

## Cabinet

10 April 2013

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



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### **Report of Corporate Management Team Terry Collins, Corporate Director for Neighbourhood Services Councillor Bob Young, Cabinet Portfolio Holder for Strategic Environment**

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#### **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 2012 to March 2013 and seeks Member approval of the proposed enforcement programme for 2013/14.

#### **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 underage 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)
4. The Authority has also adopted powers 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)
5. The enforcement of age related products has seen a shift away from routine test purchasing towards a more risk based and intelligence led approach to enforcement. This approach is epitomised within the new Code of Practice for Age Restricted Products developed by the Better Regulation Delivery Office (BRDO) of the Department for Business Innovation and Skills, The code recommends that test purchasing should only be carried out when there is intelligence suggesting sales are taking place and gives a strong steer towards encouraging local authority regulators to engage more with business and take a more holistic approach to solving age related product issues.
  6. Whilst we are already largely complying with the provisions of the new code it is envisaged that we will need to be more explicit in justifying our actions in terms of outcomes and impacts. In this respect we shall be attending national workshops run by the BRDO to help develop a specialised toolkit to support the local regulation of age-restricted sales.
  7. In addition to the above, recent changes to the Regulation of Investigatory Powers Act have affected the way local authorities conduct their directed surveillance activities. Fortunately the changes do allow for test purchasing to continue and directed surveillance can still be authorised for offences that attract a maximum custodial sentence of six months or more (this includes Trade Mark Act offences) or criminal offences relating to the underage sale of alcohol or tobacco. Where the local authority is considering conducting a test purchase exercise, consisting of one or more test purchase attempts consideration should also be made to the statutory requirements for authorisation under the Regulation of Investigatory Powers Act 2000 (as amended) and authorisations for use of covert methods would require an application for directed surveillance to the magistrate's court.

## Key Considerations

8. Tobacco is the biggest preventable cause of death in England. It accounts for more than 80,000 premature deaths in England each year - claiming the lives of 11 people every day in the North East - more than alcohol, accidents, suicide, illegal drugs and diabetes combined. Whilst the North East has seen the biggest drop in smoking in England from 29% in 2005 to 21% of people in 2011, it remains one of the most significant causes of health inequalities and one of our most significant public health challenges. In particular illicit tobacco is a key priority for enforcement action as supplies continue to undermine the work of our stop smoking services and circumvents the legal controls on supply of tobacco to children.
9. Illicit tobacco is either **smuggled, bootlegged, illicit whites** or **counterfeit** tobacco.

- **Smuggled tobacco** is generally legitimately manufactured tobacco which has evaded payment of tax by being illegally transported, distributed and sold.



- **Bootlegged:** refers to tobacco which is purchased in a country with a low level of taxation and illegally brought into the UK, evading payment of tax.



- **Illicit Whites** are cigarettes manufactured for the sole purpose of being smuggled into and sold illegally in another market. They usually do not pay tax in the country where they are made.

- **Counterfeit** refers to illegally manufactured tobacco which is often made abroad, but sometimes in the UK. It is sold cheaply and tax free and vast profits are made throughout the supply chain and is often labelled, sold or passed off as being genuine tobacco products.



10. Alcohol and licensed premises also remain a high priority particularly in relation to reducing the availability of alcohol to children and ‘proxy’ provision. As a way of combating this, the Environment, Health and Consumer Protection (EHCP) Service has promoted a step change in joint working with the Durham Constabulary’s Alcohol Harm Reduction Unit which is co-located alongside Trading Standards and Licensing Officers within Annand House, Meadowfield. This has greatly facilitated exchange of information and strengthened our multi-agency approach to problem solving and intelligence led enforcement. Within a relatively short period of time this new partnership approach has shown to be highly successful in tackling illicit supplies of alcohol and tobacco and has resulted in some early convictions, licensing reviews and other improved enforcement outcomes in relation to alcohol and licensed premises.

11. Our intelligence gathering and analysis continues to develop with support from partner agencies through well-established channels such as the Licensing Intelligence group and the Organised Crime Disruption and Intervention Panel, along with the less formal meetings with our police partners from the Alcohol Harm Reduction Unit. These regular liaison arrangements have also presented further opportunities to train and develop staff in sourcing, mapping and analysing intelligence data to enable use to target resources more effectively and deliver better outcomes.

