

## Open Agenda

Copy No:

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### Memorandum for Executive Council

**SUBJECT**

#### **Control of Tobacco and Related Products Bill**

Memorandum by the Chairman of the Public Health Committee

**ADVICE SOUGHT**

1. **Executive Council is asked to consider and advise:**
  - (a) **whether the attached draft Control of Tobacco and Related Products Bill 2019 (Annex A) should be approved;**
  - (b) **whether the Public Health Committee should commence public consultation on the draft bill.**

**BACKGROUND & CONSIDERATIONS**

2. In support of the 'Altogether Healthier' goal in the St Helena 10 Year Plan, the SHG Health Directorate Strategy and Health Promotion Strategic Framework are focused on the Island's most urgent health issue - reducing the high prevalence of Non-Communicable Diseases (NCD) among the Island community.
3. Smoking is a leading risk factor for the NCD that cause the majority of early death, disability (and inability to work) and ill health/chronic conditions on Island. These are cardiovascular disease, a majority of cancers, respiratory disease, kidney disease, and type two diabetes. Smoking is a preventable cause of harm, and reducing the number of people who start smoking, and encouraging and supporting smokers to quit are key objectives.
4. The number of smokers in the St Helena community is very high compared to many countries. Nearly 1 in 4 (24.2%) of all people on Island aged over 15 are smokers, with the highest smoking rate among young adults aged 20-29. This data derives from the 2016 Census (the statistics given relate to people of St Helenian status only). This compares, for example, to 16.8% of people aged over-15 in South Africa, and 25% of people aged 20-29 in the UK.
5. From 2018, SHG and its Health Directorate have started to put in place measures that will contribute to achieving these objectives. These include establishing a Smoking Cessation Service and making available free courses of Nicotine Replacement Therapy; the SHG-wide 'Smoke-Free Government' policy that created smoke-free SHG public sites and ended the practice of sanctioned 'smoke-breaks' for staff; raising the level of tobacco

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taxation (excise duty) to World Health Organisation recommended level (and thereby the purchase price); and undertaking quit/quit support promotion widely in the community.

6. These measures are important, yet there remain important gaps that the international evidence highlights as essential if smoking is to be reduced. The draft Control of Tobacco and Related Products Bill contains a set of measures to address these gaps. We have considered the best evidence about what works to reduce smoking proven across many countries, and received advice and support from major health bodies, including the World Health Organisation. We have considered these in relation to St Helena's own statistics and the way things work in the community, and the legislative measures are tailored to our community circumstances.
7. These actions, combined with those already undertaken since 2018, together will:
  - Discourage people from starting smoking
  - Strengthen protection from the harm of second-hand smoke
  - Help and encourage smokers to quit or start thinking about quitting
  - Make smoking a less prominent feature in and around the community.
8. The measures are summarised below:
  - (a) Part I of the draft Bill clarifies terminology for the specific provisions, and defines tobacco and also tobacco and nicotine products developed in recent years, for example, electronic cigarettes, 'heated tobacco products', oral/chewing, and nasal-use tobacco products.
  - (b) Part II: Smoke-Free Premises and Vehicles. The draft bill updates the earlier Ordinance that decrees smoke-free indoor public places, reflecting the SHG 'Smoke-Free Government' policy, and clarifying definitions to ensure workplaces are included. The new provision is to prohibit smoking in any vehicle (private, public, or for other purposes e.g. voluntary service) with a minor/s (under 18 years) present. This is to protect the community's young people from second-hand smoke. Second-hand smoking is a contributor to respiratory and cardiovascular disease risk later in life, and increases risk of and worsens childhood/adolescent asthma. Young people have a right to breathe safe air and cannot themselves to

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prevent exposure to adults' smoke in vehicles.

