

Regulatory and Audit Committee

Title:	Enforcement of The Children and Young Persons (Protection from Tobacco) Act 1991
Date:	18 th November 2015
Author:	Amanda Poole, Trading Standards Manager
Contact officer:	Amanda Poole /01296 388770 / amanda.poole@bucksand.surreytradingstandardscc.gov.uk
Electoral divisions affected:	All

Summary

A statutory requirement to consider enforcement activity to prevent underage sales of cigarettes and nicotine delivery systems in the period April 2016 to March 2017

Recommendation

To note and agree the report as a reflection of activity over the financial year 2014 – 2015 and agree the programme of enforcement activities to be undertaken in 2016 – 2017 as detailed below:

The work on tobacco issues which will focus on the Public Health strategy of addressing the “big issues” to improve the health and wellbeing of residents will include:

- **Continue to participate in and actively assist the Public Health Agenda with its projects and initiatives that fit within our enforcement activities outlined below and develop Trading Standards initiatives where they are felt necessary.**
- **Establishing the prevalence of sales of illegal tobacco (both counterfeit and non-paid duty) 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 that revised statutory warning notices are displayed in premises where tobacco is sold and advise traders about both current and new legislative requirements the legislation.**
- **Ensure that the restrictions of both price marking and visual display requirements of tobacco products in retail premises are adhered to.**
- **Continue to upgrade intelligence data from all viable sources, and where appropriate explore alternative means of detecting sales (other than by test purchases) to enable appropriate enforcement action to be taken against traders who sell to children. The Better Regulation Delivery Office Code of Practice for Regulatory Delivery on Age Restricted Products and Services to be followed. [Note: when Trading Standards previously conducted test purchases, established procedure was to covertly film the sale. This was done for both evidential purposes and Health and Safety reasons. The Regulation of Investigatory Powers Act 2000 covers all covert surveillance operations carried out by local authorities including Trading Standards. Recent Code of Practice changes require authorisation on a case by case basis from our local Magistrates. Their need to balance effective evidence gathering against the ever present risk of ‘collateral intrusion’ (i.e unintentionally capturing non relevant third party personal data on film) means that Magistrates are now less likely to give approval in circumstances when we have insufficient intelligence to satisfy the updated guidelines.]**
- **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 continues to indicate 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

The Children and Young Person's (Protection from tobacco) Act 1991 requires this authority at least once in every period of twelve months, to consider the extent to which it is appropriate to carry out enforcement action to ensure that the provisions of the Children and Young Persons 1933 Act, are effected. This seeks to prohibit the sale of cigarettes and associated items to persons under the age of 18. This duty relates to tobacco enforcement only.

The continued rise in retail sale and use of electronic cigarettes [known as nicotine inhaling devices] has meant the Children and Family Act 2014 has been amended to include two new important provisions (brought in by regulations): The Nicotine Inhaling Products (Age of Sales and Proxy Purchasing) Regulations 2015 make it a criminal offence for an adult to buy these items on behalf of a minor and also for a retailer to sell these items to a minor. An unlimited fine is available to the courts and Trading Standards are responsible for enforcement.

Two other important regulations to protect children against the harmful effects of tobacco have been introduced:

1. The Smoke Free (Private Vehicles) Regulations 2015 – these regulations seek to make all vehicles a smoke free environment when carrying children. They will be enforced both by police and local authority regulatory officers who may issue warnings or give fixed penalty notices or submit the matter to be heard in court. These regulations apply only in England from 1st October 2015.

2. Plain packaging: the Standardised Packaging of Tobacco Products Regulations 2015 are set to come into force on 20th May 2016. Research shows that younger people are now more likely to start smoking than older people and that it is harder for them to stop the earlier the habit is begun. Currently, the smoking habit begins around the age of 14 (with girls in the majority.) As the tobacco industry is known to use enticing packaging as a life style type choice to encourage this early habit, these forthcoming plain packaging regulations are hoped to prove a powerful remedy for this insidious commercial tactic.

