

Cabinet

15th April 2015

Annual Enforcement Programme Children and Young Persons (Protection from Tobacco) Act 1991 and Anti-Social Behaviour Act 2003



Report of Corporate Management Team

Terry Collins, Corporate Director, Neighbourhood Services

Anna Lynch, Director of Public Health

Councillor Brian Stephens, Cabinet Portfolio Holder for Neighbourhoods and Local Partnerships

Councillor Lucy Hovvels, Cabinet Portfolio Holder for Safer and Healthier Communities

Purpose of the Report

- 1 This report reviews enforcement activities under the Children and Young Persons (Protection from Tobacco) Act 1991, the Anti-social Behaviour Act 2003 and the Licensing Act 2003 for the period April 2014 to March 2015 and seeks approval of a new enforcement programme for 2015/16.

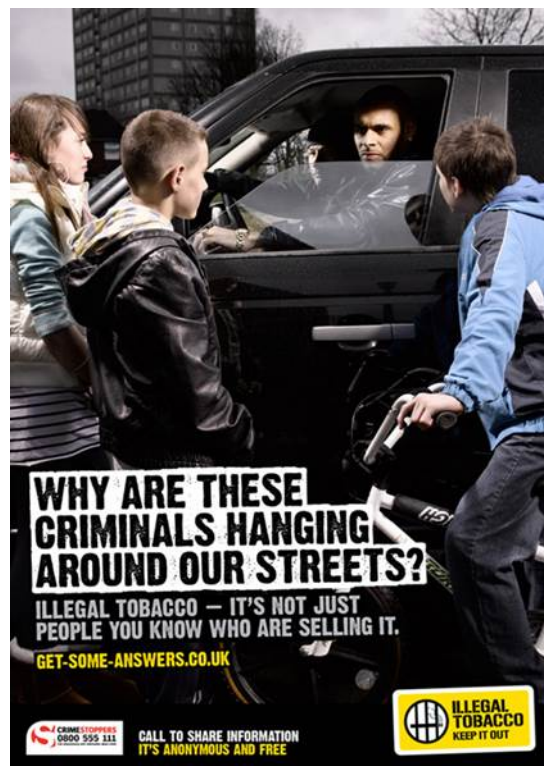
Background

- 2 The Council has a statutory duty to consider, at least once a year, the extent to which the Authority should carry out a programme of enforcement under the Children and Young Persons (Protection from Tobacco) Act 1991 and the Anti-social Behaviour Act 2003. These acts deal with the enforcement of underage sales of tobacco and aerosol paint containers respectively.
- 3 The Council has statutory responsibility for enforcement of the following age restricted products:-
 - Tobacco (Children and Young Persons (Protection from Tobacco) Act 1991)
 - Spray paint containers (Anti-social Behaviour Act 2003)
 - Alcohol (Licensing Act 2003)
 - Videos and DVD's (Video Recordings Act 2010)
 - Cigarette lighter refills (Cigarette Lighter Refill (Safety) Regulations 1999 and Consumer Protection Act 1987)
 - Fireworks (The Pyrotechnic Articles (Safety) Regulations 2010 and Fireworks Act 2003)
- 4 The Authority has also elected to enforce the age restricted sales of:-
 - Solvents and glue (Solvents Intoxicating Substances (Supply) Act 1985)
 - Knives (The Criminal Justice Act 1988, as amended by the Offensive Weapons Act 1996)
 - Access to gaming establishments (Gambling Act 2005)
 - Access to sunbed premises (Sunbeds (Regulation) Act 2010)

5 The availability of illicit alcohol and tobacco has also involved the use of other legislation such as the Trade Marks Act 1994 to tackle counterfeit products as well as the Consumer Protection Act 1987 to tackle incorrectly labelled products. In addition, a wealth of legislation has been introduced to reduce the marketing and promotion of tobacco in an attempt to reduce the number of young people starting to smoke and help established smokers to quit.

