaurants and up to six (6) times greater in bars compared to exposure in office settings. For this reason, it is important that compliance with 100% smoke-free laws in these places, along with other public places and workplaces, must be assured.

The experiences from many jurisdictions worldwide show that smoke-free laws, including in restaurants and bars, tend to enjoy high levels of public support and compliance.

### **Summary: 1. Key facts about exposure to tobacco smoke**

- Tobacco smoke contains thousands of chemicals and more than 60 are known or suspected human carcinogens.
- Exposure to tobacco smoke causes disease and death, including cancer, heart disease, respiratory diseases, and other diseases.
- There is no safe level of exposure to tobacco smoke.
- One hundred percent smoke free enclosed public places, workplaces, and other appropriate public spaces provide the only means of effective protection from the hazards of tobacco smoke. Separate smoking areas and separately ventilated rooms do not provide adequate protection.

### **2.4 Zambia's Smoke Free Laws**

To protect the public from the harms caused by exposure to tobacco smoke, the Zambian Government has enacted the Local Government (Prohibition of Smoking in Public Places) Regulations, 2008, issued under Statutory Instrument No. 39 of 2008 (SI 39). These regulations completely ban smoking in all public places. SI 39 operates together with the Public Health Act Cap 295, which prohibits statutory nuisances and other circumstances that promote situations “injurious or harmful to health”.

The Public Health (Tobacco) Regulations, 1992, issued under Statutory Instrument No. 163 of 1992, also bans smoking but only in a limited number of public places: hospitals, nursing centres, kindergartens, cinema halls, theatres, elevators, public transport, and schools for persons up to 21 years. The regulations also require “no smoking” signs in those places. *SI no. 39 and the Public Health Act Sec. 67 operate together to extend the earlier ban on smoking to all public places, including public conveyance and all workplaces.* Their enforcement will protect all members of the public, children and adults alike.

### **Summary: 2. Zambia's smoke-free laws**

The Local Government (Prohibition of Smoking in Public Places) Regulations, 2008, issued under Statutory Instrument No. 39 of 2008 (SI 39), the Public Health Act Cap 295, and the Public Health (Tobacco) Regulations 1992 issued under Statutory Instrument No. 163 of 1992 all regulate public smoking.

SI 39 and the Public Health Act operate together to ban smoking in all public places, including public conveyances, and all workplaces.

### 3. THE INTERNATIONAL LEGAL CONTEXT FOR SMOKE-FREE LAWS: FRAMEWORK CONVENTION ON TOBACCO CONTROL AND INTERNATIONAL TREATY OBLIGATIONS

Tobacco use is the leading cause of preventable disease and death worldwide. To address this global epidemic, the Framework Convention on Tobacco Control came into force in 2005 as the first international public health treaty. The Framework Convention on Tobacco Control has been ratified by over 165 governments to date, including Zambia, which became a party to the treaty in 2008. The purpose of the treaty is “to protect the present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to the smoke from tobacco by providing the framework for tobacco control measures to be implemented by all parties concerned in order to continually and substantially reduce the prevalence of tobacco use and exposure to tobacco smoke.”

In addition to the health consequences of tobacco use and exposure to tobacco smoke already mentioned, economic consequences include lost work due to tobacco-related disease in and death of wage earners, usually during productive work years, and increased poverty of their families. The country’s economic growth is diminished due to lost productivity and government expenditures on treating tobacco-related diseases.

Social costs of tobacco use and exposure to tobacco smoke include the social normalization of smoking, with the result that young people feel encouraged to begin using tobacco products. When smoking is prohibited in public places, however, studies show that tobacco consumption decreases and the norm of social acceptability of tobacco use changes. This is important for protecting youth from beginning the deadly cycle of addiction and disease that follows from tobacco initiation.

To address tobacco harms, the Framework Convention on Tobacco Control requires governments to enact and implement effective tobacco control measures, such as protection from the hazards of tobacco smoke in enclosed public places, workplaces, on public transport, and appropriate open spaces, bans on tobacco advertising, promotion, and sponsorship, requirements for tobacco product packaging and labelling (e.g., health warnings), price and tax measures, and other measures.

Article 8 of the Framework Convention on Tobacco Control requires governments to adopt measures proven to be effective in protecting people from public tobacco smoke exposure. Guidelines unanimously adopted by parties to the Framework Convention on Tobacco Control specify that 100% smoke-free environments are the **only** effective way to protect people and that **all** enclosed public places and workplaces and **all** public conveyances should be 100% smoke free, along with appropriate open public spaces.

Other international treaties to which Zambia is a party (for example, the International Covenant on Economic and Social Rights, the International Convention on Civil and Political Rights, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination Against Women), require ratifying governments to protect their citizens’ right to health, right to life, and right to a safe work environment. These treaties, along with Section 12 of

Zambia's Constitution, which also guarantees the right to life, reinforce the Framework Convention on Tobacco Control principle that all people have the human right to protection from the preventable hazards of public tobacco smoke exposure and that governments have a solemn obligation to provide this protection.

**Summary: 3. Key facts about the framework convention on tobacco control**

- The Framework Convention on Tobacco Control is the first public health treaty, adopted to address the devastating global effects of tobacco consumption and exposure to tobacco smoke.
- The Framework Convention on Tobacco Control has been ratified by more than 165 governments to date, including the government of Zambia in 2008.
- Article 8 of the Framework Convention on Tobacco Control requires Parties to enact effective measures for protection against exposure to deadly tobacco smoke in enclosed public places, workplaces, on public transport and in appropriate open spaces.
- Under the Framework Convention on Tobacco Control, other treaties to which Zambia is a party, and the Zambian Constitution, Section 12, the government has a legal obligation to provide effective protection against hazardous exposure to tobacco smoke, which is entirely preventable.
- Zambia fulfils its Framework Convention on Tobacco Control Article 8 and other treaty and constitutional obligations to protect all its citizens from public exposure to tobacco smoke with the enactment in 2008 of SI 39 combined with the Public Health Act, Cap. 295 provided these measures are implemented and enforced.

## 4. INFORMATION, EDUCATION, AND COMMUNICATION

### 4.1 The importance of information, education, and communication

Public understanding of the hazards of exposure to tobacco smoke and the benefits of 100% smoke-free environments is important for the successful implementation of smoke-free laws. With this understanding, people usually support smoke-free laws and high rates of compliance follow. People also can feel empowered to demand their right to a smoke-free environment be respected and protected. As a result, smokers often feel they should comply with the law and if they do not, members of the public can begin to insist they do.

The period at the beginning of implementation and enforcement of smoke-free laws is crucial for sensitizing the members of the public, businesses, and other establishments about the need for and benefits of the law and what is required of them to comply. Sending a clear message that the government is serious about enforcing the law is extremely important.

The Ministry of Health at all levels, other government agencies, and civil society not affiliated with the tobacco industry all have important roles to play in communicating smoke-free information to the general public and to businesses and other establishments.

### 4.2 Roles in providing information, education, and communication

#### 4.2.1 Role of the Ministry of Health

The Ministry of Health is responsible for developing and publicizing information, education, and communication messages and materials for the general public and for establishments/businesses explaining the need for and benefits of the law, the requirements of the law, how to comply with those requirements, and addressing questions and concerns people may have about the law.

The following brochures are available:

- **Smoke free Zambia:** Statutory Instrument no. 39 of 2008 (annex 7)
- **Smoke free myths and realities:** The common myths and realities on second hand smoking (annex 8)
- **Common questions on smoke free law in Zambia:** Frequently asked questions (annex 9)

The MOH also is responsible for developing press releases, statements, and background information for the media on the law and its enforcement, and for providing key messages for use when dealing with the media. After a period of implementation, the Ministry of Health should develop messages and materials on how the law is working and the support it is enjoying, based on data contained in inspection reports.

