

Cabinet

19 March 2009



Annual Enforcement Programme Children and Young Persons (Protection from Tobacco) Act 1991 and Anti Social Behaviour Act 2003 Key Decision SHSC/EN/15/08

Report of Terry Collins, Corporate Director, Neighbourhood Services Cabinet Portfolio Member for Environment – Councillor Bob Young

Purpose of the Report

- 1 This report reviews our enforcement activities under the Children and Young Persons (Protection from Tobacco) Act 1991, the Anti-social Behaviour Act and the Licensing Act 2003 for the period April 2008 through to February 2009 and asks Members to approve a new enforcement programme for the year beginning April 2009.

Background

- 2 The County 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 under age sales of tobacco and aerosol paint containers respectively.
- 3 The Authority holds joint responsibility with the police, for taking enforcement action to prevent underage sales of alcohol under the Licensing Act 2003. In addition, it has responsibility for the enforcement of age restrictions with respect to the sale or supply of videos and DVD's, cigarette lighter refills and fireworks. The Authority also enforces the provisions of the Solvents Intoxicating Substances (Supply) Act 1985.
- 4 From 1 April 2008 until 31 January 2009, the Service had received the following numbers of complaints, or information, in respect to sales of age restricted products (last year's figures in brackets): -
 - Alcohol 17 (53)
 - Tobacco 12 (14)
 - Aerosol Paints 0 (1)
 - Fireworks 0 (0)
 - Videos/DVD's 1 (0)
 - Lighter Refills 0 (2)
 - Solvents 0 (0)

- 5 Any trader who is the subject of a complaint, receives a visit from an Officer of the Service to advise them of their legal obligations. This advice is subsequently confirmed in writing and a follow up test purchase attempt is made, at a later date.
- 6 The Service carries out test purchasing using under age volunteers according to a tightly controlled and risk assessed procedure, based on Local Authority Coordinators of Regulatory Services (LACORS) guidelines.

Test Purchasing of Age Restricted Products

- 7 As well as responding to complaints and other intelligence, the Service has completed a series of projects to determine compliance for the full range of age restricted products. This work was programmed to take place over the full year. Our progress against this plan is detailed in Appendix 3.
- 8 Since 1 April 2008, the Service has completed the following test purchases (last years figures in brackets): -

	Test Purchases	Sales	Percentage of Illegal Sales %
Alcohol	13 (36)	0 (3)	0 (8)
Aerosol Paints	5 (6)	0 (0)	0 (0)
Fireworks	5 (4)	0 (0)	0 (0)
Tobacco	10 (18)	0 (4)	0 (20)
Videos/DVD's	20 (15)	2 (0)	10 (0)
Lighter Refills	6 (7)	0 (0)	0 (0)
Solvents	6 (7)	0 (0)	0 (0)
TOTAL	65 (93)	2 (7)	3 (7)

Review of Alcohol Control Activities

- 9 Complaints relating to under age sales of alcohol for retail premises have dropped sharply over the last year and whilst it is the highest cause for complaint it is now closely followed by complaints relating to illegal sales of tobacco. Many of the complaints and intelligence are related to alcohol fuelled anti-social behaviour by youths rather than direct observation of retail sales. The decrease in complaints is pleasing and hopefully reflects the success of our test purchasing regime. It is clear however that youths are still gaining access to alcohol either through proxy sales, parents and friends, or from private house sales.
- 10 We continue to work closely with the police and licensing authorities who provide much of our information. In particular we have direct contact with many Police Community Support Officers who provide us with intelligence on a regular basis.
- 11 It is heartening that, combined with a drop in complaints, no sales were made at all to our under age test purchasers of alcohol this year, compared

with an 8% sale rate last year. In this area at least it would seem that our ongoing advice and test purchasing, combined with our police colleagues efforts, has proved to be an effective deterrent to retailers in the County.

- 12 Trading Standards Services are responsible bodies under the Licensing Act 2003. This means that the Service can make relevant representations and objections when alcohol licence applications are made if continued sales of illegal sales of alcohol are proven to have taken place. We revisit any premise where an illegal sale has taken place.
- 13 With the transition to a unitary council, the licensing and trading standards functions will all come under Neighbourhood Services in a single Authority. It is hoped that closer working with our licensing colleagues will help to ensure that illegal sales of alcohol are kept to a minimum.