- (c) Part III of the draft bill regulates the importation and sale of tobacco and related products.
- i. A merchant or individual who wishes to import and sell tobacco or related products must be registered. No individual may import tobacco or any related products by mail or other means for personal consumption. (Individuals will still be able to bring their 'Duty Free' allowance of tobacco or other products to the island for their personal use). The purpose of registration is to ensure compliance with the legislation, and a means to advise and inform sellers to enable this.
  - ii. To ensure that young people cannot easily access tobacco and related products, sellers of tobacco must require and request identification to prove that young people are aged over 18 years. (ID format will be specified in consultation with relevant authorities). Failing to request and be provided with proof of age will be an offence. Selling tobacco or related products to young people or purchasing or using a minor to purchase tobacco or related products will be an offence. Vending machines that sell tobacco will be prohibited to prevent the development of alternative access to tobacco products occurring without ID. Products that mimic tobacco or cigarettes and related products, such as toy or sweet cigarettes or stationery items are prohibited. These have been proven to normalise and encourage smoking uptake among youth.
  - iii. Tobacco and related products may not be sold on premises that are used for purposes of health care, sports and recreation, government buildings, and educational facilities. The primary change to current practice is that it will no longer be possible for vendors to sell tobacco or related products at any event at Francis Plain or other school sites.
  - iv. All forms of advertising and promoting tobacco and related products by sellers will be prohibited. This includes in-store promotion (including prohibition on any display of tobacco products visible to the public and prohibition of display of price lists), and outside places of sale, in the media by advertisement or other promotion, or any other place, including social media. Sellers will need to place tobacco and related products out of public view (under counter/in cupboard) and produce a plain A4 typed

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list of products and prices (no images or colour) on request only. Various forms of advertising and promoting tobacco are strongly associated with influencing youth uptake of smoking, and also make it more difficult for smokers to quit. This measure is of major importance to de-normalise sale and visibility of tobacco/related products and recognises that they are toxic, albeit legal.

- v. The legislation will regulate import and sale of electronic cigarettes (e-cigarettes, ‘vapes’ or ‘juuls’.) International evidence is clear that these products, which convey a range of toxic chemicals directly into the respiratory system, entail substantial harm to users and that second-hand ‘vape’ is harmful for bystanders. Harms include short-term serious lung damage (including risk of death in specific circumstances, as evidenced in the United States and UK cases.) Evidence to date indicates high likelihood of long-term cancer risk and genetic damage from use. E-cigarettes have been strongly associated with youth uptake – with an epidemic of youth use in the United States. Whereas initially the public health community believed that e-cigarettes might have been a helpful and safer way for smokers to quit, the evidence since shows this is not the case. E-cigarettes have been shown to be substantially toxic, and are not effective as short-term quit devices, instead tending to create ‘dual use’ of e-cigarettes and tobacco - preventing smokers from fully quitting tobacco and using both toxic products longer-term. Many countries are now regulating more strongly and encouraging their people not to use these products. While use on St Helena is currently limited, there is an opportunity to regulate to prevent these products becoming a further problem. Only registered sellers will be able to import and sell e-cigarettes. Any advertising or display in stores or elsewhere will be prohibited. Sale to minors (under 18 years) will be prohibited. Import or sale of sweet flavoured e-liquids or e-cigarette liquids with more than 19mg nicotine will be prohibited. These types have been shown to be particularly addictive, and the flavoured / scented liquids have been shown to encourage addiction especially among young people. Sale of e-cigarettes that have labels that claim to help smokers quit will be prohibited, as the evidence indicates this is not the case, while no e-cigarettes have been registered anywhere in the world as ‘cessation’ devices for this reason.
- vi. ‘Heated’ tobacco devices (for example ‘IQOS’) will be

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prohibited for import or sale. This new form of tobacco has been shown to be as toxic as cigarettes, despite industry claims to be ‘reduced harm’. Oral and nasal tobacco is strongly associated with a range of cancers and will also be prohibited for import or sale. Again while use of these products may not currently be common on St Helena, the evidence from many countries shows that failing to regulate these products can allow them to swiftly become major problems. St Helena has an opportunity to prevent this.

