

Cabinet

20 June 2017



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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Neighbourhoods and Local Partnerships**

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 2016 to March 2017 and seeks approval of a new enforcement programme for 2017/18.

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 age restricted products, namely tobacco, nicotine inhaling products, spray paint containers, alcohol, videos and DVDs, cigarette lighter refills, fireworks and the proxy sale of tobacco products and sale of nicotine inhaling products to under 18s.
- 4 The Authority has also elected to enforce the age-restricted sales of solvents and glue, knives, access to gaming establishments and access to sunbed premises.
- 5 For many years the authority has taken a proactive approach to tackling the harms and criminality associated with the illegal supply and misuse of alcohol and tobacco within County Durham. Together with our partners in the Police and the County Durham Tobacco Alliance, we continue to conduct high visibility enforcement campaigns to tackle the health inequalities and links with organised crime associated with these products. Protection of children continues to be at the forefront of our concerns.

6 The last year has been characterised by the introduction of a wealth of new controls on tobacco and nicotine inhaling products, which will come fully into force on 20th May 2017. From this date, all tobacco products manufactured for sale in the UK must be sold in plain packaging. Cigarettes and tobacco will no longer be sold in bright, glitzy packs, but in plain green packages (see below).



7 In addition the revised Tobacco Products Directive will:

- prohibit certain promotional and misleading descriptors on packaging of tobacco products such as “lite”, “natural” and “organic”;
- require that cigarettes be sold in packs of a minimum of 20 sticks and Hand Rolling Tobacco in a minimum of 30g packets;
- prohibit cigarettes and roll-your-own tobacco with characterising flavours, for example, fruits, chocolate. From 20th May 2020 Menthol tobacco will be prohibited;
- introduce EU-wide tracking and tracing to combat illicit trade of tobacco products. This will apply from 20th May 2019 for cigarettes and hand rolling tobacco and 20th May 2024 for all other tobacco products;
- introduce strict controls on the sale, manufacture, composition and labelling of electronic cigarettes and refills including the need to register new products with the member state.

8 The end of the transition period for these new controls will signal a potential for increased enforcement activity as the deadline passes for compliance and non-conforming products continue to be on sale. This is likely to be most prevalent for novel tobacco products such as electronic cigarettes, which were previously unregulated. This service has issued full guidance to all known retailers of novel tobacco products to try to ensure full compliance before the May deadline.



- 9 Information and intelligence is higher in relation to alcohol and tobacco sales and as such investigations into the supplies of these products receive the most resource.
- 10 To enhance the sanctions and provide a greater deterrent of the supply of illicit tobacco in County Durham, the service has a fully qualified Financial Investigator who works alongside our investigation team to pursue proceeds of crime action. The ability to seize cash and pursue confiscation orders is now fully embedded into the investigations that are carried out.
- 11 As part of our multi-agency response, we have developed a wide range of strategies to combat the issues arising from alcohol and tobacco illegal supply and misuse. Our officers regularly carry out inspections of retail premises and conduct raids on domestic 'tab' houses often making use of the services of tobacco detection dogs. Intelligence gathering and sharing forms an integral part of our approach and this has enabled us to prioritise and target those offenders who are at the core of this criminal activity. Test purchasing and the appropriate use of surveillance remain very effective tools to secure evidence for prosecution alongside the use of warnings, retailer training and advice for those offending on a lower scale.
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- 12 In the case of underage sales at off-licences, the standard practice is to apply for a review of the premises under the Licensing Act 2003 as this provides the quickest and most effective way of bringing such businesses back into compliance.
- 13 HMRC published their annual tax gap figures on 20th October 2016. They showed that in 2015/16, illicit cigarettes and illicit hand rolling tobacco made up 13% and 32% of the total tobacco market in the UK, compared to 7% (revised figure) and 35% respectively in 2014/15. These figures highlight the continued importance of enforcement agencies in disrupting supply routes and the need to implement a robust tracking and tracing mechanism for tobacco products.
- 14 Seizures of counterfeit alcohol still occurs on occasions but the identified illicit market mostly concerns genuine alcohol which is smuggled or redirected back into the UK without UK duty being paid on it and remains primarily an HMRC issue.
- 15 A review of activities of 2016/17 is contained in Appendix 2.

Enforcement Programme for 2017/2018

- 16 We will further develop our intelligence led 'problem solving' approach towards age related products enforcement in accordance with the Code of Practice for Regulatory Delivery for Age Restricted Products and Services. We will make use

of the full range of options open to us including advice, surveys, test purchasing and compliance testing as appropriate, and gather and share intelligence to support a multi-agency and problem solving approach to enforcement.

- 17 We will continue to use every opportunity to develop intelligence sharing with partner agencies and engage with the public to raise awareness of the harms associated with the supply of illicit alcohol and tobacco.
18. Illicit tobacco is a priority for enforcement given its links to health deprivation and other criminal activity. Joint working with the police is now a matter of routine and has enabled criminal activity to be tackled way beyond the initial focus on illicit tobacco.

