

Sales of Age Restricted Products

Summary

1. To inform the Cabinet Member of the work undertaken by the council's trading standards service to prevent the illegal sales of age-restricted products.
2. To seek specific member approval for the programme of action for the next 12 months in relation to the enforcement of:-
 - i) The Children and Young Persons (Protection from Tobacco) Act 1991 in relation to cigarettes/tobacco.
 - ii) The Anti-Social Behaviour Act 2003 in relation to aerosol paint.

In relation to these two particular areas, annual approval of the plan of action is required.

Background

3. Legislation exists to help prevent a range of potentially dangerous/anti-social products being accessible to young people. The products regulated with age-restrictions include alcohol (minimum age 18), fireworks (18), certain video games (18), cigarettes (18), knives (18), aerosol paint (16) and solvents (16). In recent years trading standards officers have carried out education and enforcement work in all of these areas. Other age-restricted products that have not been part

of the trading standards work programme in recent years include films (12, 15, 18) and petrol (16).

4. At the Decision Session - Executive Member for Neighbourhoods & Housing on 21 September 2010 ('the decision session'), it was decided that the council should continue with a programme of education and enforcement, adopting a flexible approach to taking formal action against offenders. The programme of education and enforcement is as follows:
 - Visits to premises to advise on legal requirements and the steps that may be taken to avoid illegal sales. The visits also include checks that legal notices are correctly displayed.
 - Promotion of the 'Responsible Retailer Scheme' to off-licensed premises.
 - Responding to complaints made by residents.
 - Responding to intelligence from the police, other council departments and enforcement bodies about illegal sales.
 - Conducting test purchases using volunteer children, under the supervision of officers, to check compliance and take appropriate action following illegal sales.
 - Targeted publicity about underage sales work.
5. Test purchases are carried out in accordance with national guidelines issued by Local Government Regulation. The guidelines include that the test purchasers should not appear older than their true age, and 'for routine test purchase operations', must be told to answer any questions the seller may ask about their age truthfully.
6. The guidelines were amended in March 2010 to state that 'in exceptional circumstances, the Local Authority may consider whether it is appropriate to undertake test purchase operations where the young person is instructed not to answer truthfully any questions relating to their age posed by the seller. This may be considered in cases where the Local Authority has credible evidence for example from Police, Community Safety Wardens etc. that a **specific premises** is selling age restricted products to young persons AND that the action of the seller is always to ask the young person their age. Given that the test purchasers will answer truthfully, the

seller avoids making a sale whereas, had the young person not answered truthfully a different outcome may have ensued’.

7. The previous guidelines instructed children to answer questions truthfully, in all circumstances. The City of York Council’s test purchasing operations have always been carried out in accordance with that principle and at ‘the decision session’ it was decided that the policy should **not** be changed.
8. Officers observe the young volunteers at all times (either in person or by remote camera) to ensure that their welfare is not compromised and that a trader is not tricked into making a sale that they wouldn’t have made. The table in Annex 1 shows the number of attempted test purchases made and the number of sales for each product over the last 4 years.

Alcohol

9. In 2006, the trading standards service introduced a ‘Responsible Retailer Scheme’ to raise standards in ‘off-licences’ and recognise those businesses committed to tackling underage drinking. The scheme compliments the ‘Best Bar None’ scheme which is designed to raise overall standards in ‘on-licensed’ premises. There are currently 46 members of the ‘Responsible Retailer Scheme’. The criteria of the Responsible Retailer scheme are set out in Annex 2.
10. The Chief Officer of North Yorkshire Police has authorised trading standards officers to issue police fixed penalty notices where sales occur in ‘off licensed premises’ (as agreed at the Meeting for the Executive Member for Neighbourhood Services in December 2006).
11. The law allows premise licence holders to be prosecuted where two sales occur in less than three months (Section 147A Licensing Act 2003 - as amended by the Policing and Crime Act 2009).
12. There was one illegal sale of alcohol on our test purchasing visits last year which resulted in the issue of a fixed penalty notice to the seller.

Tobacco

13. Officers will continue to undertake a programme of education and enforcement in relation to illegal tobacco sales, and monitor compliance with tobacco advertising. On 6th April 2012, it will become illegal to display tobacco products except in the limited circumstances set out in the new law.
14. There was a rise in the number of underage sales of tobacco in the last year – mainly due to test purchasing from vending machines – at the request of the Department of Health who provided funding to support this activity. Legislation has been passed to ban the sale of tobacco from vending machines which will come into force on 1st October 2011.