6 The enforcement controls on age related products and the supply of illicit alcohol and tobacco contributes to many cross cutting themes. In striving to improve the well-being of individuals and communities, restricting the supply and availability of alcohol and tobacco to children is one of the most important issues in tackling health and inequalities.

7 We have established an intelligence led partnership approach to tackling under age sales and illicit alcohol and tobacco. In particular, we have worked with a variety of enforcement agencies to address problems involving anti-social behaviour and wider criminality which has been associated with the illegal supply of these products.



Illicit Tobacco Poster

8 Whilst the Council has had some previous success in the delivery of tobacco interventions, over the last year we have been able to build upon this success through the establishment of a dedicated tobacco control team following the receipt of additional public health funding. The opportunity to fully utilise the expertise within the team has led to some significant operations which have had an immediate impact on the supply of illicit tobacco across the County.

9 The co-location of the police Alcohol Harm Reduction Unit (AHRU) continues to show benefits in terms of sharing of intelligence, joint operations and the prioritisation of targets that are involved in wider criminality. The supply of counterfeit tobacco is classed as a 'lifestyle offence' under the Proceeds of Crime Act and this has enabled both ourselves and the police to pursue more punitive actions such as the confiscation of assets to further deter the proliferation of illicit sales of tobacco.

10 Cases are becoming increasingly more complex as we attempt to tackle those further up the supply chain. As such we must ensure that our staff continue to develop their skills and knowledge of legal process to ensure that perpetrators are successfully convicted. To this end staff training is ongoing and procedures

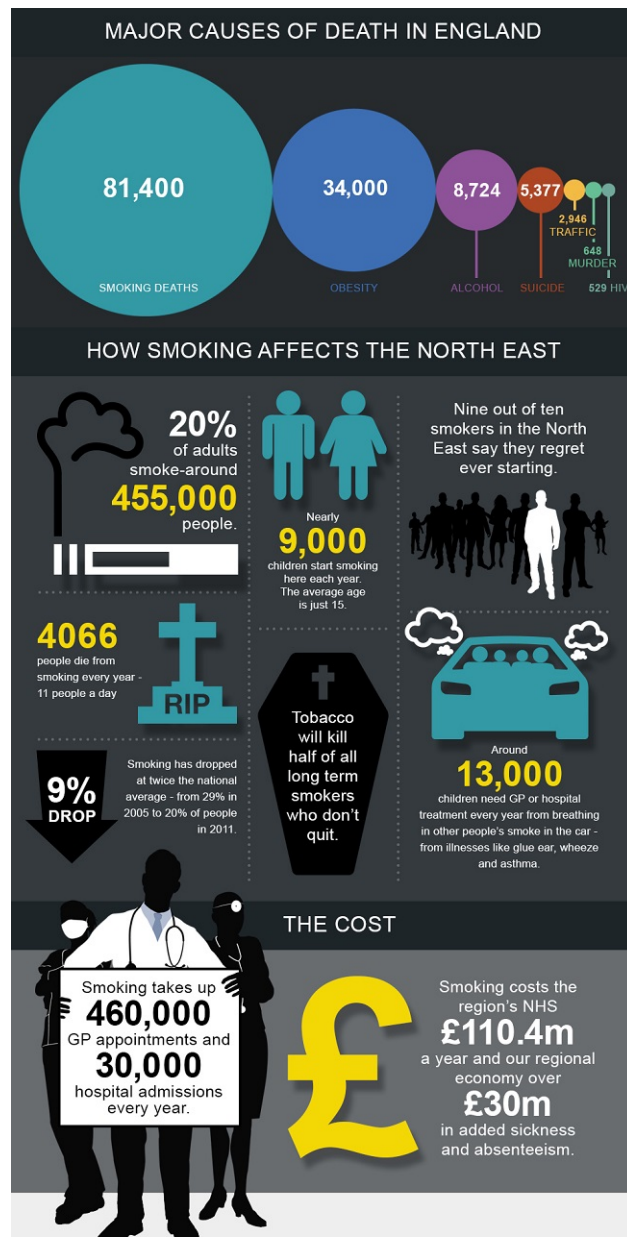
for the gathering and processing of evidence are continuously being revised and improved.

