

Cabinet

18 May 2022

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



Ordinary Decision

Report of Corporate Management Team

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

**Councillor John Shuttleworth, Cabinet Portfolio Holder for Rural
Communities and Highways**

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 2021 to March 2022 and seeks approval of a new enforcement programme for 2022/23.

Executive summary

- 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 Police Licensed Economy Team 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.

- 5 Over the last two years, Covid has impacted on our service activities and staffing resource, with members of our service being involved in the regulation of businesses impacted by the Covid restrictions. As a result, the timing of the annual plan has been disrupted and activity has been significantly limited compared to previous years.
- 6 Considerations around the health and wellbeing of our staff and, most importantly, any young volunteers used in test purchase exercises, put this work on hold in terms of the ability to conduct test purchases in a Covid secure way, in line with the health and safety risk assessments around work activities. Covid business restrictions and social distancing has limited our activities and approach to businesses.
- 7 As a result, Covid has curtailed areas of our enforcement work relating to illicit tobacco and age restricted products.
- 8 As we now begin to emerge from the impacts of the pandemic, we plan to relaunch this important area of our work, to protect our young people and residents of County Durham and safeguard their health and wellbeing.
- 9 This report provides details of enforcement activity during 2021 / 2022, in relation to age restricted products and tackling supplies of illicit tobacco.
- 10 Information is provided in relation to complaints, test purchase and seizure activity for this period.
- 11 Details of the outcomes of enforcement action are provided.
- 12 The proposed enforcement programme for 2022/ 2023 is detailed.

Recommendation(s)

- 13 Cabinet is recommended to:
 - (a) note the enforcement activity undertaken during 2021 / 2022;
 - (b) approve the proposed enforcement programme for 2022 / 2023.

Background

Underage Sales Enforcement Activity

- 14 Due to concerns as to the health and wellbeing of our young volunteers, it has not been possible to progress this programme over the last two years.
- 15 Alternative enforcement and advice to retailers has been adopted, we are in discussions with partners and organisations as to securing volunteers to recommence this important work.

Tackling Illicit Tobacco

- 16 A notable success on tackling illicit tobacco, resulted in the execution of entry warrants in retail premises and associated domestic dwellings which resulted in the recovery of over 156,000 cigarettes and approx. 53 kg of hand rolling tobacco being taken out of the supply chain. This seizure, having an estimated market value of around £61,523 being sold as illicit product, representing sales in the region of £114,780 of genuine product. Under the Proceeds of Crime Act £14,680 in cash was also detained and is subject to investigation.
- 17 Legal action was also taken, resulting in the courts imposing a closure order on the retail premises for an initial 3-month period, which was later extended for a further 3 months, the business being deemed a nuisance in the community.



- 18 Further inspections of retail business premises recovered a further 6,060 cigarettes and 3.8 kg HRT, worth around £ 2,500.
- 19 Additional work has resulted in 27 “cease and desist” warnings being issued to low level domestic sellers, allowing us to focus on developing operations against those suspected of selling illicit tobacco products to children for formal enforcement action. Monitoring will continue of complaints and intelligence to ensure compliance of this who have received warnings.
- 20 Warrants have been executed on 7 premises since April 2020, with inspections conducted on tobacco product sales in 12 retail settings.
- 21 We continue to support and raise awareness of the Keep it Out campaign to educate the public on illicit tobacco being sold in our communities and the harm it causes, including increasing availability to children. The Keep it Out website and publicity materials advise residents how they can report concerns anonymously.



Developments and Horizon Scanning

- 22 Since 18 April 2021, the age limit applying to National Lottery Tickets has changed from 16 to 18 years of age being the lawful age at which they can be purchased.
- 23 The Botulinum Toxin and Cosmetic Fillers (Children) Act 2021 came into force on 1 October 2021.
- 24 The purpose of this Act is to prohibit the administering of botulinum toxin (Botox) or a filler, by way of injection for a cosmetic purpose, to a person under 18 years of age in England.
- 25 It is also an offence for a person to make arrangements to undertake or arrange for another person to undertake these procedures on a person under 18.
- 26 These procedures carry risks to physical health, including infection, blindness, and in rare cases death. There are psychological implications with changing physical appearance which may adversely impact on the mental wellbeing, particularly of young people.