In addition, the Ministry of Health should prepare templates for no-smoking signs for establishments to post on their premises.

#### **4.2.2 Role Environmental Health Officers**

Environmental Health Officers should routinely sensitize the people and owners/occupiers/operators of public places, including public conveyances, and workplaces on smoke-free laws. When Environmental Health Officers find non-compliance, this presents a good time to sensitize the offenders, with a focus on owners/occupiers/operators of public places and workplaces, about the law and why it is so important. Environmental Health Officers and other inspectors can do this with the brochures created by the Ministry of Health by briefly highlighting the key information. During initial implementation and enforcement of the law, inspectors should give this information to businesses and establishments even when compliance is not found to be a problem.

EHOs can also meet with and engage community leaders and stakeholder groups not affiliated with the tobacco industry to enlist their support for the law and their assistance with encouraging compliance, especially on the part of public place owners/occupiers/operators.

#### **4.2.3 Role of Civil Society**

The Zambia Consumers Association has developed and is disseminating Information, Education and Communication smoke-free materials and information to the public. Environmental Health Officers should feel free to contact Zambia Consumer Association with questions (zaca@zamnet.zm).

### **4.3 Working with media organizations**

Getting information into media reports on the law and its enforcement can be a good way to encourage support for and compliance with the law. At the early stages of enforcement, everyone may not yet fully understand the harms caused by tobacco smoke exposure and the benefits provided by the law. It will be important to set the stage for people to want to comply with the law, both because it benefits them and society as a whole and because they will be sanctioned, after being warned, if they do not comply.

The tobacco industry and its allies are likely to turn to the media to try to spread *disinformation* to *undermine* the law and its implementation. The tobacco industry often does this by casting doubt on the authoritative and accepted science proving the hazards of tobacco smoke exposure and by saying that both smokers and non-smokers can be accommodated by providing smoking areas or separate ventilation, even though it is well-established that this approach is *not* effective.

Another tobacco industry strategy is to make false claims that business, especially bars and restaurants, will lose huge amounts of money if they go smoke-free, even though hundreds of reliable studies conducted across the globe overwhelmingly show neutral or increased business revenues after implementation of smoke-free laws. The tobacco industry also argues that there is a “right to smoke” and that businesses have the “right” to allow smoking on their premises, even though this seriously jeopardizes the health of workers and the public patronizing the businesses. These arguments are often made through front groups, such as restaurant, bar, and hotel trade

groups or through persons paid by the tobacco industry. In jurisdictions where courts have ruled on challenges from the tobacco industry, the duty of the government to protect health and life by regulating where people smoke and to implement public smoking bans has been found to be an important and legitimate exercise of government power in favour of health protection.

#### **Summary: 4. Smoke-free information, education, and communication**

- A population that is aware of the harms of tobacco smoke exposure and the protection provided by smoke-free laws is likely to support and comply with these laws.
- Inspection and enforcement officers can play an important role in educating the public and businesses/employers about the need for the law and the benefits it provides.
- IEC materials have been developed and these can be used by inspection and enforcement officers during inspections.
- When reporting on the law and its enforcement, it is important for media organizations to have correct and balanced information about the harms of tobacco smoke, the importance and popularity of smoke-free laws worldwide, and the benefits smoke-free laws provide.
- It is important to be prepared to talk to media professionals and to use the information, education, and communication materials to be sure the media have correct and balanced information.
- The tobacco industry and its allies are likely to try to use the media and other means to spread disinformation about smoke-free laws, so inspection and enforcement officers should be prepared to counter it.

## **5. BACKGROUND INFORMATION ON INSPECTIONS AND INVESTIGATIONS**

This section addresses:

- Roles and responsibilities;
- Objectives of inspections and investigations;
- Acts and omissions constituting legal violations;
- Places subject to inspection/investigation under governing legal authority; and
- Prioritizing places for smoke-free inspections/investigations.

Conducting inspections and investigations, sanctions, and taking enforcement action are addressed in following sections.

### **5.1 Roles and responsibilities**

#### **5.1.1 Environmental Health Officers (Health Inspectors)**

EHOs are the primarily persons responsible for inspections and investigations to determine compliance with smoke-free requirements, with the assistance of Police where necessary. Sec. 108 of the Public Health Act, Statutory Instrument No. 39 under the Local Government (Prohibition of Smoking in Public Places) Regulations, 2008, the Public Health Act, Cap. 295, and Statutory Instrument No. 163 of 1992, mandate and confer powers on Environmental health officers to enter any premises to conduct inspections as they deems fit and undertake enforcement action against owners/occupiers/operators of the premises and persons who violate the law. In the course of carrying out their inspection and enforcement duties, Environmental health officers should sensitize owners/occupiers/operators of the premises and patrons and employees about smoke-free requirements, the harms caused by exposure to tobacco smoke, the benefits of smoke-free laws, and what must be done to comply with smoke-free laws.

#### **5.1.2 Other government agency staff and mining staff**

Other government agency, including local authority, and mining company staff, should take steps to ensure smoke-free compliance in the places under their authority, calling upon Environmental health officers and / or police as necessary. They also can assist with capacity building and IEC/sensitization efforts with the public and employees at their facilities. The Ministry of Health will work with other government agency, and mining company staff to prepare them to fulfil these roles. Private businesses also have a duty to supervise compliance with legal requirements, including with smoke-free provisions, on their premises, according to the Public Health Act.

#### **5.1.3 Civil society**

Civil society organizations, e.g., Zambia Consumers Association, are prepared to play an important assisting role, such as:

- Providing information to inspectors and law enforcement agents about violations of the law;
- Providing EHOs with complaints they have received from members of the public to assist in targeted inspections;

- Monitoring and documenting the fact of compliance;
- Helping with material and technical support for enforcement of the law;
- Providing information, education and communication materials;
- Assisting to the extent possible when the need arises; and
- Offering evidence in court.

## **5.2 Coordination of roles and responsibilities**

The MOH has requested the Secretary to the Cabinet to enlist the support of all government ministries and offices in providing information on and ensuring compliance with smoke-free requirements at their facilities. The Ministry of Health will follow up on compliance in government facilities and advise Environmental Health Officers if/when they need to add these places to their inspection schedules. This will happen if the Ministry of Health has information indicating noncompliance at government facilities.

## **5.3 Objectives and focus of inspections and investigations**

The main objectives of smoke-free inspections and investigations are:

- 1) Sensitizing owners/occupiers/operators of public places, including public conveyances, workplaces, and smokers about smoke-free requirements, the importance of compliance, and what steps they should take to prevent/stop smoking in violation of the law, as a first step;
- 2) Imposing warnings and sanctions for violations as appropriate, particularly against owners/occupiers/operators but also against individuals who smoke in violation of the law;
- 3) Obtaining and documenting necessary evidence for enforcement proceedings; and
- 4) Documenting and reporting to the Ministry of Health the fact of compliance or non-compliance, particularly on the part of owners/occupier/operator, for the purposes of both taking enforcement actions and monitoring compliance trends.

## **5.4 Acts or omissions constituting violations**

Violations of smoke-free requirements occur when:

### **5.4.1 The owner/occupier/operator of a public place, including public conveyance, or workplace allows smoking by patrons or employees**

Under the Public Health Act, the owner/occupier/operator of a public place or his/her employees who allow smoking in a public place/on a public conveyance, or an employer who allows smoking in the workplace, would be considered to be allowing a nuisance, or condition hazardous to health (or “suffering a nuisance” or hazardous condition, to use the terminology in the Public Health Act). To prevent smoking, the owner/occupier/operator should remove all ashtrays, post “no smoking” signs, and be sure employees know how to deal with persons who on the premises. In response to a person smoking, the owner/occupier/operator or his/her employees should ask any person who

lights a tobacco product to put it out and if s/he refuses, stop service and ask him/her to leave, calling for assistance from a law enforcement officer if necessary. An employer also must require any employee who smokes in the workplace to stop and must take appropriate action if s/he does not. Failure to take reasonable steps to prevent and stop illegal smoking behaviour in a public place or workplace is a violation of the law on the part of the owner/occupier/operator.

