



## **CABINET – 31ST JANUARY 2018**

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

**REPORT BY: CORPORATE DIRECTOR, SOCIAL SERVICES**

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### **1. PURPOSE OF REPORT**

- 1.1 To inform Cabinet of changes to the legislation applicable to officers of the Public Protection Division prior to presentation of the report to Council to amend the Council's Constitution to include the Public Health (Wales) Act 2017.
- 1.2 To obtain additional authorisation for officers under the above Act.

### **2. SUMMARY**

- 2.1 Officers within the Public Protection Division require additional authorisation under the Public Health (Wales) Act 2017 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 (Wales) Act 2015:
  - A prosperous Wales
  - A resilient Wales
  - A healthier Wales
  - A more equal Wales
  - A Wales of cohesive communities
  - A globally responsible Wales.

### **4. THE REPORT**

- 4.1 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 Public Health (Wales) Act 2017.
- 4.2 The Act aims to address a number of specific public health concerns, and to create social conditions that are conducive to good health and where avoidable harms can be prevented. It includes provisions relating to obesity, tobacco and nicotine products, special procedures (acupuncture, body piercing, electrolysis, tattooing), intimate piercing, health impact assessments, pharmaceutical services, and toilets for public use. There are staged

commencement dates for the different Parts of the Act which will be enforced/implemented by a variety of organisations. The Parts of the Act which are the enforcement responsibility of the local authority are summarised below.

#### 4.3 **Part 5 Intimate piercing**

The provision relating to Part 5 of the Act - intimate piercing came into force on 1st January 2018. The Act prohibits the intimate piercing of a person who is under the age of 18 in Wales, in any setting. It will also be an offence to make arrangements to perform such a procedure on a person under 18. This Part of the Act can be enforced by police and local authorities.

#### 4.4 **Part 4 Special procedures**

The Act creates a mandatory licensing scheme for practitioners and businesses carrying out special procedures in Wales. The four special procedures specified in the Act are acupuncture, body piercing, electrolysis, and tattooing. It will be an offence for a practitioner to carry out any of these special procedures without a licence, or to perform any procedure from premises or vehicles that are not approved. There will be provision to add to the list of special procedures (or to remove procedures) via regulations, to take account of new practices and changing trends, and any emerging evidence of public health risk. The commencement date for Part 4 is yet to be confirmed.

#### 4.5 **Part 3 Tobacco and nicotine products**

The Act re-states restrictions on smoking in enclosed and substantially enclosed public and work places. Additionally, it places restrictions on smoking in outdoor care settings for children, school grounds, hospital grounds and public playgrounds. The Act gives Welsh Ministers a regulation-making power to extend the restrictions on smoking to additional premises or vehicles, where it's considered that this is 'likely to contribute towards the promotion of the health of the people of Wales'.

4.5.1 The Act establishes a national register of retailers of tobacco and nicotine products. All retailers who sell either tobacco products or nicotine products in Wales will have to register in order to be permitted to sell these products - it will be an offence to sell tobacco/nicotine products from premises (including mobile units) in Wales if they are not on the national register.

4.5.2 The Act provides Welsh Ministers with a regulation-making power to add to the offences which contribute to a Restricted Premises Order (RPO) in Wales. (An RPO prohibits the sale from a premises of any tobacco products to any person, by the business or any of its staff for a period of up to one year). Such offences must relate to the supply, sale, transport, display, offer for sale, advertising or possession of tobacco and nicotine products. The Act also prohibits the handing over of tobacco and/or nicotine products to a person under the age of 18. This relates to situations where, for example, a delivery driver knowingly hands over tobacco or nicotine products to someone under the 18 who is unaccompanied by an adult.

4.6 In other provisions the Act places a duty on the Welsh Ministers to make regulations which require public bodies to carry out health impact assessments in specified circumstances and requires the Welsh Government to publish a national strategy on preventing and reducing obesity. Under the Act, each local authority in Wales will be required to prepare and publish a local toilets strategy for its area. The Act also contains measures aimed at improving the planning and delivery of pharmaceutical services, and strengthening the role of community pharmacy, in promoting and protecting public health. The Act makes a minor technical amendment to the Food Hygiene Rating (Wales) Act 2013 so that the receipts from fixed penalty notices for non-compliance with the food hygiene rating scheme must be used by food authorities (primarily local authorities) to enforce the scheme.

### 5. **WELL-BEING OF FUTURE GENERATIONS**

5.1 The proposals contribute to the Well-being Goals as set out in the Links to Strategy above.

Having regard to the five ways of working as defined within the sustainable development principle in the Well-being of Future Generations (Wales) Act the Public Health (Wales) Act has a strong focus on prevention. Authorising officers to enforce the Public Health Act will enable them to prevent intimate piercing of under 18 year olds, reduce the harm caused by smoking, and impose tighter controls on acupuncture, body piercing, electrolysis, and tattooing.

## **6. EQUALITIES IMPLICATIONS**

- 6.1 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.

## **7. FINANCIAL IMPLICATIONS**

- 7.1 Enforcement activities are carried out within existing work programmes and the authorisation of officers under the Act has no direct financial implications.
- 7.2 The minor amendment to the Food Hygiene Rating (Wales) Act 2013 means that receipts from fixed penalty notices issued in connection with the food hygiene rating scheme will come to Local Authorities. The Council has issued 15 fixed penalty notices and 104 warning letters since the scheme became mandatory in November 2013. The Food Safety Expert Panel in Wales have advised that as the mandatory display has been in place for some time enforcement should be more robust. As we are now no longer sending out warning letters, but directly moving to a fixed penalty notice for non-display food hygiene rating, the level of receipts may rise. The fixed penalty fine is £200 (reduced to £150 if paid within 14 days) and will result in a small amount of additional income which can only be used for food hygiene activities.

## **8. PERSONNEL IMPLICATIONS**

- 8.1 None.

## **9. CONSULTATION**

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

## **10. RECOMMENDATIONS**

- 10.1 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 to make the necessary amendments to the Council's Constitution.
- 10.2 That the Council's Constitution and terms of reference be amended by adding the Public Health (Wales) Act 2017.
- 10.3 That Officers within the Public Protection Division be authorised under the Public Health (Wales) Act 2017 in order to enforce the legislation and carry out their duties.

## **11. REASONS FOR RECOMMENDATION**

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

## **12. STATUTORY POWER**

- 12.1 Local Government Act 1972, The Public Health (Wales) Act 2017. The discharge of duties under the above legislation is a Cabinet function.

Author: Ceri Edwards – Environmental Health Manager  
Consultees: Cllr Eluned Stenner, Cabinet Member for Environment and Public Protection  
Dave Street, Corporate Director, Social Services  
Rob Hartshorn, Head of Policy and Public Protection  
Richard Harris, Audit Manager, Deputy Monitoring Officer  
Lisa Lane, Corporate Solicitor  
Sue Ead, Solicitor  
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Shaun Watkins, HR Manager  
Mike Eedy, Finance Manager