

Committee(s): Port Health and Environmental Services Health & Wellbeing Board	Dated: 09/01/2024 02/02/2024
Subject: Trading Standards Update – Nicotine Inhaling Products	Public
Which outcomes in the City Corporation’s Corporate Plan does this proposal aim to impact directly?	1,2,5,6
Does this proposal require extra revenue and/or capital spending?	No
If so, how much?	N/A
What is the source of Funding?	N/A
Has this Funding Source been agreed with the Chamberlain’s Department?	N/A
Report of: Bob Roberts, Executive Director Environment	For Information
Report author: Ian Dobson, Trading Standards Officer	

Summary

The purpose of this report is to inform members of the current situation with regards to sales of illegal nicotine inhaling products (vapes and e-cigarettes), the action currently being undertaken by the City of London’s Trading Standards Service, including enforcement activity.

Recommendation(s)

Members are asked to note the report.

Main Report

Background

1. Nicotine inhaling products, often referred to as vapes or e-cigarettes, are battery-operated devices which heat a solution of nicotine and deliver it to the user in the form of an aerosol rather than through combustion of tobacco. The NHS claim that vaping is 95% safer than smoking tobacco and they, and The UK Health Security Agency (previously Public Health England), promote vaping as a safer alternative to smoking tobacco and as an effective smoking cessation aid for current smokers. The NHS do concede, however, that the long-term risks of vaping are not yet clear and discourage the use of vapes by persons who do not currently smoke tobacco.
2. There are concerns about the popularity of vaping among children and young people and the associated health risks. Nicotine is a poisonous and highly addictive substance which has been shown to harm adolescent brain development and can prove fatal in large doses.

3. A study by public health charity 'Action on Smoking and Health' (ASH) found that in March/April 2023 the proportion of children experimenting with vaping had grown by 50% year on year, from one in thirteen to one in nine. Children's awareness and the promotion of vapes has also grown and this is inevitably linked to the way that vape manufacturers make the products child appealing with packaging design and flavours.
4. Currently, vapes offered for sale are required to be notified to the Medicines and Healthcare Regulatory Agency and must comply with strict standards prescribed by the Tobacco and Related Products Regulations 2016 (TRPRs). The TRPRs stipulate the maximum strength and tank capacity of nicotine solutions, ban certain ingredients, and require specific labelling and health warnings. The TRPRs are defined as safety regulations for the purposes of the Consumer Protection Act 1987 and the enforcement responsibility sits with Trading Standards.
5. The sale of vapes to under 18s is also prohibited by the Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015.
6. Based on the findings of Trading Standards services around the UK, it is apparent that many vapes offered for sale do not comply with the strict requirements of the TRPRs, particularly with respect to maximum tank size, maximum strength of nicotine solution, labelling and presence of toxic metals such as nickel, cadmium and lead.
7. The Tobacco and Vapes Bill, announced in the King's Speech on 7 November 2023, seeks to reduce the appeal of vapes to children by regulating point-of-sale displays and restricting flavours, presentation and packaging of vapes. Restricting the sale of disposable vapes will also be considered. These products are not only attractive to children but are extremely harmful to the environment.
8. The BBC reports that around five million disposable vapes, which contain non-biodegradable plastics and toxic lithium batteries, are thrown away each week in normal bins or on the roadside and that recycling rates are low. Vapes can cause fires in refuse collection lorries and waste treatment facilities if not disposed of correctly, although this has not been an issue within the City to date.
9. The increased use of vapes is concerning from a waste production perspective, particularly single use vapes. Although vape recycling is possible, it is technically difficult due to the varied and complex nature of the products.
10. A recent government consultation on the subject recognised that although there are measures already in place to ensure responsible production and disposal of electronic items through the Waste Electrical and Electronic Equipment Regulations 2013 (WEEE) and obligations under the Waste Batteries and Accumulators Regulations 2009, compliance with these obligations is low, given the recent surge of businesses supplying disposable vapes.

11. There is further work in this area planned as both the WEEE and batteries regulations are being reviewed, with further consultations planned on the subject.
12. Information on disposing of vapes is on the City of London website under the recycling A to Z. Currently, there is a dedicated vape disposal point located in Tesco Cheapside. Additional drop off points will be added to the website as and when they become available.

Current Position

13. City of London Trading Standards Officers (TSOs) are authorised for the purposes of the TRPRs and the Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations.
14. As part of a joint SLA with the Public Health Team and funded by the City's and Hackney's Public Health grants, TSOs have been conducting inspections of retailers selling vapes. Since November 2022 TSOs have carried out 28 visits to retailers to check that vapes sold in the City comply with the requirements of the TRPRs. Retailers are also being reminded of their legal obligation, under the WEEE (Waste Electrical and Electronic Equipment) Regulations, to provide facilities for safe recycling of vapes.
15. Out of the 28 premises visited, problems were found in ten premises. Around twelve thousand non-compliant vapes, and other related products such as oral tobacco and nicotine pouches, have been seized by City TSOs and taken off the market. The retail value of the seized, non-compliant stock is around £64,000. There have been three particularly large seizures of illegal products, one of which was reported on in February 2023 <https://news.cityoflondon.gov.uk/40000-worth-of-illegal-vapes-taken-off-city-streets-set-to-be-destroyed/>
16. Where illegal products are found, Trading Standards will decide on how to deal with the issues identified. In the case of significant seizures, retailers of non-compliant vapes are interviewed under caution with a view to possible prosecution. Where prosecution is not considered appropriate, having regard to the Port Health & Public Protection's Enforcement Policy, seized vapes have been surrendered voluntarily by the seller and safely destroyed by an authorised waste treatment company in accordance with relevant legal and environmental requirements. Sellers are required to meet the cost of secure destruction.
17. One recent inspection in October 2023 resulted in TSOs being obstructed while trying to carry out their duties. As a result, officers received excellent support from City of London Police and a large seizure was made. This matter is currently under investigation.
18. Currently, the Trading Standards Service is conducting a test-purchasing exercise to test retailers' age verification processes for the sales of vapes. An eighteen-year-old member of the trading standards team is visiting all retailers in the City that are known to sell vapes and attempting to make a purchase. Whilst a sale to an eighteen-year-old is not an offence under the Nicotine Inhaling

Products (Age of Sale and Proxy Purchasing) Regulations, it provides an indication that the seller's approach to age verification is not sufficiently robust because they have not effectively implemented a "Challenge 25" scheme, which requires a prospective purchaser of age-restricted products to provide documented proof of their age if they appear to be under the age of 25. Out of 14 purchases attempted, sales were made on 4 occasions without checking proof of age.

19. All schools/colleges within the City of London have been contacted by email to ascertain whether there are any concerns about students using vapes, but none have expressed any concerns.
20. Arrangements are being made for the Trading Standards Service to use fifteen- and sixteen-year-old volunteers for an under-age sales test-purchasing exercise. The exercise is planned to take place during 2024 and will focus initially on retailers that have previously failed a Challenge 25 test-purchase. Prior to commencing the exercise, these retailers will receive written notification of the Challenge 25 test-purchase failure and advice on good practice on sales of age-restricted products.

Corporate & Strategic Implications

21. None

Conclusion

22. The Trading Standards Service plays a significant role in ensuring that consumers in the City of London are not exposed to harm from non-compliant and dangerous nicotine inhaling products and that children and young people are protected from the health risks associated with nicotine consumption and being drawn into nicotine addiction through illegal sales of vapes.
23. If the proposals in the Tobacco and Vapes Bill becomes law, the Trading Standards Service will enforce the new provisions and this protection will be further strengthened.

Appendices

None

Background Papers

None

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