

Cabinet

14 June 2023



Annual Enforcement Programme Tackling underage sales of age restricted products and sales of illicit and non- compliant age restricted goods.

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 relating to the underage sales and illicit age restricted products over the period April 2022 to March 2023 and seeks approval of a new enforcement programme for 2023/2024.

Executive summary

- 2 This report provides details of enforcement activity during 2022 / 2023, in relation to age restricted products and tackling supplies of illicit tobacco and non-compliant vaping products.
- 3 Information is provided in relation to test purchase and seizure activity for this period. Details of the outcomes of enforcement action are provided.
- 4 The legislation enforced by the Community Protection Service, of Durham County Council, relating to age restricted products, is detailed in Appendix 2.
- 5 The proposed enforcement programme for 2023/ 2024 is detailed at Appendix 3 detailing activities, the relevant legislation, contribution to partnerships and outcomes.

Recommendation(s)

6 Cabinet is recommended to:

- (a) note the enforcement activity undertaken during 2022 / 2023;
- (b) approve the proposed enforcement programme for 2023 / 2024.

Background

Underage Sales Enforcement Activity

- 7 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.
- 8 Under the Children and Young Persons (Protection from Tobacco) Act 1991 and the Antisocial Behaviour Act 2003, there is a duty on a local authority to consider at least once in every 12-month period a programme of enforcement action in relation to sales of tobacco to young persons and aerosol spray paint respectively.
- 9 Taking a broader approach, this report addresses all age restricted issues for which we have responsibility and the activity to tackle the supply of illicit age restricted products.
- 10 During the course of 2022, this extended to include provisions of the Offensive Weapons Act 2019, in relation to the age restrictions surrounding remote and onsite sales of knives, bladed items and corrosive substances. Enforcement of these provisions would be based on intelligence or specific complaints being received.
- 11 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.
- 12 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.
- 13 The work of the service is included in the County Durham Tobacco Control Plan, working with partners to tackle the prevalence of smoking, targeting illicit products and supporting smoking cessation initiatives.
- 14 Community Protection is an area where it is vital that skills and experience are retained and renewed. The pressures placed upon the service through the COVID pandemic and beyond have exacerbated

the challenges in this area and as a result additional investment into the service was made as part of MTFP(13).

Underage Sales Enforcement Activity

- 15 Following success in recruiting some new young volunteers to undertake test purchase attempts to test the legal compliance of retailers with their duties and responsibilities this important area of our work recommenced.
- 16 Forty premises were identified through the receipt of complaints or intelligence where concerns existed that alcohol may be being sold to persons under the age of 18, contrary to the Licensing Act 2003.
- 17 In all 45 test purchase attempts of alcohol were made. Whilst 5 first sales were made, the follow up second test purchase attempt resulted in the sales being refused. Following investigations into the circumstances of the sales, no formal action was taken, with the traders being provided with strict warnings and will be the subject of ongoing monitoring for compliance.
- 18 Further testing purchasing visits have been made to address concerns and complaints around the sale of nicotine vapes to young people under the age of 18. This has resulted in a number of sales by retailers failing their legal obligations, with follow up investigations now being undertaken.
- 19 Following the introduction of The Botulinum Toxin and Cosmetic Fillers (Children) Act 2021, the Service wrote to all potential businesses who may be involved in such treatments in the beauty care sector. Additionally, guidance has been supplied by our Occupational Health and Safety Team during inspection visits and information for the sector made available on the DCC Website.
- 20 No complaints have been received in relation to the underage supply of Botox and cosmetic fillers. This is an area that would be dependent on intelligence being received as to the nature of the non-compliance before formal investigations would be considered.
- 21 Our work around underage sales, supports partnership working across DCC and supports the wider work with partners to tackle smoking cessation misuse of alcohol, tobacco and antisocial behaviour issues.
- 22 These partnerships include the County Durham Tobacco Alliance, The Combatting Drug and Alcohol Group and the Licensing Responsible Authority Group.

Tackling Illicit Tobacco

- 23 For the period 1 April 2022, to 13 January 2023, activity tackling illicit tobacco, resulted in the seizure of 63,760 cigarettes and 28 kg of Hand Rolling Tobacco. This equated to an illicit street value of £22,632 and around £44,638 if it had been genuine.
- 24 Two retail premises which were the subject of illegal sales of tobacco products, were the subject of criminal investigation and prosecution also held premise licences for alcohol sales. The process was commenced for seeking licence reviews. Before the respective hearing dates in one case the licence was surrendered and in the other the business was sold, and the licence transferred to a new party.
- 25 Two retail shops, one in Shildon and another in Ferryhill were found to be persistently selling illegal tobacco products. Closure Orders of 3 months duration were sought and obtained from the courts under Section 80 of the Anti-social Behaviour, Crime and Policing Act 2014. The premises remain the subject of pending legal action.



