

Cabinet

16 September 2020

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



Ordinary Decision

Report of Alan Patrickson, Corporate Director of Neighbourhoods and Climate Change

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 2019 to March 2020 and seeks approval of a new enforcement programme for 2020/21.
- 2 The County Council has statutory responsibility for enforcement of age restricted products, namely tobacco, 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 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 2019/2020, 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 2020/2021 is detailed.
- 9 Information is provided on the Offensive Weapons Act 2019.

Recommendation(s)

- 10 Cabinet is recommended to:
 - (a) note the enforcement activity undertaken during 2019/2020;
 - (b) approve the proposed enforcement programme for 2020/2021;
 - (c) note the anticipated changes in enforcement action upon a commencement order being made in respect of the Offensive Weapons Act 2019.

Background

Underage Sales Enforcement Activity

- 11 2019/2020 complaints and enforcement during the financial year:
- 12 Our team work closely in partnership with the Police Harm Reduction Unit in matters relating to allegations of underage sales from licensed retail premises.
- 13 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 Council's General Licensing and Registration Committee by means of a review of the Premise Licence.
- 14 During 2019/2020, 4 premises were taken to a review in relation to underage sales of alcohol, resulting in more robust licensing conditions being attached to prevent future non-compliance with legal obligations. 3 other premises have also been the subject of mediated reviews to implement corrective action.

Summary by product type

Alcohol	67 Complaints / Intelligence Reports relating to Off Licence premises 46 Test purchase attempts 17 fails / 9 Pass = 37 % failure rate on test purchase attempts 4 taken to review – conditions imposed 3 mediated reviews
Tobacco	1 Complaint / 14 Compliance checks 15 Test Purchase attempts 2 failures being investigated 13 % failure rate
Knives	No complaints / intelligence reports received.

E Cigarettes/ Nicotine Inhaling products	No complaints 8 intelligence reports 8 Test purchase Attempts 2 Failures 25 %
Fireworks	No Complaints received 6 Intelligence reports 6 Test Purchase attempts – PASS
Spray paints	No Complaints received
Age Restricted Computer Games	No complaints or intelligence received.
Gambling	No Complaints – 9 Notifications from Industry compliance checks -following test purchase attempts- PASS.

- 15 Our enforcement activity into our regulatory activity for some of the above age restricted products during 2019/2020 has been somewhat limited in light of the lack of complaints from the public and intelligence from partners.
- 16 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.
- 17 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 2019/2020



- 18 Since April 2019, action has been taken in respect of 31 intelligence reports, which have led to criminal investigations and cease and desist warnings. 6 Investigation report files have been submitted for consideration of commencement of criminal proceedings.
- 19 11 seizures being made from private dwellings, 2 from commercial premises and one from a vehicle travelling through the county.
- 20 3 matters have been before the criminal courts in that time.
- 21 Outcomes: 2019/2020
- 1 custodial sentence imposed by the courts, totalling 30 months;
 - A 3-month probation order including 5 rehabilitation days;
 - 12-month community order, with 250 hours of unpaid work;
 - 2 Proceeds of Crime Act confiscations totalling - £ 37,000;
 - A proceeds of crime investigation, which led to the disclaiming of £1,228;
 - Another proceeds of crime matter is ongoing through the courts, following the seizure of £ 4,067;
 - 2 Simple cautions were issued in relation to tobacco offences;
 - 5 prosecution reports are ongoing through the criminal justice process.
- 22 A criminal investigation into the supply of tobacco products remains ongoing in the above matter.
- 23 During 2019/2020 a total of:
- 14,890 Cigarettes;
 - 41.5 Kg of Hand Rolling Tobacco
- have been seized as a result of 14 intelligence led targeted operations.

