

Cabinet

6 April 2016

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



Report of Corporate Management Team

Oliver Sherratt, Corporate Director, Neighbourhood Services

Councillor Brian Stephens, Cabinet Portfolio Holder for Neighbourhoods and Local Partnerships

Purpose of the Report

1. To review 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 2015 to March 2016.
2. To seek approval to a new enforcement programme for 2016/17.

Background

3. The County Council has an important role in protecting young people from the harm caused by alcohol, tobacco and other products. It has a statutory responsibility, through various legislation to enforce regarding the following age related 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 2015 and Fireworks Act 2003)
 - Children and Families Act 2014 (proxy sale of tobacco products and sale of nicotine inhaling products to under 18s)
4. In further recognition of the importance of protecting young people, the Council has also chosen to adopt the following powers for age restricted sales:
 - 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 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. The remainder of this report sets out the Councils approach, reviews the success of 2015/16 and outlines for consideration the future enforcement programme.

Councils Approach

6. **Partnership.** Whilst the Council leads for the activity are in Environment, Health and Consumer Protection (EHCP), it is important to emphasise that their work also involves close working across Council services such as Children and Adult Services and Public Health. Indeed, funding through the public health grant has supported the establishment of a dedicated task force within EHCP service to focus their activities primarily around tobacco control. It is intended that whilst these arrangements will continue, subject to available funding, the scope of work undertaken by the team will be widened in the future to include other areas of enforcement activity which directly contribute to the delivery of key public health outcomes.
7. In addition the Council also works in close partnership with external organisations, especially Durham Constabulary, whose Alcohol Harm Reduction Unit are co-located with EHCP, an arrangement which can be considered national best practice.
8. **Intelligence led.** Working with partners, the Council has adopted an intelligence led approach to enforcement, focusing its activity on individuals and premises of greatest concern. Appendix 2 shows a selection of media articles from some of our successful operations during the last year. The complaints and intelligence recorded by the Service concerning illegal sales of age restricted products and illegal tobacco for the last three years are tabled below. Clearly the greatest areas of concern relate to alcohol and tobacco.

Product	Complaints to service April 2015 to Jan 2016	Complaints to service April 2014 to Jan 2015	Complaints to service April 2013 to Jan 2014
Illicit tobacco	60	74	57
Underage Age Sales Alcohol	70	47	34
Underage Age Sales Retail Tobacco/E-cigs	9	12	5
Underage Age Sales Fireworks	3	1	2
Underage Age Sales Sunbed access	0	1	2
Underage Age Sales Butane	0	1	0
Underage Age Sales DVD's/Computer games	0	1	0
Underage Age Sales Spray paints	0	0	9
Underage Age Sales Gambling access	0	0	0
Underage Age Sales Knives	0	0	0
Underage Age Sales Petroleum	0	0	0
Underage Age Sales Solvents	0	0	0
Totals	142	137	109

9. This intelligence led approach allows us to concentrate our resources on targeting problem individuals and businesses that are seen as 'high risk'. In attempting to bring businesses back into compliance we have use the full range of enforcement tools at our disposal including premise reviews of alcohol premise licences under the Licensing Act 2003. Tasking of Trading Standards enforcement actions are carried out using the National Trading Standards Intelligence Operating Model (IOM) framework which helps build and produce an intelligence picture locally regionally and nationally.
10. **Education and Awareness.** Training of retail staff continues to be a mainstay of our advice and education on under age sales. We have trained a further 172 staff on our 'Do You Pass' age related product retailer training courses and again to our knowledge no-one who has attended this course has gone on to make illegal sales in the future. This remains a very effective preventative and alternative strategy for dealing with first time offences.
11. We continue to use the media as tool to deter those tempted to flout the law in the area of age related products. Regular press releases were sent out surrounding our work on age restricted products, mostly surrounding our success combating illicit tobacco and alcohol. In addition we have prewarned the media to attend our more high profile cases which has resulted in extensive press coverage direct from the court.
12. **Tackling the illicit trade.** The focus of work is not restricted to tackling underage retail sales, but also tackling illegal trade in alcohol and tobacco as these routes actively avoid regulation and can therefore more easily reach young people. As can be seen above this matter is frequently raised with the service. The Illicit Tobacco North East study 2015 of 3268 adults found that 90% consider illegal tobacco to be a danger to children. Similar arguments also exist for alcohol.

