

## Cabinet

11 April 2018



### **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 Jane Robinson, Corporate Director of Adults and Health Services Councillor Brian Stephens, Portfolio Holder for Neighbourhoods and Local Partnerships**

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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 2017 to March 2018 and seeks approval of a new enforcement programme for 2018/19.

#### **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 is also a high priority. This forms part of a holistic approach the County Council has adopted to tackle the harms caused by alcohol and tobacco as well as tackling the wider determinants of health

- 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. From 20th May 2017, all tobacco products manufactured for sale in the UK must be sold in plain packaging. This captures cigarettes and hand rolling tobacco must be sold in plain green packages (see below). Cigarette pack size is also restricted to a minimum of 20 sticks.



- 7 A compliance audit of retailers to gauge compliance with these new requirements was conducted by our service during June and July 2017, with all retailers visited as part of a national survey being found to be compliant.
- 8 Non-compliance with the plain packaging requirements have since been found with counterfeit branded products and illicit product is still being found and the subject of seizure and enforcement action.
- 9 The Tobacco and Related Products Regulations 2016, brought in a requirement from 20 May 2017 changes affecting the sale of electronic cigarettes and refill liquids. These address minimum standards of safety and quality of all e-cigarettes and refill containers (e liquids) Information must be provided to enable consumers to make informed choices.
- 10 Maximum tank capacities have been introduced for single use / disposable e-cigarettes of 2 ml. Maximum volumes have been imposed for e-liquids in a single container of 10ml and a maximum strength of nicotine in e-liquids of 20mg/ml.
- 11 Products containing nicotine must be in child resistant and tamper proof packaging. Certain ingredients such as colourings, caffeine and taurine are banned. Additional labelling requirements inform the consumer and all e-cigarettes and e-liquids must be notified to the Medicines and Healthcare Products Regulatory Agency (MHRA) before being put on sale.
- 12 The regulations impose maximum nicotine concentration limits of 20mg/ml and maximum 10 ml refill sizes and 2 ml maximum sizes for e-cigarettes.

13 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.

14 Following a restructuring exercise affecting the Consumer Protection Team, the Information and Intelligence Team has been created. This team consists of a team leader and two part time Financial Investigators. This team acts as a single point of contact, dealing amongst other things with intelligence received concerning the supply of illicit tobacco, alcohol and counterfeit products. This team also liaises closely with local and regional enforcement partners.



15 During November and December 2017, our service as part of the County Durham Tobacco Control Alliance supported a North East Region wide campaign “Keep it Out.” This campaign, sought to raise public and business awareness of illegal tobacco. The main concerns being highlighted being the fact that children can get hold of tobacco cheaply and easily on the illicit market, enabling them to become hooked at a young age. The links to sales of illegal tobacco to organised crime were the second them highlighted during the campaign.



16 Considerable media interest followed the launch of this regional campaign, with input in media interviews by our Director of Public Health. Campaign materials have been distributed via Durham County Council public facing outlets such as council offices and libraries.

17 Additionally we have engaged the support of enforcement colleagues within Environment, Health and Consumer Protection visiting retail outlets, The Police Harm Reduction Unit Pubwatch scheme, The County Durham Organised Crime Disruption Panel and the Health and Safety Executive who visit non- retail premise across the County.

18 To enhance the sanctions and provide a greater deterrent of the supply of illicit tobacco in County Durham, the service progress proceeds of crime action. The ability to seize cash and pursue confiscation orders is now fully embedded into the investigations that are carried out.

19 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.

- 20 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



- 21 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.

- 22 North east Illicit Tobacco survey 2017 main findings –

Comfort towards illicit tobacco (often a key determinant to illicit tobacco purchase prevalence and volume share of illicit) has increased from 5% in 2015 to 9% in 2017 and is now higher than any previous 4 studies. Concurrently, the proportion of the adult population classified as very uncomfortable has fallen from a high of 70% in 2013 to 52% in 2017

- 23 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.

### **Horizon Scanning**

- 24 The Government is currently considering the responses to consultation which closed on 9 December 2017, concerning new legislation on offensive and dangerous weapons. Violent crime recorded by the Police has seen an 18 % rise in the period March 2017 – 2018. The concern being young peoples' access to weapons such as knives and corrosive substances such as acids used in violent attacks. There are proposals to impose requirements on the online sales of knives to prevent them being delivered to private residential premises. Such deliveries would be required to be made to a location where age and identity checks can be made on the purchaser to ensure that they are

in fact over 18 years of age. For example collection from a Post office where age verification checks would be conducted. The proposed measures also seek to ban certain types of knives from being sold.