- (d) Part IV of the Bill ensures that tobacco and related products cannot be promoted or advertised in any other way in the community. This measure is important to de-normalise the promotion of tobacco and related products in community life, and prevent covert marketing such as sports or event sponsorship, awards, or giveaways.
- (e) Part V of the Bill will regulate packaging, labelling and product requirements. A key provision is to prohibit sellers from breaking up cigarette packs and selling ‘Singles’. This practice makes smoking especially accessible to young people – enabling early addiction and perpetuating youth use. It also is a barrier to quitting for adult smokers who would otherwise consider quitting, as it keeps smoking convenient and affordable. In the short term the pattern by which some people buy cigarettes will change (buying a pack when paid/receive pension and making that last the period) instead of buying several sticks a day at 30p per stick. Evidence from many countries shows that loss of this form of buying convenience over time encourages youth/young adults to quit. For adults, it does not result in people smoking more (incomes are finite) but changes buying behaviour and in the medium to long term acts as a driver to encourage people to quit.
- (f) Part V of the Bill specifies that tobacco must be ‘labelled in the prescribed manner’. The regulations will specify that tobacco pack labels must be as prescribed by current UK law or South African law on tobacco packaging. This means in effect that importers may only import UK or South African tobacco. The purpose of this provision is to ensure that within a short number of years all tobacco sold on St Helena will be in ‘Plain’ or ‘Standardised’ Packaging. This means that all of the manufacturer’s branding and attractive packaging is removed/prohibited, packs are plain brown coloured, and include very large graphic health warnings that show images

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of the explicit harms of tobacco use. ‘Plain packs’ are proven to deter people from starting smoking and to help smokers quit and many countries are legislating to adopt these. UK currently has Plain Packs. South Africa has a Draft Bill to introduce this and passage is anticipated by 2022. Linking the draft Control of Tobacco and Related Products Bill to packs that comply with either UK or South African labelling requirements allows merchants to continue to source tobacco from South Africa at present. When South Africa passes its updated legislation to require ‘Plain Packaged’ tobacco, St Helena can then undertake secondary legislation to require compliance with the updated South African law or UK requirements. The reason that the draft Bill does not require compliance solely with UK Plain Packaging law (2016) is firstly because St Helena merchants currently source the vast majority of tobacco from South Africa. Importantly also the price of UK tobacco is considerably higher than in South Africa, even without freight. While raising tobacco prices is effective to reduce tobacco consumption, the scale of the increase is too great for this to be an acceptable option for the St Helena community.

- (g) Part VI of the Bill specifies the Offences for breach of the legislation and the penalties to be incurred. These are essential to ensure compliance.
- (h) The measures in this legislation are designed collectively to better protect the community’s health now and into the future. The package of measures will work effectively with those already in place since 2018 and will make smoking less prominent, less attractive, less easily available, and ensure it is not promoted in the community. It will also strengthen the protection of community members, particularly young people, from the harms of second-hand smoke.

## FINANCIAL IMPLICATIONS

9. The measures within the draft bill are not envisaged to entail significant financial implications for merchants, government, or the public. Specifically:

- a. The new Registration process for dealers/Sellers of Tobacco and related products will entail a fee. This will be operationalised using existing administrative structures and processes (similar for example to alcohol sales registration.) The administrative cost to operate this system will not therefore provide notable additional burden. The registration fee will be advised by Public Health Committee however the primary purpose of registration is to enable monitoring of sellers to ensure compliance with the provisions of the Ordinance.