Review of Last Year's Tobacco Control Activities

- 14 Since 1 April last year, officers have carried out 119 visits to retail premises to ensure that all statutory warning notices, relating to tobacco sales, were being displayed. Only 7 premises (6%) failed to comply with these provisions. This is a substantial decrease on the previous year when 20% of premises were found to be non-compliant. It is pleasing to note that all vending machines inspected complied fully with the requirement for these notices to be displayed.
- 15 As part of our ongoing programme of test purchasing we have carried out 10 test purchases of tobacco products using under age volunteers. No sales were made. Clearly, retailers are making positive efforts to ensure cigarettes are not being sold to minors.
- 16 Unfortunately we do receive a small number of complaints relating to sales being made from private houses. Whilst this is difficult area to tackle, our interventions over the last year have successfully reduced compliant levels against individual premises.
- 17 From revisits made to those vending machines from which tobacco was sold last year we know that the number of machines in use have reduced, others resited, and some have become token operated. These measures will help to reduce access by children.
- 18 The Service contributes to local tobacco control issues via active membership of the Darlington and County Durham Tobacco Alliance Group. The Group's action plan contains targets for proactive work in the areas of test purchasing, inspections of premises for compliance with notices and tobacco labelling and advertising restrictions and media work.
- 19 This year has been notable for the formation of a North East Trading Standards Association (NETSA) Tobacco Control Project. This project is funded by the Department of Health (DOH) to provide a regional resource to undertake a wide range of activities related to tobacco control and to provide additional funding for test purchase exercises, training and equipment to be shared by authorities within NETSA.

- 20 The project has three broad aims, they are to:-
- Reduce the number of illegal sales to under age people.
 - Disrupt the sales of illegal and counterfeit tobacco products (Cheap and illicit tobacco or CIT).
 - Enforce the prohibitions on tobacco advertising.
- 21 The project aims to carry out the following activities:-
- A series of vending machine test purchase exercises.
 - A regional test purchase programme, carried out over the year, relying on local and regional intelligence.
 - Liaison with HM Revenues and Customs (HMRC) and the Police on enforcement activity relating to the cheap and illicit market.
 - A survey of compliance with tobacco advertising.
 - An internet sweep of on line tobacco sales sites.
 - Additional training for all enforcement staff on tobacco control legislation and enforcement.
 - Raising awareness of Trading Standards in the area of health promotion and protection.
 - Contact with the DOH and 'stop smoking' services to build appropriate links and access additional funding for CIT and under age sales work.

Review of Aerosol Spray Paint and other Age Restricted Products Enforcement

- 22 Last year's enforcement programme included specific projects designed to supplement our complaints and intelligence led test purchasing, as a means to ensuring compliance with the full range of age restricted goods legislation.
- 23 The trend towards improved compliance has continued this year, with only sales of computer games covered by an '18' British Board of Film Classification (BBFC) certificate, being made to our under age volunteer.
- 24 We make use of intelligence from the County's Customer Relationship Management (CRM) system to identify graffiti hotspots, so that we can target shops in those areas for under age sales of spray paints. The lack of sales in this area has also been mirrored by a reduction in the number of incidents of graffiti reported to our CRM system, which have fallen from 203 in 2007 to 157 in 2008.
- 25 Overall, it seems as though our enforcement and publicity work has had a significant effect on ensuring compliance with age related product legislation.

Enforcement Programme for 2009/2010

- 26 Despite a significant drop in the number of complaints received by this Service, alcohol and tobacco sales continue to be the products of greatest concern. However, there is a trend towards more complaints about illegal or counterfeit sales of alcohol and tobacco from private premises.

- 27 The Department of Health have funded a regional tobacco control project which will support tobacco control enforcement efforts in the County and neighbouring authorities. In relation to tobacco it would make sense to tailor our activities to co-ordinate with this project.
- 28 It is envisaged that test purchases of alcohol and tobacco will form the bulk of the test purchase programme as these have the greatest effect on the health and wellbeing of our communities. We intend to work with the police and other agencies to combat the growing problem of 'proxy' sales where adults buy on behalf of children.
- 29 Since our initial work on sales of cigarettes from vending machines, a Government consultation on 'The Future of Tobacco Control' has prompted the Government to publish a new Bill which includes measures designed to protect children from accessing tobacco. These include reserve powers to prohibit or control sales of tobacco from vending machines. Until these measures are introduced we will continue to monitor sales from vending machines and include test purchases in our enforcement activities.
- 30 The problem of smuggled and counterfeit tobacco has become a top Government priority as demonstrated by Department Of Health funding for a regional tobacco control project. This is the next biggest challenge for tobacco enforcement and we will play our part in contributing to the partnerships involved in this project.
- 31 We should continue to run a programme of test purchasing to cover all age related products for which we are authorised, especially for those age restricted products which are not always a source of complaint.
- 32 Revisits to premises that have sold in the past should also continue to be part of the test purchase programme to ensure that sellers comply with the law. In the case of alcohol, if repeat offences are established, we will make representations as a responsible body under the Licensing Act 2003 for a review of license conditions or forfeiture.
- 33 I recommend that the enforcement programme for the coming year consists of those activities detailed below:
- (a) Investigation of all consumer and trader complaints.
 - (b) Revisits to shops that have previously made an illegal sale.
 - (c) Support the activities of the NETSA Tobacco Control Project.
 - (d) Project to examine compliance in relation to sales of video games.
 - (e) Project to examine compliance in relation to sales of cigarette lighter refills.
 - (f) Project to examine compliance in relation to sales of solvents.
 - (g) Project to examine compliance in relation to aerosol paint, targeting shops near graffiti hotspots.
 - (h) Project on cigarette sales from vending machines.
 - (i) Project to examine compliance in relation to age related sales of fireworks.