11 Whilst smoking prevalence has dropped by more than 5% since 2009/10 in County Durham, 20.9% of adults in County Durham are estimated to smoke regularly and this rises to 26.0% among people employed in routine and manual occupations.¹ Nearly one in five (18%) of all deaths among adults over 35 are estimated to be as a result of smoking from diseases such as lung cancer, bronchitis, emphysema and heart disease.

12 At current smoking levels, there will be approximately 826 deaths in County Durham each year in adults aged 35 and over which are directly attributable to smoking.² This equates to 275.1 deaths for every 100,000 people living in County Durham.³ This is similar to the North East average of 272.8, but substantially higher than the England average of 210.6.

13 Smoking in the young still remains a problem. In England in 2011 over a quarter of school pupils (25%), had tried smoking at least once and 5% were regular smokers (smoking at least one cigarette a week).² The role of illicit tobacco in tempting children to start smoking is further emphasised by a 2013 survey in which it was found that just under a third (30%) of young smokers bought illicit tobacco and almost a third had been offered illicit tobacco in the street (more than twice as likely as their adult counterparts).⁴

14 Local health data published by Public Health England allows mapping of the prevalence of young people aged 16-17 who are regular smokers (see below)



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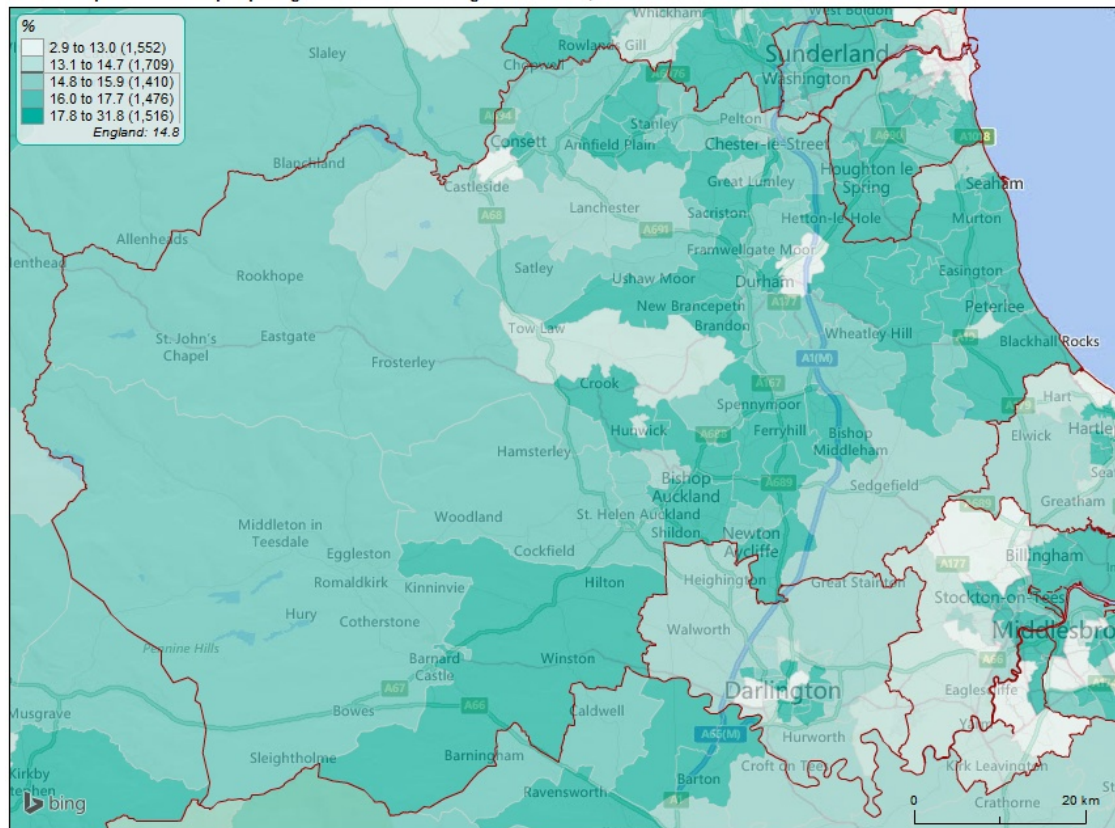
¹ Integrated Household Survey - all adult prevalence data (April 2011 – March 2012)