**Authority:** Public Health Act, Cap 295 of the Laws of Zambia, Sec. 64 provides: “No person shall cause a nuisance or shall suffer a nuisance to exist on any land or premises owned or occupied by him or of which he is in charge ...”

Public Health Act, Cap 295 of the Laws of Zambia Sec. 67(1) (s) provides that a nuisance includes “any act, omission, or thing which is, or may be offensive, dangerous to life, or injurious to health.”

Public Health Act, Cap 295 of the Laws of Zambia, Sec. 67(2) provides “The author of a nuisance means the person by whose act, default or sufferance, nuisance is caused, exists or is continued, whether he be the owner or occupier or both owner and occupier or any other person.”

#### **5.4.2 No smoking” signs are not posted**

**Authority:** The Public Health (Tobacco) Regulations provide that signs stating “NO SMOKING” in bold lettering must be posted in: hospitals, nursing centres, kindergartens, schools for persons up to 21, cinema halls, theatres, elevators, and public transport. Note that there is not an explicit requirement for posting “no smoking” signs in other public places under either SI 39 or the Public Health Act. However, having failed to post signs in a public place where someone is smoking might be considered to be a default on the part of the owner/occupier/operator that enabled the nuisance to occur under the Public Health Act.

#### **5.4.3 A person smokes in a public place or workplace**

**Authority:** Statutory Instrument 39 of 2008, Sec. 3(1) provides that “a person shall not smoke in a public place within the area.”<sup>1</sup>

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<sup>1</sup> Although the prohibition against causing a nuisance in Sec. 64 of the Public Health Act applies to individual smokers, as does the prohibition against smoking in the places covered by the Public Health (Tobacco) Regulations, the more straightforward approach to addressing smoke-free violations by smokers is through the application of SI 39.

## **Summary: 5. Smoke-free violations**

Violations occur when:

- The owner/occupier/operator of a public place, including public conveyance, or a person working for him/her, allows smoking in the public place/public conveyance, or an employer allows smoking in the workplace.

**Authority:** The Public Health Act, Cap 295 of the Laws of Zambia, Sec. 64 prohibits “suffering a nuisance” or other condition hazardous or injurious to health on the premises under one’s charge.

- “No smoking” signs are not posted at public places or workplaces.

**Authority:** The Public Health (Tobacco) Regulations provide signs stating “NO SMOKING” in bold lettering must be posted, in hospitals, nursing centres, kindergartens, cinema halls, theatres, elevators, public transport, and schools for persons up to 21 years of age. In addition, signage can be required by the Environmental Health Officer in other public places because the posting of “no smoking” signage is may be necessary to enable the owner/occupier/operator to fulfil his/her duties to supervise compliance with smoke-free requirements.

- A person smokes in a public place/workplace/public conveyance

**Authority:** Statutory Instrument 39 of 2008, Sec. 3(1) prohibits smoking in a public place.

## **5.5 Places subject to smoke-free inspection and investigation**

### **5.5.1 Public Places**

As discussed, SI 39 of 2008 prohibits smoking in any public place. While the term “public place” is defined in SI 39 and in local laws, the definition of “public place” provided in SI 39 is the definition that governs for purposes of inspection/investigation and enforcement of smoke-free requirements, rather than the definitions for the term provided in local laws.

**SI 39 defines “public place” as “any building, premises, conveyance, or other place to which the public has access.”**

This is a very broad definition that includes all parts of all enclosed and open spaces of all public places, including all public conveyances, whether government or privately owned or operated.

### **5.5.2 Any Other Building or Premises**

The Public Health Act, Cap. 295, Section 72 authorizes local authorities, through any of their officers, to enter any building or premises at all reasonable times for the purpose of examining as to the existence of any nuisance. The broad scope of both SI 39 and the Public Health Act provide

the authority necessary to inspect all public places, including public conveyances, and all workplaces for smoke-free compliance.

## 5.6 Prioritizing places for inspection and investigation

With such a broad definition of “public place” under SI 39 and the wide application of the Public Health Act, it is important to understand which places are priorities for smoke-free inspections in order to make the inspection and enforcement process feasible.

### 5.6.1 Inspections

**Public places and workplaces where EHOs already conduct inspections under the Public Health Act will automatically be inspected for smoke-free compliance.** Since EHOs routinely enter all licensed public places, including public conveyances and workplaces as part of their inspection duties already, checking on smoke-free compliance can be accomplished with little additional effort.

As a general rule, limited inspection resources should concentrate on the *enclosed portions* of public places/workplaces where the risk of harm is greatest, as well as open spaces where the risk of harm also is significant because of the potential for tobacco smoke concentration in proximity to numbers of people (discussed in the next paragraphs).<sup>2</sup>

Under the Guidelines to FCTC Article 8, “enclosed” is considered to be any space covered by a roof or having one or more walls or sides, whether temporary or permanent. This definition is likely to cover most of the places and spaces of concern for smoke-free compliance, including outdoor seating or service areas of public places like restaurants and bars.

There may be instances where seating or service areas are completely detached and completely open, however, and these also should be inspected even though they are not “enclosed”. The same goes for outdoor entertainment or performance areas such as stadiums and concert venues. This is because of the high risk of concentrated exposure to smoke in such spaces if smoking were to occur.<sup>3</sup> Also included in this category would be outdoor waiting areas at public places such as at public transportation centres as well as doorways of public buildings and workplaces. Smoke is likely to be concentrated at doorways as a result of smokers stepping directly outside to smoke. Additionally smoke is likely to drift inside from doorways.

The following are priority places for smoke-free inspections and are already subject to routine inspections by Environmental Health Officers during initial and renewal licensure inspections:

- 1) Public places that are open to large numbers of people *and* where compliance is likely to be a problem, such as **restaurants, bars, hotels, casinos, and similar places, and any outdoor seating or service areas at those places.**

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<sup>2</sup> Inspectors will not be expected to inspect completely open public places, such as streets, even though covered by SI 39 and the Public Health Act, because the risk of smoke concentration and exposure is less likely.

<sup>3</sup>Exposure in open spaces and the resulting harm are a function of factors that include the concentration of the smoke (affected by the number of persons smoking), the distance from the smoke, and the direction of the wind.

Compliance may be a problem in these places because, for example:

- Smoking was common in these places before the law or
  - The owner/operators/occupiers may not realise the law applies to their places, or to particular spaces on the premises, like outdoor restaurant or bar patios.
- 2) Any part of the premises (enclosed or open) of public places frequented by minors, such as **schools, child caring facilities, and youth centres**.

Young persons can be especially vulnerable to the hazards of tobacco smoke. They also are susceptible to the normalization of smoking behaviour.

- 3) Any part of the premises (enclosed or open) of **health care facilities, such as hospitals and clinics**.

Sick people also are especially vulnerable to the hazards of tobacco smoke. Additionally, allowing smoking on such premises sends a conflicting message about the seriousness of the harms of smoking and tobacco smoke exposure.

### 5.6.2 Investigations

Investigations will be the primary means by which smoke-free compliance will be checked in any places subject to inspection under SI 39, the Public Health Act, or the Public Health (Tobacco) Regulations that may not be routinely inspected under the Public Health Act.

