

Cabinet

16th April 2014

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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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 2013 to March 2014 and seeks approval of a new enforcement programme for 2014/15.

Background

- 2 The 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 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 Council 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)

- 5 The Council has as its corporate priorities for 2013-2017
- Altogether Wealthier
 - Altogether Healthier
 - Altogether Better for Children and Young People
 - Altogether Safer
 - Altogether Greener
 - Altogether Better Council
- 6 The enforcement controls on age related products and the supply of illicit tobacco contributes towards many of these key themes. In striving to improve the well-being of individuals and communities, the control and availability of alcohol and tobacco to those underage is one of the most important issues in tackling health and achievement inequalities.
- 7 The recent introduction of the Code of Practice for Age Restricted Products has required Trading Standards services to amend their approach to tackling these issues by engaging more with partners, business and communities to take a wider perspective in trying to tackle anti-social behaviour and criminality associated with underage sales.

8 Partnership working is essential in utilising resources effectively and sharing intelligence so that priority is given to those areas which have the biggest impact. This has been demonstrated in our work on illicit tobacco where supply from private houses brings criminality into our communities, undermines the stop smoking services and allows uncontrolled access to tobacco to a whole new generation of smokers. We have joined forces with the police to tackle sellers who are also use the supply of illicit tobacco as an entry level crime which leads to money laundering and other organised crime.



'Tab House' leaflet

- 9 Transferring our attention to the illicit trade has meant up skilling our staff in the techniques and skills required to tackle such trade and we have succeeded in training our staff to a high level in covert surveillance and intelligence gathering to effectively tackle this breed of criminal. Our successes in tackling illicit tobacco has resulted in securing funding from colleagues in Public Health to bolster our enforcement of tobacco control through the appointment of three part time Tobacco Control Officers.
- 10 Tobacco is still the biggest preventable cause of death in England and will kill half of those long term smokers who do not quit. In the North East alone it is estimated that it accounts for 460,000 GP appointments and 30,000 hospital admissions a year at a cost to the NHS of £110.4 million and £30 million in added sickness and absenteeism.

- 11 In addition, a recent survey¹ revealed:-
- Despite the overall downward shifts in smoking prevalence and illicit supply, young people are still as susceptible as ever to becoming hooked on smoking
 - The average consumption level of young (14-15 year old) smokers is 6 cigarettes a day
 - More than a third (38%) are concerned about their smoking, and similar numbers (33%) regret a lot taking up smoking in the first instance
 - Conversely 44% do not regret taking up smoking, (at least 3 times as likely as their adult counterparts)
 - 62% indicated that they felt they were addicted to smoking
 - 60% indicated some desire to quit, and indeed three-quarters of them had already tried to do so
 - Just under a third (30%) of young smokers bought illicit tobacco and almost a third had been offered illicit tobacco in the street (more than twice as likely as their adult counterparts).



- 12 During the last four years and coinciding with much of our work on illicit tobacco there has been a 6% reduction in smoking prevalence in the north east to 17%. Also for the same period there has been a marked decline in illicit tobacco purchase with one in six (17%) smokers now being illicit buyers, compared to one in four (24%) in 2009. Clearly our high profile enforcement and that of our partners has had a considerable impact.
- 13 Our work on alcohol and licensed premises continues to focus on reducing the availability of alcohol to children, 'proxy' provision and anti-social behaviour issues. It continues to benefit from the joint working and intelligence sharing with the police Alcohol Harm Reduction Unit co-located with Consumer Protection services within Annand House, Meadowfield and other partner agencies such as 'For Real'. Combined enforcement actions have seen a number of licenced premises brought up for review of their licences.
- 14 The effectiveness of our intelligence gathering and analysis has been bolstered by the adoption of the National Trading Standards Intelligence Operating Model (IOM) which is a framework developed to support national, regional and local enforcement needs by clearer tasking, evidence based decision making and a problem solving approach to issues. All major investigations and identified areas of concern are now fed through this framework which ensures a focus on securing wider perspective outcomes and optimal utilisation of resources and partnership working arrangements. It also ensures that we prioritise our work

¹ NEMS North East Illicit Tobacco Survey, 2013

towards issues and subjects which are of most concern to achieve significant and sustained reductions in consumer and business detriment.