12. Education and partnership working continues to play a key role in tackling under age sales. The success of our involvement with the Stanley CAP (Community Alcohol Partnership) has prompted us to engage with a similar initiative with the Wear Community Alcohol Partnership. Our 'Do You Pass?' age and has been nationally recognised and praised as best practice. Perhaps more importantly no retailers who have sent their staff on these courses have subsequently failed any test purchases



13. It is fundamental to the successful delivery of this year's plan that we take into account increasing demands on services and the limited resources available. In meeting these challenges, it is vital that we continue to enhance our partnership working particularly with Durham Constabulary and HM Revenue and Customs, in order to build capacity within the service and target available resources to deliver of those actions aimed at stemming the supply of illicit tobacco and alcohol.

#### Review of 12-13 activities

14. Since 1<sup>st</sup> April 2012 the following complaints and intelligence have been received by the Service:-

Product	Complaints to service	Intelligence from other sources <sup>1</sup>	Total
Alcohol	4	72	76
Illicit tobacco	5	50	55
Retail Tobacco	6	1	7
Fireworks	2	0	2
Gambling access	1	0	1
Butane	0	0	0
DVD's/Computer games	0	0	0
Knives	0	0	0
Petroleum	0	0	0
Solvents	0	0	0
Spray paints	0	0	0
Sunbed access	0	0	0
<b>Totals</b>	<b>18</b>	<b>123</b>	<b>141</b>

15. In considering our approach to intelligence led enforcement, the vast majority of work undertaken over the last twelve months has unsurprisingly centred on

<sup>1</sup> Other sources include crimestoppers, MEMEX intelligence system, and police and HMRC intelligence sources

alcohol and tobacco as these are the major areas of concern both in terms of underage sales and links with serious crime, anti-social behaviour and health. Most intelligence concerning alcohol has been gathered as a result of our partnership with the Durham Constabulary Alcohol Harm Reduction unit.

16. Unfortunately due to staff vacancies during the year we have been unable to complete the full planned enforcement programme work. However, a variety of actions have taken place this year in addition to the intelligence led test purchasing.
17. The following retail test purchases were undertaken last year:-

<b>Product</b>	<b>Total attempts</b>	<b>Number of Sales</b>	<b>Percentage</b>	<b>Action Taken</b>
<b>Alcohol</b>	73	7	9.6:%	6 fixed penalty notices 1 premise subject to licence review
<b>Tobacco</b>	6	0	0%	

18. With alcohol and tobacco being the subject of 93% of complaints and intelligence, test purchasing has focused on alcohol and retail tobacco premises. The percentage failure rate for alcohol test purchases has increased from 6.9% last year to 9.6% this year. This is not really surprising as last year's figure included routine test purchases as well. All alcohol test purchasing is now carried out jointly with the Durham Constabulary Alcohol Harm Reduction Unit. As two failures were from the same premise, that premise is now subject to a review with a view to staff receiving compulsory retailer training.
19. In addition to the above activity, the service has also worked in partnership with Durham Constabulary to conduct multi-agency inspections of 20 'problem' on-licences. Failed test purchases and other 'licensing' and related issues resulted in reviews of licence conditions and a number of successful, high profile revocations of alcohol licences.
20. During 2012-2013 the service worked alongside the Police and Neighbourhood Wardens and was involved in the Stay Safe initiative which tackles the problem of children's access to alcohol by participating with partners. The scheme targets young people under 18 who are found out drinking at night in parks and other hangouts. Alcohol is seized from these children who are then taken to a place of safety where they are spoken to about their behaviour, their parents contacted and if appropriate a referral made to 'For Real' children's services. As well as being a tool to tackle anti-social behaviour in neighbourhoods the operation is also used to identify youngsters who are potentially being neglected by their parents, are participating in risky behaviour or are vulnerable to sexual exploitation. As well as safeguarding children, valuable intelligence about where they source their alcohol is often gathered and can be fed back leading to enforcement action.

21. A major focus this year has been on the supply of illicit tobacco. Officers are currently carrying out several in depth investigations into suspected suppliers throughout County Durham. As is often the case, the initial target investigation can lead to further intelligence and information sources which are subsequently linked to other suppliers and organised crime groups results in investigations taking longer than anticipated to bring to a satisfactory conclusion.



