
To: Infrastructure, Land and Environment Policy Board

On: 18 March 2020

Report by: Director of Communities, Housing and Planning Services

**Heading: Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 – An
Update on the Enforcement of Provisions Relating to Tobacco
and Nicotine Vapour Products (NVPs)**

1. Summary

- 1.1 This report provides an update on the operation of the enhanced tobacco sales enforcement programme and notes its ongoing funding for a further year from the Scottish Government and plans to mainstream both the funding and the programme within the Trading Standards and Licensing service. The report also notes the intention to commence issuing fixed penalty notices for repeated contraventions of the terms of the legislation – in line with the Council's approved Integrated Enforcement Policy.
- 1.2 In 2011, the Scottish Government agreed to provide £44k per annum to Renfrewshire Council for 3 years to fund the rollout of the original Tobacco & Primary Medical Services (Scotland) Act 2010. Local authorities were given a statutory duty of enforcement under the 2010 Act, as well as powers to issue Fixed Penalty Notices in relation to these offences. Within Renfrewshire Council, these powers were delegated to Officers within the Trading Standards & Licensing Team, now within Communities and Public Protection.
- 1.3 As part of that agreement, the Scottish Government required Renfrewshire Council to undertake a programme of activities, which became known as the Enhanced Tobacco Sales Enforcement Programme (ETSEP). Annual targets were set for activities such as advice to traders and test purchasing, and these figures were collated and sent to the Scottish Government on a quarterly basis.
- 1.4 The success of the ETSEP programme, and associated funding led to the Scottish Government offering an initial three years of funding for local authorities to carry out enhanced activities in relation to NVPs in 2017. Part of the funding agreement was that regular performance figures would be submitted to the Scottish Government through the Society of Chief Officers of Trading Standards in Scotland. These figures reflected targets that were broadly similar to those requested for the ETSEP programme. The Scottish Government funding allowed the recruitment of an additional Trading Standards Officer with a focus on carrying out these duties.

- 1.5 Due to the success of this approach, the Scottish Government are now offering a further year of funding to continue the enhanced enforcement of NVPs with a future proposal to include this funding on a permanent basis to allow a mainstream budget to be provided to Trading Standards Teams across Scotland.
 - 1.6 In Renfrewshire, the Trading Standards and Licensing team will continue to undertake this work as part of its routine duties. The work will be carried out by the recently recruited Fair Trading and Licensing Standards Officers.
 - 1.7 These Officers will be taking on age-restricted sales as part of their role, as well as undertaking a 3 to 4-year training qualification to become fully qualified Trading Standards Officers. Targeted test purchasing will be undertaken where necessary, and activity will include the issuing of Fixed Penalty Notices.
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2. Recommendations

- 2.1 It is recommended that the Infrastructure, Land and Environment Policy Board:
 - a) notes the update on activity undertaken to regulate Tobacco, and Nicotine Vapour Products;
 - b) notes the extended funding for a further year and supports the proposed future transfer of the baseline budget from Scottish Government to Trading Standards, to allow continued and enhanced activity to regulate Tobacco and Nicotine Vapour Products; and
 - c) notes the role of the Fair Trading and Licensing Standards Officers in the Trading Standards and Licensing Team to take forward this area of work and the intention to increase enforcement, including issuing fixed penalty notices for repeat offences, in line with the approved Renfrewshire Council Integrated Enforcement Policy.
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3. Background