- 15 This year has seen us step up our enforcement against those taking advantage of social networking sites to trade illegally in age related products. This has presented significant challenges in complying with legal requirements in order to engage with online sellers. It is evident that more and more sales of illicit products will be made using these platforms so this area will continue to present challenges to our enforcement work.
- 16 Our education and partnership working has continued and we have now been active partners in community based alcohol partnerships in Stanley, Peterlee and Wear Valley. We have continued to use our 'Do You Pass?' age restricted product training both as an education tool and as an 'alternative enforcement strategy' as an option to paying a fixed penalty fine for a failed test purchase of alcohol. This Council has trained more retail sales staff than any other local authority through this approach.
- 17 This year's plan seeks to strengthen our intelligence led approach to enforcement of age restricted products and illicit tobacco. The appointment of three new members of staff will assist in this approach. All areas of our work on age restricted products however will benefit from our newly up skilled staff and adoption of the National Intelligence Operating Model.



Underage drinking den?

Review of 13-14 activities

- 18 Since 1st April 2013 the following complaints and intelligence has been received by the Service concerning illegal sales of age restricted products and illegal tobacco:-

Product	Complaints to service
Illicit tobacco	57
Underage Age Sales Alcohol	34
Underage Age Sales Spray paints	9
Underage Age Sales Retail Tobacco	5
Underage Age Sales Fireworks	2
Underage Age Sales Sunbed access	2
Underage Age Sales Gambling access	0
Underage Age Sales Butane	0
Underage Age Sales DVD's/Computer games	0
Underage Age Sales Knives	0
Underage Age Sales Petroleum	0
Underage Age Sales Solvents	0
Totals	109

- 19 The vast majority of complaints and intelligence surrounding age restricted products centre on alcohol and tobacco. Within these categories the supply of illicit tobacco continues to be the major enforcement issue particularly with its links to other crime and money laundering. In support of our work on illicit tobacco the 2013 survey found that across the North East adult population, 70% of the adult population and even amongst smokers themselves 51% are now very concerned about illicit tobacco.
- 20 This year we have also had expressed concerns over the level of graffiti both from the public via the CRM system and police beat teams and this has prompted us to carry out a test purchasing survey in the worst affected areas to make sure systems were in place to prevent under age sales of spray paints.
- 21 As a result of intelligence and complaints the following retail test purchases of age related products were undertaken last year:-

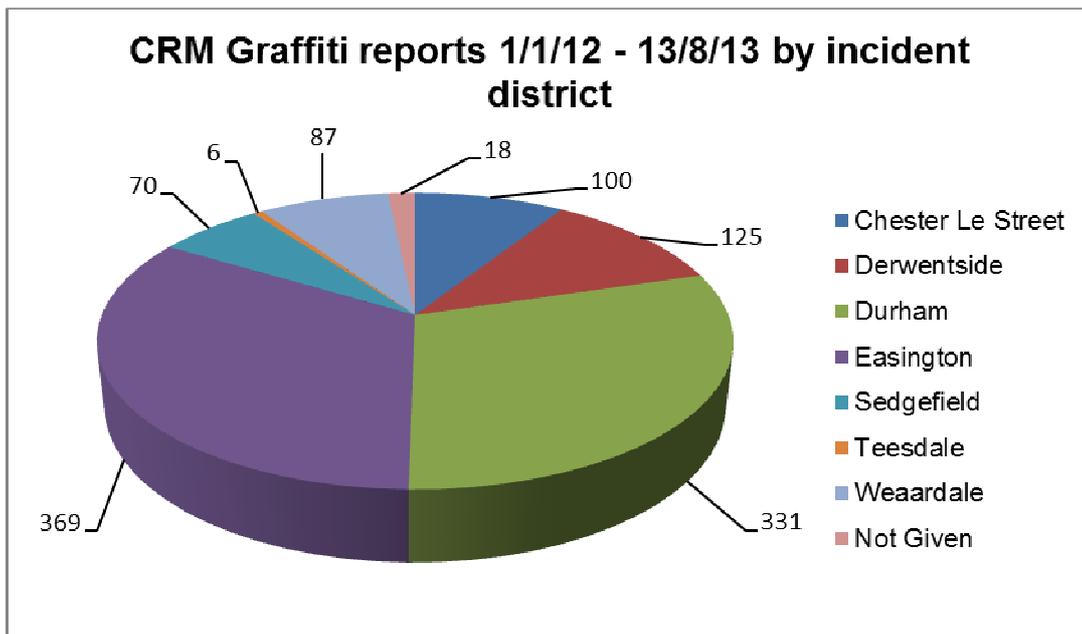
Product	Total attempts		Number of Sales		Percentage		Action Taken
	2013/14	2012/13	2013/14	2012/13	2013/14	2012/13	
Alcohol*	82	73	17	7	21%	9.6%	13 employee fixed penalty notices 3 premise subject to licence review
Tobacco	11	1	0	0	0%	0%	-
Spray Paints	7	0	2	0	28.5%	0%	Both still under investigation

