



COUNCIL EXECUTIVE

**FIXED PENALTY PROVISIONS – TOBACCO AND PRIMARY MEDICAL SERVICES
(SCOTLAND) ACT 2010**

REPORT BY ENVIRONMENTAL HEALTH & TRADING STANDARDS MANAGER

A. PURPOSE OF REPORT

The purpose of this report is seek authorisation for the Head of Planning and Economic Development to apply procedures in respect of the issuing of Fixed Penalty Notices (FPNs) for certain offences under the Tobacco and Primary Medical Services (Scotland) Act 2010.

B. RECOMMENDATION

The Council Executive is asked to approve the necessary amendments to the Scheme of Delegation to Officers to: Authorise the Head of Planning and Economic Development to issue FPNs, withdraw FPNs, put in place procedures to consider “representations” in respect of the issuing of FPN’s and authorise officers from Environmental Health & Trading Standards to enforce the relevant provisions of the Tobacco and Primary Medical Services (Scotland) Act 2010.

C. SUMMARY OF IMPLICATIONS

I Council Values	Being open, honest and accountable.
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Policy: None Legal: The Scheme of Delegation to Officers requires to be amended.
III Resources - (Financial, Staffing and Property)	The activities will be delivered within existing budget.
IV Consultations	Legal Services.

D. TERMS OF REPORT

On 1/4/11, the Tobacco and Primary Medical Services (Scotland) Act 2010 (the Act) introduced new offences in respect of the sale and supply of tobacco and tobacco products and gave local authorities the power to issue FPNs in relation to said offences. A report, approved by the Council Executive on 21/7/10, outlined the main provisions of the Act and incorporated a consultation response to Scottish Government. The primary purpose of the Act is to make tobacco less attractive and less accessible to children and young people under eighteen.

The Scottish Government has recently published '*Tobacco Sales – Guidance for Local Authorities – Enforcement Guidance and Protocols*', providing guidance to local authorities on the various aspects of enforcement of the Act, including a suggested standard template FPN. Unfortunately, the date of receipt of this guidance did not allow adequate time to report this matter to the Environment PDSP prior to presentation to the Council Executive and it is considered necessary to have the procedures approved before planned enforcement activity can be undertaken during the forthcoming summer months. The guidance has been observed by Trading Standards staff in the development of procedures relating to the issuing of FPNs and the consideration of any 'representations' made in respect of FPNs. Some of the key aspects covered are:

- That, as a general rule, FPNs will be issued in relation to all relevant offences under the Act. In limited circumstances, the investigating officer may choose not to issue an FPN but to recommend the submission of a report to the Procurator Fiscal.
- The development of procedures for obtaining authorisation for exemption from offences of purchasing or attempting to purchase tobacco products or cigarette papers under Section 5 (2) of the Act.
- Ensuring that a risk assessment to avoid any risk to the welfare and safety of the young volunteer is carried out.
- Identifying the Environmental Health & Trading Standards Manager (or nominee) as the 'deciding official' in the consideration of any 'representations' made by the recipient of a FPN.

E. CONCLUSION

The Council Executive is asked to approve the necessary amendments to the Scheme of Delegation to Officers to: Authorise the Head of Planning and Economic Development to issue FPNs, withdraw FPNs, put in place procedures to consider "representations" made in respect of FPNs and authorise officers from Environmental Health & Trading Standards to enforce the relevant provisions of the Tobacco and Primary Medical Services (Scotland) Act 2010.

F. BACKGROUND REFERENCES

Council Executive Report, '*Consultation Response on Draft Tobacco Regulations*' 21/7/10

Scottish Government document, '*Tobacco Sales – Guidance for Local Authorities – Enforcement Guidance and Protocols*' April 2011

Appendices/Attachments: (i) Procedures for Test Purchase Operations (ii) Procedures for Representations for a Review of the Issuing of a Fixed Penalty Notice

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