22. In February 2013, a conviction was achieved against four persons in the Crook area who were convicted of varying offences concerned with the supply and possession of over 14,000 illicit cigarettes and 6kg of illicit rolling tobacco. The main supplier was given an eight week jail sentence suspended for 12 months while the others received unpaid work orders.

23. In the same month an operation to crackdown on illicit tobacco was carried out by our officers supported by Durham Constabulary and HM Revenue and



Customs (HMRC). A vehicle delivering to a licensed premise along with two houses and a domestic garage in east Durham were targeted as part of the operation. More than 30,000 cigarettes, 600 pouches of rolling tobacco and 300 bottles of wine were seized in total.

24. Whenever possible following major investigations into illicit supplies of tobacco and alcohol we can make applications to recover proceeds of crime to further deter future criminal activity. In this particular case, it has been confirmed that we will receive a share of proceeds of crime linked to the joint action taken with the police against the defendants back in 2011 and it is expected further funds will follow as a result of the guilty verdicts in February 2013.
25. Other enforcement work on tobacco includes contributing to Department of Health survey on compliance with the Tobacco Display and Pricing Regulations 2010 in relation to the removal of tobacco products from display in large premises. Pleasingly all those inspected in County Durham were found to comply. All tobacco premises will have to comply with this requirement by 6 April 2015.
26. As an alternative intervention to enforcement action, we have continued to educate the public and partners about the harms surrounding illicit tobacco and its links to organised crime, through the distribution of posters and talks to groups such as smoking cessation workers.

We have supported the FRESH “Get Some Answers” campaign which uses the Crimestoppers number and as a result, Durham receives the highest amount of illicit tobacco intelligence in the North East region. Use of local media and web based information sites are a vital part of our strategy to raise awareness and deter suppliers of illicit tobacco.

27. With few complaints and lack of intelligence concerning other age related products, there has been no formal enforcement action taken place in these areas. In the case of fireworks however the complaints received related to the storage or misuse of fireworks by private individuals and investigations faltered through lack of evidence. We did, however, continue to advise retailers of their obligations with regard to all age related products.
28. With respect to spray paint containers, we continue to monitor the levels of graffiti around the County. Without specific intelligence or complaints we are unable to pursue test purchases of nearby retailers. As a way of increasing the local intelligence we will seek to improve our links with officers within front line neighbourhood services in the year ahead, for example, street scene
29. Education has been fundamental to our work on age related products this year. In the last two years we have attracted 107 retail staff onto our ‘Do you Pass’ age related product retailer training courses, 104 of whom have successfully passed and been awarded a module certificate of the Trading Standards Fair Trading Award. The training has been well received and we have been invited to speak about our work at a national seminar of the Retail of Alcohol Standards Group (RASG). No premises which have had staff attend this course have subsequently failed a test purchase.
30. As indicated in last year’s plan we have placed a greater emphasis on education and training following first offences. Premise reviews are often seen as a more effective tool for compliance than prosecution and we now offer our ‘Do You Pass?’ retailer training as an alternative to fixed penalties for first time sellers of alcohol to under 18’s.

### **Forthcoming legislation**

31. On 19 December 2012, after much consultation with and lobbying from the industry and health communities, the European Commission published its much-awaited proposal for a new tobacco-products directive.
32. If adopted, the directive will take another large step towards reducing the attractiveness of tobacco consumption, potentially affecting millions of lives and reshaping the tobacco industry. The EU Commission proposes to ban slim cigarettes and menthol cigarettes (as well as other tobacco products with characterising flavours).

It also, while not embracing plain packaging has opted for highly standardised packaging – will result in packets very close to the plain pack pioneered by Australia.

Combined (graphic and pictorial) warnings would cover 75% of a package; the remaining surface would represent the last available channel for tobacco companies to display their brand and market their products, as tobacco advertising is banned.

33. Member states are free to introduce more stringent standards, however, and the UK government has already consulted on the introduction of standardised plain packaging. The County Council has participated in this consultation, pledging support for its introduction.
34. Whilst the proposal focuses predominantly on tobacco, it also extends the directive's scope to include other nicotine products such as electronic and herbal cigarettes. Their marketing material will have to carry health warnings. In addition, e-cigarettes will be subject to the same authorisation required for medicinal products. As yet there is no date set for the final implementation of the directive.