* All alcohol test purchasing is carried out jointly with the police Alcohol Harm Reduction Unit

- 22 The percentage increase in failed test purchases for alcohol from 2012/13 would seem to offer cause for alarm. In reality it reflects the success of our intelligence led approach to enforcement which now only targets those premises where intelligence or complaints has been gathered. Most premises that have failed have done so on only one occasion and a large proportion have

taken up our retailer training in response to falling foul of the law. All such premises will be subject to revisits and any further failed test purchases will prompt licence reviews.

- 23 Pleasingly despite a similar intelligence led approach we still have not had any failed test purchases for tobacco. It is not known why this is so although the ease of availability of illegal tobacco from 'tab houses' may go some way to an explanation. These results and the findings from the recent north east research on illicit tobacco would support our efforts in focussing resources on tackling illegal supplies of tobacco rather than bona fide tobacco retailers.
- 24 The survey of premises selling spray paints arose from an analysis of graffiti incidents reported to the Council. Peterlee and Durham were identified as clear hotspots for this activity and a further survey of premises selling spray paints in these areas was undertaken. It is of particular concern that two premises out of 7 which had failed test purchases were major retailers who would be expected to have good systems in place to prevent under age sales. As consequence investigations are ongoing into the due diligence systems operated by the companies involved.



- 25 In addition to our traditional test purchasing approach, we conducted an audit of 'Challenge 25' schemes operating in the alcohol partnership areas of Peterlee and Wear Valley. This involved undertaking test purchases with an 18 year old volunteer, who whilst over the legal age to purchase would still have triggered a challenge for identification under the Challenge 25 scheme. Disappointingly nearly 40% of premises tested in this way failed to challenge the purchaser.

	Total attempts	Number of Sales	Percentage	Action Taken
Alcohol 'Challenge 25' audits	43	17	39.5%	Training course offered to all failures followed by follow up test purchase

Those who sold without challenge were sent a letter explaining the outcome and invited to attend our training course. The information will also be used as intelligence to justify a full test purchase using an underage volunteer.

26 Finally, we have also carried out some work on the availability to children of electronic cigarettes, often used as a replacement nicotine treatment. Whilst the supply of 'e-cigarettes' to children is not as yet illegal, it is generally accepted that they should not be sold to under 18's and indeed many packs are labelled with this intention. During the year 22 test purchase attempts were made with young volunteers and e-cigarettes were supplied on 11 occasions, a 50% strike rate. Clearly there are concerns that children are able to get hold of these products so easily and that they may lead to them taking up the smoking of real cigarettes in the future.

27 With regard to the complaints received about fireworks being sold to children, these involved sales via the social network site 'Facebook'. Officers have also monitored retail sales and carried out a specific operation concerning 'Facebook' sellers of illegal fireworks and unregistered storage. This is an area which will continue to be of increasing concern for us in the future. In addition we have had two complaints about a premise allowing sunbed access to children and this was dealt with by way of advice and guidance.