Partnerships

Keep It Out Illegal Tobacco Campaign



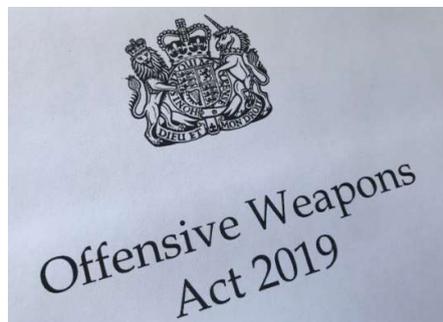
- 24 During January 2020, saw the relaunch of the Keep it Out campaign, in partnership with FRESH NE, the regional tobacco control programme. This campaign raises awareness of the harms of illegal tobacco, particularly in relation to the availability to young people. The campaign has been promoted regionally by FRESH through the press and local radio. This aims to promote reporting of concerns as to sources of illegal tobacco, by legitimate retailers and the public to an anonymous reporting Hotline.
- 25 At a more local level, the campaign is driven by participating local authorities. Within County Durham, this has seen the issue of a press release, circulation of a Member's Briefing, information on the DCC Intranet and school's extranet as well as engagement with partners in regulatory and educational fields.
- 26 The County Durham Tobacco Control Alliance, which we continue to support and participate in, has distributed campaign materials to Housing Providers, the Area Action Partnerships and smoking cessation services.
- 27 The wider Community Protection Service is distributing leaflets and posters on the campaign and reporting mechanisms to residents and businesses it engages with. Partners within the County Durham Organised Crime Group Disruption and Intervention Panel and the Police led Pubwatch scheme as also assisting with our efforts. The Keep in the Know Neighbourhood Alert system has also circulated campaign information on illegal tobacco to over 6,000 residents.
- 28 During 2019/2020, 87 intelligence reports have been received relating to illegal tobacco.

- 29 These have been actioned or are being developed with a view to carrying out future enforcement operations to tackle illegal tobacco sales.
- 30 The reliance on community intelligence is crucial to the continued successes in tackling this type of crime. We will continue to encourage members of the public to report any illegal or suspicious activity as it plays an integral part in keeping these types of products out of the supply chain and allows the service to target resources effectively.

Emerging Issues:

Knife Crime and Corrosive substances- Offensive Weapons Act 2019

- 31 This legislation was introduced, following Government consultation undertaken in relation to violent crime involving knives/bladed articles and corrosive substances, which formed part of the Serious Violence Strategy.
- 32 Knife crime and corrosive attacks are issues of public concern, with these crimes having a devastating impact on victims, families and their communities.
- 33 This has resulted in the introduction of the Offensive Weapons Act 2019, which received Royal Assent on 16 May 2019.



- 34 Section 64 of this Act, which is currently awaiting introduction via a commencement order, allows local authorities – weights and measures authorities - to enforce within its area the new offences under the Act and existing offences relating to the sale, delivery etc. of knives, corrosive products and other offensive weapons.

35 These new provisions being as follows-

- Section 1 Prohibiting the sale of corrosive products to persons under 18;
- Section 3 The delivery of corrosive products to residential premises;
- Section 4 The delivery of corrosive products to persons under 18;
- Section 38 The delivery of bladed products to residential premises;

- Section 39 The delivery of bladed products to persons under 18;
 - Section 32 The delivery of bladed articles to persons under 18.
- 36 New criminal offences are being created prohibiting the delivery of bladed products sold online to a residential address, providing a defence where age verification takes place upon delivery.
- 37 Upon introduction of Section 64, local authorities, will also have the power to deal with matters falling under the following legislation:
- Section 1 of the Restriction of Offensive Weapons Act 1959 – penalties in relation to dangerous weapons;
 - Section 1 of the Crossbows Act 1987 dealing with the sale of crossbows to persons under 18;
 - Section 141 of the Criminal Justice Act 1988 and Section 141 A sale of bladed articles to persons under 18;
 - Section 1 of the Knives Act 1997 the unlawful marketing of knives.

Sale and Delivery of Corrosive Products

- 38 The purpose being to restrict access to products which contain the most harmful corrosive substances by persons under the age of 18, both over the counter and through online sales.
- 39 Corrosive products are defined within the legislation by reference to their chemical abstracts, registry number and concentration limits – thus catching those that contain corrosive substances at levels which, if misused, could cause serious harm and life changing injuries. This approach has been taken rather than a list of products by name, which would require continual update.
- 40 Products such as normal strength household bleach and cleaners will not be caught, whereas high strength drain cleaners, rust removers and limescale removers could be, dependent on inclusion in the schedule of products and concentrations, covering several acids and hydroxides.
- 41 Retailers must therefore take steps to understand and train their staff, which of their product lines are caught and subject to the age restriction. It will also be a good policy to operate a Challenge 25 approach similar to other age restricted products already under legal controls. Online sales should implement measures to ensure that age verification checks are made at the point of delivery. Several major retailers have already signed up to a voluntary code.
- 42 It is an offence to deliver corrosive products to residential premises and steps must be taken to ensure that they are not delivered to collection lockers.