- 3.1 On 1 April 2011, various provisions of The Tobacco & Primary Medical Services (Scotland) Act 2010 were brought into effect. Officers from the Trading Standards and Licensing Team were authorised to enforce this legislation, which aims to control the sale of tobacco products.
- 3.2 Provisions included introducing an age restriction of 18 for purchasing this type of product, alongside new offences for the purchase or proxy purchase of Nicotine Vapour Products. Certain offences within the 2010 Act, as amended by the 2016 Act can be disposed of by means of a Fixed Penalty Notice, or by referring the matter to the Procurator Fiscal for consideration as a criminal case. Where an offence punishable by Fixed Penalty Notice is observed by Officers, a Fixed Penalty Notice will be issued to the individual committing the offence. After review, and where considered appropriate, unpaid Fixed Penalty Notices are reported to the Procurator Fiscal.
- 3.3 The provisions of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 (hereafter referred to as “the 2016 Act”) came into force in early 2017. This legislation brought in controls on the sale of Nicotine Vapour Products (NVPs), commonly known as “e-cigarettes” to young people under the age of 18. The 2016 Act amended existing legislation, namely the Tobacco & Primary Medical Services (Scotland) Act 2010 (hereafter referred to as “the 2010 Act”), to create a number of offences specifically in relation to the sale of NVPs.

- 3.4 Intelligence gathered from a number of sources has been used to formulate a local risk-based approach to carrying out interventions at premises known or suspected to be selling NVPs. It was agreed that – in line with our Regulatory Services Integrated Enforcement Policy – advice and guidance would be given, wherever possible, to support traders into compliance. Additional funding was received from the Society of Chief Officers of Trading Standards in Scotland, to allow the composition of an age-restricted products “advice pack” which is provided to all traders at time of inspection.
- 3.5 These inspections have been carried out over a three-year period covered by funding received from the Scottish Government. While the primary focus of these visits was to carry out activities in relation to NVPs, Officers also check compliance with all other consumer protection legislation at time of visit. This includes checks on pricing, product descriptions, consumer product safety and weights & measures.
- 3.6 The figures provided below relate to the numbers of inspections carried out each year and the “savings to business” relate to the cost that businesses would have incurred had fines related to the numbers of breaches identified through those visits been applied. (2019-20 figures are for the year to date at time of this report). The “savings to business” reflect the breaches found at time of first visit, which could have resulted in a Fixed Penalty Notice to the trader. The figure is calculated by multiplying the number of criminal breaches found by the amount that could have been levied on the trader by means of a Fixed Penalty Notice, should that trader have paid the fine early (£200 per breach, reduced to £150 for early payment).

Year	No. of visits	Minimum saving to business	Issues identified
2017-18	88	£34,000	Overall low level of compliance – over half had no age verification policy
2018-19	133	£35,000	Overall low level of compliance – over half could not demonstrate due diligence
2019-20 (to date)	56	£21,000	Year to date – still in progress

- 3.7 All enforcement work carried out by the service is in line with the Renfrewshire Council Integrated Enforcement Policy, as approved by the Leadership Board on 14 September 2016. This advocates the use of an enabling approach; to support traders to compliance through advice and guidance, rather than enforcement. In general, this approach is supportive and effective. It allows intelligence to be hardened, assisting the Team in targeting enforcement activities against deliberate and repeat offenders. At this stage however, the legislation and the inspections have now been in place for a number of years and as can be seen from the data over the last 3 years a number of businesses continue to demonstrate an overall low level of compliance. In future where a business has previously received guidance or a warning in relation to non-compliance with the legislation a Fixed Penalty Notice will be issued for further instances of non-compliance.

Implications of the Report

1. **Financial** – the funding for the NVP work has been extended for another year with the proposal to mainstream the funding moving forward.
2. **HR & Organisational Development** – None

3. **Community/Council Planning –**

- *Our Renfrewshire is safe* – By checking and regulating age restricted sales, Renfrewshire will comply with appropriate legislation to keep people under 18 safe from accessing products that are inappropriate.
- *Our Renfrewshire is fair* – By targeting premises that do not comply with regulations, it ensures that legitimate businesses can thrive.

4. **Legal** – This report ensures Renfrewshire Council implements the appropriate legislative requirements.

5. **Property/Assets** - none.

6. **Information Technology** - none

7. **Equality & Human Rights**

- (a) The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.

8. **Health & Safety** - none

9. **Procurement** - none

10. **Risk** – none

11. **Privacy Impact** - none

12. **COSLA Policy Position** – N/A

13. **Climate Risk** - none.

List of Background Papers

None

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