

CHESHIRE EAST COUNCIL

Cabinet

Date of Meeting:	4 th February 2014
Report of:	Guy Kilminster, Corporate Manager Health Improvement
Subject/Title:	Proposed amendment to Smoke Free Policy
Portfolio Holder:	Councillors Janet Clowes, Health and Adult Care, and Barry Moran, Performance

1.0 Report Summary

- 1.1 The Smoke Free Policy was adopted in November 2009. Following consultation it is proposed that the current Council Smoke Free Policy be amended to include electronic cigarettes. The use of these 'e-cigarettes' has now been noted in Council offices and other locations, and this is causing some concern amongst staff. The lack of reference to e-cigarettes in the current Policy is leading to a lack of clarity as to the acceptability of their use. It is proposed that the indoor use of e-cigarettes be banned in all Council premises and vehicles. It is proposed to update the Policy at the same time, removing references to the Primary Care Trust.

2.0 Recommendation

- 2.1 That an amendment be made to the Smoke Free Policy to include reference to e-cigarettes and ban their use from all council premises;
- 2.2 That references to the 'Primary Care Trust' in the Policy be removed and replaced as appropriate;
- 2.3 That the Policy be reviewed in 2016 when e-cigarettes are licensed.

3.0 Reasons for Recommendations

- 3.1 In June 2013 Jeremy Mean of The Medicines and Healthcare Products Regulatory Agency (MHRA) said the government had concluded that **e-cigarettes currently on the market do not meet appropriate standards of safety, quality and efficacy**. He said "**levels of contamination**" had been **found** in the products and some were poorly manufactured. There will be no compulsory licensing of the products until 2016 but until then **they are not recommended for use**.
- 3.2 The use of e-cigarettes has divided staff but the majority who responded to the consultation are in favour of a ban.
- 3.3 The Primary Care Trust was abolished in March 2013.

4.0 Wards Affected

4.1 All

5.0 Local Ward Members

5.1 All

6.0 Policy Implications

- 6.1 The Council recognises that there is an overwhelming medical evidence base that proves that the inhalation of tobacco smoke and breathing in second hand tobacco smoke can cause serious damage to public health and can result in death. Second hand smoke is the smoke people breathe in from other people's tobacco smoke and it can cause lung cancer, heart disease and many other illnesses in non-smokers.
- 6.2 The Council considers that all employees, elected members, visitors, clients and contractors have a right to be in a totally smoke free environment when in or on any of its grounds or premises.
- 6.3 The evidence base for e-cigarettes is less robust, but the production and sale of e-cigarettes is currently unlicensed and safety concerns regarding their use have been expressed by the Government.

7.0 Financial Implications

7.1 None

8.0 Legal Implications

- 8.1 From 1st July 2007, virtually all enclosed public places and workplaces in England became smoke-free by the requirements of the Health Act 2006.
- 8.2 The Council also has a legal requirement under Section 2 of the Health and Safety at Work etc. Act 1974 placed on it as an employer to provide and maintain a working environment that is "safe, without risk to health"
- 8.3 The Health Act does not ban e-cigarettes from enclosed public places and workplaces. However, they are currently unlicensed and safety concerns have been expressed. Since the council has a duty to maintain a safe working environment, it can assess the risk such e-cigarettes may pose and may decide on that basis to include them within the Council's Smoke Free Workplace Policy and to ban them from all council premises and vehicles.