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b. The regulations will specify that merchants that wish to import tobacco products must do so from UK or South Africa. This is designed to provide flexibility for merchants, and these countries are the current sources of products on Island. This measure will not therefore entail additional costs to Island registered sellers.

c. Removal / prohibition of any form of tobacco and related products advertising or promotion either inside or outside stores or in the wider community is not envisaged as entailing significant cost for merchants. Most advertising on Island is in the form of a shop window or door informal signage, and in-store notices, and in-store product display. The relocation of tobacco products to 'out of sight' location in store (for example, under the counter or in a non-public part of the store) can be achieved without significant expenditure.

d. Prohibition on sale of individual/loose cigarettes, from experience in many other countries, will in the short term change the pattern by which people buy cigarettes (i.e. buying a pack when paid / receive pension and making that last a period) instead of buying several a day. For youth smokers the effect generally is to encourage quitting and prevent long-term addiction. For adults, it does not result in people smoking more (incomes are finite) but it does change their buying behaviour and in the medium to long term acts as a further driver to encourage people to quit.

e. The restriction on private import of tobacco and related products (apart from Duty free allowance) may increase merchant revenue from shop sales in the short to medium term.

10. The overall purpose of this legislation is to reduce the consumption of tobacco and tobacco products in its various forms within the community over time. This will undoubtedly have an impact on Government revenues from customs duties but the longer term financial benefits to the Government in terms of reduced Healthcare cost is equally an important consideration. It is not expected that customs revenues will decrease significantly in the short term and revenue performance will be monitored closely.

## ECONOMIC IMPLICATIONS

11. The measures in the draft Bill are not anticipated to have a significant economic effect in the short term. They are proven effective in changing behaviour to reduce smoking uptake and encourage quitting in the medium term and so it is expected that tobacco consumption will decline over time. This would reduce tobacco sales gradually and so merchants would not experience a sharp drop off in revenue and will have time to diversify their sales.

12. For the wider community, the measures will be economically beneficial. Reducing tobacco consumption is strongly associated with increasing household income among the families who have quit smoking (increasing disposable income). Reducing smoking is very

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strongly associated with reduced levels of chronic disease and in the longer term it is anticipated that this will be economically beneficial by maintaining a healthier workforce (less sickness absence, more productive workforce, skill retention via non loss due to heart attack / stroke), and reducing the health budget currently spent on treating NCD and emergency and elective care off Island.

### CONSISTENCY WITH INVESTMENT POLICY PRINCIPLES

13. N/A

### PUBLIC / SOCIAL IMPACT

14. The ultimate aim of the measures in the draft Bill is to reduce the harm caused by smoking to the community of St Helena. Currently the prevalence of tobacco use is high (considerably higher than, for example South Africa and the UK) with one third of men and women aged 20-65 years and half of young adults aged 20-29 smoking. Smoking is the leading risk factor for the main non-communicable diseases that are responsible for the majority of chronic illness, disability and early death in the St Helena community (cardiovascular disease, type two diabetes, cancer, and respiratory disease.) Smoking is a highly preventable risk factor if the most effective measures to reduce consumption are used.

15. The draft bill includes proven, evidence based measures that will address the current gaps in tobacco control on St Helena. For the community the outcomes will be fewer young people starting smoking, increased quitting among adult established smokers, reduced exposure to second-hand smoke, and creating a community culture where smoking is no longer seen and accepted as a commonplace / non-harmful activity.

16. For smokers, the short-term impacts will be to adjust their usual routine by not smoking in a car with a minor present, and if they previously bought single stick cigarettes, instead purchase a pack when they receive their pay/pension and put these aside for the period they usually smoke them over (the amount spent will remain the same.) Young people under 18 will be protected from second-hand smoke in vehicles, they will no longer be able to purchase cigarettes due to the ID requirement and adults will be unable to purchase for young people.

17. E-cigarette users will need to purchase these from registered sellers and flavoured liquids and high nicotine liquid will no longer be available. E-cigarette users will be encouraged to receive support from the Smoking Cessation Service and use Nicotine Replacement Therapy (NRT) to safely and sustainably quit nicotine entirely.

