

Regulatory and Audit Committee

Title:	Enforcement of The Children and Young Persons (Protection from Tobacco) Act 1991
Date:	October 2014
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Electoral divisions affected:	All

Summary

A statutory requirement to consider enforcement activity to prevent underage sales of cigarettes covering the period April 2015 to March 2016.

Recommendation

To note and agree the report as a reflection of activity over the financial year 2013 - 2014 and agree the programme of enforcement activities to be undertaken in 2015 - 2016 as detailed below:

- **Help people to live healthy lifestyles, make healthy choices and reduce health inequalities by ensuring that our work supports the delivery of the Public Health improvement outcomes and responsibilities that relate to the use of tobacco.**

This work may include

- **Establishing the prevalence of sales of illegal tobacco and intervening appropriately with regulatory partners to reduce this**
- **Use local, regional and national intelligence to ensure we target our resources appropriately.**
- **Promote the use of the Challenge 25 Training Pack to help prevent under-age sales by local retailers**



INVESTOR IN PEOPLE



- **Ensure statutory warning notices are displayed in premises where tobacco is sold and advise traders about the legislation.**
- **Ensure that the restrictions on tobacco advertising in retail premises are adhered to.**
- **Ensure that the restrictions on selling from tobacco vending machines are adhered to.**
- **If robust intelligence is received, and it is appropriate to do so: conduct test purchases or explore alternative means of detecting sales other than by test purchases; and consider appropriate enforcement action against traders who sell to underage children having regard to the Better Regulation Delivery Office Code of Practice for Regulatory Delivery on Age Restricted Products and Services.**
- **Continue to participate in the Public Health Agenda and other new projects and initiatives that fit within our enforcement activities outlined above together with our own initiatives when they are felt necessary.**
- **Should we discover persistent sales of tobacco to under 18's (2 or more occasions within a two year period) we will consider using powers contained in Section 143 of the Criminal Justice and Immigration Act 2008 to make a complaint to a Magistrate for an order either to prohibit tobacco sales from the premises or prohibit a specific person from selling tobacco products. This order is for a period of up to 12 months.**

Resource implications

There are no extra resource implications if the recommendations are agreed as they can be delivered from within current anticipated resources.

Legal implications

There are no legal implications associated with this decision.

Local Member implications

Data and intelligence collected by the Service over the last twelve months appears to indicate (by its occasional nature - around two complaints etc. per month) that no particular geographical areas within the County present particular cause for concern. Should this change to particular issues in a local area, the local Members will be advised appropriately.

Other implications/issues

It is a duty under the Act for the Authority to consider, at least once in every period of twelve months, the extent to which it is appropriate within the Authority to carry out a programme of enforcement action to give effect to the provisions of the earlier Children and Young Persons 1933 Act, which seeks to prohibit the sale of cigarettes and associated paraphernalia to persons under the age of 18. This duty relates to tobacco enforcement only, it does not require consideration of the enforcement of other age-restricted products.

The dramatic rise in retail sale and use of electronic cigarettes will inevitably include sales (and use) to those under 18. Although the 1933 Act defines "tobacco" broadly, it has yet to be ruled

whether operating the electronic device could be defined as “smoking” for the purposes of this legislation or “lit” for the purposes of the Public Health Act 2006 (which contains the powers for banning smoking in defined public places). Whether electronic cigarettes are a useful aid to giving up smoking traditional cigarettes or equally as bad for health in the long term is still a subject of national debate.

There is no defined mandatory or minimum level of enforcement specified. Work in relation to tobacco sales, however, inevitably links closely with our other underage sales duties - including cigarette lighter refill canisters containing butane, alcohol, solvents, fireworks and offensive weapons. Such work also links with the high profile given to reducing smoking and tobacco use which has become a key priority of the local Health and Wellbeing Strategy being driven by Buckinghamshire County Council.

National data shows that habitual smokers begin around the age of 14, and our own intelligence shows young people under the age of 18 continue to buy their own cigarettes, facilitated by a minority of Bucks traders who are willing to sell them. It is recognised that the earlier a person starts smoking, the harder it is for them to stop and that younger people are more likely to start smoking than older people.

The close links Trading Standards has with local communities (e.g. via LAFs and neighbourhood policing units) enables the collection of contemporaneous and high- quality intelligence. This in turn allows us to respond to local concerns by more effective targeting of resources.

Effective enforcement, together with education continues be a powerful weapon in the fight to reduce the number of young people who start smoking. The proposed broad range of activity, from proactive, preventative work (such as the Information Packs for business) through to appropriate enforcement action, supports this aim.

