

Cabinet

18 April 2012



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

**Report of Corporate Management Team
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Councillor Bob Young, Cabinet Portfolio Holder for Strategic
Environment**

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 and the Licensing Act 2003 for the period April 2011 to March 2012 and asks Members to approve a new enforcement programme for 2012/13.

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 County Council has statutory responsibility for enforcement of the following age restricted products:-
 - Tobacco (Children and Young Persons (Protection from Tobacco) Act 1991)
 - Spray paint containers (Anti-social Behaviour Act 2003)
 - Alcohol (Licensing Act 2003)
 - Videos and DVD's (Video Recordings Act 2010)
 - Cigarette lighter refills (Cigarette Lighter Refill (Safety) Regulations 1999 and Consumer Protection Act 1987)
 - Fireworks (The Pyrotechnic Articles (Safety) Regulations 2010 and Fireworks Act 2003)

The Authority has also elected to enforce the age restricted sales of:-

- Solvents and glue (Solvents Intoxicating Substances (Supply) Act 1985)
- Knives (The Criminal Justice Act 1988, as amended by the Offensive Weapons Act 1996)
- Access to gaming establishments (Gambling Act 2005)
- Access to sunbed premises (Sunbeds (Regulation) Act 2010)

- 4 In addition to routine test purchasing, last year's activity in the area of age restricted products centred on two major initiatives. Firstly, the investigation of 'tab' houses (domestic properties that sell cheap, illicit tobacco without any regulatory control) and secondly contributing to the Community Alcohol Partnership pilot in the Stanley area. Both of these activities had as their theme multi agency working with the sharing of expertise and resources enabling new and more effective approaches to enforcement and education.
- 5 2011-12 has also seen a vast increase in intelligence gathering and analysis which in part has been augmented by the formation of a Licensing Intelligence group and the Disruption Panel which provide a forum for sharing of multiagency intelligence. A joint approach to enforcement has been adopted by the groups and has also strived to develop more consistent enforcement policies and procedures for under age sales test purchasing, a duty we share with the police.
- 6 This years plan will be influenced by the backdrop of levels of resources and demands. A new National Alcohol Strategy is due to be released and it is expected to include a further emphasis on measures such as Community Alcohol Partnerships (CAP) supported by industry or retailers. In addition, The Local better Regulation Office (LBRO) have released an Age Restricted Products and Services Framework. This document sets out an agreed set of shared responsibilities and reasonable expectations for young people, parents, businesses, employees and regulators with regard to the supply of age restricted products and services. The detail contained in these national documents, which is not yet confirmed, can have an impact as to the level of performance and expectation that the service can deliver
- 7 The suggested proposals on age restricted products enforcement stresses the need for a transparent and risk based approach to testing compliance. This would seem to preclude routine or speculative test purchasing. Whilst not a mandatory framework it is expected that these principles will form the basis for the development of a new code of practice on test purchasing for regulators and enforcers for consultation later in 2012.

Review of last years activities

- 8 In summary, since 1 January 2011, the Service has completed the following test purchases: -

| Product | Total attempts | Number of Sales | Percentage | Action Taken |
|------------------------|----------------|-----------------|--------------|---|
| Alcohol | 102 | 7 | 6.9% | 2 employee fixed penalty notices Written warnings to 5 Designated Premises Supervisors & 5 employees |
| Tobacco | 47 | 5 | 10.6% | Written warnings to 5 owners & 5 employees |
| Gaming machines | 12 | 9 | 75.0% | Written warnings to 9 premise owners. |
| Knives | 12 | 1 | 8.3% | Written warning to manager |
| Sunbeds | 9 | 1 | 11.1% | Written warning to owner |
| Butane | 4 | 0 | 0.0% | Not Applicable |
| Solvents | 4 | 1 | 25.0% | Written warning to owner & employee |
| Totals | 190 | 24 | 12.6% | |