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### ENVIRONMENTAL IMPACT

18. Cigarette litter (inappropriately discarded butts) is a common community complaint, and reducing smoking over time can help reduce this. Cigarette filters are plastic and are one of the most common forms of marine pollution and have been linked to long-term damage to marine life and ecosystems. Reducing smoking can make a positive contribution to protecting St Helena's terrestrial and marine environment, while limiting an eye-sore that detracts from community and tourist enjoyment of the environment also.

### PREVIOUS CONSULTATION / COMMITTEE INPUT

19. The draft bill has been developed with the close consultation and involvement of Public Health Committee members over the last two years. The Public Health Committee approved the final draft of the Bill in November 2019. On 15 November 2019 the draft bill was presented to Informal Legislative Council and Elected Members had opportunity to review and ask questions about the legislation.

### PUBLIC REACTION

20. It is likely that public reaction to the draft bill will be mixed, however with majority support. Support is anticipated from the majority population of non-smokers in the community (more than two-thirds of the whole population) especially for the measures to protect young people and reduce exposure to second-hand smoke. Recognition that smoking-related illness costs the entire community also may encourage people to support the measures to further encourage quit and prevent people starting.

21. Most measures will not impinge on non-smokers in any way. While some smokers may object to the prohibition on smoking in cars with young people under 18 present, in other countries it has been found that this measure tends to be supported also by many smokers who recognise that children and young people do not have a choice on whether they breathe second-hand smoke. Smokers who currently buy single sticks may potentially object to the ending of the practice by some merchants of breaking packs. It is often claimed that these smokers cannot afford to buy a full pack, yet it is not the amount spent over a week/two weeks that will change, it is the loss of the convenience of when they purchase their cigarettes. The measure will only affect the proportion of smokers who find it convenient to buy cigarettes in this way, and this tends to particularly include young smokers.

22. E-cigarette users may object to no longer being able to buy flavoured liquids or certain types of products, however awareness is low among e-cigarette users about the specific harms of these types of the product (on top of the general harms). Further information and awareness about these products in general will be helpful to the community.

23. Merchants will need to register to sell and import tobacco or related products, however this system is already in place for alcohol

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for example, it will be administratively simple. It is unlikely that this would be objected to. Some merchants who currently use large in-store displays to attract purchases may object to having to remove this and keep products out of sight, yet not all merchants display tobacco and it will be only a number of merchants that are affected.

### PUBLICITY

24. Executive Councils decision will be covered in the media briefing following the meeting. Separate publicity is also recommended that there is publicity to the general public to explain the measures in the Ordinance, the reasons that they are important for the health of the community, and any changes individuals may need to make (for example, not smoking in a vehicle with a minor present). The publicity should be undertaken using all media channels (press, radio and digital)

25. In addition there should be specific information prepared to advise merchants about any adjustments they need to make. This can be provided by the Health Directorate.

26. The Health Directorate will expand information and social marketing to the community for quitting smoking. It will also develop material to provide e-cigarette users with full information about harms and safer ways to quit smoking/nicotine for good.

### SUPPORT TO STRATEGIC OBJECTIVES

27. The draft Bill is a key deliverable towards achieving the Island's aim of reducing the present level of chronic disease via the Health Promotion Strategic Framework and Health Directorate Strategy. , It supports the '*Altogether Healthier*' goal in the 10 Year Plan and Strategic Objective 5.1 improve the health of the community.

28. Reducing smoking may also in time contribute to '*Altogether Greener*' goal (reduced litter and marine plastic from filters) and '*Altogether Wealthier*' goal (via anticipated positive impact on household incomes)

### LINK TO SUSTAINABLE ECONOMIC DEVELOPMENT PLAN GOALS

29. N/A

**DFT**

### OPEN /CLOSED AGENDA ITEM

30. Recommended for the Open Agenda.

Corporate Support  
Corporate Services

04<sup>th</sup> December 2019

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