- 26 Further activity by our Special Investigations Team, has involved the execution of entry warrants in domestic dwellings which resulted in the recovery of illegal tobacco. Some more minor matters being dealt with by means of cease-and-desist warnings and planned monitoring activity.
- 27 An ongoing programme of inspecting tobacco products at retail level serves to monitor for sales of illegal products, deterring non-complaint activity and providing community reassurance.
- 28 £14,680 in cash seized under the Proceeds of Crime Act in connection with illicit tobacco sales was disclaimed by the holder, and in another

investigation a further £2,000 was also detained and is subject to proceedings.

- 29 Additional work has resulted in 8 “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 those who have received warnings.
- 30 Warrants have been executed on 3 premises since April 2022, with targeted inspections conducted on tobacco product sales in 15 retail settings.
- 31 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. Since April 2022, 70 intelligence reports have been passed to us via the campaign.



Nicotine Inhaling Products -Vaping Devices and E Cigarettes



- 32 During 2022/2023 our Business Compliance Team has undertaken both proactive and reactive work around vaping devices.

- 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 the age restriction of 18, being imposed by the Nicotine Inhaling Products (Age of Sale and Proxy Purchases) Regulations 2015.
- 34 Vapes and E cigarettes are seen as a valuable tool in helping adults quit smoking tobacco products, however vaping should not be taken up by non-smokers or young people.
- 35 Nationally there are concerns as to high volumes of non-compliant products found on the market which fail to comply with the Tobacco and Related Products Regulations 2016.
- 36 Products have been found on sale with incorrect labelling and excessive tank sizes above the permitted volumes.
- 37 Nicotine containing liquid on retail sale, can either be in a dedicated refill container not exceeding a volume of 10ml or in the case of disposable E-Cigarettes a single use cartridge or tank not exceeding 2 ml.
- 38 The nicotine containing liquid must not contain nicotine which exceeds 20 milligrams per millilitre. (2%)
- 39 Non- compliant products may be genuine but are not intended for the UK market and do not meet UK legislation.
- 40 Inspections of 40 premises, has led to the seizure or voluntary surrender of over 3,700 devices.
- 41 One such product was found to contain 4 x 2ml cartridges as a means of seeking to circumvent the regulations exceeding the 2ml maximum volume permitted for a disposable device. Enquiries have been undertaken to have this product removed from the market.





- 42 Action is being taken, with visits to retailers, providing trader guidance and with enforcement activity where necessary.
- 43 Two Investigation files are set to be submitted for consideration of proceedings in relation to 2 retail outlets selling non-compliant vapes.
- 44 In conjunction with the 12 North East Trading Standards Services, 1.4 tonnes of seized vapes taken off the market, were sent for specialist disposal.



Key actions - for the year ahead

- 45 The proposed enforcement programme for 2023/2024 consists of the activities detailed in Appendix 3.
- 46 The 2023/24 programme has been informed by the learning from the 2022/23 actions as outlined in this report, particularly in the maintaining of an intelligence led approach, in partnership with other agencies to obtain the best outcomes. The Key actions include:
- (a) An intelligence led approach to underage sales enforcement and tackling illicit tobacco. This being based on developing intelligence from the Keep it Out campaign, partners, and community intelligence.
 - (b) Working with partners to support tobacco control and cessation, tackling antisocial behaviour associated with young person's being sold alcohol.
 - (c) These partnerships include the County Durham Tobacco Alliance, which includes colleagues from Public Health. The Combatting Drugs and Alcohol Group. The Responsible Authorities Licensing Group.
 - (d) Addressing emerging concerns both locally and nationally as to the underage access to nicotine vapes and non-compliant vapes on the market. We await more details of the Government's proposals to support local authorities in this area of enforcement and intelligence sharing initiatives.
 - (e) We also await further information as to any implications for the service around the proposed ban on retail sales of nitrous oxide and any enforcement implications for local authorities.

Conclusion

- 46 The agreement of the proposed Enforcement Programme for 2023/2024 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.

Under section 5 of the Children & Young Persons (Protection from Tobacco) Act 1991 and section 54A of the Anti-Social Behaviour Act 2003, the Council has a duty to at least once every 12 months to consider its enforcement programme relating to the sales of tobacco and aerosol spray paints to young people under the ages of 18 and 16 respectively.

The enforcement programme at Appendix 3 includes activity relating to the Council's other enforcement obligations in relation to age restricted products. Whilst there is no legal requirement for this activity to be included, it is considered good practice.

Finance

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

The enforcement programme at Appendix 3 includes activity relating to the Council's other enforcement obligations in relation to age restricted products. Whilst there is no legal requirement for this activity to be included, it is considered good practice.

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, 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.

Appendix 2: List of relevant legislation enforced by Community Protection Staff in relation to age restricted products

Attached as separate document.

Appendix 3: Proposed Enforcement Programme for 2023/2024

Attached as separate document.