² NHS Information Centre, Statistics on Smoking in England, 2012

³ London Health Observatory Local Tobacco Profiles

⁴ NEMS North East Illicit Tobacco Survey, 2013

Modelled prevalence of people aged 16-17 who are regular smokers, 2009-2012



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It is no coincidence that the intelligence received relates to hotspots of illicit tobacco supply and correlates very highly with areas where underage smoking is most prevalent. This is also backed up by the findings surrounding supply to young people from the 2013 tobacco survey.

- 15 Reducing the availability of alcohol to children continues to be a priority for the service along with its associated 'proxy' provision and anti-social behaviour issues. In this regard we have joined Durham Constabulary, Community Alcohol Partnerships (CAPs) and local alcohol retailers to implement Operation ARIES (Alcohol Related Intervention Enforcement Support) across County Durham.
- 16 Operation ARIES aims to reduce underage sales of alcohol and anti-social behaviour and also raises awareness of the health and risk issues associated with underage drinking. It follows on from successful pilot schemes in Crook, Peterlee and Stanley for which we delivered retailer training on age related products and undertook test purchasing and compliance testing to ensure systems were in place for prevention of underage sales.
- 17 Tasking of enforcement actions are carried out using the National Trading Standards Intelligence Operating Model (IOM) framework which helps build an intelligence picture locally regionally and nationally.
- 18 The implementation of the Tobacco Products Directive (2014/40/EU) will see the introduction of more legislative controls surrounding the sale of tobacco and

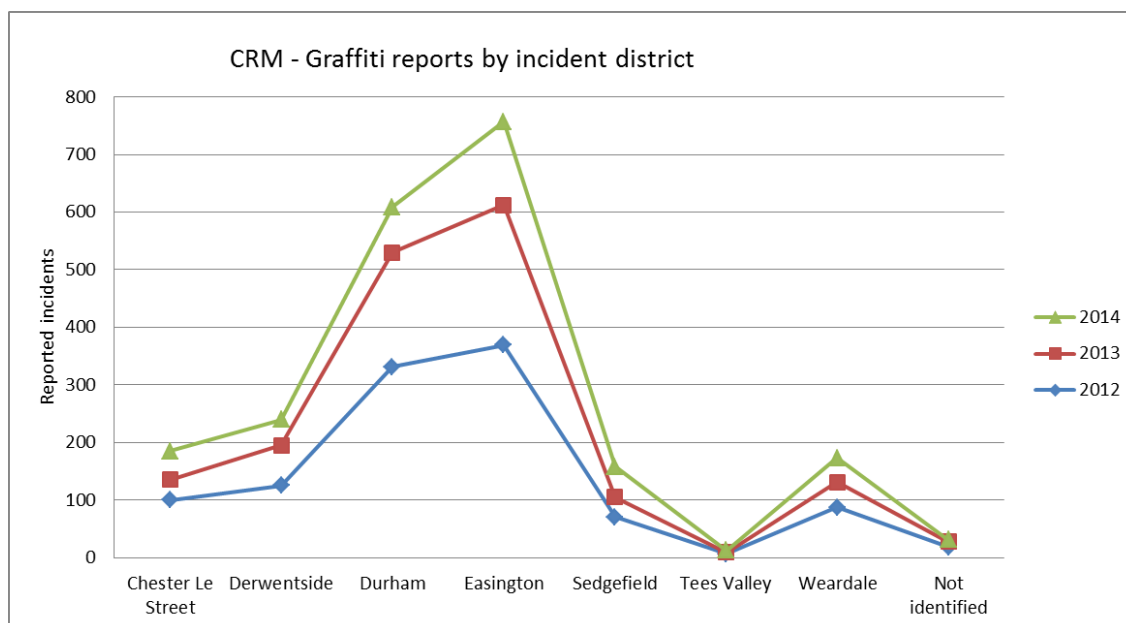
cigarette substitutes such as e-cigarettes. In addition the current government are planning proposals to introduce plain, non-branded packaging for cigarettes and other smoking products. All such measures will likely an extra enforcement duty on local authorities.