- 9 The failure rate for 11/12 are similar to those for 10/11 although is showing a small decline. Alcohol and tobacco test purchasing is still the main area of intelligence regarding underage sales but increased education by the service for retailers is considered a major contributor to that decline. The decline in the number of alcohol sales is possibly contributing to the rise in proxy sales of alcohol and the supply of tobacco products from tab houses are likely to increase. Enforcement and education around proxy sales and supplies from tab houses will show a shift of emphasis for the service but demonstrates that the landscape for age restricted products is changing and the service must adapt to combat these issues. Gaming and gambling premises still show a high failure rate and whilst there is often little intelligence received in this area it is still a priority for the service to address these matters with the operators
- 10 Agreed changes to service delivery by Cabinet in using test purchase volunteers in their normal attire and aged up to 17 years old has shown that there is the continued supply of age restricted products to those under age. In all cases the sellers were employees who were first offenders and were therefore dealt with by means of fixed penalties and written warnings.
- 11 Last year a survey of gaming premises in partnership with the Gambling Commission to see whether our volunteer could gain access to gaming machines was carried out. Alarmingly 9 out of 12 premises allowed our child volunteer access. As this was the first time the operators were tested in such an exercise, the failures were taken up with the businesses with a view to them reviewing their training and procedures. Revisits are planned to assess the level of compliance with more formal action being considered if the situation has not improved.

- 12 On a positive note the follow up activity on the sales of knives to minors has shown a marked improvement in retailer compliance with only one premise failing on a follow up test purchases. This exercise has shown the value of market surveillance for new or rarely tested age related products to raise compliance levels amongst retailers. It also demonstrates that there can be a value in routine for testing of the market place even when no intelligence or complaints have been received.
- 13 Another new area of test purchasing related to access to sunbeds by children under 18. This ban came into effect in April 2011 and Durham County Council were probably the first local authority to test this legislation. An extensive programme of education and training was undertaken with colleagues in Environmental Health in advance of the test purchase operation. Pleasingly it would appear that the education had been successful and only one of the nine premises tested failed to check the age of our volunteer. In this instance the failure resulted from temporary untrained staff covering for holiday leave. Again it shows the crucial role that proper training must play in preventing breaches of under age sales legislation.
- 14 Whilst there were no test purchasing of fireworks this year, a number of complaints were received surrounding the illegal storage of fireworks from private houses. Whilst there were some allegations that children were being unlawfully supplied, no evidence was uncovered to verify these occurrences. It is apparent the level of compliance of legitimate retailers is high but intelligence suggests that individuals are storing fireworks in their home with a view to unregulated supply
- 15 A key area of work this year was the involvement in a pilot Community Alcohol Partnership in Stanley. This a Safe Durham Partnership initiative which aims to tackle under-age drinking through cooperation between alcohol retailers and local partners, such as police, Durham County Council, Trading Standards, licensing teams, 4Real and local schools.
- 16 The Stanley area was chosen as a known High Impact Locality (HIL) where alcohol related anti social behaviour was known to be a real issue for local people. The pilot was aimed at engagement, education, change public perceptions and carry out enforcement. The role of Trading Standards was to carry out a programme of test purchasing and more of an emphasis on retailer education throughout the pilot.
- 17 The service developed a training opportunity for all retailers in the area based on the Trading Standards Institute 'Do You Pass' Fair Trading Award. Uniquely this training was delivered with partners from the police and a major national retailer. The highly interactive training sessions resulted in the training of 68 members of staff from premises within the Stanley CAP area and were very well received. The training has been considered as best practice by our business partners the Retail of Alcohol Standards Group (RASG).
- 18 The Service continues to support FRESH the north east tobacco control agency in the promotion of their illegal tobacco campaign 'Get Some Answers'. A significant amount of intelligence is received surrounding private houses where tobacco is being sold ('tab houses') and we continue

to gather evidence for enforcement action. The investigations have proven to be lengthy and require significant resources to gather the necessary evidence needed for prosecution. It is a priority of the Tobacco Alliance to work to minimise the supply of illicit tobacco which can be seen as a cause of young people starting to smoke and increases its availability to those wishing to quit

