

BIRMINGHAM CITY COUNCIL

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

21 JUNE 2017
ALL WARDS

**REPORT ON CHANGE OF LAW IN RELATION TO NEW RULES FOR NICOTINE-
CONTAINING ELECTRONIC CIGARETTES AND REFILL CONTAINERS**

1. Summary

- 1.1 This report provides Committee with information on the change to the law relating to nicotine-containing electronic cigarettes and refill containers (otherwise known as e-liquids).

2. Recommendation

- 2.1 That the report be noted and outstanding minute number 845 be discharged.

Contact Officer: Sajeela Naseer, Head of Trading Standards
Telephone: 0121 303 6112
E-mail: sajeela.naseer@birmingham.gov.uk

Originating Officer: Adam O'Donnell, Trading Standards Officer

3. Background

- 3.1 The use and popularity of electronic cigarettes has increased over recent years – as a result the EU has introduced the Tobacco Products Directive 2014/40/EU (TPD). The UK Tobacco and Related Products Regulations 2016 implement the TPD in the UK.
- 3.2 The Tobacco and Related Products Regulations 2016 came into force on 20th May 2016 – the legislation included a transitional period allowing the sale of old stock. The law became fully effective on 20th May 2017.
- 3.3 An ASH (Action on Smoking and Health) report from 2016 estimates 2.8 million adults use electronic cigarettes.
- 3.4 The TPD introduces new rules for nicotine-containing electronic cigarettes and refill containers. The Medicines & Healthcare Products Regulatory Agency (MHRA) is responsible for implementing the majority of provisions and has been designated as the competent authority for the notification scheme for e-cigarettes and refill containers in the UK.
- 3.5 The notification scheme requires manufacturers or importers of electronic cigarettes to comply with the requirements of the TPD (shown below) and to inform the MHRA of this compliance and providing trading details.
- 3.6 In brief terms the MHRA are responsible for registration (notification) of products and Trading Standards are responsible for dealing with the sale / supply and labelling of products.

4. Tobacco Products Directive

- 4.1 The TPD introduces new rules which ensure minimum standards for the safety and quality of all e-cigarettes and refill containers.
- 4.2 The TPD requires information to be provided to consumers so that they can make informed choices and ensures an environment that protects children from starting to use these products.
- 4.3 The new requirements:
 - restrict e-cigarette tanks to a capacity of no more than 2ml.
 - restrict the maximum volume of e-liquid for sale in one refill container to 10ml.
 - restrict e-liquids to a nicotine strength of no more than 20mg/ml.
 - require nicotine-containing products or their packaging to be child-resistant and tamper evident ban certain ingredients including colourings, caffeine and taurine include new labelling requirements and warnings require all e-cigarettes and e-liquids be notified to MHRA before they can be sold.

- Consumers and healthcare professionals can report side effects and safety concerns with e-cigarettes or refill containers to the MHRA through the Yellow Card reporting system.
- 4.4 Advice for retailers - from 20 May 2017 when sourcing new supplies of any e-cigarette or e-liquid product retailers should check that details of the notification for the product have been published in the list of Submitted Products (which is a public record of the notifications).
 - 4.5 If the product cannot be found on the MHRA website retailers should ask their supplier to confirm the product complies with the TPD and has been notified to MHRA. If a producer has not notified the product or it does not comply with the TPD, the producer may not supply it to a retailer.
5. CLP Regulation – Classification, Labelling and Packaging
 - 5.1 The European Regulation (EC) No 1272/2008 on classification, labelling and packaging of substances and mixtures is known by its abbreviated form, 'the CLP Regulation'.
 - 5.2 The CLP Regulation applies to any chemical placed on the market including those that may be contained in a device or delivery mechanism such as e-cigarettes and refill containers.
 - 5.3 The CLP Regulation requires chemicals to be classified (identification of all intrinsic hazardous properties) labelled (communicating information about the identified hazards alongside safety instructions) packaged to ensure chemicals are properly and safely contained.
 - 5.4 Classification - the CLP Regulation applies to the chemical substances and mixtures in e-cigarettes and refill containers whether they contain nicotine or not.
 - 5.5 Nicotine is assigned a harmonised classification and labelling, agreed by independent experts across the European Union.
 - 5.6 Labelling - the most familiar aspect of the CLP Regulation is the red-bordered diamond shaped pictogram that illustrates the hazard/s present in a chemical, for example:



- 5.7 Once the classification is determined, the appropriate pictogram should be shown on a CLP hazard label alongside an explanation of the hazard/s

(hazard statements), the appropriate signal word ('warning' or 'danger') and safety instructions precautionary statements) to ensure the chemical is used, stored and disposed of properly.

5.8 Suppliers must label the e-cigarette product according to CLP before placing it on the market.

5.9 For e-cigarettes and refill containers, the requirement for warning symbols, tactile warnings and text relating to the nicotine content depends on the nicotine strength.

6. Issues identified and advice provided

6.1 The following issues have arisen which have been dealt with by way of trader advice / warning:

- False nicotine declarations.
- Failure to include correct warnings.
- Child appealing packaging – must not attract or arouse the active curiosity of children.

6.2 There are ten Birmingham based producers of e-liquid registered with the MHRA (registered with the European Common Entry Gate (EU-CEG) notification portal). A letter of advice and guidance has been issued to each of these producers and follow up visits will be conducted in due course.

6.3 Information relating to the change in legislation will shortly be available on the Trading Standards page of the Birmingham City Council website.

7. The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015

7.1 These came into force On 1 October 2015. This legislation was made under the Children and Families Act 2014 and prohibited the sale of such products to under eighteens. It also makes it an offence for someone to purchase such products for someone under eighteen. There are exemptions for products classified and supplied as medicines as a cessation device.

7.2 Prior to the age restriction coming into force the Trading Standards Service had received 3 complaints about under eighteens having access to Nicotine Inhaling Products. As a result of these officers provided advice on best practice and raised awareness of the legislation due to come into force.

7.3 The Service participated in a regional survey and sent advisory letters to premises that were identified as potential sellers of such products in September 2015. Following on from that officers visited 12 premises with underage volunteers and test purchases were attempted. There was 1 sale made which resulted in an officer warning on that occasion.

7.4 A follow up exercise was carried out in March 2016. The shop that had sold previously was retested and on this occasion refused the sale after asking for identification. This demonstrates that the advice given by officers had been heeded. There has only been one further complaint alleging sales to under eighteens; officers did attempt to do a test purchase but on arrival found that the premises didn't sell such products and, therefore, assume that the complaint was vexatious.

7.5 Officers will continue to provide advice on the sale of age restricted products including nicotine inhaling products.

8. Implications for Resources

8.1 The resources employed in carrying out the work detailed in this report are contained within the approved budget available to your Committee.

8.2 Incoming enquires and complaints are dealt with in the normal way - no additional resources are allocated to this activity.

9. Implications for Policy Priorities

9.1 This work contributes to fulfilling the Council's vision (Vision 2020) set out in the *Council Business Plan for 2016*, to work towards delivering 'a healthy, happy city'.

9.2 The work also supports the Regulation and Enforcement Division's mission statement to provide 'locally accountable and responsive fair regulation for all - achieving a safe, healthy, clean, green and fair trading city for residents, business and visitors'.

ACTING DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers:

GOV.UK advice - <https://www.gov.uk/guidance/e-cigarettes-regulations-for-consumer-products>