Review of 2014/15 activities

- 19 The complaints and intelligence recorded by the Service concerning illegal sales of age restricted products and illegal tobacco for the last two years are tabled below:-

Product	Complaints to service April 2014 to Jan 2015	Complaints to service April 2013 to Jan 2014
Illicit tobacco	74	57
Underage Age Sales Alcohol	47	34
Underage Age Sales Retail Tobacco/E-cigs	12	5
Underage Age Sales Fireworks	1	2
Underage Age Sales Sunbed access	1	2
Underage Age Sales Butane	1	0
Underage Age Sales DVD's/Computer games	1	0
Underage Age Sales Spray paints	0	9
Underage Age Sales Gambling access	0	0
Underage Age Sales Knives	0	0
Underage Age Sales Petroleum	0	0
Underage Age Sales Solvents	0	0
Totals	137	109

- 20 This shows that improved intelligence gathering networks are working with a 26% overall increase in recorded intelligence and complaints. Illicit tobacco and under age sales of alcohol account for over 88% of all referrals and for this reason the vast majority of work this year has centred on these areas.
- 21 The only other significant area of concern is under age sales of tobacco and electronic cigarettes. Complaints ranged from straightforward sales to children from retail premises to proxy sales and sales to children from 'tab' (private) houses. Although sales of electronic cigarettes to minors are not yet a criminal offence there are concerns that despite pack warnings stating the product is not to be sold to under 18's some retailers may supply to children.
- 22 Compared to last year there has been a significant drop in complaints and intelligence relating to the sale to children of spray paints and any associated graffiti arising from spray paint misuse. Figures obtained from the County Council's Customer Relationship Management (CRM) system show a marked decline in the nuisance caused by graffiti over the last three years (see below). Due to the lack of intelligence no test purchasing for spray paints was carried out last year.



23 In accordance with the code of practice on age related products⁵, test purchasing activity is solely prompted by complaints and intelligence. For that reason our efforts have overwhelmingly concentrated on testing for the underage supply of alcohol.

Product	Total attempts		Number of Sales		Percentage		Action Taken 2014/15
	2014/15	2013/14	2014/15	2013/14	2014/15	2013/14	
Alcohol*	26	82	12	17	46%	21%	12 fixed penalty notices 7 premises reviewed
Tobacco	1	11	1	0	100%	0%	Retailer training

* All alcohol test purchasing is carried out jointly with the police Alcohol Harm Reduction Unit

24 Fewer test purchases were undertaken last year yet the failure rate is higher. Whilst this may be interpreted that retailers are taking less care than in previous years to prevent sales, the reality is that the quality and quantity of our intelligence gathering has enabled us to target resources at tackling those premises where we already have evidence that the law is being flouted. In line with good enforcement practice this confirms that we are targeting higher risk premises therefore reducing the inspection burden on compliant traders.