#### **Summary: 6. Places environmental health officers should routinely inspect for smoke-free compliance**

Inspectors should routinely inspect for smoke-free compliance in enclosed\* portions of public places and workplaces they already routinely inspect under the Public Health Act for other purposes (like initial licensure applications and renewals), as well as any associated outdoor seating, service, and waiting areas. Priority places for smoke-free inspections within those places routinely subject to inspection include:

- Enclosed places where there is high risk of tobacco smoke exposure and a high risk of noncompliance (e.g., bars, restaurants, hotels, casinos, other enclosed public places where non-compliance may be likely), along with any outdoor seating or service areas, and doorways;
- Anywhere on the premises of places frequented by vulnerable populations, such as youth or sick persons (e.g., schools, child caring facilities, health care facilities, etc.); and
- Public conveyances.

Inspectors should investigate all credible allegations of non-compliance in all enclosed public places, including public conveyances, and workplaces as well as crowded outdoor public places, such as stadiums.

\* For inspection/investigation purposes, “enclosed” is given the broad meaning provided in the FCTC Art. 8 Guidelines: any space covered by a roof or having one or more walls or sides, whether temporary or permanent.

## **6. CONDUCTING SMOKE-FREE INSPECTIONS**

Inspectors will determine smoke-free compliance using a variety of techniques:

- Observing
- Talking to the owner/occupier/operator, if present, and/or to management or employees of the public place or workplace
- Talking to witnesses.

### **6.1 Observation**

Based on the acts that constitute non-compliance with smoke-free provisions (See Sec. 5(D)), inspectors will make observations of the following:

- Is anyone smoking?
- Is there the smell of smoke?
- Are ashtrays present? Do they contain cigarette, cigar, or other butts or ashes?
- Are “no smoking” signs posted? Note: although posting “no smoking” signs is not a requirement under SI 39 of 2008 or the Public Health Act, if a nuisance enforcement action is pursued, requiring owners/occupiers to post signs could be requested or ordered as a means of preventing a recurrence and failure to post “no smoking” signs in a public place/workplace where people are found smoking could be considered a violation that enabled the nuisance. .

For most public places/workplaces, If the answer to 1-3 is no, the inspector may simply note his/her observations on the inspection report and conclude the inspection with a finding of compliance. The answer to #4 is relevant in the public places covered by the Public Health Tobacco Regulations and in public/workplaces where there is evidence of someone having smoked in the place.

If someone is smoking or if there is the smell of smoke or ashes in an ashtray, the inspector should observe for a while to see if someone begins to smoke in his/her presence and see if the owner/occupier/operator or any employee takes action to require the person to stop smoking. Evidence of recent smoking behaviour, such as the smell of tobacco smoke or ashes in ashtrays, should cause the inspector to talk to witnesses.

### **6.2 Talking to witnesses**

#### **6.2.1 Talking to the owner / occupier / operator, manager, or employee**

If the inspector is aware of or suspects but did not directly observe a violation, s/he should speak to the owner/occupier/operator (if the owner/occupier is not present, the inspector should talk to a manager and if a manager is not available, then to employees) to find out whether there was or should have been: 1) an awareness that someone was smoking; 2) if so, what actions were taken to stop it; and 3) whether the owner/occupier and employees are aware of the public smoking ban and its application to the premises and whether they know what to do to prevent and/or stop prohibited smoking behaviour. The inspector also should find out:

- Whether the owner/occupier/operator and employees know what they need to do to ensure the smoking ban is observed at the establishment/public conveyance;
- Whether the owner/occupier/operator has received information on the smoke-free law and compliance requirements and is aware of the harms to workers and the public from exposure to tobacco smoke;
- Whether policies and procedures to ensure compliance with smoke-free requirements been developed and implemented;
- Whether the establishment has received a warning or has been sanctioned for a smoke-free violation before. This should be corroborated by reviewing the inspection report register and/or database (discussed in chapter ten);
- Any other information the Environmental Health Officers deems appropriate.

These questions, and/or questions of the inspector's own making, should be posed to help determine if there was a violation on the part of the owner/occupier/operator, help identify information that will help the owner/occupier/operator ensure compliance in the future, and help assess whether to issue a warning or begin nuisance procedures, discussed in chapter eight.

### **6.2.2 Talking to the smoker**

The inspector should determine if any person observed smoking in violation of the law is aware s/he is violating the law and whether s/he has been warned or sanctioned for non-compliance before. As with the owner/occupier/operator, the inspector should take the opportunity to sensitize the smoker about the harms to others caused by his or her tobacco smoke and about where s/he cannot smoke.

### **6.2.3 Talking to other witnesses**

If the inspector has reason to believe that the owner/occupier allowed illegal smoking behaviour but the inspector did not observe this personally, s/he should also talk to witnesses present to find out if they observed smoking and, if so, what they observed the person in charge or any employee doing about it, if anything.

Even if the inspector personally observes a person smoking, s/he should identify other witnesses who can corroborate this and the failure by any employee of the establishment to stop it if corroborating evidence will be necessary to pursue a nuisance action successfully before a magistrate.

## **6.3 Obtaining evidence**

When an inspector confirms a violation and determines that circumstances warrant pursuing an enforcement action (See Sec. 8), s/he should focus on obtaining evidence that confirms a violation on the part of the owner/occupier/operator. Evidence confirming a violation on the part of a smoker also should be obtained where circumstances warrant pursuing an action against the smoker (See chapter eight).

### **6.3.1 Pictures**

Inspectors should carry cameras/video equipment with them, if available, and where feasible take pictures or videos when a violation is found. For example, pictures/video might include:

- person(s) smoking inside the public place or on the patio or other crowded open space on the premises;
- the people and space around the person smoking to demonstrate the degree of exposure to others; and
- ashtrays laying about, especially with butts or ashes in them.

Pictures/videos should clearly identify the place where the violation occurred and should clearly link the pictures illustrating the violation with the place. If the camera/video recorder does not put a date stamp on the film, the inspector will need to record the picture numbers/video footage with the date and approximate time taken.

### **6.3.2 Witness statements**

If witness statements are necessary, they should be prepared by the inspector for the signature by person(s) making statement(s), and the witness should sign in the presence of other witnesses who also sign, if possible. Any witness statement should identify:

- the date, approximate time, address, and name of the place where the violation occurred, including where in/on the premises the smoking was allowed;
- number and identities of person(s) smoking in violation of the law;
- person in charge of the place and/or employee(s) who were present and failed to take action to stop the illegal smoking behaviour;
- the approximate number of people in the room or, if outdoors, within close proximity;
- statements of what the witness personally observed at this time, including the owner/occupier/operator's tolerance of the prohibited smoking behaviour and on any relevant prior occasions at the place; and
- contact information for the witness and any signature witnesses.

## **6.4 Recording inspection results**

The inspector should complete the smoke free inspection report using the sampling form in annex 1 or based on the information outlined in annex 1, and where a violation is noted, the following should be documented and included in or attached to the report:

- responses of the owner/occupier and/or employee(s) to questioning;
- signed witness statements;
- list and/or description of evidence obtained;
- the degree to which the owner/occupier/operator was cooperative during the inspection/investigation;
- whether a warning or nuisance notice is being applied against the owner/occupier/operator and, if so, corrective action that the inspector is requiring, if any;
- whether a warning or sanction is being applied against a smoker; and
- other relevant information deemed important by the inspector.