28 We have continued to work closely with the police in a variety of areas but in particular we have joined forces to target illicit tobacco dealers who are also known to be involved in money laundering and other criminal activity. A summary of our success up to the end of last year is summarised below:-

- Commendation from the Chief Constable for our achievements in tackling illicit tobacco. This is the first time a non-Police team have received such an award.
- 62,542 illicit cigarettes seized.
- 1,683 pouches of illicit hand rolling tobacco seized
- £54,000 recovered so far as part of proceeds of crime action.
- 7 persons convicted to date of illicit tobacco offences including 2 suspended prison sentences.
- 4 more defendants undergoing investigation.



**Certificate of Commendation
for our work**

- A substantial increase in intelligence gathering as a result of our promotion of the 'Get some Answers' campaign
- 29 The 'Do you Pass' age related product retailer training courses have also continued to go from strength to strength and a further 63 staff being trained this year, taking the total number trained since its introduction to 185. It is seen as a very effective preventative and alternative strategy for dealing with first time offences.

Forthcoming legislation

- 30 On February 26th 2014 the European Parliament passed a revised EU Tobacco Products Directive which will require all European Union countries to put in place a series of tough legal measures to curb smoking and tobacco use.

Key elements of the new Directive include:

- Mandatory pictorial health warnings covering 65% of both sides at the top of every cigarette pack
 - Member states can introduce further controls through the introduction of standardised packaging. The UK Government has already taken powers to do this under the Children and Families Bill.
 - A ban on "characterising flavours" in cigarettes, such as fruit or chocolate, from 2016, with menthol banned from 2022.
 - A regulatory framework for electronic cigarettes.
 - Strong "tracking and tracing" provisions for tobacco products to help fight illicit trade.
- 31 Following formal adoption by the European Council, Governments of the EU Member States will have two years to include the Directive's provisions in national law, with an extension to six years for prohibiting menthol flavouring.

- 32 An electronic cigarette (or e-cigarette), consists of a battery powered device which simulates tobacco smoking. It generally uses a heating element known as an atomiser that vaporises a liquid solution. Some solutions contain a mixture of nicotine and flavourings, while others release a flavoured vapour without nicotine. Many are designed to simulate smoking implements, such as cigarettes or cigars, in



An e-cigarette

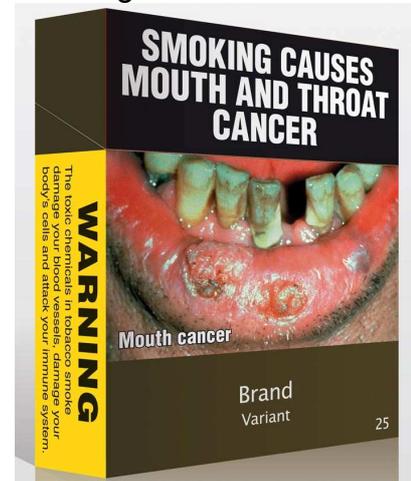
their use and/or appearance, while others are considerably different in appearance. The benefits and risks of electronic cigarette use are presently

uncertain and they may carry a risk of developing nicotine addiction. The regulation of e cigarettes is the subject of ongoing debate.

- 33 As proposed by MEPs, e-cigarettes could be regulated, either as medicinal products, if they are marketed as a quit aid, or alternatively as tobacco products. In the latter case, they should not contain nicotine in a concentration of more than 20 mg/ml. Refillable cartridges may be allowed and so would flavourings. A single cartridge should contain the equivalent in nicotine of a pack of cigarettes. Electronic cigarettes should be childproof and should carry health warnings and would be subject to the same advertising restrictions as tobacco products.
- 34 The directive would ban flavourings in cigarettes and roll-your-own tobacco that would make the product more attractive by giving it a “characterising flavour”. Menthol would be banned from 2020. Flavours would be allowed for water pipes. A "priority list" of additives allowed in cigarettes and roll-your-own tobacco would be laid down by the European Commission. Additives essential to produce tobacco, such as sugar, would be authorised.
- 35 On 10th February 2014, the House of Commons debated the tobacco amendments to the Children and Families Bill which had been added at third reading in the House of Lords. These amendments:

- Enable the Government to introduce regulations requiring standardised packaging for tobacco products
- Enable the Government to introduce regulations making it an offence to sell e-cigarettes to children under 18
- Make it an offence for an adult to buy cigarettes for anyone under 18 (proxy purchasing)
- Enable the Government to introduce regulations making it an offence to smoke in a private vehicle carrying children

- 36 The Bill has just received Royal Assent and to bring this legislation into effect, further regulations will need to be developed and put before Parliament. With regard to standardised packaging, the Government will decide whether to proceed with regulations following the outcome of Chantler review which is due to be reported in March 2014.



