



CABINET – 29TH JUNE 2016

SUBJECT: AMENDMENTS TO AUTHORISATION OF OFFICERS WITHIN THE PUBLIC PROTECTION DIVISION

REPORT BY: CORPORATE DIRECTOR, SOCIAL SERVICES

1. PURPOSE OF REPORT

- 1.1 To inform Cabinet of changes to the legislation applicable officers of the Public Protection Division prior to presentation of the report to Council to amend the Council's Constitution to include Psychoactive Substances Act 2016 and the Children and Families Act 2014.
- 1.2 To obtain additional authorisation for officers under the above Acts.

2. SUMMARY

- 2.1 Officers within the Public Protection Division require additional authorisation under Acts of Parliament in order to enforce the legislation and carry out their duties.

3. LINKS TO STRATEGY

- 3.1 Public protection is a statutory duty of the authority and contributes towards the Healthier Caerphilly priority within the Caerphilly single integrated plan, Caerphilly Delivers. The Public Protection Division also contributes to the following Well-being Goals within the Well-being of Future Generations Act (Wales) 2015:

- A prosperous Wales
- A resilient Wales
- A healthier Wales
- A more equal Wales
- A Wales of cohesive communities
- A Wales of vibrant culture and thriving Welsh language

The proposal for additional enforcement powers is also consistent with the five ways of working set out in the sustainable development principle as defined in the Act and contributes to a number of the Well-being goals

4. THE REPORT

4.1 Authorisation of Officers

- 4.1.1 As a result of the introduction of new legislation and following a review of existing authorisations it is considered that the Council's Constitution should be amended to include the following legislation:

- **Psychoactive Substances Act 2016**

The above legislation came into force on the 26th of May 2016 and can be enforced by police, Local authorities, Border Force and the National Crime Agency with the Police taking primary responsibility. The legislation creates offences for the supply, production, import and export of New Psychoactive Substances (NPS) also called “legal highs”. The new law captures any substance intended for human consumption that is capable of producing a psychoactive effect excluding substances, such as alcohol, tobacco, nicotine, caffeine and medical products.

It also provides four civil sanctions – prohibition notices, premises notices, prohibition orders and premises orders (breach of the two orders will be a criminal offence) – to enable the police and local authorities to adopt a graded response to the production, supply etc. of psychoactive substances in appropriate cases. Officers are currently working in partnership with Gwent Police to raise awareness of the legislation; Trading Standards will take responsibility for sales from retail premises and Police where they are sold in other circumstances and environments. Local authorities may issue prohibition notices (to prevent a person from carrying out any prohibited activity specified) in the notice) or a premises notice (to require a person to take all reasonable steps to prevent any prohibited activity being carried out at any premise owned etc. by the person). If the notices are not complied with the local authority can apply to the courts for a prohibition order or premise order. The courts can issue prohibition orders on conviction. Breach of a prohibition order is an offence. Orders can contain an access prohibition. Specific powers are given to authorised persons to enforce such access prohibitions. Magistrates can issue a search warrant to Local Authority officers to enter a premise and to search them for relevant evidence.

- **Children and Families Act 2014**

The above act introduces a number of new powers and responsibilities for the authority's Trading Standards Service.

Purchase of tobacco etc. on behalf of persons under 18

Section 395 of the above Act introduces an offence in England and Wales of “proxy purchasing” of tobacco products and cigarette papers. This makes it an offence for a person aged 18 or over to buy, or attempt to buy, tobacco or cigarette papers on behalf of a person under the age of 18. This section also provides local authority enforcement officers with the flexibility to issue fixed penalty notices if they believe an offence has been committed and powers of entry.

Prohibition of sale of nicotine products to persons under 18

This legislation also makes consequential amendments to integrate the new age of sale offence for nicotine products into the existing legislation for tobacco products i.e. Children and Young Persons (Protection from Tobacco) Act 1991 and Children and Young Persons Act 1933. The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015 made under Part 5 of the above Act, contain provisions which make it an offence to sell certain nicotine inhaling products to persons aged under 18 and for an adult to purchase nicotine inhaling products on behalf of a person aged under 18 (proxy sales of e-cigs and e-liquids). There is an exemption for products that are licensed as either a medicinal product or a medical device and is sold by prescription.

5. EQUALITIES IMPLICATIONS

- 5.1 There are no potential equalities implications of this report and its recommendations on groups or individuals who fall under the categories identified in Section 6 of the Council's Strategic Equality Plan. There is no requirement for an Equalities Impact Assessment Questionnaire to be completed for this report.

6. FINANCIAL IMPLICATIONS

6.1 None, enforcement activities are carried out within normal work programme.

7. PERSONNEL IMPLICATIONS

7.1 None.

8. CONSULTATION

8.1 This report has been sent to the Consultees listed below and all comments received are reflected in this report.

9. RECOMMENDATIONS

9.1 That Cabinet note the implementation of this legislation and refer the recommended changes to the Council's Constitution to Council for determination. The Council's Monitoring Officer make the necessary amendments to the Council's Constitution.

9.2 That the Council's Constitution and terms of reference be amended by adding the following: Psychoactive Substances Act 2016, Children and Families Act 2014.

9.3 That Officers within the Public Protection Division be authorised under the Psychoactive Substances Act 2016 and the Children and Families Act 2014 in order to enforce the legislation and carry out their duties.

10. REASONS FOR RECOMMENDATION

10.1 In order to comply with statutory requirements and to ensure proper and effective enforcement of the legislation.

11. STATUTORY POWER

11.1 Local Government Act 1972, Psychoactive substances Act 2016, Children and Families Act 2014. The discharge of duties under the above legislation is a Cabinet function.

Author: Jacqui Morgan, Trading Standards, Licensing and Registrars Manager – Ext 5034

Consultees: Cllr N George, Cabinet Member for Community & Leisure Services
Dave Street, Corporate Director, Social Services
Rob Hartshorn, Head of Public Protection
Gail Williams, Interim Head of Legal Services/Monitoring Officer
Sue Ead, Solicitor
David A. Thomas, Senior Policy Officer (Equalities and Welsh Language)
Shaun Watkins, HR Manager
Mike Eedy, Finance Manager