### **Proposed Enforcement Programme for 2013/2014**

35. The controls put in place by legislative age restrictions on diverse products and services are essential for the protection of young people, particularly the most vulnerable. Local regulation therefore needs to deliver the protection that individual young people need, and in doing so, to contribute to better outcomes for local communities, individuals and businesses. To achieve this, we will target those that represent the greatest risks to young people, taking effective action where businesses do not take a responsible approach to compliance.
36. A clear steer towards intelligence led enforcement has been given by the publication of the new Code of Practice for Age Restricted Products. As such we will continue to carry out test purchasing only in response to complaints or intelligence.
37. The integration of the Durham Constabulary's Alcohol Harm Reduction Unit along-side the EHCP service has been a significant and positive step. This multi-agency approach to problem solving has ensured some excellent enforcement outcomes. It is clear, particularly with regards to alcohol licensed premises that enforcement has been swifter and more efficient as a result. This has led to 'problem' premises and associated anti-social or criminal behaviours being nipped in the bud at the earliest opportunity. We will continue develop this work with the police and other partners and use all the enforcement powers available to us to combat the worst offenders.
38. We will continue to maximise opportunities to use education and alternative enforcement interventions rather than prosecution where appropriate. In this respect we will expand our successful 'Do You Pass?' retailer training, also offering it as an alternative to more formal action for certain offenders in relation to sales to our test purchasers. We will also continue to emphasise the high impact on the health of our communities caused by the supply of illicit tobacco through talks and publicity.



39. Having identified the supply of illicit tobacco as a major issue within County Durham, we will continue to carry out investigations to tackle the major players in this crime. The challenge this year will be to look at how we can tackle the many lower level suppliers that are being identified. Again partnership working and the adoption of alternative enforcement strategies will be key to the successful delivery of this programme. To enhance this work, the EHCP service will look to improve its data and intelligence sharing across other council services including street scene, community safety and public health.
40. With other areas of age related legislation such as knives, access to sunbeds and use of gaming machines we shall continue to advise businesses and ensure that they have procedures in place to ensure children are safeguarded. With regard to graffiti and the sale of spray paints to children we shall liaise with our partners and particularly colleagues in Street Scene to gather more intelligence on any particular retailers supplying spray paints to children. Where complaints or intelligence shows cause for concern, appropriate enforcement action will be taken.
41. We will continue to develop effective working partnerships with the Police, HMRC, FRESH, Balance and the Health Services to attempt to tackle both the criminal and wider health issues surrounding the illegal supply of age related products.
42. Where necessary we will continue to make use of 'exceptional circumstances' to justify situations where our test purchase volunteers will be allowed to give false information about their age where there is evidence that sellers are asking the age of the volunteer without asking for ID.
43. The service contributes significantly to the strategic development of alcohol and tobacco controls at national, regional and sub-regional levels. We will continue to respond on behalf of the County Council to all relevant government consultations on our areas of work and engage with Community Safety partnerships as well as contribute to initiatives such as the Community Alcohol Programme, Think Family projects and work of the Community Action Team (CAT).
44. We intend to use directed surveillance under the Regulation of Investigatory Powers Act 2000 with regard to investigation of illegal sales from private houses and other offences for which the law permits.
45. For more serious investigations involving lifestyle offences relating to the supply of illicit tobacco and alcohol, we will use Financial Investigators authorised under the Proceeds of Crime Act 2002 to seize and confiscate assets increasing the deterrent factor for this type of crime. It is proposed that in the future rather than sourcing these services from other local authorities, we will have secured an agreement to access the services of Durham Constabulary's financial investigation team as part of the development of closer partnership working. This will have benefits for both partner organisations as increasingly the subjects of this type of action are involved in serious and/or organised crime and this approach can significantly disrupt the activity of such criminals.



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## **Appendix 1: Implications**

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### **Finance**

None

### **Staffing**

The proposed enforcement program has been based around exiting 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**

The proposed enforcement programme, which is intelligence led, will have a potential positive impact on all young people and children by discouraging sales of age-restricted products. The results will be reviewed to inform future programmes should any impacts be identified.

### **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**

None

### **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 (i.e. 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.