

REPORT TO INFRASTRUCTURE SERVICES COMMITTEE – 3 OCTOBER 2019

THE TOBACCO AND PRIMARY MEDICAL SERVICES (SCOTLAND) ACT 2010 – ENFORCEMENT ACTION PROGRAMME

1 Reason for Report / Summary

- 1.1 The report seeks approval for the Trading Standards Service to conduct a programme of enforcement in relation to Tobacco and Nicotine Vaping Products (NVP). The programme will consist of maintaining a retail register, conducting test purchasing, education, information, prevention and intervention

2 Recommendations

The Committee is recommended to:

- 2.1 **Agree that the Trading Standards Service will undertake a programme of enforcement by way of advice and information to tobacco and nicotine vaping retailers, including the maintenance of the register of tobacco and nicotine vaping products and the prevention of sales to those under 18 years of age, a programme of inspection and surveillance, when necessary, of premises from which tobacco and nicotine vaping products are sold (including through social media sites) and a thorough investigation of complaints received;**
- 2.2 **Approve Council operated test-purchasing exercises throughout Aberdeenshire, utilising volunteers who are a minimum of sixteen years of age; and**
- 2.3 **Endorse a Council programme of raising awareness of the legislation, particularly as it applies to purchases of tobacco by persons under 18 years of age and by members of the public proxy purchasing on behalf of persons under 18 years of age.**

3 Purpose and Decision Making Route

- 3.1 The purpose of this report is to agree a programme of tobacco and nicotine vaping products (NVP) enforcement, for the period 2019-2020. The programme will ensure that Aberdeenshire meets its duty under Section 26(1) of the Tobacco and Primary Medical Services (Scotland) Act 2010, to carry out a programme of enforcement action, in respect of tobacco, at least once every 12 months. This programme involves the investigation of complaints in respect of alleged offences of this legislation and taking other measures to reduce the incidence of such breaches.
- 3.2 The Council is required to make an annual return to the Scottish Government on its enforcement activities and the level of complaints and problems regarding underage sales of tobacco. The statistics mentioned in paragraph 4.3, were reported as part of this return.

- 3.3 Trading Standards Services in Scotland entered into an agreement with the Scottish Government to increase enforcement activity, in relation to cigarettes and NVP, with a view to reducing the availability of tobacco products to young people, the long term aim being to prevent young people from taking up smoking and nicotine vaping. The Service committed to conducting inspection visits to 20% and to undertaking test purchasing at 10%, of all tobacco and NVP retailers, within Scotland.
- 3.4 Aberdeenshire Trading Standards proposes to continue with a programme of advice to retailers, including inspections of premises where tobacco and NVP are sold and surveillance of premises where complaints or other intelligence indicates that tobacco products may be being illegally sold; continue with test purchasing exercises to establish compliance
- 3.5 We shall continue to support and contribute to the Aberdeenshire and Local Tobacco Alliance (ALTA). In conjunction with Aberdeenshire Public Health, the Alliance will alongside other measures, continue to raise awareness of the legislation in relation to proxy purchases, by under 18 year olds and purchases on behalf of persons under 18 years old.
- 3.6 The enforcement programme for the period 2018-19 was reported to this Committee as a Bulletin item on 29th November 2018. This report recommends that the same programme continues without amendment, for the period 2019-2020.

4 Discussion

- 4.1 Legislation prohibits sales of cigarettes and NVP to under 18 year olds and purchasing of cigarettes and NVP on behalf of under 18 year olds (proxy purchasing). It is also an offence for under 18 year olds to purchase tobacco products. The Act also introduced a requirement for relevant retailers to be registered in order to legally sell tobacco products, NVP or a combination of both. Further Regulations now require standardised plain packaging with statutory warnings and limitations on the capacity of NVP tanks. A display ban applies to tobacco products and a marketing ban applies to both tobacco and NVP.
- 4.2 Test purchasing activity is carried out in line with guidance developed by the Society of Chief Officers of Trading Standards in Scotland (SCOTSS), to help ensure consistency across Scotland. The guidance allows for the test purchase volunteer to adopt a given persona in exceptional circumstances. They may be given an assumed name, address and date of birth but this will only be used where the authority has suspicion that the retailer is test purchase aware and this is the only realistic means of detection. It is anticipated that instances where this is required will be extremely rare and in any case will be subject to specific authorisation by the Head of Service.
- 4.3 In the 12 month period to April 2019, Aberdeenshire Trading Standards conducted 82 Inspections to registered retailers of tobacco and NVP. In the same period, with the assistance of 16 year old volunteers, staff conducted 25 test purchase exercises, resulting in 5 failures. Non-compliant premises were issued with warnings or fixed penalty notices, depending upon previous history of non-compliance. Non-compliant retailers will also be the subject of re-visits.