*It is important for the inspector to record the determination of both non-compliance and compliance, as the case may be, so that the MOH can monitor trends in the level of compliance and evaluate the effectiveness of the law.*

### **Summary: 7. Inspection steps**

- Observe whether:
  - Anyone is smoking, there is the smell of smoke, or ashtrays are present;
  - If so, whether the owner/occupier or employee(s) takes appropriate action to stop the person who is smoking in violation of the law; and
  - Whether and how prominently “no smoking” signs are posted.
- If there is evidence of smoking, talk to the person in charge and/or employee(s) to determine:
  - If the person in charge and employees are aware of the law and what is required of them and whether they are aware of the harms caused by exposure to tobacco smoke to themselves and the public;
  - If the person in charge or any employee was or should have been aware of any person smoking;
  - If there are policies or procedures in place to prevent violations of smoke-free requirements; and
  - What actions the person in charge or any employee took to stop the smoking; and
  - Whether a warning or notice of nuisance for smoke-free violations has been issued before, including whether corrective action was taken if required.
- Talk to any person who is smoking to determine:
  - If s/he is aware s/he is violating the law;
  - whether s/he is aware of the harms caused by exposure to tobacco smoke; and
  - Whether s/he has been warned or sanctioned before.
- Talk to other witnesses if corroborating evidence is needed because, for example:
  - The inspector suspects illegal behaviour but did not personally observe it and the person in charge of the place/employee(s) denied it, or
  - The inspector plans to pursue a nuisance action against the establishment or apply a sanction under SI 39 against the smoker.
- Obtain evidence where the inspector plans to pursue a nuisance action against the owner/occupier/operator under the Public Health Act or apply a sanction against the smoker under SI 39, including:
  - Pictures/videos of people smoking, presence of ashtrays, space and people around the smoker(s), if possible, and
  - Witness statements.
- Complete the inspection report, including documenting the finding of compliance or noncompliance, and whether a warning or nuisance action is being applied against the establishment and whether corrective action is required, or a warning or sanction is being applied against the smoker.

**Note:** An inspection checklist and report is provided in annexes as an aid to inspectors.

## 7. CONDUCTING INVESTIGATIONS

### 7.1 When investigations are required

Inspectors are required to respond to credible complaints or allegations of violations. All complaints received should be recorded.

### 7.2 Investigation procedure

#### 7.2.1 Log complaint

Inspectors should log all complaints received (date, approximate time, nature of the complaint, identification of the public place/workplace/conveyance, address, and contact information of complainant, if available). If it is determined that no investigation is warranted, this should be explained in the log entry.

#### 7.2.2 Investigate

Where warranted, the complaint should be investigated and evidence obtained using largely the same methods described in the previous section. Interviewing the owner/occupier/operator and/or employees and any witnesses will be necessary since the inspector will not have observed the actual behaviour giving rise to the complaint. The investigator's own observations at the time of the investigation may support or contraindicate the facts alleged, and/or may point to a separate or new violation.

#### 7.2.3 Record results

The Inspector's findings should be recorded and should clearly show that the findings were the result of a complaint investigation. Because law enforcement is dependant on the cooperation and involvement of the community and civil society at all stages of the process, the complainant should be notified of the results of the investigation and of any action taken where contact information has been given.

### **Summary: 8. Investigation procedure**

All complaints received should be logged.

Credible complaints should be investigated, largely using the inspection techniques outlined in Section 6.

Results should be recorded.

Complainant should be notified of the investigation results and any action taken if his/her contact information has been given.

## 8. ENFORCEMENT ACTION

### 8.1 Enforcement approach and principles

A key to successful enforcement, including gaining popular support that leads to self-enforcement, is to ensure a fair and consistent approach. Violators should be treated similarly when imposing a warning or penalty in order to ensure fairness and consistency of the process. Initially, a focus on education and sensitization should be the approach. Generally, a warning will be issued for first time offences, both to the owner/occupier/operator who allows smoking and to the person who smokes in violation of the law.<sup>4</sup>

### 8.2 Application of sanctions

Different penalties apply to the smoker under SI 39 (fines) than to the establishment or public conveyance operator under the Public Health Act that allows smoking (nuisance notice, fines for failure to remove the nuisance, possible license sanction).

#### 8.2.1 Penalties against the owner/occupier/operator who allows smoking in the public place, including public conveyance, or /workplace

Penalties available for application against the owner/occupier/operator are:

##### a) Warning

A warning is appropriate for a first time offence, especially where the owner/occupier is unaware of the law or of what was required for compliance and is cooperative with the inspection or investigation. When issuing warnings, inspectors should take the opportunity to educate the owner/occupier/operator about the harms to workers and the public of exposure to tobacco smoke and about the law and how to comply with it.

**Authority:** The inspector has the inherent discretion to issue a warning where warranted by the circumstances, as long as this is done in a consistent manner.

##### b) Notice requiring removal of a nuisance and of specific action required

Serving a nuisance notice may be appropriate where an owner / occupier / operator of the public place/workplace/public conveyance allowed illegal smoking behaviour a second or subsequent time.

The inspector may require specific action to remove the nuisance and, if appropriate, to prevent a recurrence. Such action might include, as applicable, imposing a continuous duty to remove all

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<sup>4</sup> Because the Public Health (Tobacco) Regulations have been in force for a significant period of time, allowing smoking, failing to post “no smoking” signs, and smoking in the places covered by those regulations could be sanctioned without a prior warning. The inspector should use discretion in making this determination.

ashtrays, posting “no smoking signs” in specified locations, developing and implementing policies and procedures for handling non-compliance by patrons and employees, and training for employees.

**Authority:** Public Health Act, Cap 295 of the Laws of Zambia, Sec. 68 provides for service of a notice requiring removal of the nuisance and authorizes requiring specific action to remove it and to prevent a recurrence.

### **c) Complaint filed with a magistrate**

A complaint with a magistrate may be appropriate where:

- A notice of nuisance has been issued but the nuisance has not been removed (e.g., upon re-inspection, smoking is still being allowed, ashtrays are present, signs are not posted, policies have not been implemented or employees have not been trained);
- Specified action to remove the nuisance and prevent a recurrence was required but has not been taken;
- The nuisance was removed (no evidence of smoking or ashtrays, “no smoking” signs are posted on re-inspection) but inspector has reasonable grounds to believe a recurrence is likely (e.g., due to repeat violations in the past or action to correct the nuisance has not been sustained; and/or
- Non-compliance with a court order in relation to any of the above.

The Magistrate can order compliance with the nuisance notice, require specific action to prevent a recurrence, and issue a fine of up to 300 penalty units. An owner/occupier/operator may also be subject to a fine not exceeding one hundred and twenty penalty units for every day a failure to comply with a court order continues.

**Authority:** Public Health Act, Cap 295 of the Laws of Zambia, Sec. 69 (1) provides: the local authorities through their authorised officers (medical officer of health or health inspectors or any other suitably qualified person) can make a complaint before a magistrate where there is non-compliance with the nuisance notice.

Public Health Act, Cap 295 of the Laws of Zambia, Sec. 69 (3) authorizes the court to order compliance and impose a fine not exceeding three hundred penalty units.

Public Health Act, Cap 295 of the Laws of Zambia, Sec. 69 (4) authorizes the local authorities to make a complaint before a magistrate if the nuisance has been removed but is likely to recur on the same premises.

Public Health Act, Cap 295 of the Laws of Zambia, Sec. 69 (5) authorizes the court to order specific work to prevent recurrence.

Public Health Act, Cap 295 of the Laws of Zambia, Sec. 69 (6) authorizes the Local Authority to again file a complaint with a magistrate, who may impose a fine not exceeding three hundred penalty units upon proof of non-compliance with the order.

Public Health Act, Cap 295 of the Laws of Zambia, Sec 70 (1) provides that the court may order a fine not exceeding one hundred and twenty penalty units for each day the nuisance continues where all due diligence to carry out the order has not been used.

**d) Fine and possible licensure sanction for failure to post the required “no smoking” signs**

An owner/occupier of a place or conveyance covered under the Public Health (Tobacco) Regulations would be subject to a fine for failing to post the “no smoking” sign as required by those regulations. An owner/occupier/operator of a public place or workplace not covered by the Public Health (Tobacco) Regulations also could be subject to a nuisance action under the appropriate circumstances (discussed in Manual Section 5 (d) (2)). Additionally, the establishment or conveyance operator could be subject to licensure sanction.