The Trading Standards service has been active in forging stronger links with local communities. It has been developing a training programme for local young volunteers to help us help their communities. This assistance to us includes information on levels of peer group smoking, any known rogue retailers and levels of proxy purchasing. Equally valuable has been our volunteers' intelligence gathered across the county on the level of small shops' compliance with the new laws on displaying tobacco products and their prices. This was as a result of the change in law from 6th April 2015.

Links with local communities also include local authority fora, neighbourhood policing units and Trading Standards volunteers. Such links have proved useful in gathering intelligence to respond effectively to local issues and in the case of the Trading Standards volunteers to participate in the services response to the demands of new legislation.

The combination of young persons' specific tobacco-use education and (albeit resource-limited) effective enforcement continues as Trading Standards' main approach to help reduce the number of young people who start smoking. The proposed activities contained in this report aim to support his goal.

Tobacco use among young people is considered as risk-taking behaviour (by themselves as much as anyone else) and may be seen therefore as gateway-behaviour for other risk taking activities. These would include experimenting with alcohol and new psychoactive substances (NPS), when this is combined with carrying offensive weapons and misuse of fireworks the resulting anti social behaviour adversely affects how safe people feel in their own communities.

The programme for the financial year 2014/2015 was as follows:-

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

Following guidance contained in 'challenge 25 training pack' combined with in-shop training, retail premises continue to improve their own precautionary procedures. This increasing diligence has seen the level of complaints received by this service concerning underage sale of cigarettes (including sales of illegal tobacco products) fall to be around 2 per month on average. Such intelligence is analysed and added to our database for intelligence led work.

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

This statutory notice is required to be displayed in a prominent position in all retail premises where tobacco products are sold. Making use of external funding, this Service was able to inspect and observe over 50 premises across the county. These retail premises were assessed for compliance with Tobacco Advertising and Promotion (and Display of Prices) Regulations 2010. The majority of the observational visits were done by our own Trading Standards volunteers after having received instructions and guidance from Trading Standards officers. This partnership enabled valuable work for both local communities and retailers to continue and expand, in spite of the continued pressure on the authority's limited resources. Such work done by volunteers was able to assist them in their own Duke of Edinburgh Award portfolio. Encouragingly, a high level of compliance with these regulations was found at majority of retailers.

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

Retail premises rely on accurate up to date information and subsequent training/experience to be compliant with laws. Accordingly Trading Standards continues to provide the above training pack wherever a need is identified or a request is made.

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. However, as these exercises are highly resource intensive, and the new restrictions of RIPA 2000 bear heavily, these are increasingly considered a 'last resort'. The police do have a duty to confiscate tobacco from under age persons which in combination with other activities might well contribute in the drive to reduce underage tobacco use.

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 misuse and potential dangers were again conducted across the County throughout the financial year. Trading Standards has trialled seminars at various locations to help young people develop for themselves strategies to combat the tobacco industries' glamorous portrayal of smoking. An illustration of this work was seen on 8/04/2015 in High Wycombe Youth Space where young people spent the day developing proposals for a television advertisement to show the harmful effects of smoking. Later in May, officers attended various exhibitions across the country to promote smoking reduction strategies.

This service seeks to further the work done with public health colleagues to deliver the current public health outcomes where they include use of tobacco.

The 'Buckinghamshire Alliance for Action on Smoking' and has produced a further plan for a Tobacco Free Buckinghamshire. This Service will assist in the delivery of this plan.

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

Regulation of Investigatory Act 2000 Revised Codes of Practice

The Children and Family Act 2014

The Nicotine Inhaling Products (Age of Sale and Proxy purchasing) Regulations 2015/895

The Smoke Free (Private Vehicles) Regulations 2015

Standardised Packaging of Tobacco Products regulations 2015

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

Trading Standards Service Statistics

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

Buckinghamshire Health and Wellbeing Strategy 2013-16

(Copies may be obtained from Contact Officer.)