- 27 The legislation, therefore, aims to safeguard children, not only from the potential health risks, but also takes into account the ethical considerations about the extent to which young people under 18 years of age, have the emotional and mental maturity to give informed consent on such invasive procedures, available on the commercial market, without a medical or psychological assessment.
- 28 Such procedures will still be available to people under 18 but only where they have been approved by a doctor, with the administration of the treatment carried out by an approved person.
- 29 The prohibition aims to reinforce existing good practice within the cosmetics industry.
- 30 Legal requirements affecting the beauty sector have been added to the DCC website pages, covering Botox and fillers.
- 31 Trader advice has been given to the sector and we will follow up on any complaints from the public.
- 32 [Note – source Guidance for local authorities from the Departments of Health and Social Care].

Nicotine Inhaling Products -Vaping Devices and E Cigarettes



- 33 The product safety requirements relating to e cigarettes and vaping devices are within the remit of the Tobacco and Related Products Regulations 2016 with age restriction of 18 being imposed by the Nicotine Inhaling Products (Age of Sale and Proxy Purchases) Regulations 2015.
- 34 More recently, such devices have increasingly come to the attention of Trading Standards authorities across the country, in relation to concerns as to complying with the legislation.
- 35 These concerns relate to nicotine strength, vaping liquid tank capacity, both of which may exceed the permitted amounts.

- 36 Vaping liquids (other than for medical use) must be registered with the Medical and Healthcare Products Regulatory Agency, (MHRA), before they can be placed on the market.
- 37 Concern also exists as to products being on the market in the UK, which are intended for other countries and counterfeit products. Some products also give rise for concern as to the safety of batteries and charging devices where they are rechargeable as opposed to single use devices.



- 38 Action is being taken, with visits to retailers, providing trader guidance and with enforcement activity where necessary.

Offensive Weapons Act 2018

- 39 It is anticipated that the provisions of this Act, relating to knives, certain offensive weapons, bladed articles, and corrosive substances, enabling enforcement by local authority Trading Standards Teams, will come into force in April 2022.
- 40 This will apply to the distance sales of such products to ensure that proof of age checks are in place upon delivery or collection by customers.

Main implications

- 41 The proposed enforcement programme for 2022/2023 consists of the activities detailed below:
- (a) An intelligence led approach to underage sales enforcement and tobacco. This will continue to develop the intelligence from the “Keep it Out Campaign” and from other partners and sources, to deliver enforcement action where possible. It will continue to develop information from community intelligence through partnership working and publicity activity;

- (b) Scoping delivery of the “Tick Box” Campaign, a national initiative, working with the self-storage industry to adopt good practice and prevent the storage by individuals and business of counterfeit and illicit products in storage facilities;
- (c) 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;
- (d) Investigation of all consumer and trader complaints;
- (e) Undertaking market surveillance project activity in relation to age restricted products;
- (f) Continuation of our joint working with the Police Licenced Economy Team, and other agencies to adopt a holistic approach to solving problems associated with the accessibility and misuse of age restricted products;
- (g) Contributing to 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;
- (h) Providing retailer training, on underage sales as a way of supporting businesses meet their legal obligations;
- (i) 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;
- (j) Working with the County Durham Tobacco Alliance partners, providing guidance to traders on the legal requirements surrounding E Cigarettes / Vaping equipment and products and access of their customers to advise on smoking cessation support;
- (k) Providing training to the County Durham smoking cessation service, ABL Health, on illegal tobacco and vaping devices;
- (j) Continuation with a practice of reviewing licenced premises when appropriate;
- (l) 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;
- (m) 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. Exploring the delivery of a responsible retailer scheme, in partnership with the Police, in relation to the Offensive Weapons Act 2019.

Conclusion

42. The agreement of the proposed Enforcement Programme for 2022/2023 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.

Background papers

- None.

Other useful documents

- None.

Author(s)

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Appendix 1: Implications

Legal Implications

In relation to instituting criminal proceedings of taking Licence reviews to committee, and other sanctions – within the existing infrastructure with DCC Legal Services.

Finance

No additional implications beyond existing funding / staffing arrangements. Some additional and time limited external funding may be available for targeted project work.

Consultation

Not applicable.

Equality and Diversity / Public Sector Equality Duty

Not applicable.

Climate Change

No applicable.

Human Rights

Enforcement activity to be undertaken with due regard to the Human Rights Act 1998, and 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 and Public Health on these issues.

Staffing

Additional duties and enforcement responsibilities under the Botulinum Toxin and Cosmetic Fillers (Children) Act 2021 and the anticipated commencement order as to section 64 of the Offensive Weapons Act 2019. No indication at present as to additional Government funding for the enforcement burdens of these duties. To deliver within existing staffing.

Accommodation

Not applicable.

Risk

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

Procurement

Not applicable.