25 Fixed penalty notices were issued to all persons who sold alcohol to children. In addition, all premises that failed test purchases were, in the first instance, offered free retailer training for their staff. All premises that fail test purchases are subject to a revisit to check that they are brought back into compliance. Any premises that failed two alcohol test purchases within a year were immediately taken to review. In all 7 applications for review were taken against premises

⁵ Age Restricted Products and Services: A Code of Practice for Regulatory Delivery published by Better Regulation Delivery Office

with all resulting in more stringent conditions being imposed on their licences. In addition, one premise had its alcohol licence suspended for 6 weeks.

26 Whilst complaints concerning tobacco being sold to children from established retailers are low, the intelligence received and gathered in relation to illicit tobacco shows that sales to children from houses are far more likely.

27 In addition to our traditional test purchasing approach, we continue to carry out compliance checks of 'Challenge 25' schemes operating in active alcohol partnership areas under the ARIES programme. This involves undertaking test purchases with an 18 year old volunteer, who whilst over the legal age to purchase would still have triggered a challenge for identification under the Challenge 25 scheme. The results show that many premises failed to challenge the purchaser appropriately and whilst no criminal offence was committed it is clear that many retailers are failing to properly challenge those under 25.

	Total attempts	Number of Sales	Percentage	Action Taken
Alcohol 'Challenge 25' audits	12	8	67%	Training course offered to all failures followed by follow up test purchase

Those who sold without challenge were sent a letter explaining the outcome and invited to attend our training course. The information will also be used as intelligence to justify a full test purchase using an underage volunteer.

28 We continue to receive intelligence surrounding sales of age related products via social networks such as Facebook. This is a particular problem around Bonfire night when several unregistered sellers of fireworks appear. Warning letters often suffice to put off most sellers but persistent sellers still face a challenge in terms of enforcement. This year we tried to tackle the problem by warning people through a press release of the dangers involved with buying fireworks from these sites especially when illegal fireworks such as bangers are being sold. High visibility inspections and visits were made in hotspot areas.

29 The one area which makes the biggest impact in terms of tobacco control and health inequalities is enforcement against illicit tobacco suppliers. Since April 2014 we have achieved the following results:-

- Finalist in Working Together Great Staff Great Staff Awards for our work on illicit tobacco
- Raids on 12 suspected illicit tobacco or 'tab' houses
- Illicit tobacco seized from 6 retail premises
- 24 people investigated for selling illicit tobacco
- Seizure of 39,499 illegal cigarettes
- Seizure of 809 pouches or 40.45kg of illegal hand rolled tobacco



Illicit Tobacco seizure

- Participation in Operation Henry, involving the use of sniffer dogs to find concealed tobacco products. In the North East the project led to the discovery of large quantities of illicit tobacco products, including 80 kg of HRT in one seizure and nearly 66,000 seized cigarettes in total.
- Several convictions and formal cautions resulting in penalties including fines, a confiscation order of more than £47,000 and two 6 week tagging orders.
- Enterprise Act formal undertakings signed to desist from supplying illicit tobacco.
- Partnership working with 3 housing associations on the criminality behind illicit tobacco which could result in evictions.

30 We continue to run 'Do you Pass' age related product retailer training courses and a further 147 staff have been trained this year. It is believed that no-one who has attended this course has gone on to make illegal sales in the future. This remains a very effective preventative and alternative strategy for dealing with first time offences.

31 In the last year we have seen more intelligence in relation to counterfeit alcohol. This has resulted in several seizures including one haul of 330 bottles of counterfeit Kommissar vodka from 2 licenced premises. Further investigations are continuing.



32 We have had 10 positive press releases surrounding our work on age restricted products, mostly surrounding our success combating illicit tobacco.

Forthcoming legislation

33 Tobacco control measures are currently very high on the parliamentary agenda. The UK has until 29th April 2016 to prepare for the implementation of the EU Tobacco Products Directive. In particular, the Directive introduces:

- Mandatory pictorial health warnings covering 65% of both sides at the top of every cigarette pack
- The option for member states to introduce further controls through the introduction of standardised packaging (The UK Government has already taken powers to do this under the Children and Families Bill).
- A ban on "characterising flavours" in cigarettes, such as fruit or chocolate, from 2016, with menthol banned from 2022.
- A regulatory framework for electronic cigarettes.
- Strong "tracking and tracing" provisions for tobacco products to help fight illicit trade.