Trading standards’ general underage sales duties, in particular alcohol, fireworks, offensive weapons and solvents have all been linked to anti-social behaviour and each impacts adversely on how safe people are made to feel within their communities. Tobacco use among young people is considered as risk-taking behaviour and those who engage in this activity may be more likely to take other risks such as engage in drug and alcohol abuse.

This report on tobacco enforcement is an issue that particularly affects young people.

The proposed plan meets the apparent need for advisory and enforcement work without imposing too great a burden on honest traders or the Service.

The following section looks back at 2013/14 and gives a précis of current issues.

The programme for the financial year 2013/2014 was as follows:-

i Use all complaints to provide intelligence to target resources correctly.

27 complaints were received regarding 27 premises where under age sales of cigarettes and possible sales of illegal tobacco were alleged. Those premises that were the subject of a complaint were added to our data base for intelligence–led future work.

ii Ensuring statutory warning notices are displayed in premises where tobacco is sold and advising traders about the legislation

Advice continues to be frequently provided to traders either where a need is identified or a request made for this statutory notice, which is required to be displayed in a prominent position and can be sourced from trading standards.

iii Ensuring that the restrictions on tobacco advertising in retail premises are adhered to.

These regulations restrict the size and type of tobacco advertising at point of sale. Trader enquiries were received concerning this subject and advice given accordingly.

iv. Where appropriate issue to trader's Challenge 25 Training Pack to help avoid age restricted sales.

Advice continues to be frequently provided to traders either where a need is identified or a request made. This is still particularly relevant and helpful for small independent retailers who do not have their own company materials to use.

v. Explore alternative means of detecting sales other than by test purchases, particularly where it is apparent sellers know the purchasers concerned.

Surveillance exercises with police and police community support officers at premises thought to be selling to local underage persons are an available strategy. As previously reported, these exercises are highly resource intensive, so are considered 'last resort'. Partnership with Police neighbourhood teams to gather intelligence about sales patterns to enable better targeting of suspected premises continues. The police do have a duty to confiscate tobacco from underage persons but rarely exercise this power.

vi Continue to participate in those new projects and initiatives that fit within our enforcement activities outlined above together with our own initiatives where they are felt necessary.

Awareness-raising activities concerning tobacco mis-use and potential dangers were conducted across the County throughout the financial year. These included a talk at Mandeville School [May 2013], a 'Meet the Councillors' event [July 2013], trading standards' Volunteering Launch Event [July 2013], County Show [Aug 2013], Talk to Students at Shaw Trust High Wycombe [Dec 2013 & March 2014], Awareness Raising Event Beaconsfield [Feb 2014] and most recently Talk to schoolchildren at Chiltern Hills Academy, Chesham. At these events, the strengths (and limitations) of trading standards' response to information and intelligence of potential offences and mal-trading practices was discussed, with the valuable opportunity to raise smoking issues with young people taken wherever possible.

We continued with our project work across parts of the Thames Valley Region alongside Crimestoppers to raise awareness of problems related to Illegal Tobacco. Three traders were visited and provided with Crimestoppers Advice Packs concerning illegal tobacco. Partner organisations including the police, District Authorities and Bucks NHS Trust were also supplied with educational material to disseminate.

The Tobacco Advertising and Promotion (Display) (England) Regulations 2010 has already banned the display of cigarettes in large stores (floor area exceeding 280 square metres 6th April 2012). This ban will apply to all other shops from 6th April 2015 and we will continue to provide the small independent retailer with advice and guidance material to ensure their readiness.

We continue to work with Public Health colleagues to explore the most effective ways we can contribute to the delivery of the relevant Public Health outcomes that relate to the use of tobacco.

The 'Buckinghamshire Alliance for Action on Smoking' initiative continues and has produced a 2012-2015 local Plan for a Tobacco Free Buckinghamshire; this Service assists in the delivery of this plan. The Alliance is also providing limited funding as a contribution to our work relating to establishing the prevalence of sales of counterfeit tobacco in the County.

Feedback from consultation, Local Area Forums and Local Member views (if relevant)

There has been no local consultation.

Background Papers:

Children and Young Persons (Protection from Tobacco) Act 1991

Better Regulation Delivery Office Code of Practice for Regulatory Delivery on Age Restricted Products and Services

Health Act 2006

The Tobacco Products (Manufacture, Presentation and Sale) (Safety) (Amendment) Regulations 2007

Criminal Justice and Immigration Act 2008

Health Act 2009

The Tobacco Advertising and Promotion (Display)(England) Regulations 2010

The Protection from Tobacco (Sales from Vending Machines) (England) Regulations 2010

Tobacco Advertising and Promotion (Display and Specialist Tobacconists) (England) (Amendment) Regulations 2011

Trading Standards Service Statistics

Health Lives, healthy people: a tobacco control plan for England [9 March 2011]

Copies may be obtained from Contact Officer.
