

Cabinet

3 April 2019



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

**Report of Ian Thompson, Corporate Director of Regeneration and
Local Services.**

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

Electoral division(s) affected:

Countywide

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 2018 to March 2019 and seeks approval of a new enforcement programme for 2019/20.
- 2 The County Council has statutory responsibility for enforcement of age restricted products, namely tobacco, nicotine inhaling products, spray paint containers, alcohol, videos and DVDs, cigarette lighter refills, fireworks and the proxy sale of tobacco products and supply of nicotine inhaling products to under 18s.
- 3 The Authority has also elected to enforce the age-restricted sales of solvents and glue, knives, access to gaming establishments and access to sunbed premises.
- 4 For many years the Authority has taken a proactive approach to tackling the harms and criminality associated with the illegal supply and misuse of alcohol and tobacco within County Durham. Together with our partners in the Durham Police Harm Reduction Unit and the County Durham Tobacco Alliance, we continue to conduct high visibility enforcement campaigns to tackle the health inequalities and links with organised crime associated with these products. Protection of children is also a high priority. This forms part of a holistic approach the County

Council has adopted to tackle the harms caused by alcohol and tobacco as well as tackling the wider determinants of health.

Executive summary

- 5 This report provides details of enforcement activity during 2018 / 2019, in relation to age restricted products and tackling supplies of illicit tobacco.
- 6 Information is provided in relation to complaints, test purchase and seizure activity for this period.
- 7 Details of the outcomes of enforcement action are provided.
- 8 The proposed enforcement programme for 2019/ 2020 is detailed.

Recommendations

- 9 Cabinet recommended
 - (a) Note the enforcement activity undertaken during 2018 / 2019.
 - (b) Approve the proposed enforcement programme for 2019 / 2020.

Background

Under Age Sales Enforcement Activity 2018/2019:

- 11 Our team work closely in partnership with the Police Harm Reduction Unit in matters relating to allegations of underage sales from licensed retail premises.
- 12 Usually where premises make two underage sales over a short period of time, formal action is taken by our service, bringing the facts before Durham County Councils' Licensing Committee by means of a review of the Premise Licence.
- 13 During 2018, two premises were taken to a review in relation to under age sales of alcohol, resulting in more robust licensing conditions being attached to prevent future non-compliance.

Summary of activity by product type:

14	Alcohol	52 Complaints / Intelligence Reports relating to 46 premises 28 Test purchase attempts 19 fails / 9 Pass = 68 % failure rate on test purchase attempts (The remaining premises are being scoped for future compliance testing) For Premises which have failed being considered for further action e.g. licence review / prosecution)
	Tobacco	2 complaints – to be developed and actioned.
	Knives *	1 complaint has been received
	E Cigarettes/ Nicotine Inhaling products	No complaints / intelligence reports
	Fireworks	No Complaints
	Spray paints	No Complaints
	Age Restricted Computer Games	No Complaints
	Gambling	No Complaints - 8 Notifications from Industry compliance checks - 8 test purchase attempts- PASS.

*A joint project with the Police Operation Sceptre is being scoped to be undertaken, which will include the age restrictions on knives and other bladed goods subject to the legislation.

- 15 Our enforcement activity for the above age restricted products during 2018/2019 has been somewhat limited, in light of the lack of complaints from the public and intelligence from partners.
- 16 The high level of failures could indicate that the intelligence that does exist is accurate and that a more targeted approach is better use of resources as it focusses on the area of greatest concern.
- 17 We continue to seek avenues to develop sources of community intelligence through the wider working of our service, other County Council service teams and project partners. For example, projects

being developed with County Durham and Darlington Neighbourhood Watch and the Area Action partnerships across County Durham.

- 18 Project work is also planned to be undertaken by the Trading Standards Business Compliance Team around the issues of market surveillance of trader compliance in relation to age restricted products where intelligence has not been forthcoming.

Tackling illicit tobacco During 2018 / 2019

- 19 11 Investigation report files have been submitted for consideration of commencement of criminal proceedings.

- 20 4 matters have been dealt with by means of issuing a simple caution. This addresses low level offending / quantities of tobacco recovered and evidence of the extent of the activity.

- 21 6 matters have been before the criminal courts in that time.

- 22 Outcomes:

- 4 custodial sentences imposed by the courts, totalling 5 years 2 months
- 8-month custodial sentence suspended for 18 months
- 3-month home curfew 8pm to 8 am
- 18-month conditional discharge
- Fines totalling £730
- Costs recovered: £3,767-63
- Proceeds of Crime Act confiscations totalling over £50k
- Another proceeds of crime matter is ongoing through the courts.
- 2 prosecution reports are ongoing through the criminal justice process.

- 23 Another investigation relating to a retail premise associated with the sale of illegal tobacco products, resulted in an application to the Magistrates Court for a 3 Month Closure Order, which was imposed on the premises and upheld on appeal. The Premise Licence to sell alcohol was also revoked by Durham County Council Licensing Committee in respect of this premise.



Retail premises linked to illegal tobacco sales

- 24 A criminal investigation into the supply of tobacco products remains ongoing in the above matter.
- 25 During 2018 / 2019 a total of:
- 24,400 Cigarettes
 - 129.24 Kg of Hand Rolling Tobacco
- was seized as a result of 16 intelligence led targeted operations.

Keep It Out National Campaign

- 26 120 Intelligence reports have been received via the anonymous reporting Hotline during 2018 / 2019 (50 since the campaign was refreshed in November 2018).



- 27 14 reports have been received from other intelligence sources. These are being developed with a view to carrying out future enforcement operations.
- 28 Recently, partnerships have been developed in relation to other project areas with County Durham and Darlington Neighbourhood Watch and the County's Area Action Partnerships.



