Fife Health and Wellbeing Alliance is the community planning partnership with the strategic lead for improving the health of Fifers and reducing health inequalities and represents NHS Fife, Fife Council, the Health and Social Care Partnership and Fife Voluntary Action. The Alliance is accountable to Fife’s community planning partnership - the Fife Partnership, and submits this response on its behalf.

The Bill includes a number of amendments of the Tobacco and Primary Medical Services (Scotland) Act 2010 [TPMS]. As Fife Council Environmental services would primarily be involved from an enforcement perspective, our response mainly relates to that aspect.

Vicarious liability

The presumption in the TPMS is that any person who sells tobacco to an underage person may commit an offence. An LA would normally interpret this as covering both serving staff and registered owners as appropriate as we understand that this was the intention.

However, when a retailer is reported to the PF this view has occasionally been questioned. Other statutes enforced by Trading Standards tend to use the word ‘supply’ rather than ‘sell’ which avoids the discussion as to whether a person without title to the goods can actually sell.

Our concern is that extending the offences in the TPMS to NVPs will mean that businesses that have no prior experience of operating proof of age schemes will now require to operate one and should they fall foul of the legislation an issue may again arise as to who may have actually committed the offence.

Warning notice

Should the seller of NVPs receive a banning order they are under a legal duty to display a notice that they have been banned from selling NVPs. However, there appears to be no requirement to display a warning notice that NVP’s are an age restricted product and therefore an offence to sell it to someone underage.

The TPMS re-stated earlier legislation that a warning notices: “Please Note it is Illegal to Sell Tobacco Products to Anyone Under the Age of 18” must be displayed. It is suggested that NVPs should be added to this requirement, although a single notice covering both products could be accepted where both products are sold.

Banning orders

There have been some recent difficulties with banning orders. When a banning orders was granted in Fife on the owner of a business that person transferred the
lease to a family member and so the premises continued to trade in tobacco products.

It is suggested that a much improved outcome would be achieved by placing a ban on the **premises** from selling tobacco products. There is a precedent as such powers are currently available to Licensing Boards in respect of underage alcohol sales where the premises licence can be reviewed and if necessary suspended or revoked.

**Relevant offences**

The sale of counterfeit and illicit tobacco is offences under reserved legislation and not included as relevant offences within the TPMS when considering banning orders.

We are not clear on the competency of including offences under reserved legislation within the TPMS but should this prove not to be a barrier we would like this issue to be considered, as conviction under the Trade Marks Act 1994 for selling counterfeit tobacco products could be used as an indicator of a person’s fitness to be registered to sell tobacco.

**Financial Memorandum**

As stated in the FM, there is a lack of robust data at present on the actual numbers of premises selling NVPs. The introduction of controls, the requirement for age verification and other factors could potentially lead to a proportion of current sellers discontinuing the sale of NVPs. However, it would appear there continues to be an increase in e-cigarette users in the population.

Premises that currently sell other age restricted products such as tobacco, alcohol or fireworks for example, should already have a proof of age scheme in operation. However, for those that do not, the assistance from local authorities to help introduce a proof of age scheme in order to sell NVPs will place a greater demand on Trading Standards resources.

Test purchase operations are resource intensive but continue to contribute to a reduction in failure rates across Scotland.

Whilst Scottish government made resources available on the introduction of the Enhanced Tobacco Sales Enforcement Programme (ETSEP), the Trading Standards Service has suffered both staff and budgetary reductions in recent years which may be exacerbated with the increased number of new premises selling only NVP’s that will need assistance as stated above.

**Wider Issues**

The Financial Memorandum stated that anticipated costs to the NHS around the smokefree legislation will be ‘modest costs associated with updating existing training and materials’. We believe that the change in message (from whole site to partial areas) will have considerable financial implications associated with amending policies, paperwork, communication materials (printed and digital). This will also impact on staff time and resource revisiting the work completed to date.
NHS Fife have worked hard on communicating the ‘Smokefree grounds’ message to staff, patients and visitors as well as across the community (ongoing via annual radio marketing contract). This has resulted in significant financial outlay to support the development of a high profile marketing campaign covering: new site signage, commissioning of local research with patients, visitors and staff, paid articles in papers and lifestyle magazines, bus stop campaigns, A4 posters for hospital sites and community venues, flyers for car parks, information flyer for staff induction and contract packs to support policy, credit card sized information card to hand to individuals smoking on site, portable pop up stands, Car parking attendant costs etc

Considerable staff time and resources have been required to progress and manage this work. Applying an ‘area designated by regulations’ would require changes to the work undertaken to date which we feel will be detrimental to the progress we have made to date.

The proposal states that the Scottish Government will provide (149 hospitals) with new signage at considerable cost. We believe that as most boards have already gone to some expense to purchase their own signage (in line with Scotland Tobacco Strategy) that this would not be required if the designated perimeter proposal is removed from the Bill.