- 19 In December one such investigation culminated in warrants being executed on three premises in the Crook area and the seizure of a substantial quantity of illegal tobacco. The operation was a multi agency action and will hopefully lead to confiscation of assets via the Proceeds of Crime Act. A key part of the operation was the timely use of a press release to reinforce the message of our 'zero tolerance' approach to the supply of illicit tobacco in County Durham.
20. Intelligence received to date indicates that there are over 100 sellers of illicit tobacco within County Durham. Resource levels within the service has limited the enforcement action that can be taken on this but we will continue to tackle the problem in the most efficient ways possible
- 21 The sale of tobacco products from automatic vending machines was prohibited outright on 1 October 2011. An additional offence was also created if advertising or images of cigarette packs were left on the machine even when empty. The Service secured a £1,000 grant from the Regional Tobacco Project to survey compliance following the ban. The outcome of the survey showed a high level of compliance.
- 22 Other activity throughout the year included:-
 - Checks on statutory display notices for the sale of tobacco, fireworks and tobacco vending machine notices
 - Checks on tobacco fiscal marking and tobacco point of sale advertising
 - Visits to retailers to advise them of the steps necessary to prevent under age sales
 - Talks to community and worker groups on illicit tobacco
 - Assistance with the roll out of the Safe Durham Partnership ID4U proof of age card.
- 23 With respect to spray paint containers we completed a series of test purchases during February 2012. Intelligence has been used to determine a list of graffiti hotspots from incidents reported to Streetscene and will be concentrating our efforts on these areas to see whether our enforcement succeeds in reducing incidents.
- 24 Throughout the year we have been working closely with other enforcement agencies and sharing intelligence via a Licensing Intelligence Meeting which meets on a regular basis to discuss appropriate multi agency responses and consistent ways of working.
- 25 Although sanctions against sellers have ranged from written warnings, fixed penalties and prosecution, this last year has seen a greater emphasis on education and training as a means of dealing with first offences.

- 26 In addition we continue to make use of our powers as a responsible authority under the Licensing Act 2003 to apply for reviews of premises where two or more illegal sales have taken place from the same premises. This is an effective tool with a greater potential outcome than prosecution which can result in more stringent conditions being placed on the premises licence, suspension or revocation of the licence.

Forthcoming legislation

- 27 From April 2012 new laws are coming in concerning the display of tobacco products and the display of tobacco prices.¹ This will affect larger shops initially (other than specialist and bulk tobacconists). All other shops and businesses selling tobacco products (including bulk tobacconists and specialist tobacconists) will be affected from 6 April 2015.
- 28 From these dates it will be illegal to display tobacco products in the relevant shops and businesses in England, except to people over the age of 18 years in the limited circumstances set out in the new law. Where appropriate, age checks must be carried out before any tobacco product is shown to a customer who asks to buy tobacco or asks for information about a tobacco product.
- 29 From these dates, it will also be illegal to display the prices of tobacco products in the relevant shops and businesses in England, except in the formats set out in the new law.

Enforcement Programme for 2012/2013

- 30 The nature of enforcement work has changed significantly over the past year with a far greater emphasis on partnership working, education and intelligence led enforcement. This has coincided with strong direction from the Local Better Regulation Office that routine test purchasing should be replaced by an intelligence led, risk assessed investigations.
- 31 Another influential factor that will have an affect is the establishment of a centralised Police Licensing Unit located at the same building as the Consumer Protection service. This presents improved opportunities for the sharing of intelligence and resources and a joint strategic and operational approach to solving alcohol related anti social behaviour and other crimes in licensed premise.