- 19 We will continue to deliver the 'Do You Pass' Retailer training as an alternative enforcement intervention and the assist businesses in complying with their legal obligations, including new legislation concerning the marketing, packaging and supply of tobacco including the new requirements for standardised packaging, e-cigarettes and herbal tobacco.



- 20 In other areas of age related legislation we will continue to gather intelligence and evidence of illegal activity and respond with advice or enforcement as appropriate.
- 21 We will continue to develop effective working partnerships with all agencies to attempt to tackle both the criminal and wider health issues surrounding the illegal supply of age restricted products and services.
- 22 The 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.

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Where considered appropriate, cash seizures will be made followed by financial investigations that involve lifestyle offences relating to the supply of illicit tobacco and alcohol. In addition, where significant assets have accrued from this criminal lifestyle, we shall apply to the courts for confiscation orders under the Proceeds of Crime Act, thereby providing a significant deterrent for those tempted to profit from this illegal trade.

- 24 We will co-ordinate activities and share information with the police to ensure a consistent approach to the enforcement of the requirements of new restrictions on psychoactive substances formerly known as 'legal highs'.

- 25 The enforcement programme for 2017/2018 consists of those activities detailed below:
- (a) An intelligence led approach to under age sales enforcement and tobacco.
 - (b) Investigation of all consumer and trader complaints.
 - (c) Continuation of our joint working with the Police Harm Reduction Unit and other agencies to adopt a holistic approach to solving problems associated with the accessibility and misuse of age related products.
 - (d) Hold 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.
 - (e) Continuation of the 'Do You Pass' retailer training as a way of assisting business.
 - (f) Continuation of our work in partnership with the police, HMRC and other agencies to tackle sales from private premises to children, particularly in relation to alcohol and tobacco.
 - (g) Continuation with a practice of reviewing premises when appropriate.
 - (h) Continuation of our work to tackle health inequalities and antisocial behaviour associated with the misuse and illegal supply of age-restricted products, in particular alcohol and tobacco.
 - (i) Deliver business advice on and carry out enforcement of new legislation for which we may be statutorily responsible including all new legislation.

Conclusion

- 26 The agreement of the proposed Enforcement Programme for 2017/2018 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

- 27 That Cabinet approves the proposed Enforcement Programme for 2017/2018.

Background Papers

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

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. The funding for dedicated resource in tackling illicit tobacco will run out on 31st March 2018, failure to address this funding gap will result in a significant reduction in enforcement and awareness of illicit tobacco from that time

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.

APPENDIX 2

Review of enforcement activity 2016/17 (1st March 2016 to date)

Complaints and intelligence

Subject	No.
Underage sales of alcohol	94
Illicit Tobacco	31
Under age sales of fireworks	13
Under age sales of DVD/computer games	12
Under age sales of tobacco	7
Nicotine Inhaling products	7
Illicit alcohol	5
Under age sales of electronic cigarettes	4
Under age sales of lottery/scratch cards	1
Novel Psychoactive substances	1

Test purchases / compliance testing

Product	TP's	Fails	%
Alcohol	68	20	29.4 %
DVD/computer games*	12	6	50.0 %
Fireworks*	10	1	10.0 %
Tobacco	9	3	33.3 %
Gambling establishment test of entry	1	1	100.0%
Spray Paints (pending)			
Total	100	69	69.0 %

*Compliance test with 18 year old to check operation of challenge 25 policy

Failure rates for test purchases continue to be quite high but reflect our intelligence led approach to enforcement. Failed alcohol test purchases will in the first instance result in the issue of a fixed penalty notice and a requirement to attend training. Subsequent failures prompt a review of the premises licence under the Licensing Act 2003. In 2016/17, reviews were taken against three premises resulting in a surrender of one licence and two other premises having conditions added to their licence.

In addition to the above enforcement action, the Service carried out 31 visits in relation to the sale of illicit tobacco resulting in the following actions:

- Seizures from one retail premise, nine 'tab' houses and one vehicle.
- Seizure of 130,340 cigarettes, 71.15kg hand rolled tobacco and £14,600 in cash.

- Proceeds of crime action pending to seek significant compensation orders against several suppliers of illicit tobacco.
- Four pending court cases, two court convictions and one caution.
- Six test purchases for illicit tobacco in retail premises (1 failure).

As part of our initiative to tackle illicit tobacco we ran 3 tobacco roadshow events in Peterlee, Stanley and Bishop Auckland where we raised awareness of issues around illicit tobacco helped by tobacco sniffer dog demonstrations. To publicise this area of work we have also issued several press releases resulting in radio and TV interviews.



Compliance testing to test the use of challenge 25 policies for refusal of sales to children was conducted using an 18-year-old volunteer for fireworks and tobacco. Where sales were conducted without an ID challenge traders were advised accordingly and full test purchases will be conducted at these premises as part of follow up action.

Our retailer training on age related products continues to be popular and this year we trained another 35 members of staff to bring the total trained in the county to 403.