Review of 2015/16

Tobacco Enforcement

13. The one area that continues to make the biggest impact in terms of tobacco control and health inequalities is enforcement against illicit tobacco suppliers. Helped by three part time Enforcement Officers who are funded through public health grant, we have made a significant impact into this criminal activity. Since April 2015 we have achieved the following results:-
- 350,000 illegal cigarettes seized
 - 66kg of illegal hand rolled tobacco seized
 - £40,000 cash seizures
 - 35 plus potential defendants
 - Many convictions including suspended prison sentences, tagging orders and several Proceeds of Crime (POCA) actions

14. As well as tackling illicit tobacco sold from private houses a significant number of checks have been carried out on tobacco retailers and other age related product retailers to ensure they are compliant with current legislation. Since April 2015 the following checks have been undertaken:-

- 155 visits to advise retailers on proof of age procedures
- 18 retail premises inspected for illicit tobacco products including the use of specialist tobacco dog team.
- 233 cigarette packs checked with counterfeit cigarette reader
- 153 checks on the labelling of tobacco products
- 36 checks on tobacco retailer display notices
- 44 checks on firework retailer display notices
- 18 point of sale checks for tobacco advertising

15. Amongst the complaints and intelligence concerning the underage sale of tobacco several concerns were raised about the sale to minors of electronic cigarettes. It was only on 1st October 2015 that it became illegal for retailers to sell electronic cigarettes (e-cigarettes) or e-liquids to someone under 18. At the same time it became illegal for adults to buy (or try to buy) tobacco products or e-cigarettes for someone under 18 otherwise known as proxy sales

16. At first sight the 9 complaints or intelligence surrounding the underage sale of tobacco and e-cigarettes give some cause for concern but mostly these relate to non-specific premises or premises that had already passed an alcohol test purchase. In addition there were advisory visits made surrounding the introduction of the law banning the sale of e-cigarettes to under 18's.

Alcohol Enforcement

17. We continue to work closely with the Police Alcohol Harm Reduction Unit (AHRU), Neighbourhood Beat Teams and other agencies to reduce the availability of alcohol to children and tackle the associated anti-social behaviour and harm caused by its misuse by young people. We have joined Durham Constabulary, Community Alcohol Partnerships (CAPs) and local alcohol retailers to implement Operation ARIES (Alcohol Related Intervention Enforcement Support) across County Durham which again seeks to tackle problems on a multiagency basis.

18. Operation ARIES has as its aims to reduce underage sales of alcohol and anti-social behaviour and raise awareness of the health and risk issues associated with underage drinking. Our contribution to this operation includes the delivery of retailer training on age related products as well as test purchasing and compliance testing to ensure systems are in place for prevention of underage sales.

19. In response to complaints or intelligence surrounding under age sales of alcohol a programme of test purchasing was conducted in accordance with the code of practice on age related products¹. The results were as follows:-

	Total attempts		Number of Sales		Action Taken 2015/16
	2015/16	2014/15	2015/16	2014/15	
Alcohol test purchase	41	36	8 (20%)	12 (33%)	5 premises subjected to fixed penalty notices and/or review procedures 3 premises required to send staff on UAS training course

20. It is pleasing to note that the percentage of failed test purchases has fallen from 33% in 2014/15 to 20% in 2015/16 despite the fact that all premises were targeted as before as a result of complaints or intelligence received about them. It could be that the high level of education, advice and enforcement activity arising from our participation in Operation Aries is having an effect taking and that fewer traders are prepared to risk their livelihood by selling to children. This would need to be demonstrated by further years of evidence however.

21. For a first offence in relation to a failed alcohol test purchase sellers fixed penalty notices were usually issued to persons who sold alcohol to the volunteer. In addition, all premises that failed test purchases were, in the first instance, offered free retailer training for their staff. All premises that fail test purchases are subject to a revisit to check that they are brought back into compliance. Any premises who failed two alcohol test purchases within a year were immediately taken to review or. Last year no applications for review were made by Trading Standards but one premise agreed to stringent conditions being imposed voluntarily as an alternative to being taken to review following their prosecution by us. Action is currently pending on three off licences which may result in reviews of their licence.