	Aberdeenshire	Scotland	National Target
Tobacco/NVP Premises	311	10818	N/A
Test Purchase Visit	25 (8%)	12%	10%
Test Purchase Non-Compliant	5 (17%)	12%	N/A
Tobacco/NVP Inspection	82(32%)	42%	20%
Tobacco/NVP Inspection Non-Compliant	7 (9%)	N/A	N/A

- 4.4 Aberdeenshire exceeded the national target of 20% for inspection visits and were below the 10% for Test Purchases. It is noted that the targets are national, and the enforcement activity of each local Authority is combined to provide an overall result. The loss of a dedicated Technical Officer (Under-age Sales) during the period, resulted in a reduced number of test purchases taking place.
- 4.5 In 2018 the ALTA group were presented with the Tobacco Free Generation Award by ASH Scotland, for the nationally recognised proxy sales awareness campaign. The campaign formed part of the 2018-19 tobacco enforcement programme and the Services intends to extend and build upon the previous year's campaign.

5 Council Prioritise, Implications and Risk

- 5.1 This report helps deliver Council Priority 5- Encourage active lifestyle and promote well-being with a focus on obesity and mental health
- 5.2 The table below shows whether risks and implications apply if the recommendations are agreed.

Subject	Yes	No	N/A
Financial		x	
Staffing		x	
Equalities	x		
Fairer Scotland Duty		x	
Town Centre First		x	
Sustainability		x	
Children and Young People's Rights and Wellbeing		x	

- 5.3 An equality impact assessment has been carried out as part of the development of the proposal set out above. It is included as Appendix 1

and there is a positive impact on young people's health and well-being, through reducing access to tobacco and NVP to young persons.

- 5.4 The following Risk have been identified as relevant to this matter on a Corporate Level: Working with other organisations; Social Risk, Changes in Government policy, legislation and regulation. The following Risk have been identified as relevant to this matter on a Strategic Level: Scottish Regulators Code of Practice.

6 Scheme of Governance

- 6.1 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and had no comments to make
- 6.2 The Committee is able to take a decision on this item in terms of Section F 1.1.b of the List of Committee Powers in Part 2A of the Scheme of Governance as it relates to policy and resource issues relating to trading standards, part of economic development and protective services.

Stephen Archer
Director of Infrastructure Services

Report prepared by Gary Glasgow, Principal Trading Standards Officer
06/09/2019

List of Appendices – Appendix 1 Equality Impact Assessment

APPENDIX 1

EQUALITY IMPACT ASSESSMENT

Stage 1: Title and aims of the activity (“activity” is an umbrella term covering policies, procedures, guidance and decisions).	
Service	Infrastructure
Section	Trading Standards
Title of the activity etc.	Tobacco and Primary Medical Services (Scotland) Act 2010- Enforcement action programme
Aims of the activity	To reduce availability of tobacco to under 18 year olds and restrict access to Nicotine Vaping Products by under 16 years of age.
Author(s) & Title(s)	Gary Glasgow, Principal Trading Standards Officer

Stage 2: List the evidence that has been used in this assessment.	
Internal data (customer satisfaction surveys; equality monitoring data; customer complaints).	Data on number of visits, test purchase exercises and likelihood of sales.
Internal consultation with staff and other services affected.	
External consultation (partner organisations, community groups, and councils).	
External data (census, available statistics).	Data on number of visits, test purchase exercises and likelihood of sales across Scotland, SALSUS data.
Other (general information as appropriate).	