- 34 The Trading Standards Institute (TSI) and Action on Smoking and Health (ASH) have produced a helpful timetable featuring information on all changes to tobacco regulations in 2015/16, which is reproduced below:-

Regulations	Act	Date changes come into effect
Point of sale display ban of tobacco in small stores not subject to Sunday Trading Laws.	Health Act 2009	6th April 2015
Proxy purchasing of tobacco and nicotine products (such as electronic cigarettes)	Children and Families Act 2014	2015 (date TBC)
Age of sale for nicotine products (such as electronic cigarettes)	Children and Families Act 2014	2015 (date TBC)
Standardised packaging	Children and Families Act 2014	20th May 2016 (provisional)
Smoking in cars with children	Children and Families Act 2014	2015 (date TBC)
Revisions under the European Union Tobacco Products Directive.	The European Union Tobacco Products Directive	From 20th May 2016

- 35 With regards to tobacco displays, legislation requiring all shops, pubs, clubs and duty free outlets to remove their tobacco point of sale displays comes into force on 6th April 2015. Previously this only applied to larger retail premises. The end to tobacco displays has been brought in by the Government to protect young people who may be the target of tobacco promotion. Evidence suggests that children are more likely to smoke if they are exposed to tobacco displays in shops. Seeing these can also be hard for people trying to quit smoking as well. The Service has published a guide to retailers on the Council website explaining how to comply with this ban and a press release raising awareness on the issue was released in February.



Tobacco displays will be banned from April 6th 2015

Enforcement Programme for 2015/2016

- 36 We will continue with an intelligence led approach towards regulation of age related products. In doing so we will continue to adhere to the Code of Practice for Regulatory Delivery for Age Restricted Products and Services and use the National Trading Standards Intelligence Operating Model to prioritise, scope and task enforcement actions. We will make use of the full range of options open to us including advice, surveys, test purchasing and compliance testing as appropriate and gather and share intelligence to support a multi-agency and problem solving approach to enforcement.
- 37 We will continue to develop our links with partner agencies to widen our sources of intelligence in relation to the illegal supply of age related products and raise awareness of the wider health and criminality issues associated with the supply of illicit alcohol and tobacco. We will continue to support partnership approaches to tackling health and anti-social behaviour issues arising from the misuse of alcohol and tobacco through support and engagement with projects such as ARIES.
- 38 We will continue to target illicit tobacco as a priority for enforcement with its links to health deprivation and other criminal activity. The appointment of three temporary Tobacco Control Officers has enabled us to make a step change in enforcement in this area which has already had a significant impact on the level of crime in this area. With many targets also of concern to the police for other criminal activity such as money laundering the impact of multi-agency enforcement is reaching far beyond the initial focus on illicit tobacco. To this end the benefits of this approach to the community of this work is greatly enhanced.
- 39 We will continue to offer our 'Do You Pass' Retailer training as an alternative enforcement intervention for first time offenders and as an integral part of the ARIES alcohol partnership delivery. In addition to continue to develop the Durham County Council website as a source of information and guidance for businesses in relation to legislative controls on age related products particularly when faced with the introduction of new legislation.
- 40 With regard to other areas of age related legislation such as butane, fireworks, knives, access to sunbeds and use of gaming machines etc. we will continue to gather intelligence and evidence of illegal activity and respond with advice or enforcement as appropriate.
- 41 We will continue to develop effective working partnerships with the Police, HMRC, FRESH, Balance and the Health Services to attempt to tackle both the criminal and wider health issues surrounding the illegal supply of age related products. We will also continue to work with FRESH and other partners to highlight the impact of the supply of illicit tobacco on the health of our communities through a range of communications and associated publicity.