Fireworks

15. Officers have continued to undertake a programme of education and enforcement in relation to illegal fireworks sales.
16. Traders will again be sent a guidance leaflet on all aspects of the law relating to firework sales with their registration certificate - businesses must register with the council if they wish to sell fireworks. Officers will then visit retailers to check storage conditions, check for the sale of 'banned' fireworks i.e. those not complying with noise limit requirements and those which are 'unsafe'. Verbal advice is given on preventing underage sales, and checks made to ensure the correct notices are displayed.
17. In 2010-11, funding was received from the Safer York Partnership to provide businesses with a sticker to display showing that they are registered for the supply of fireworks. This was introduced to help consumers identify legitimate retailers of fireworks, the service will again encourage retailers to display the sticker again this year. We are also planning a test purchase operation in 'firework season' to check retailers compliance with the law.

Aerosol Paint

18. Officers receive very little 'intelligence' on businesses illegally selling spray paint to children either from the public or other

sources. A small amount of test purchasing is planned in 2011-12 to help establish whether this is a problem in York.

Consultation

19. In October 2009, The Talk About Panel (Survey 33) were asked to prioritise issues for Environmental Health and Trading Standards services. The issues that they were asked about were those that the council has a discretion over the level of service it can provide (i.e. although enforcement is a duty, no minimum criteria is specified). 27% of respondents said that the top priority for the trading standards service was preventing the sale of alcohol, cigarettes and fireworks to children. This is down from 60% in the last Talk About Survey (April 2004).

Options

20. Option 1: The council should continue with the programme of education and enforcement action set out in paragraph 4 for the next 12 months.
21. Option 2: The Council may adopt a different programme of education enforcement

Analysis

22. Option 1 will permit officers to continue with a programme of enforcement activity which has resulted in a general reduction in underage sales.
23. Option 2: Any other programme will have to consider the impact it would make in reducing sales of age restricted products

Council Priorities

24. The trading standards work on tackling illegal sales of age restricted products supports the council priority of protecting vulnerable people.

Implications

- **Financial:**

25. There are no financial implications associated with this report, other than the additional funding referred to in paragraph 12.

- **Human Resources (HR):**

26. There are no HR implications associated with this report.

- **Equalities**

27. There are no equalities implications associated with this report

- **Legal:**

28. The Council are legally obliged to consider its activities in relation to tackling underage sales of alcohol, spray paint and cigarettes each year. The Cabinet Member is being asked to make a decision on enforcement action.

29. Legislation gives officers the power to undertake test purchase operations so there are no issues surrounding 'entrapment'.

- **Crime and Disorder**

30. The links to tackling crime and disorder have been highlighted earlier in this report.

- **Information Technology (IT)**

31. There are no IT implications associated with this report.

Property

32. There are no property implications associated with this report.

- **Other**

33. There are no other implications to consider.

Risk Management

34. There is a risk of carrying out test purchasing operations in 'on-licensed' premises if the support of North Yorkshire police is withdrawn. Their services are required to respond to any breach of the peace that may arise.
35. The safety / welfare of the test purchasers involved is fully risk assessed and appropriate control measures are put in place.

Recommendations

36. That the Cabinet Member notes the report and adopts the programme of enforcement action for the next 12 months set out in paragraph 20.

Reason: So that the council can meet its legal obligations.

Contact Details

Author:	Chief Officer Responsible for the report:		
Matt Boxall	Steve Waddington		
Trading Standards Manager	Assistant Director – Housing & Public Protection		
Ext 1528	Report Approved	<input checked="" type="checkbox"/>	Date 12/9/2011
Specialist Implications Officer(s) None			
Wards Affected: <i>List wards or tick box to indicate all</i>		All	<input checked="" type="checkbox"/>
For further information please contact the author of the report			

Background Papers:

Decision Session – Executive Member for Neighbourhood Services 21 September 2010.

Enforcement Policy for Environmental Health, Trading Standards and Licensing Services, 19 March 2008.

Annexes

Annex 1 – The results of test purchasing activity 2004-2011

Annex 2 – Responsible Retailer Scheme – Qualifying Criteria