9.0 Risk Management

- 9.1 The Council recognises that there is overwhelming medical evidence base that proves that the inhalation of tobacco smoke and breathing in second hand tobacco smoke can cause serious damage to public health and can result in death. Second hand smoke is the smoke people breathe in from other people's tobacco smoke and it can cause lung cancer, heart disease and many other illnesses in non smokers.
- 9.2 The evidence base for e-cigarettes is less robust, but the production and sale of e-cigarettes is not currently licensed and will not be until 2016. Safety concerns have been expressed by Government.
- 9.3 From a health and safety perspective there is anecdotal evidence of e-cigarettes overheating and exploding. The fluid itself may fall under the 'Control of Chemicals Hazardous to Health Regulations' although more guidance is awaited from the Health and Safety Executive. There was also a well reported incident on a coach on the M6 when e-cigarette vapour was mistaken as smoke from an incendiary device leading to a major terrorist alert. Until the e-cigarette industry is regulated and a hazard free product is robustly evidenced, it is prudent to extend the policy to include electronic cigarettes.
- 9.4 There may be some adverse staff reaction to the decision from those currently using electronic cigarettes, but the staff consultation has demonstrated support for the amendment to be made. Consultation with the Unions and through HR has been ongoing. Advice regarding alternative means of reducing nicotine consumption can be offered to members of staff who wish to reduce or quit.

10.0 Background and Options

- 10.1 Cheshire East Council's Smoke Free Workplace Policy was written and approved in November 2009. This policy recognised that employees, elected members, visitors, clients and contractors had a right to a totally smoke free environment under Health and Safety legislation and is in line with the national legislation introduced in England in July 2007 which controls where people cannot smoke in public places and workplaces (indoors and vehicles).
- 10.2 Since this policy was introduced there has been increasing use of electronic cigarettes and there has been increasing concern about their use in the workplace. The World Health Organisation is advising that consumers should not use e-cigarettes until they are deemed safe by a competent regulatory body. The British Medical Association has called for a ban on public "vaping" in the same way that public smoking was banned in 2007.
- 10.3 Under new regulations electronic cigarettes are to be licensed as a medicine in the UK from 2016. However in June 2013 Jeremy Mean of The Medicines and Healthcare Products Regulatory Agency (MHRA)

said the government had concluded that **e-cigarettes currently on the market do not meet appropriate standards of safety**, quality and efficacy. He said "**levels of contamination**" had been found in the products and some were poorly manufactured. There will be no compulsory licensing of the products until 2016 but until then **they are not recommended for use**, he said.

(Source: <http://www.bbc.co.uk/news/health-22870301>)

- 10.4 As part of Cheshire East Council's Workplace Health Initiative to encourage and support employees to give up smoking, the national campaign of "Stoptober" was promoted in October 2013. However Council employees started to contact the Health Improvement Team expressing concern about their colleagues who were using e-cigarettes in the workplace in an attempt to give up smoking.
- 10.5 Investigations into the complaints revealed that the existing Smoke Free Workplace Policy needed to include an amendment to control the use of e-cigarettes in the workplace. The proposed amendment would state that electronic cigarettes would not be allowed to be used in any indoor space in the workplace or inside any Council vehicle. The use of electronic cigarettes outside would **not** be restricted to designated smoking areas where tobacco users are expected to smoke. This amendment would be included until such time that respected research proved that e-cigarettes (or similar electronic nicotine devices-ENDs) were harmless to the user and the passive population around the user. If sufficient evidence is provided that the use of e-cigarettes is harmless then the amendment would be removed from the Smoke free Workplace Policy
- 10.6 During November 2013 a consultation with staff and Union representatives at Cheshire East Council took place through the Social Message Board, Team Talk newsletter, The People's Panel and the Corporate Trade Union Meeting. The 44 responses received during the consultation have been collated by the Health Improvement Team and they indicate that 75% (33 replies) are against the use of electronic cigarettes in the workplace. 25% (11 replies) are in favour of using electronic cigarettes in the workplace.
- 10.7 This suggests that the majority of respondents are in favour of an amendment to the existing Smoke Free Workplace Policy at Cheshire East Council to include the control of the use of electronic cigarettes in the workplace.
- 10.8 The opportunity will also be taken to update the Policy where it refers to the former Primary Care Trust.
- 10.9 The existing Policy requires 12 weeks notice to be given for any agreed amendment. It would therefore be proposed to introduce the new Policy on 1st June 2014.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

Name: Guy Kilminster

Designation: Corporate Manager Health Improvement

Tel No: 01270 686560

Email: guy.kilminster@cheshireeast.gov.uk