- 42 We will continue to make use of 'exceptional circumstances' to justify situations where our test purchase volunteers will be allowed to give false information about their age where there is evidence that sellers are asking the age of the volunteer without asking for ID.
- 43 The service will continue to contribute to the overall strategic development of alcohol and tobacco control locally, regionally and nationally.
- 44 We will continue to use directed surveillance under the Regulation of Investigatory Powers Act 2000 with regard to illegal sales from private houses and the newly growing area of sales via social networking sites such as Facebook where appropriate.
- 45 For more serious investigations involving lifestyle offences relating to the supply of illicit tobacco and alcohol the service we will use Durham Constabulary's financial investigation team authorised under the Proceeds of Crime Act 2002 in order to seize and confiscate assets increasing the deterrent factor for this type of crime.
- 46 In summary, the enforcement programme for 2015/2016 consists of those activities set out below:
- (a) An intelligence led approach to under age sales enforcement and tobacco control based on the National Trading Standards Intelligence Operating Model and will follow the principles outlined in the Age Restricted Products Code of Practice.
 - (b) Investigation of all consumer and trader complaints.
 - (c) Continuation of our joint working with the Police Alcohol Harm Reduction Unit and other agencies to adopt a holistic approach to solving problems associated with the accessibility and misuse of age related products. To include education, surveillance and test purchasing as well as other alternative enforcement strategies as appropriate.
 - (d) Continuation of our 'Do You Pass' retailer training including its use as an alternative to fixed penalty notices and other formal action.
 - (e) Continuation of our work in partnership with the police, HMRC and other agencies to tackle the problem of proxy sales and sales from private premises to children, particularly in relation to alcohol and tobacco.
 - (f) Continuation with a policy of reviewing licensed premises when appropriate.
 - (g) Continuation of our work strategically both corporately and with partner agencies to tackle health inequalities and antisocial behaviour associated with the misuse and illegal supply of age restricted products, in particular alcohol and tobacco.
 - (h) Enforcement of any new legislation for which we may be statutorily responsible that may arise from the implementation of the EU Tobacco Directive, The Health Act 2009 or Children and Families Act 2014.

Conclusion

- 47 The agreement of the proposed Enforcement Programme for 2015/2016 will ensure that the Council continues to address the problem of underage sales and access to age restricted products by those under age as well as the wider health and criminal issues surrounding these products.

Recommendations and Reasons

- 48 That the Enforcement Programme for 2015/2016 is adopted by Cabinet.

Background Papers

- The Local better Regulation Office (LBRO) Age Restricted Products and Services Code of Practice

Contact: Joanne Waller Tel: 03000 260924

Appendix 1: Implications

Finance

None

Staffing

The proposed enforcement programme has been based around exiting levels of staffing resources

Risk

There are significant reputational risks to the authority in failure to tackle the availability of age restricted products to those underage. In not combating underage sales it could lead to a rise in accessibility of products that can contribute negatively to the users health and wellbeing as well as contributing to a potential rise in crime and disorder and anti-social behaviour in the County

Equality and Diversity / Public Sector Equality Duty

An Equality and diversity impact assessment screening has been completed and no adverse equality and diversity implications have been identified. This will have a positive impact on all young people and children.

Accommodation

None

Crime and Disorder

Will help to discourage sales of age-restricted products to young people in the community and consequently influence their behaviour. The outcome of the enforcement and educational aspects to the program will seek to reduce accessibility of age restricted products and punish those who do supply. Failure to tackle the supply of age restricted products can lead to an increase in anti-social behaviour, crime and the fear of crime.

Human Rights

None

Consultation

A consumer survey conducted in 2005, rated this area of work as a high priority.

Procurement

None

Disability Issues

None

Legal Implications

The council has a statutory duty to enforce the provisions of legislation controlling the supply of age restricted products. The County Council has also chosen to adopt other pieces of legislation that govern the supply and availability of other (i.e. knives) areas. These are long standing obligations and commitments.