22. The supply of counterfeit alcohol is also of concern to public safety. Action was taken against the owner of 2 licenced premises in the north west of County Durham for being in possession of 330 bottles of counterfeit vodka. The vodka was made from industrial alcohol and posed a serious risk to health. To highlight the seriousness with which the courts viewed this it resulted in an individual being fined £10,000 fine plus costs. Further investigations are ongoing.

Key Priorities for 2016/2017

Enforcement Programme

22. Building on the successful work to date is the delivery of the following activities:-

- 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.
- Investigation of all consumer and trader complaints.
- 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.

- Staging of events to raise public awareness of the harms associated with illicit tobacco, to publicise the work of the service and encourage reporting of this criminal activity.
- Continuation of our 'Do You Pass' retailer training including its use as an alternative to fixed penalty notices and other formal action.
- 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.
- Continuation with a policy of reviewing premises when appropriate.
- 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.

Responding to New Legislation

23. The next few months will see further legislative changes in the control of tobacco and tobacco related products. **Appendix 3** provides a brief overview of the new controls.
24. The Psychoactive Substances Act 2016 will come into effect on 6th April 2016. This Act will make it an offence to supply any psychoactive substance with the exemption of nicotine, alcohol, caffeine and medicinal products. The main intention of the Bill is to shut down shops and websites that currently trade in 'legal highs'. Working closely with our partners we will tackle the reckless trade in psychoactive substances.

Service Innovation

25. We will continue to use media and public forums to encourage community intelligence and incident reporting.
26. We will use all available covert surveillance techniques with regard to illegal sales from private houses.
27. We will use our own accredited Financial Investigator to take action under the Proceeds of Crime Act 2002 including the seizure and confiscation of assets.

Summary

28. There are high levels of Partnership working to reduce the risk of children having access to harmful products. This report illustrates how, through an intelligence led approach and using both education and enforcement, under age sales and supply are being tackled, especially in relation to tobacco and alcohol.

29. The agreement of the proposed Enforcement Programme for 2016/2017 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

30. That Cabinet notes the enforcement activity during 2015/6 and approves the proposed Enforcement Programme for 2016/2017 set out in paragraphs 22 to 27.

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 existing levels of staffing resources and could only happen due to the nature of funding received from Public Health

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.

12:10 Thursday 03 April 2014

THREE people have been arrested in connection with supplying illicit tobacco following a raid on a property in Peterlee.

Durham County Council Trading Standards and Durham Constabulary found 224 pouches of rolling tobacco and 2,120 cigarettes believed to have been smuggled or counterfeit when they searched the property and a number of vehicles.

Joanne Waller, Durham County Council's head of environment, health and consumer protection, said: "We will continue to work with our partners to get rid of illicit tobacco suppliers in County Durham.

"The sale of illegal cigarettes sidesteps the controls that lawful businesses have in place to uphold age of sale laws and undermines the work of the stop smoking services. It also encourages a whole new generation of young smokers and leaving little incentive or motivation for people to quit.

"The message to those involved in this illicit trade is loud and clear. Stop supplying illicit tobacco or face the consequences."

A recent survey found that 14 to 15-year-old smokers consume an average of six cigarettes a day.

The same survey showed that 30 per cent of young smokers bought illicit tobacco and almost a third had been offered illicit tobacco in the street – more than twice the adult rate.

12:32 Thursday 22 May 2014

TWO people have been arrested after counterfeit cigarettes and cash were seized during a raid on a house.

Trading Standards officers from Durham County Council joined Durham Police when they executed a warrant on the property, in Horden, on Wednesday.

As well as 1,200 counterfeit cigarettes and a large sum of cash, officers also found 2kg of incorrectly labelled hand-rolling tobacco.

The raid is part of an ongoing crackdown on illicit tobacco in County Durham.

Joanne Waller, the county council's head of environment, health and consumer protection, said: "This latest raid reinforces our commitment to stamping out the supply of illicit tobacco in County Durham.

"We have taken on extra resources to combat this area of criminality as we believe it is an essential tool in our fight to bring down smoking rates in the North East and protect our children from tobacco harm.

