

Report to the Tyne and Wear Trading Standards Joint Committee

14 February 2019

Proposal from Greater Manchester to Introduce a Tobacco Retailer & Wholesaler Licensing System

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Purpose of the report

To update the Committee on the proposal from Greater Manchester to introduce a tobacco retailer and wholesaler licensing system. The proposal provides partners outside Greater Manchester with an opportunity to consider their interest in pursuing this agenda as part of comprehensive approaches to local tobacco control.

Context

1. The Greater Manchester “*Making Smoking History*” strategy identifies addressing tobacco licensing as a key issue for Greater Manchester wide action. The strategy also flags extending smokefree spaces as another potential area for regulatory change. This report sets out the next proposed steps for a regulatory process to better control sales of tobacco in Greater Manchester and build on the popular 2007 smokefree laws as part of a publicly driven movement to “Make Smoking History” in Greater Manchester.
2. The regulatory framework relating to tobacco has changed significantly over the past decade. The promotion of tobacco via mainstream marketing, advertising and sponsorship is now gone; 2007 saw the ground-breaking ‘smokefree’ law come into force; age of sale has increased to 18; vending machines have been removed; tobacco is now sold in standardised packs; cars carrying under 18s should now be smokefree.
3. What has not changed is the ability and capacity of local authorities in England to monitor, control and sanction the sale of tobacco in their communities. This is seen as putting England at odds with other UK jurisdictions in Wales, Scotland and Northern Ireland where tobacco retailer registration schemes are in place.
4. In England no such regulatory powers exist, and the Government’s Tobacco Control Plan for England, “Towards a Smokefree Generation”, published in July 2017, makes no reference to any plans for a tobacco retailer licensing or registration scheme.
5. A public engagement conducted during February - April 2018 demonstrated strong backing for the Greater Manchester “*Making Smoking History*” strategy, including extending smokefree spaces and a tobacco retailer licensing scheme in Greater Manchester, with some 81% supporting the proposal. This confirms previously high levels of support for these measures in other national surveys.

6. An independent study with a representative sample of 352 tobacco retailers across all 10 Greater Manchester localities, asked retailers to what extent they agreed that having a tobacco licence they could lose if they broke the law around underage sales or illegal would deter them from doing so. 82% strongly or slightly agreed, with 69% strongly agreeing.

Benefits of Tobacco Licensing Schemes

7. Such schemes:
 - Protect children from underage sales and sales of illegal tobacco;
 - Helps regulatory services to build more positive relationships with responsible retailers;
 - Protects legitimate business from rogue traders and rogue trade;
 - Fits within the recommendations of the international Illicit Trade Protocol;
 - Provides additional sanctions for local authority regulators;
 - Helps quitters by preventing sale of cheap illegal cigarettes;
 - Empowers planners. Authorities could decide not to grant licences within a certain distance of a school or to allow maximum number of licences for an area;
 - Ensures retailers to receive appropriate information and support to uphold their obligations.

A Way Forward for New Tobacco Regulation in Greater Manchester

8. The 2017 Tobacco Control Plan for England does not intend to seek powers to create a new national regime for tobacco retailing.
9. The Greater Manchester “Making Smoking History” Strategy stated that consideration will be given to ‘a new positive licensing system for Greater Manchester tobacco retailers and wholesalers’. Public opinion surveys have shown that there is widespread support for licensing the tobacco trade.
10. A workshop conducted with senior regulatory services officers and partners from Greater Manchester Police and HMRC indicated a strong appetite to scope potential licensing legislation.
11. A review by the legal services at Manchester City Council, with legal support from the Greater Manchester Combined Authority has been carried out to (a) explore whether existing powers could enable the Combined Authority, and/or the 10 local authorities introduce a licensing scheme(s) and extend smokefree spaces; or (b) other legislative vehicles such as byelaws or a local Act of Parliament would be required.
12. In summary, this review concluded that it would not be possible to make existing powers such as those in operation in Scotland and Wales become a legal function of the Greater Manchester Combined Authority or any Greater Manchester authority.
13. Under section 239 of the Local Government Act 1972, the combined authority or one individual local authority on behalf of the 10 could however promote a local Act of Parliament. The Greater Manchester Leadership Team has agreed a lead local authority route. Manchester City Council will lead the process for Greater Manchester localities. This process is independently open to any local authority.

Proposed Next Steps

14. The process for achieving the implementation of such an Act is complex. The plan of Greater is to table a Bill in November 2019. The draft Bill was expected to be available in January 2019 and will be subject to a regulatory impact assessment and consultation process.
15. There is scope for localities outside of Greater Manchester to work alongside them to pursue similar Bills just as Liverpool, London and Merseyside all took forward independent and identical smokefree Private Bills in November 2004 and 2005. Any locality engaging in the same process could pursue only the licensing element of the legislation should they so wish. Costs and risks could be shared appropriately.
16. Greater Manchester is keen to work with the region and Fresh Smokefree Northeast and with other partners across the North and beyond to understand any interest in the legislation they are taking forward. The experience of Liverpool, Merseyside and London local authorities was that their Private Bills for a smokefree law were superceded by national legislation, which became comprehensive in its scope.

Recommendation

17. The Committee is asked to note the information as contained within the report.

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