¹ The legislation is set out in

- (a) Sections 6(A1),7A, 7B and 7C of the Tobacco Advertising and Promotion Act, as inserted by sections 20 and 21 Health Act 2009
- (b) The Tobacco Advertising and Promotion (Display)(England) Regulations 2010 (S.I.2010/445)
- (c) The Tobacco Advertising and Promotion (Display of Prices)(England) Regulations 2010 (S.I.2010/863)
- (d) The Tobacco Advertising and Promotion (Specialist Tobacconists) Regulations 2010 (S.I.2010/446)
- (e) The Tobacco Advertising and Promotion (Display and Specialist Tobacconists) (England) (Amendment) Regulations 2011 (S.I.2011/1256).

At the time of writing, further amending regulations have been notified to the European Commission and are still to be made and laid in Parliament.

- 32 With the above in mind we propose to remove our routine target driven approach to test purchasing and replace it with an intelligence led programme of enforcement which will rely on a multi agency intelligence and maximising the use of education and alternative enforcement interventions such as those employed in the Stanley CAP in addition to the more traditional methods of test purchasing.
- 33 Tobacco enforcement we will be focussed more on the supply of cheap and illicit tobacco from tab houses. This type of work has been driven by a significant increase in intelligence being received over the last year and it is seen as having a high impact on the health of our communities. According to a survey by FRESH the regional tobacco office, nine out of ten people in the North East think illegal tobacco is a danger as it allows children to smoke, while six out of ten believe it brings crime into communities. 85% of those questioned in the survey support efforts to stamp out dealing to children.
- 34 Part of our work on tobacco next year will also include visits and tests to ensure that the new legislation on display and pricing of tobacco is being complied with by the larger shops which are caught by the legislation from April 2012
- 35 With other areas of age related legislation such as knives, access to sunbeds and use of gaming machines we shall continue to carry out project work to ascertain whether businesses have procedures in place to ensure children are safeguarded. Whilst this could be considered routine test purchasing the findings of earlier operations has shown that there is still a need for some market surveillance in the County.
- 36 Graffiti is still a major cause of concern for the County Council and residents and incidents will continue to be monitored to see if our targeted test purchasing of spray paint containers succeeds in reducing incidents of this nature.
- 37 The final independent evaluation of the Stanley CAP by Teesside University, is not yet known, but it is likely that some elements of the CAP program will be extended to other High Impact Localities within County Durham. The work carried out has already been given excellent feedback from businesses with regards the retailer training and we have now been approached to extend this to other parts of the County. Depending on the results of evaluation and resource levels we will also likely extend our work in relation to proxy sales and sales to children from private premises. We will continue to work with our partners in the Police, HMRC, FRESH, Balance and the Health Services to attempt to tackle these problems.
- 38 We will continue to develop our test purchasing and enforcement policies to ensure that we adopt a consistent approach with all agencies and make use of 'exceptional circumstances' to justify situations where our test purchase volunteers will be allowed to lie about their age where there is evidence that sellers are asking the age of the volunteer without asking for ID.
- 39 The service contributes significantly with the strategic direction of alcohol and tobacco control by attending County wide forums. We will continue to

work locally with Community Safety partnerships to engage with other partners to address local concerns again using principles that have been proven in existing partnerships.