Stage 3: Evidence Gaps.	
Are there any gaps in the information you currently hold?	No

Stage 4: Measures to fill the evidence gaps.		
What measures will be taken to fill the information gaps before the activity is implemented? These should be included in the action plan at the back of this form.	Measures:	Timescale:

Stage 5: Are there potential impacts on protected groups? Please complete for each protected group by inserting "yes" in the applicable box/boxes below.				
	Positive	Negative	Neutral	Unknown
Age – Younger	Yes			
Age – Older			Yes	
Disability			Yes	
Race – (includes Gypsy Travellers)			Yes	
Religion or Belief			Yes	
Gender – male/female			Yes	
Pregnancy and maternity			Yes	
Sexual orientation – (includes Lesbian/ Gay/Bisexual)			Yes	
Gender reassignment – (includes Transgender)			Yes	
Marriage and Civil Partnership			Yes	

Stage 6: What are the positive and negative impacts?		
Impacts.	Positive (describe the impact for each of the protected characteristics affected)	Negative (describe the impact for each of the protected characteristics affected)
Please detail the potential positive and/or negative impacts on those with protected characteristics you have highlighted above. Detail the impacts and describe those affected.	By reducing the likelihood of a young person being able to purchase cigarettes and nicotine vaping products you reduce the availability with a view to positively impacting their health.	

Stage 7: Have any of the affected groups been consulted?	
If yes, please give details of how this was done and what the results were. If no, how have you ensured that you can make an informed decision about mitigating steps?	No

Stage 8: What mitigating steps will be taken to remove or reduce negative impacts?		
These should be included in any action plan at the back of this form.	Mitigating Steps	Timescale

Stage 9: What steps can be taken to promote good relations between various groups?

<p>These should be included in the action plan.</p>	
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<p>Stage 10: How does the policy/activity create opportunities for advancing equality of opportunity?</p>
<p>If less young people take up smoking they will have more money to spend on other, hopefully positive, activities.</p>

<p>Stage 11: What equality monitoring arrangements will be put in place?</p>	
<p>These should be included in any action plan (for example customer satisfaction questionnaires).</p>	

<p>Stage 12: What is the outcome of the Assessment?</p>			
<p>Please complete the appropriate box/boxes</p>	<table border="1"> <tr> <td data-bbox="367 1115 555 1167">1</td> <td data-bbox="555 1115 1503 1167">No negative impacts have been identified –please explain.</td> </tr> </table>	1	No negative impacts have been identified –please explain.
	1	No negative impacts have been identified –please explain.	
	<p>This legislation is designed to protect and improve the health of young people. If successful it will have a positive effect.</p>		
	<table border="1"> <tr> <td data-bbox="367 1361 555 1496">2</td> <td data-bbox="555 1361 1503 1496">Negative Impacts have been identified, these can be mitigated - please explain. * Please fill in Stage 13 if this option is chosen.</td> </tr> </table>	2	Negative Impacts have been identified, these can be mitigated - please explain. * Please fill in Stage 13 if this option is chosen.
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<table border="1"> <tr> <td data-bbox="367 1691 555 1825">3</td> <td data-bbox="555 1691 1503 1825">The activity will have negative impacts which cannot be mitigated fully – please explain. * Please fill in Stage 13 if this option is chosen</td> </tr> </table>	3	The activity will have negative impacts which cannot be mitigated fully – please explain. * Please fill in Stage 13 if this option is chosen	
3	The activity will have negative impacts which cannot be mitigated fully – please explain. * Please fill in Stage 13 if this option is chosen		

* Stage 13: Set out the justification that the activity can and should go ahead despite the negative impact.

Stage 14: Sign off and authorisation.

Sign off and authorisation.	1) Service and Team	Infrastructure- Trading Standards		
	2) Title of Policy/Activity	Tobacco and Primary Medical Services (Scotland) Act 2010- Enforcement action programme (if appropriate)		
	3) Authors: I/We have completed the equality impact assessment for this policy/activity.	Name: Gary Glasgow Position: Principal Trading Standards Officer Date: 06/09/2019 Signature:	Name: Position: Date: Signature:	
		Name: Position: Date: Signature:	Name: Position: Date: Signature:	
	4) Consultation with Service Manager	Name: Gary Glasgow Date: 05/09/2019		
	5) Authorisation by Director or Head of Service	Name: Belinda Miller Position: Head of Economic Development and Protective Services. Date:	Name: Position: Date:	
	6) If the EIA relates to a matter that has to go before a Committee, Committee report author sends the Committee Report and this form, and any supporting assessment documents, to the Officers responsible for monitoring and the Committee Officer of the relevant Committee. e.g. Social Work and Housing Committee.			Date: 05/09/2019
	7) EIA author sends a copy of the finalised form to: eia@abdnshire			Date:
(Equalities team to complete) Has the completed form been published on the website? YES/NO			Date:	