- 29 These relationships provide a means to circulate information bulletins seeking community intelligence around the issues of illegal and under age sales of tobacco products.
- 30 Continued close working with the Police has also provided an opportunity to have input to the Police probationer training officer in relation to trading standards issues, including illicit goods and age restricted products.



Nicotine inhaling Products - E Cigs and vaping devices

- 31 Our Trading Standards Team has joined up to the National Real Deal Online Project.
- 32 This aims to engage with online sellers who make use of social media platforms including Facebook, to sell goods. This can include counterfeit and age restricted products, such as tobacco.
- 33 The overall aim is to work with the selling site group administrators to prevent illegal sales and sign up to a best practice charter. Where co-operation is unsuccessful, we will consider enforcement action and site takedowns to disrupt future online sales by that seller.

Work with the Vaping Sector

- 34 In partnership with DCC Public Health colleagues, and Smokefreelife County Durham, who deliver the smoking cessation service, we are carrying out some work with the vaping retail sector.
- 35 A training package, which will include an option of online video training modules is being developed. The aim being to raise awareness within the vaping sectors as to retailer legal obligations as to the age restrictions applicable to the products sold in addition to the safety of the product itself, the vaping liquid, vaping device and charger. Colleagues from the Environment, Health and Consumer Protection service (EHCP) are proving general health and safety advice applicable to an employers' responsibilities in operating retail premises.

- 36 Vaping Retailers will be provided with information on smoking cessation services and how they can direct customers who are currently tobacco smokers into the services available to help them to quit smoking.



Controls on E Liquids – address maximum quantities, labelling requirements and permitted ingredients.

Emerging Issues for consideration

Knife Crime

- 37 Following the Government consultation undertaken last year in relation to knife crime:
- 38 National Trading Standards funded a number of pilot enforcement projects in areas of the Country with high levels of knife crime.
- 39 As such best practice guidance is beginning to emerge for Trading Standards on this area of age restricted products and enforcement activity.
- 40 The Government has recently announced plans to introduce Knife Crime Orders aimed at tackling youth knife crime and promotion of gang related activity associated with communication via social media.
- 41 This announcement included an indication that Trading Standards will nationally be provided with a prosecution fighting fund of £ 500,000 to assist with enforcement action which may be taken in relation to offences committed by retailers in selling knives and any other products caught under Section 141 A of the Criminal Justice Act 1988 to a

person under 18, whether from premises or online, to under age persons.

- 42 Our service works closely with the Police and is set to review any annual data relating to knife crime to determine if any intelligence as to the retail source of knives may be identified and where any enforcement action may be targeted. This will be delivered as part of Operation Sceptre joint working with Durham Constabulary.

Main implications

43. **The proposed enforcement programme for 2019/2020 consists of the activities detailed below:**

- (a) An intelligence led approach to under age sales enforcement and tobacco.
This will continue to develop the intelligence from the “Keep it Out Campaign” to deliver enforcement action where possible. Continue to develop sources of community intelligence through partnership working and publicity activity.
- (b) Working in partnership with the Police and other enforcement agencies to identify and disrupt the involvement of organised criminality in the illicit tobacco supply chain.
- (c) Investigation of all consumer and trader complaints.
- (d) Undertaking market surveillance project activity in relation to age restricted products.
- (e) Continuation of our joint working with the Police Harm Reduction Unit and other agencies to adopt a holistic approach to solving problems associated with the accessibility and misuse of age restricted products.
- (f) Hold events to raise public awareness of the harms associated with illicit tobacco, to publicise the work of the service and encourage reporting of this criminal activity.
- (g) Continuation of the ‘Do You Pass’ retailer training as a way of assisting business.
- (h) Continuation of our work in partnership with the police, HMRC and other agencies to tackle sales from private premises to children, particularly in relation to alcohol and tobacco.
- (i) Working with the County Durham Tobacco Alliance partners, provide guidance to traders on the legal requirements surrounding E Cigarettes / Vaping equipment and products and access of their customers to advice on smoking cessation support.
- (j) Continuation with a practice of reviewing premises when appropriate.

- (k) Continuation of our work to tackle health inequalities and antisocial behaviour associated with the misuse and illegal supply of age-restricted products, in particular alcohol and tobacco.
- (l) Deliver business advice on and carry out enforcement of new legislation for which we may be statutorily responsible including all new legislation, which may emerge in relation to knife sales and corrosive substances.

Conclusion

44 The agreement of the proposed Enforcement Programme for 2019/2020 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

- 45 That Cabinet
- a) Notes the work undertaken during 2018/19, and
 - b) Supports the proposed Enforcement Programme for 2019/2020.

Background papers

None.

Other useful documents

None.

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Appendix 1: Implications

Legal Implications

This report summarises the activity undertaken by the Council in the discharge of its duties and discretionary powers in relation to the enforcement of age restricted products. The proposed programme of activity for 2019/20 will enable the Council to continue to discharge its duties going forward.

Finance

No additional implications beyond existing funding / staffing arrangements.

Consultation

Not Applicable.

Equality and Diversity / Public Sector Equality Duty

Not Applicable.

Human Rights

Enforcement activity to be undertaken with due regard to the Human Rights Act 1998, The Regulation of Investigatory Powers Act 2000.

Crime and Disorder

This area of proposed enforcement activity seeks to protect residents, young people and legitimate businesses from criminal activity and disorder linked to the matters concerned. Partnership working with Durham Police on these issues.

Staffing

Undertaken within existing staffing establishment.

Accommodation

Not applicable.

Risk

If proposed enforcement activity is not undertaken - reputational risk, potential health and crime and disorder harms taking place in communities. Growth in criminality and involvement of Organised Crime Groups for illicit tobacco.

Procurement

Not applicable.