"Along with our partners in the County Durham Tobacco Alliance, we have a vision that by 2030, smoking prevalence in County Durham can be reduced by five per cent."

Information about supply of illegal tobacco can be reported to Crimestoppers on 0800 555111 or www.crimestoppers-uk.org

Related couples sold illicit tobacco products to scores of visitors to their nearby homes



Durham Crown Court told trading standards officers observed large number of callers to defendants' homes to buy cheap, duty-free cigarettes and tobacco.



27 Apr 2015

Bruce Unwin, Chief Reporter (Durham)

A COUPLE who supplied illicit cheap tobacco products from their home made tens of thousands of pounds from their activities at the expense of the Treasury.

Durham Crown Court heard for several years Darrell and Jean Wild made doorstep sales of duty-free cigarettes and rolled tobacco, some supplied by people returning from overseas holidays.

In return the Wilds, who own a villa in Florida, USA, would make a contribution to reduce the cost of their supplier's holidays.

The court was told when their own stocks ran empty or, when they were away themselves, Jean Wild's sister, Linda Temple and her husband, Edward, who lived nearby in Eleventh Street, Horden, County Durham, acted as back-up, or "reserve" sellers.

Cigarettes seized from West Auckland ice cream van

© 26 February 2015 | Tees



Thousands of cigarettes have been seized by police and trading standards officers from an ice cream van in County Durham.

A man and a woman were arrested after the vehicle was searched on a farm in West Auckland on Wednesday.

The search yielded 4,560 cigarettes, 20kg of hand rolling tobacco and cash.

A spokesman for Durham County Council said the van was known to have parked close to a number of primary schools throughout the county.

Tackling the supply of illegal tobacco

Published October 28, 2014 11.46am

More than 11,000 cigarettes and nearly 9kg of rolling tobacco have been seized as part of a crackdown on the supply of illegal tobacco in the county.



Some of the tobacco which was seized.

Our Trading Standards officers and Durham Constabulary police officers searched two premises in Chilton and Newton Aycliffe on Friday (24 October).

Both raids netted a total of 11,140 cigarettes and nearly 9kg of rolling tobacco - all of which was believed to be counterfeit, smuggled or made specifically for the illegal market.

Cutting the supply

The seizure was the latest in a series of operations carried out by Trading Standards officers and police in a bid to cut the supply of illicit tobacco in the county.

Owen Cleugh, our consumer protection manager, said: "This is one of our most significant hauls to date and steps up the pressure on those supplying tobacco illegally.

"The regularity with which we are carrying out these operations in County Durham sends a clear warning to those who flout the law.

"We would like to thank the public for providing us with a wealth of intelligence concerning the supply of illegal tobacco. This kind of activity undermines the work of the stop smoking services and could encourage young people to pick up the habit."

Forthcoming Legislation

The revised **Tobacco Products Directive (2014/4/EU)** will introduce stricter controls on the manufacture, sale and presentation of tobacco and related products including for the first time herbal products and e-cigarettes and refills. This will include a notification system for electronic cigarettes and other novel tobacco products which were hitherto unregulated. Standardised packaging of tobacco products is also being introduced which will add to the measures already in place restricting the advertising, promotion and display of tobacco products.

The Tobacco and Related Products Regulations 2016 come into force on 20th May 2016 which implements the EU Tobacco Products Directive. In particular, the regulations introduce:-

- Mandatory pictorial health warnings covering 65% of both sides at the top of every cigarette pack
- The option for member states to 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.

The Standardised Packaging of Tobacco Products Regulations 2015 made under the Children and Families Act 2014 is due to come into force on 20th May 2016. One of the key aims for introducing standardised packaging is to discourage people from starting to smoke, particularly young people. It will apply to cigarettes and hand rolling tobacco and ensure that all packaging will be reduced to a simple common format (see picture overleaf)....

Evidence shows (Stirling review 2012ⁱ and Chantler Review 2014ⁱ) that standardised packaging is likely to:-

- Reduce the attractiveness and appeal of tobacco products to consumers, particularly young people
- Increase the noticeability and effectiveness of required health warnings
- Reduce the ability for packaging to mislead consumers about the harms of smoking
- Contribute to efforts to reduce smoking rates.