

To: INFRASTRUCTURE, LAND AND ENVIRONMENT POLICY BOARD

On: 8 NOVEMBER 2017

Report by: DIRECTOR OF ENVIRONMENT & COMMUNITIES

Heading: HEALTH (TOBACCO, NICOTINE ETC. AND CARE) (SCOTLAND) ACT 2016 – THE ENFORCEMENT OF NEW PROVISIONS RELATING TO NICOTINE VAPOR PRODUCTS (NVPs)

1. Summary

1.1. The provisions of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 came into force in early 2017. This legislation aims to control the sale of Nicotine Vapour Products (NVPs), commonly known as “e-cigarettes” to young people under the age of 18. The 2016 Act amends the Tobacco & Primary Medical Services (Scotland) Act 2010, to create a number of offences in relation to the sale of Nicotine Vapour Products - including:

- An age restriction of 18 on purchases of Nicotine Vapour Products
- Offences relating to the purchase or proxy purchase of Nicotine Vapour Products.

1.2. Local authorities have a statutory duty of enforcement, as well as powers to issue Fixed Penalty Notices in relation to these offences. In Renfrewshire, these powers have been delegated to Officers within the Trading Standards & Licensing Team who currently check that local traders are complying with the Tobacco & Primary Medical Services (Scotland) Act 2010, as well as other legislation to prevent the underage supply of fireworks, spray paints, butane gas lighter refills, petroleum and DVDs.

1.3. In the first instance, Trading Standards and Licensing Officers will assist local traders to achieve compliance with the provisions of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 through the provision of business advice and support in line with the Integrated Enforcement Policy agreed at Leadership Board on 14

September 2016. Continued contraventions will be considered for enforcement action only if compliance is not reached.

- 1.4. Legal Services have confirmed that as the new Act amends legislation which is already delegated to Officers, the Scheme of Delegated Functions will not require to be changed and support for businesses and enforcement can be started immediately.
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2. Recommendations

- 2.1 It is recommended that the Infrastructure, Land and Environment Policy Board notes the implementation of the new Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 and the associated enforcement duties relating to Nicotine Vapour Products.
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3. Background

- 3.1 Environment & Communities Trading Standards & Licensing Team have been proactive in the field of underage sales in the past, with figures for test-purchase failures falling from 38% in 2007-2008 to 10.1% of traders in 2011. The only case to go to Court in that time resulted in a local trader being fined £2000 for selling cigarettes to a fifteen-year-old girl – the highest fine awarded in Scotland for this offence.
- 3.2 On 1 April 2011, various provisions of The Tobacco & Primary Medical Services (Scotland) Act 2010 were brought into effect, to control the sale of tobacco products and to create a duty on Local Authorities to enforce the provisions of the Act. At that time, Officers from the Trading Standards and Licensing Team were authorised to undertake the enforcement required under the legislation.
- 3.3 Throughout early 2017, the provisions of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 were brought into effect, to update and amend the 2010 Act, to include Nicotine Vapour Products (NVPs) as tobacco products. Provisions include introducing a purchasing age restriction of 18, alongside new offences for the purchase or proxy purchase of Nicotine Vapour Products. At present there is no restriction on the advertising or display of Nicotine Vapour products.
- 3.4 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 can be reported to the Procurator Fiscal.
- 3.5 All enforcement work will be carried out in line with the Renfrewshire Council Integrated Enforcement Policy, as approved by the Leadership Board on 14

September 2016 in compliance with the Scottish Regulators Code of Practice. As such, the initial focus will be on supporting traders to achieve compliance with the legislation through the provision of business advice and support.

- 3.6 The Scottish Regulators Strategic Code of Practice was agreed by the Scottish Government in February 2015. The Code of Practice seeks to ensure enforcement decisions are consistent and transparent and local authorities are encouraged to develop Enforcement Policies in relation to all legislation enforced by the local authority. The Council is required to produce an Annual Statement of Compliance showing how it has met the Code over the previous year. The first Annual Statement of Compliance was approved at the Leadership Board on 19 September 2017.

Implications of the Report

1. **Financial** - None
2. **HR & Organisational Development** - None
3. **Community Planning – Jobs and the Economy –** Enforcement work on age-restricted products helps ensure a level-playing field for traders. This work will ensure Renfrewshire is seen as an attractive place to trade.
Safer and Stronger – Enforcement of this Act will aim to make our communities safer by ensuring that age-restricted products are not sold to underage persons in Renfrewshire. Work on this, in conjunction with the agencies involved in the Community Safety Partnership, will help to reduce anti-social behaviour problems.
4. **Legal** - None
5. **Property/Assets** - None
6. **Information Technology** - None
7. **Equality & Human Rights** - 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** – the proposed new work will not require the Council to gather any additional personal or sensitive data, than is already gathered in the course of their normal functions.
 12. **CoSLA Policy Position** – None
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List of Background Papers

- (a) Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016
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