**Authority:** The Public Health (Tobacco) Regulations provide that any violator is subject to the penalty provisions of Sec. 109 of the Public Health Act, which provides for a fine of up to 750 penalty units and up to 90 penalty units for each day the default, as well as for licensure sanction.

**8.2.2 Sanctions against the smoker**

**a) Warning**

Warnings to smokers are appropriate for a first time offence, especially where the person is unaware of the law or of where smoking is not allowed and was cooperative. Warnings should be accompanied by sensitization and information on the harms to others caused by tobacco smoke.

**Authority:** The inspector has the inherent discretion to issue a warning where warranted by the circumstances, as long as it is done in a consistent manner.

**b) Fine and possible prison term**

The penalty applied against the smoker is decided by the magistrate and can include a prison term under SI 39.

**Authority:** Statutory Instrument 39, Sec. 3 (2) provides for a fine of up to 200 penalty units and a possible prison term of up to 2 years.

**8.3 Notice to the violator and initiation of a nuisance action**

Where a nuisance action is being taken against an owner/occupier/operator for a smoke-free violation, the owner/occupier/operator should be provided with notice of the action as is normally done when carrying out other inspections under the Public Health Act. The procedure for initiating the court action would also be the same. See Manual Section 10.

## Summary: 9. Enforcement Approach

### a) Enforcement Principles and Approach

- To ensure a fair and balanced approach to enforcement, there must be consistency in applying sanctions so that similarly situated person will be treated similarly.
- Generally, a warning will be issued to both the owner/occupier/operator who allow smoking and to the smoker for first time offences.
- After a warning for a first offence, it will be important to demonstrate the government's seriousness about enforcing the law, especially during the launch of the smoke-free inspection process.

### b) Enforcement Actions

#### **Sanctions available for application against the owner/occupier/operator of the public place/workplace/public conveyance include:**

- Notice requiring removal of a nuisance and of action required to remove it and to prevent its recurrence
  - Appropriate against an owner/occupier/operator who allows smoking after a warning has already been issued.
  - Action required to prevent a recurrence might include, such things as the removal of ashtrays, posting "no smoking signs" in specified locations, developing and implementing policies and procedures for handling non-compliance with smoke-free requirements by patrons and employees, and training for employees.
- Complaint filed with a magistrate
  - Appropriate where:
    - A notice of nuisance has been issued and upon re-inspection, smoking is still being allowed;
    - Required action by the notice has not been taken; or
    - The inspector has reasonable grounds to believe a recurrence is likely based on history and/or other factors.
- Fine and possible licensure sanction for failure to post no smoking signs.

#### **Sanctions available for application against the smoker include:**

- Warning
  - Appropriate for first time offences
- Fine of up to 2,500 penalty units and a possible prison term
  - Appropriate for repeat offences

### c) Notice and Process for Initiating a Sanction

- Where a nuisance action is being taken against an owner/occupier for a smoke-free violation, the process for providing the notice and initiating the action are the same as for other actions under the Public Health Act (discussed in section 10).

## 9. PROCEDURES FOR EXECUTING A STATUTORY NOTICE OF NUISANCE AND PROSECUTING A CASE

According to Public Health Act, CAP 295, and the Criminal Procedure Code, CAP 88 of the Laws of Zambia, a complaint before a Magistrate is made by executing a Statutory Notice of Nuisance following a determination of non-compliance with smoke-free requirements during an inspection or investigation.

The following is a guide for completing the procedure for executing a Statutory Notice of Nuisance:

1. Return to office and send a standard informal letter (a normal inspection letter) stating the violation that gives rise to the nuisance and that it may be reported to the Health Board/Council with a view of serving a Statutory Notice if the nuisance is not abated/the violation is not corrected.
2. It is advisable to inform District officials of the nuisance/letter and of the intent to pursue a statutory notice in the event compliance is not forthcoming, and, if appropriate, request assent to continue the legal proceedings in the event of noncompliance with the notice. This might be done by requesting that the nuisance/inspection letter be included on the agenda of the District Health Management Team meeting or Health sub-Committee in the Local Authority.
3. After informing District Officials, as above, or after the District Health Management Team/Local Authority has ratified the minutes, revisit the premises to see if there has been compliance with the letter.
4. If the violator has not complied with the letter, serve the Statutory Notice, which must be signed by the alleged violator, as provided in Sec. 90 of the Criminal Procedure Code.

The Statutory Notice must specify:-

- The nature of the Statutory Nuisance
- The period of time given to remove the nuisance/take corrective action
- The corrective action required to be undertaken to abate the statutory nuisance

Provided the requirements of the notice are substantially and intelligibly set forth, it will be valid even if there is a small defect in the form of the notice.

5. The day after the time given to remove the nuisance/take corrective action expires, revisit the premises to check if the nuisance has been abated/violation corrected.
6. If the “author of nuisance” has failed to take corrective action, prepare a Complaint and accompanying record and present these to the Magistrate. The record presented to the Magistrate must include, in addition to the Complaint, a copy of the letter(s)/Statutory Notice and should include a copy of the Council/District Health Office minutes ratifying service of the notice and the initiation of legal proceedings, if obtained.

7. The Magistrate, upon receiving a complaint will draw up and sign a formal charge or direct a public prosecutor or legal practitioner representing the complainant to draw up and sign, or permit the complainant to draw up and sign the charge. The formal charge must contain two elements: (1) a statement of the offence with which the accused is charged and (2) the particulars of the offence: where and when the offence was committed and by whom.

The prosecutor will require all the facts from the Environmental Health Officer in order to record the appropriate statement of offences with correct and relevant citations of the legal provisions violated.

8. The court will then issue a summons to the author of nuisance/violator and inform the Council/District Director of Health of the date of the hearing.
9. Revisit the premises before the hearing and if adequate corrective action has been taken, consider whether the case should be withdrawn or if it should be continued in order to claim expenses or because there is concern that the corrective action taken will not be sustained.
10. If adequate corrective action has not been taken, continue with the case and appear in court on the specified day and time, with evidence and witnesses.
11. Once satisfied, the court will issue Nuisance/Court Order to the author of nuisance/violator to comply with the Local Authority/District Health Office Statutory Notice.
12. On expiry of the time for compliance provided in the Court Order, revisit the premises and if there still is a failure to correct the violation, inform the Magistrate of that fact, and the Court will follow-up with a contempt of Court action.

Experience has shown a high degree of compliance by owners/occupiers/operators once these steps are followed, irrespective of the outcome of court decisions.

### **9.1 Sample forms**

The forms below are available from the Government Printer.

9.1.1 Formal charge form

IN THE SUBORDINATE COURT OF THE FIRST CLASS FOR ..... DISTRICT HOLDEN  
AT .....

I, ....., environmental health officer with  
.....District Council being dully sworn, charges that (state the  
offence with time and place where committed). I have reason to believe and in fact do believe that  
on 23rdJuly 2009, at 15.00hrs I inspected ..... bar and found that  
..... was smoking in the bar, being a public place.

I hereby apply for the summons to be returnable on ..... 20..... to answer  
the charge of :

*Smoking in a public place contrary to Regulation 3, subsection 1 of the Statutory Instrument No. 39 of 2008 of the Local Government (Prohibition of Smoking in Public Places) Regulations, 2008.*

-----  
Signed by the complainant

Taken and Sworn at this ....., 20.....

-----  
Signed by Magistrate

**Statement of offence:**

*Smoking in public place contrary to Regulation 3, subsection 1 of the Statutory Instrument No. 39 of 2008, the Local Government (Prohibition of smoking in Public Places) Regulations, 2008.*

**Particulars of offence:**

.....on ....., 20..... at ..... in the  
..... District in .....Province of the Republic  
of Zambia did smoke in a public place namely .....  
bar situated at plot No. 3 Central street in  
.....  
.....  
.....