- 43 For distance sales, where the seller is outside of the UK, steps must also be taken to ensure that the specified corrosive products are not delivered into the hands of a person under 18 years of age.
- 44 Defences exist by ensuring that all reasonable precautions and all due diligence are exercised to avoid the commission of the offence.
- 45 Prosecution in the courts can lead to unlimited fines and/or up to 51 weeks imprisonment being imposed.

Sale and Delivery of Knives



- 46 This aspect of the Offensive Weapons Act 2019 strengthens legislation in relation to age restricted sales of knives, remote sales, requiring that age verification takes place both when a sale is accepted and at the point when the item is delivered. These are both important steps in preventing the sale of knives to persons under 18.
- 47 Bladed articles include any knife, knife blade or razor blade, axe, any other article which has a blade, or which is sharply pointed, and which is made or adapted for causing injury to a person.
- 48 Retailers are expected to act responsibly and carefully consider whether an item could commonly be defined as a knife.
- 49 Bladed products cannot be delivered to residential premises or collection lockers, unless the seller can be sure that it will not be delivered to a person under 18 otherwise it will need to be collected in person from a collection point.

Defences and Penalties

- 50 A defence exists for sellers and delivery companies, where they can show that they took all reasonable precautions and all due diligence to prevent the offence. Upon conviction in the courts, penalties range from a fine up to 51 weeks imprisonment, or both.
- 51 Our service works closely with the Police and is set to keep under review any 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.

- 52 A good practice guide for knife retailers has been developed by colleagues in London Trading Standards Authorities, in partnership with the Metropolitan Police, the Mayor's Office for Police and Crime.
- 53 We will look in the coming year to develop such a guide for retailers as part of our business information webpages to advise traders of their legal obligations.
- 54 It is perhaps reassuring that the incidences of knife crime across County Durham are low in terms of violent crime amongst young people.
- 55 As such it does not feature as a priority crime area identified by the Community Safety partnership at this time.
- 56 Adoption of this legislation will serve to future proof the ability of our Trading Standards Team to be able to respond to any complaints as to underage sales of bladed articles or corrosive products and conduct education and compliance checks with retailers. To be able to respond to issues relating to online sales and other distance sales, when the commencement order for this legislation is introduced, providing trading standards with the power to enforcement the relevant parts of the Act.
- 57 Such an approach will avoid any delays to obtaining authorisation to address what is a serious and emotive area of legislation and social concern.
- 58 Officers enforcement powers will be derived from those already contained within the Consumer Rights Act 2015.

Main implications

- 59 The proposed enforcement programme for 2020/2021 consists of the activities detailed below:
- (a) An intelligence led approach to underage sales enforcement and illegal 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, following incidents of the underage sale of alcohol.
- (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, once these provisions commence in law.

Conclusion

- 60 The agreement of the proposed Enforcement Programme for 2020/2021 will ensure that the Council continues to address the problem of underage sales and access to age restricted products by those underage as well as the wider health and criminal issues surrounding these products.
- 61 Adoption of the Offensive Weapons Act 2019 will ensure that the service can respond to complaints and address any compliance issues relating to the sale of bladed articles and corrosive products from retail and remote sellers in a timely manner.

Background papers

None.

Other useful documents

None.

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Appendix 1: Implications

Legal Implications

In relation to instituting criminal legal proceedings/licence reviews and other sanctions, within existing infrastructure with DCC Legal Services.

Finance

No additional implications beyond existing funding/staffing arrangements.

Consultation

Not applicable.

Equality and Diversity / Public Sector Equality Duty

Not Applicable.

Climate Change

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.

Procurement

Not Applicable