- 40 The programme of test purchasing will cover all age related products for which we are responsible where market surveillance or intelligence justifies our intervention. The use of directed surveillance under the Regulation of Investigatory Powers Act with regard to illegal sales from private houses will continue, although it is anticipated that possible changes in the law for local authorities in this respect could have an impact.
- 41 For more serious investigations involving lifestyle offences relating to the supply of illicit tobacco and alcohol the service will consider using a Financial Investigator authorised under the Proceeds of Crime Act to seize and confiscate assets by way of providing a greater deterrent for this type of crime. In the long term it is considered beneficial to have Durham County Council authorised officers trained and qualified to recover assets in this manner.
- 42 The enforcement programme for the coming year consists of those activities detailed below:
- (a) An intelligence led approach to under age sales enforcement and tobacco control based on the principles outlined in LBRO's Age Restricted Products and Services Framework but not precluding the use of market surveillance projects to determine current levels of compliance.
 - (b) Investigation of all consumer and trader complaints.
 - (c) Visits to ensure compliance with new legislation relating to the display and pricing of tobacco products
 - (d) Closer working with the Police Central Licensing unit and other agencies to adopt a holistic approach to solving problems associated with the accessibility and misuse of age related products. To include education, surveillance and test purchasing as well as other alternative enforcement strategies as appropriate.
 - (e) Further, more intense enforcement activities at premises that have been known to sell to those under age.
 - (f) Continue to work in partnership with the police, HMRC and other agencies to tackle the problem of proxy sales and sales from private premises to children, particularly in relation to alcohol and tobacco.
 - (g) Support the promotion of the ID4U County Durham proof of age scheme
 - (h) Continue with a policy of reviewing premises when appropriate.
 - (i) Continue to work strategically both corporately and with partner agencies to tackle health inequalities and antisocial behaviour associated with the misuse and illegal supply of age restricted products, in particular alcohol and tobacco.

Recommendations and Reasons

- 43 Members are recommended to approve the enforcement plan described above for 2012/ 2013, which will ensure that the Council continues to address the problem of underage sales and access to age restricted products by those under age.

Background Papers

- Children and Young Persons (Protection from Tobacco) Act 1991; Anti-social Behaviour Act 2003; Licensing Act 2003; Video Recordings Act 2010; Cigarette Lighter Refill (Safety) Regulations 1999 and Consumer Protection Act 1987; Fireworks (The Pyrotechnic Articles (Safety) Regulations 2010 and Fireworks Act 2003); Solvents Intoxicating Substances (Supply) Act 1985, Gambling Act 2003, The Criminal Justice Act 1988, as amended by the Offensive Weapons Act 1996, Sunbeds (Regulations) Act 2010.
- The Local better Regulation Office (LBRO) Age Restricted Products and Services Framework

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Appendix 1: Implications

Finance

None

Staffing

The proposed enforcement program has been based around existing levels of staffing resources

Risk

There are significant reputational risks to the authority in failure to tackle the availability of age restricted products to those underage. In not combating underage sales it could lead to a rise in accessibility of products that can contribute negatively to the users health and wellbeing as well as contributing to a potential rise in crime and disorder and anti-social behaviour in the County

Equality and Diversity / Public Sector Equality Duty

An Equality and diversity impact assessment screening has been completed and no adverse equality and diversity implications have been identified.

Appendix 2

The sale of alcohol to minors, with the possible anti-social behaviour that may occur, can impact on community safety in the area. Those who are vulnerable such as older people or those with a disability may be affected by anti-social behaviour which may result from a reduction in enforcement. Also the health and wellbeing of young people may be compromised. The implementation of this programme will result in a reduction in the availability and supply of age restricted products and associated crime and disorder, greater awareness of health concerns surrounding these issues and compliant retailers and suppliers of these products.

Accommodation

None

Crime and Disorder

Will help to discourage sales of age-restricted products to young people in the community and consequently influence their behaviour. The outcome of the enforcement and educational aspects to the program will seek to reduce accessibility of age restricted products and punish those who do supply. Failure to tackle the supply of age restricted products can lead to an increase in anti social behaviour, crime and the fear of crime.

Human Rights

None

Consultation

A consumer survey conducted in 2005, rated this area of work as a high priority.

Procurement

None

Disability Issues

None

Legal Implications

The council has a statutory duty to enforce the provisions of legislation controlling the supply of age restricted products. The County Council has also chosen to adopt other pieces of legislation that govern the supply and availability of other (ie knives) areas. These are long standing obligations and commitments. The Enforcement program has not been subject to legal advice as it is a service delivery plan and has no legal implications as to its implementation. Any subsequent actions or interventions that would stem from the delivery of the plan would involve legal services and they would be considered in the usual way