'Proposed' Plain Packaging Pack

Enforcement Programme for 2014/2015

- 37 We will continue to adhere to the principles in the Code of Practice for Age Restricted Products. Our adoption of an intelligence led approach is clearly paying dividends in respect of more targeted enforcement and a more effective use of resources. We will undertake further survey or compliance testing where

there are hotspots of anti-social behaviour or other indicators of non-compliance in a particular area.

- 38 We will further develop our partnership working which is now firmly embedded in our approach to enforcement of age restricted products and will continue to gather and share intelligence to support a multi-agency and problem solving approach to enforcement.
- 39 Illicit tobacco will continue to be the primary target for enforcement with its links to health deprivation and other criminal activity. In this respect the funding of three temporary Tobacco Control Officers by Public Health will give us the necessary resource and expertise to identify the major players in this activity and make a real impact in eradicating illegal sales from the County.
- 40 We will continue to offer our 'Do You Pass' Retailer training and alternative enforcement intervention for first time offenders to prevent their repeat. We will also continue to work with FRESH and other partners to highlight the impact of the supply of illicit tobacco on the health of our communities through a range of communications and associated publicity.
- 41 With other areas of age related legislation such as knives, access to sunbeds and use of gaming machines we will continue to gather intelligence and evidence of illegal activity and respond with advice or enforcement as appropriate.
- 42 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.
- 43 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.
- 44 The service will continue to contribute to the overall strategic development of alcohol and tobacco control locally, regionally and nationally through various partnerships including Community Safety Partnership and Community Alcohol Partnership as well as other forums and national consultations relevant to this area of work.
- 45 We will continue to use directed surveillance under the Regulation of Investigatory Powers Act 2000 with regard to illegal sales from private houses and the newly growing area of sales via social networking sites such as Facebook including the use of a Covert Human Intelligence source (CHIS) where appropriate.
- 46 For more serious investigations involving lifestyle offences relating to the supply of illicit tobacco and alcohol the service we will use Durham Constabulary's financial investigation team authorised under the Proceeds of Crime Act 2002 in

order to seize and confiscate assets increasing the deterrent factor for this type of crime.

- 47 The enforcement programme for 2014/2015 consists of those activities detailed below:
- (a) An intelligence led approach to under age sales enforcement and tobacco control based on the National Trading Standards Intelligence Operating Model and will follow the principles outlined in the Age Restricted Products Code of Practice.
 - (b) Investigation of all consumer and trader complaints.
 - (c) Continuation of our joint working with the Police Alcohol Harm Reduction 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.
 - (d) Continuation of our 'Do You Pass' retailer training including its use as an alternative to fixed penalty notices and other formal action.
 - (e) Continuation of our 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.
 - (f) Continuation with a policy of reviewing premises when appropriate.
 - (g) Continuation of our 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.
 - (h) Enforcement of any new legislation for which we may be statutorily responsible that may arise from the implementation of the draft EU Tobacco Directive or Children and Families Bill.

Conclusion

- 48 The agreement of the proposed Enforcement Programme for 2014/2015 will ensure that the Council continues to address the problem of underage sales and access to age restricted products by those under age as well as the wider health and criminal issues surrounding these products.

Recommendations and Reasons

- 49 That Cabinet approves the proposed Enforcement Programme for 2014/2015.

Background Papers

- The Local Better Regulation Office (LBRO) Age Restricted Products and Services Code of Practice

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Appendix 1: Implications

Finance

None

Staffing

The proposed enforcement programme 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

An Equality and diversity impact assessment screening has been completed and no adverse equality and diversity implications have been identified. This will have a positive impact on all young people and children.

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 (i.e. knives) areas. These are long standing obligations and commitments.