**9.1.2 Summons to accused form**

**IN THE SUBORDINATE COURT OF THE FIRST CLASS FOR ..... DISTRICT**  
**HOLDEN AT .....**

**To:.....**  
.....  
.....  
.....

Whereas your attendance is necessary to answer to a complaint of (state shortly the offence complained of, time and place).  
**‘Smoking in public place contrary to Regulation 3, subsection 1 of the Statutory Instrument No. 39 of 2008 of the Local Government (Prohibition of Smoking in Public Places) Regulations, 2008’.**

You are hereby commanded in the name of the President to appear (in person) before this court at .....on ..... 20.... and on every adjournment of the court until the case be disposed of.

Issued at ..... the ....., 20...

-----  
**Signed by Magistrate**

**9.1.3 Certificate of service form**

**I hereby certify that this .....Day of July 2009, at the above address, I served a true and correct copy of this Summons on ..... by (method of service) personal service and fully explained the contents of the summons to him.**

Received by: ..... Signed: .....

Name: .....

Rank:.....

Signature: .....

**9.1.4 Charge form**

In the subordinate court of the First Class for ..... District hold  
at..... before.....  
on ..... day of ....., 20..  
at ..... hrs in the noon.

The People versus:

Physical address:

Tribe: \_\_\_\_\_

Chief: \_\_\_\_\_

Village: \_\_\_\_\_

Occupation: \_\_\_\_\_

Accused was served on \_\_\_\_\_ with summons dated \_\_\_\_\_

## **10. FILING INSPECTION AND INVESTIGATION REPORTS AND COURT PROCEEDING RESULTS**

Documentation of all matters related to Environmental Health is mandatory. In addition, documentation of inspection and investigation reports is necessary for the following purposes:

- Making follow-ups;
- Supporting any court actions taken;
- Helping the provinces, districts management teams, district councils, local authorities, mines, and health facility staff in assessing the extent of tasks and performance;
- Allowing external supervisors to give advice on matters of importance; and
- Communication to the Ministry of Health.

In addition, the data from inspection/investigation reports and reports on court proceedings are put in the monthly, quarterly, and annual reports. This facilitates monitoring and evaluating trends in compliance at all levels and identifying legal and other problems encountered with inspections and enforcement.

### **10.1 Filing inspection/investigation reports**

The report as it relates to **smoke free laws** should include, among other things, indicators contained in Section 6 of the Manual. A copy of the inspection or investigation report should be sent to the Provincial Medical Officer at the same frequency of other required reports. The inspector also should enter the findings in a register and database designated purely for enforcement of smoke free laws. The register and database can complement each other with the former working as a back up. The format in the register and data base can include:

- a) Name of the establishment or business
- b) Type of establishment (e.g., restaurant, office, school, etc.) and address
- c) Date of inspection
- d) Name of Inspector
- e) Establishment's compliance status: Compliance or Non-compliance:
  - If non-compliance: specify whether the violation has to do with: 1) allowing smoking or 2) failing to post "no smoking" signs.
- f) Name and address of individual(s) smoking in violation of the law, if any

### **10.2 Filing court proceeding results**

Inspectors should also promptly enter into the register and database information on court actions, including:

- a) Names of the parties, case number, and date filed
- b) Type of action: 1) Public Health Act Nuisance action against the owner/occupier/operator of a public place/workplace/public conveyance and briefly describe the violation, or 2) Sanction against the smoker under SI 39
- c) Court result: Violation found or No violation found by the Court

- d) Sanction or remedy imposed by the court, if any
- e) Appealed: Appealed or Not appealed
- f) If applicable, Appeal result

**Summary: 10. Filing inspection and investigation reports and court proceeding results**

Copies of inspection/investigation reports should be sent to the Provincial Medical Officer along with other required reports. In addition:

Inspectors must also enter periodically the findings in a register and database designated for enforcement of smoke free laws, including:

Name of the establishment or business

- a) Type of establishment (e.g., restaurant, office, school, etc.) and address
- b) Date of inspection
- c) Name of Inspector
- d) Establishment's compliance status: Compliance or Non-compliance:
  - If non-compliance: specify whether the violation has to do with: 1) allowing smoking or 2) failing to post "no smoking" signs.
- e) Name and address of individual(s) smoking in violation of the law, if any

Inspectors must also periodically enter into the register and database information on court actions, including:

- a) Names of the parties, case number, and date filed
- b) Type of action: 1) Public Health Act Nuisance action against the owner/occupier/operator of a public place/workplace/public conveyance and briefly describe the violation, or 2) Sanction against the smoker under SI 39
- c) Court result: Violation found or No violation found by the Court
- d) Sanction or remedy imposed by the court, if any
- e) Appealed: Appealed or Not appealed
- f) If applicable, Appeal result

## **11. MONITORING AND EVALUATION**

### **11.1 Role of the Ministry of Health**

The Ministry of Health will regularly review and analyze reports filed by Environmental Health Officers and use information from them to:

- assess the effectiveness of the law, efforts to enforce it, and the degree of support for the law;
- Publicize support for the law;
- Assess and advocate for needed improvements to the law;
- Identify other efforts or measures that need to be taken to enhance compliance; and
- Advocate for additional inspection resources, where necessary.

The government also is required to file reports with the Framework Convention on Tobacco Control Secretariat on implementation of the FCTC, including information on adoption and implementation of smoke-free measures. Inspection and enforcement information will be a key component of the Framework Convention on Tobacco Control reports.

### **11.2 Role of civil society**

Civil society organizations can use this information for similar purposes, to identify ways it may be able to assist, and to play a watchdog role to ensure the government is fulfilling its legal obligations.

### **11.3 Role of Environmental Health Officers**

In addition to completing and filing reports, Environmental Health Officers can let supervisors know of any problems encountered in the field and make recommendations for law and/or internal policy changes that might make inspections, determinations about violations, and enforcement actions easier and/or more successful.

## ANNEXES

### 1. Sample of inspection or investigation checklist and report

Property inspected (name of establishment): \_\_\_\_\_  
\_\_\_\_\_

Owner/occupier (name): \_\_\_\_\_  
\_\_\_\_\_

Physical address, including plot no.: \_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_ Approx. time: \_\_\_\_\_

Inspector's name: \_\_\_\_\_  
\_\_\_\_\_

Inspector's address: \_\_\_\_\_  
\_\_\_\_\_

License type, number, and validity: \_\_\_\_\_

Type of inspection/investigation:

- a) Initial inspection: \_\_\_\_\_
- b) Re-inspection (If re-inspection, please give date of initial inspection and any other follow ups: \_\_\_\_\_)
- c) Investigation: \_\_\_\_\_

### 2. Compliance status

Violation by:	Y/N
Public Place/Workplace/Public Conveyance-allowing smoking	
Public Place/Workplace/Public Conveyance (SI 163 and as a necessary preventive measure under the Public Health Act).	
Smoker(s) on the premises	

If no violation is found, stop here.  
\_\_\_\_\_

If a violation is found:

**3. Violation(s) by owner / occupier/operator of the public place / workplace/public conveyance**

Evidence of Violation	Observed by inspector: Y/N	Observed by witness: Y/N
Owner/occupier/operator or an employee allowed one or more persons to smoke*		
Ashtrays present, with ashes or butts		
Ashtrays present w/o ashes or butts		
Smell of smoke, corroborated by witness report of Owner/occupier/operator failing to stop the violation		
Failure to post "no smoking" signs		
Other		
* A violation for allowing a person to smoke where it is prohibited occurs when the owner/occupier or an employee is aware or should have been aware that someone was smoking and did not ask that person to stop smoking or to leave. If the smoker was asked to stop smoking or leave but refused and the person in charge/employee took no further action, such as calling law enforcement, this still constitutes a violation.		
<b>Name and contact information for the owner/occupier/operator and manager or employee(s) with whom the inspector interacted during the inspection or investigation:</b> .....		
.....		
.....		
.....		
<b>Name(s) and identifying info for witness(es):</b> .....		
.....		
.....		
.....		