- 25 The Home Office is concerned as to the reports of serious and life changing injuries inflicted by acids and other corrosive substances. Most of these attacks being carried out by persons under the age of 18. The measures would seek to introduce an offence of selling to persons under the age of 18, to prevent the sale of the most harmful corrosive substances, which are at certain concentration levels.
- 26 The Home Office consultation document does not however identify where enforcement responsibility would lie, which may be the Police and or Local Authorities Trading Standards Services.
- 27 A review of activities of 2017/18 is contained in Appendix 2.

### **Enforcement Programme for 2018/2019**

- 28 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.
- 29 We will continue at 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. This being through the Community Intelligence Plan developed by our Information and Intelligence Team, engaging with partner and voluntary sector agencies and the public. We will also work to support initiatives within the County Durham Tobacco Alliance, which assists our regulatory role in relation to tobacco products.
- 30 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.
- 31 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.



32 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.

33 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.

34 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.

36 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'.

37 The enforcement programme for 2018/2019 consists of those activities detailed below:

- (a) An intelligence led approach to under age sales enforcement and tobacco. This will continue to develop the intelligence from the "Keep it Out Campaign" to deliver enforcement action where possible.
- (b) Working in partnership with the Police and other enforcement agencies to identify and disrupt the involvement of organised criminality in the illicit tobacco supply chain.
- (c) Investigation of all consumer and trader complaints.
- (d) 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.
- (e) 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.
- (f) Continuation of the 'Do You Pass' retailer training as a way of assisting business.
- (g) 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.

- (h) Working with the County Durham Tobacco Alliance partners, provide guidance to traders on the legal requirements surrounding E Cigarettes / Vaping equipment and products and access of their customers to advice on smoking cessation support.
- (i) Continuation with a practice of reviewing premises when appropriate.
- (j) 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.
- (k) Deliver business advice on and carry out enforcement of new legislation for which we may be statutorily responsible including all new legislation, which may emerge in relation to knife sales and corrosive substances.

### **Conclusion**

38 The agreement of the proposed Enforcement Programme for 2018/2019 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**

39 That Cabinet

- a) Note the work done during 2017/18, and
- b) Supports the proposed Enforcement Programme for 2018/2019.

### **Background Papers**

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

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## **Appendix 1: Implications**

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### **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**

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.

## APPENDIX 2

### Review of enforcement activity 2017/18 (1<sup>st</sup> March 2017 to date)

#### Complaints and intelligence

Subject	No.
Underage sales of alcohol	68
Illicit Tobacco	105 (49 of which from Keep it out campaign)
Under age sales of fireworks	1
Under age sales of DVD/computer games	0
Under age sales of tobacco	3
Nicotine Inhaling products	1
Illicit alcohol	9
Under age sales of electronic cigarettes	2
Under age sales of lottery/scratch cards	1
Novel Psychoactive substances	0

#### Test purchases / compliance testing

Product	TP's	Fails	%
Alcohol	68	14	21 %
DVD/computer games	Nil	Nil	
Fireworks*	1	1	100 %
Tobacco	6	6	100 %
Gambling establishment test of entry	14	1	7 %
Spray Paints	Nil	Nil	
<b>Total</b>	<b>89</b>	<b>22</b>	<b>25 %</b>

\* Fireworks test purchase relates to the illegal sale of a firework in the street by an unlicensed seller.

Failure rates for test purchases, particularly of alcohol continue to be of concern. The increased intelligence around illicit tobacco, following the Keep It Out campaign will result in the development of the intelligence and prioritising investigations on key subjects as part of 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 2017/18, mediated interventions imposed additional licensing conditions on a number of premises. Other premises where sales were made are currently under consideration

In addition to the above enforcement action, the Service carried out inspection visits and executed five warrants to premises in relation to the sale of illicit tobacco resulting in the following actions:

- Seizures from three retail premise, four dwellings.
- Seizure of 94,040 cigarettes, 41.8 kg hand rolled tobacco and seizures of over £4000 in cash.
- Proceeds of crime action pending to seek significant compensation orders against several suppliers of illicit tobacco.

In January 2018, a closure order was obtained under the Anti-Social Behaviour and Policing Act 2014, in respect of a shop in the Seaham area of the County, which had repeatedly been found to be selling illegal tobacco. Subsequently an application was made for the review of the premises licence following this order. This review was not required to go ahead, due to the licence being surrendered.



Formal action has been commenced against four individuals believed to be involved in the supply of illicit tobacco with several others currently under review

Two public awareness-raising events were held at the Market Places in both Durham and Chester-le-Street, during the summer of 2017, highlighting the dangers of illegal tobacco. Colleagues from the smoking cessation service, Smoke Free Life County Durham were also on hand to assist residents seeking advice on quitting smoking.



To publicise this area of work we have also issued several press releases resulting in radio and TV interviews.

Our retailer training on age related products continues to be popular and this year we trained another 23 members of staff to bring the total trained in the county to 433.