This work is detailed in Appendix 4.

Recommendations and Reasons

- 34 Members are recommended to approve the enforcement plan described above, for the period April 2009 to March 2010, which will ensure that Trading Standards continues to address the problem of underage sales of alcohol, tobacco, spray paint products and other age related products.

Background Papers

Children and Young Persons (Protection from Tobacco) Act 1991; Anti-social Behaviour Act 2003; Licensing Act 2003; Video Recordings Act 1994; Cigarette Lighter Refill (Safety) Regulations 1999 and Consumer Protection Act 1987; Fireworks (Safety) Regulations 1997 and Fireworks Act 2003; Solvents Intoxicating Substances (Supply) Act 1985.
Service Statistics.

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Appendix 1: Implications

Local Government Reorganisation

(Does the decision impact upon a future Unitary Council)

No

Finance

None

Staffing

None

Equality and Diversity

None

Accommodation

None

Crime and Disorder

May help to discourage sales of age-restricted products to young people in the community and consequently influence their behaviour. This may help to reduce fear of crime.

Sustainability

Healthier environment for everyone.

Human Rights

None

Localities and Rurality

May discourage groups of young people from gathering around the premises of traders prepared to ignore the law in respect of age restricted products.

Young People

May help young people to remain healthier over their lifetime.

Consultation

Our citizens panel survey of 2002, demonstrated that the public give this area of our work, a high priority. A consumer survey conducted in 2005, rated this area of work as a high priority.

Health

May help young people to remain healthier over their lifetime. Enforcement activity to reduce illegal sales of alcohol and tobacco products, to underage young people, is likely to impact upon the health of people in our communities.

Appendix 2 - Risk Assessment

Risk Description	Potential Impact	Treatment (if not already in place, state implementation date)	Risk Owner
The reputation of the Council may be adversely affected by not implementing the recommendation.	1. Criticism that we are not protecting the health and well being of our young people. 2. Inability to respond to complaints and intelligence gathered on potential under age sales.	Consider other means of enforcing under age sale legislation.	Phillip Holman, Head of Trading Standards

Appendix 3 – Progress against Under Age Sales Programme 2008/9

DATE	NUMBER OF DAYS FOR TEST PURCHASES	TYPE OF PRODUCT TO TEST PURCHASE	NUMBER OF TEST PURCHASES ACHIEVED	PURPOSE OF THE TEST PURCHASE
5 th April to 20 th April 2008	Minimum of 3 days	Alcohol (estimate 10)	Deferred to August	Complaints received.
		Tobacco (estimate 5)	None received	Complaints received
24 th May to 1 st June 2008	Minimum of 3 days	Alcohol (estimate 15)	Deferred to August	Complaints received & revisits to premises that have previously sold.
24 th July to 3 rd September 2008	Minimum of 8 days	Video games (20)	20 (2 sales)	Project to ensure compliance
		Butane (5)	6 (No sales)	Project to ensure compliance
		Solvents (5)	6 (No sales)	Project to raise awareness
		Aerosol paint containers(5)	5 (No sales)	Intelligence sourced from graffiti complaints (HAL)
		Alcohol (estimate 5)	13 (No sales)	Complaints received
25 th October to 2 nd November 2008	Minimum of 2 days	Tobacco (10)	10 (No sales)	Complaints received and project on vending machines to ensure compliance and revisits to premises that have previously sold
29 th October to 5 th November 2008	Minimum of 1 day/night	Fireworks (5)	5 (No sales)	Project to ensure compliance & complaints
14 th February to 22 nd February 2009	Minimum of 2 days	Alcohol (estimate 5)	Not due	Complaints received
		All other products	None received so far	Remaining complaints received

Appendix 4 – Under Age Sales Programme 2009/10

DATE	NUMBER OF DAYS FOR TEST PURCHASES	TYPE OF PRODUCT TO TEST PURCHASE	PURPOSE OF THE TEST PURCHASE
2 nd April to 17 th April 2009	Minimum of 3 days	Alcohol (estimate 10)	Complaints received
		Tobacco (estimate 5)	Complaints received
29 th May to 5 th June 2009	Minimum of 3 days	Alcohol (estimate 15)	Complaints received & revisits to premises that have previously sold.
		Tobacco (5)	Project on vending machines to ensure compliance and revisits to premises that have previously sold
23 rd July to 2 nd September 2009	Minimum of 8 days	Video games (10)	Project to ensure compliance
		Butane (5)	Project to ensure compliance
		Solvents (5)	Project to raise awareness
		Aerosol paint containers(5)	Intelligence sourced from graffiti complaints (HAL)
		Alcohol (estimate 5)	Complaints received
24 th October to 1 st November 2009	Minimum of 2 days	Tobacco (5)	Complaints received.
24 th October to 5 th November 2009	Minimum of 1 day/night	Fireworks (5)	Project to ensure compliance & complaints
15 th February to 20 th February 2010	Minimum of 2 days	Alcohol (estimate 5)	Complaints received
		All other products	Remaining complaints received