**4. Sanction imposed against the owner/occupier**

Sanction	Y/N
Warning	
Notice of nuisance (no specific corrective action required)	
Notice of nuisance with specific corrective action required as follows:	
Complaint filed with magistrate	



**7. Statutory Instrument No. 39 of 2008: The Local Government Act (Laws, Volume 16, Cap 281) (Prohibition of Smoking in Public Places) Regulations, 2008**

In EXERCISE of the powers contained in section eight-four of the Local Government Act, the following Regulations are hereby made:

1. These Regulations may be cited as the Local Government (Prohibition of Smoking in Public Places) Regulations, 2008.
2. In these Regulations, unless the content otherwise requires –
  - “Act” means the Local Government Act;
  - “Area” means the area under the jurisdiction of a council;
  - “Council” means any city, municipal or district council established under section three of the Act; and
  - “Public place” means any building, premises, conveyance or other place to which the public has access
3. (1) A person shall not smoke in a public within the area  
 (2) A Person who contravenes sub-section (1) commits an offence and is liable, upon conviction to a fine not exceeding two thousand five hundred penalty units or to imprisonment for a term not exceeding two years, or to both.

**8. Myths and reality**

<b>Myths</b>	<b>Reality</b>
Second hand smoke is not harmful to health	Second hand smoke is a serious health threat and a significant cause of disease and ill health. Every major scientific body in the world , including World Health Organisation and other research institutions have reached the same conclusion
Smoke free policies violate an individual's right to smoke	The right of a person to breath clean air takes priority over any possible right of smokers to pollute the air
Designated and separate rooms for smokers provide adequate protection from second hand smoke	Designated and separate smoking rooms do not provide effective protection to the public and workers from the deadly effect of second hand smoke
Smoke free laws will result in more smokers smoking in their homes and will expose more children to the dangers of second hand smoke	Smoke free laws encourage adults to quit. When fewer adults smoke children's exposure to second hand smoke is reduced. Smoke free laws also encourage people to adopt smoke free homes voluntarily.
If the demand for tobacco products fell, most countries would see permanent job losses.	Independent studies that use variable measures have repeatedly shown that there would be no significant job losses because of the decline in tobacco consumption. In some cases, there might be even gains. If people don't buy cigarette, they will spend their money on other important goods and services. The only business that is guaranteed to lose money after a smoke free law takes effect is the tobacco industry.
Smoke free laws are unpopular. Most	Smoke free laws are popular; these policies are extremely

people don't want them.	popular and become more popular as the law come into force. In many countries support for smoke free policies is highest among those who know that second hand smoke harms health.
Laws to stop people from smoking in their leisure time are unenforceable.	The experiences of countries around the world show us that this is not the case. Both smokers and businesses overwhelmingly comply with the smoke free laws. Typically, compliance rates are higher than 90%
Smoke free policies are not simply appropriate in this country	Smoke free laws have been introduced and succeeded in big countries and small, urban, rich and rural poor. Smoke free laws work across cultures.

## 9. Common questions on smoke free law

Question	Answer
What is second smoke?	Second smoke is the combination of smoke emitted from the burning end of a cigarette or other tobacco products and smoke exhaled by the smoker.
What is the effect of second hand smoke on non smokers?	Second hand smoke also known as environmental tobacco smoke is a complex mixture of some 4,000 chemicals compounds, including almost 70 known or probable human carcinogens. Health and scientific authorities around the world agree that second hand smoke is a serious threat to human health and that effective action must be taken to reduce exposure.  <b>Their conclusions include:</b> Second smoke is a major cause of several diseases in non-smokers including cancers, coronary heart diseases, sudden infant death syndrome, respiratory illness and asthma attacks.
What about rights of smokers?	The right of a person to breathe clean air takes priority over any possible right of smokers to pollute the air.
What does tobacco free place mean?	Designated public place where it is not allowed to smoke
Do designated smoking rooms provide protection to non smokers?	Only 100% smoke free environment protect non smokers from exposure to second hand smoke. Designated smoking rooms have been known to be ineffective
Who is responsible for enforcement of smoke free law in Zambia?	Local authorities have delegated powers to enforce the law.
What is the penalty for contravening the smoke free law in Zambia (S.I. 39)?	A person who contravenes sub-regulation (1) of Statutory Instrument no. 39 of 2008 commits an offence and is liable, upon conviction to a fine not exceeding two years, or both.

**Annex 9: List of participants who attended the training workshop on the smoke-free laws held from 20<sup>th</sup> to 24 July, 2009 at Chisamba IBIS Gardens, Chibombo.**

<b>S/N</b>	<b>NAME</b>	<b>DESIGNATION</b>	<b>STATION</b>
1.	Mr. Emmanuel Phiri	Chief Environmental Health Officer	Mongu
2.	Mr Charles Kajimo	Chief Environmental Health Officer	Solwezi
3.	Ms Florence Ngala	Chief Environmental Health Officer	Lusaka
4.	Mr Mulonda Mate	Chief Environmental Health Officer	Ndola
5.	Mrs C.C. Makwala	Chief Health Officer	Kitwe Mopani
6.	Mr Moomba K	Chief Health Officer	Chingola Council
7.	His Worship Mr W Singwato	Resident Magistrate	Choma
8.	Mr Mbonge K	Prosecutor	Choma
9.	Mr Mangwato	Chief Reporter	ZANIS- LSK
10.	Mr Fordson Nyirenda	Deputy Director- EoH	MoH
11.	Mr H. C. Mooya	Chief Environmental Health Officer	MoH
12.	Mr M. Muzyamba	Senior Health Inspector	Siavonga
13.	Ms F Ngaba	Chief Health Officer	Luanshya
14.	Mr W Mfula	Chief Health Officer	Livingstone CC
15.	Mr William Ndhlovu	Director Public health	LCC
16.	Ms Doreen Ng'andu	Environmental Health Technologist	Siavonga
17.	Mr M Bwanga	Environmental Health Officer	Mpulungu
18.	Mr F Chibesa	Environmental Health Technologist	Chibombo
19.	Mr M Chaula	Environmental Health Technologist	Nakonde
20.	Mr T Kapeshi	D/Director Public Health	Kitwe CC
21.	Ms J Kunda	Health Inspector	Ndola CC
22.	Mr L Mukosha	Environmental Health Technologist	Choma DHMT
23.	Mr F Chola	District Health Inspector	Nakonde
24.	Ms C Simutele	EHE	Lusaka
25.	Mr Lubasi Maliwo	Environmental Health Officer	Nchelenge
26.	Mr Clifford Fwalanga	Environmental Health Technologist	Mwinilunga
27.	Ms Rose Nondo	Environmental Health Technologist	Livingstone
28.	Mr Davis Silwamba	Environmental Health Officer	Mansa
29.	Mr Godfrey Sichinga	Senior Environmental Health Technologist	Kabwe
30.	Brian Moonga	Programme Officer	ZTCC
31.	Ms R Nathan	Campaign for Tobacco Free kids	Washington, USA
32.	Mr M Musenga	Programme Manager	ZACA
33.	Mr M Ililonga	Executive Secretary	ZACA
34.	Ms P Zulu	Programme Officer	ZACA
35.	Ms R Musako	Consumer Education Officer	ZACA
36.	Ms Theresa Mondela	Programme Officer	ZACA