

Report of the Assistant Director – Housing and Community Safety

## **Sales of Age Restricted Products 2013-14**

### **Summary**

1. This report informs the Cabinet Member of the work undertaken by City of York Council (CYC) Trading Standards Service to prevent the illegal sales of age-restricted products.
2. To seek the required Cabinet Member approval for the programme of action for the next 12 months regarding 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.

### **Background**

3. Legislation exists to help to prevent a range of products which are dangerous and/or often associated with anti-social behaviour being accessible to young people. The products regulated with age-restrictions include alcohol (minimum age 18), cigarettes (18), fireworks (18), knives (18), and aerosol paint (16). Annex 1 is a list of the main age restricted products. In January 2013, The Better Regulation Delivery Office (BRDO) published a 'Code of Practice for Regulatory Delivery in Support of the Age Restricted Products and Services Framework' (the Code of Practice) which we use to guide our activities.

## Existing Programme of Education and Enforcement

4. The intended outcomes of our education and enforcement work are to protect young people from harm, keep communities safe, and support law abiding businesses. Annex 2 is a summary of the education and enforcement action taken in 2013-14.
5. At the 'Decision Session – Cabinet Member for Homes & Safer Communities, 7 January 2014', 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. It was also decided that the council should follow the latest guidelines to ensure that test purchasing more closely mirrors reality. The programme of education and enforcement is as follows:
  - Visits to premises and other publicity as appropriate to advise on legal requirements and the steps that may be taken to avoid illegal sales. We also advise on other legal requirements to ensure, for example, that products are stored correctly and that notices are properly displayed.
  - Responding to complaints made by residents and intelligence from the police, other council departments and enforcement bodies about illegal sales.
  - Conducting test purchases (see below) using volunteer children, under the supervision of officers, to check compliance and take appropriate enforcement action following illegal sales. This includes test purchasing at premises where intelligence suggests that illegal sales are taking place.
  - Enforcement action will be taken following the principles of Environmental Health, Trading Standards, Licensing, Street Environment and Enforcement Services enforcement policy.
  - Targeted publicity about underage sales work.

## Working with others

6. Through the following groups we ensure our work compliments the activities of our partners.
  - We are a member of the Safer York Partnership's Alcohol, Violence and Night Time Economy Group which consists of representatives from the Police, York District Hospital, the Universities and other CYC services such as the Substance Misuse team.

- We attend the Alcohol Harm Reduction Forum which is a meeting of Licensing Officers across North Yorkshire to identify emerging issues.
- We are part of the Yorkshire & Humber Region Public Health Group which co-ordinates the activities of Trading Standards Services in the Yorkshire & Humber Region.
- We are also part of the West Yorkshire and York Illicit Tobacco Alliance which is aimed at reducing the prevalence of illegal, cheap tobacco in the City.

### Test Purchases

7. Test purchases are conducted in accordance with the Code of Practice. This means, amongst other things, that test purchasers do not appear older than their true age (13-16 years old) and they are always instructed to answer any questions the seller may ask about their age truthfully. They dress in a manner which is appropriate for the venue being visited.
8. The young volunteers are observed by officers (either in person or by remote camera). This helps to ensure that the child's welfare is not compromised and that a trader is not tricked into making a sale that they wouldn't have made. Businesses are always informed of the outcome of an attempted test purchase.
9. The table in Annex 3 shows the number of attempted test purchases and the number of sales for each product over the last ten years. In this time, the number of illegal sales has been generally decreasing.

### The application of the Regulation of Investigatory Powers Act 2000 (RIPA)

10. Investigators must have regard to the principles of RIPA in the course of their operations. By complying with RIPA, we are more likely to be able to defend any challenge that our action has contravened a person's human right to a 'private life'. The Surveillance Commissioner has issued guidance (2011) on the applicability of RIPA to test purchases. The guidance states that a 'directed surveillance' authorisation is 'desirable' and consideration must also be given as to whether the purchaser is acting as a 'covert human intelligence source' (which requires separate authorisation). It is unlikely that in the normal course of events a young test purchaser will be deemed to be a 'covert human intelligence source'.

11. On 1 November 2012 there were significant changes introduced governing how local authorities use RIPA. Firstly, authorisations require a magistrates court order before they can take effect. Secondly, local authorities will only be granted an authorisation under RIPA in certain investigations. These are criminal offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco. This means that RIPA authorisations cannot be given for test purchases of products such as spray paint and sun bed sessions. Any test purchasing in these areas would not therefore have the protection of RIPA in the event of a 'human rights' challenge but is not in itself unlawful.

## **Consultation**

12. In October 2009, The Talk About panel (Survey 33) were asked to prioritise issues for environmental health and trading standards services. The issues 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**

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

## **Analysis**

15. Option 1 will permit officers to continue with a programme of which provides support to legitimate businesses and has resulted in a general reduction in underage sales. Our figures show that when no test purchasing is undertaken half of all businesses will sell age restricted products to children. Appendix 3 shows we currently find

around 20% of businesses making illegal sales and only 'higher risk' and 'complained about' businesses are visited. This and academic studies such as the Cochrane Review (2008) shows a connection between enforcement and a reduction in retailers selling age restricted products.

16. Option 2: If an alternative programme is chosen, the council have to consider the impact it would make in reducing sales of age restricted products and the level of business support.

## **Council Plan**

17. The trading standards work on tackling illegal sales of age restricted supports the council plan to 'protect vulnerable people' by reducing health inequalities across York. It also helps 'build stronger communities' by creating healthier communities and making communities safer, resilient and cohesive.

## **Implications**

- **Financial** - There are no financial implications associated with this report.
- **Human Resources (HR)** - There are no HR implications associated with this report.
- **Equalities** - There are no equalities implications associated with this report.
- **Legal** - There is no legal duty to undertake test purchasing, the Council are however obliged to consider its activities in relation to tackling underage sales of cigarettes and spray paints each year. The cabinet member is being asked to make a decision on our action.

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

There is a risk that any 'test purchasing' operations in relation to the sale of spray paint and sun bed sessions will attract a challenge under human rights legislation as such activity cannot be authorised under the protection of RIPA.

- **Crime and Disorder** - The links to tackling crime and disorder have been highlighted earlier in this report.
- **Information Technology (IT)** - There are no IT implications associated with this report.
- **Property** - There are no property implications associated with this report.
- **Other** - There are no other implications to consider.

## **Risk Management**

18. 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.
19. The safety / welfare of the test purchasers involved is fully risk assessed and appropriate control measures are put in place.
20. There is a risk that fewer routine 'test purchases' to check general compliance will be possible as Magistrates may require intelligence about illegal sales before authorising surveillance activities under RIPA.

## **Recommendations**

21. That the Cabinet Member notes the report and adopts the programme of education and enforcement action for the next 12 months set out in paragraph 5.

Reason: To minimise the level of illegal underage sales in the city.

## Contact Details

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**Report  
Approved**

**Date** 12<sup>th</sup> December 2014

**Specialist Implications Officer(s)** *None*

**Wards Affected:** *List wards or tick box to indicate all*

**All**

**For further information please contact the author of the report**

**Background Papers:**

Decision Session – Cabinet Member for Crime & Stronger Communities,  
7 January 2014

Environmental Health, Trading Standards, Licensing, Street Environment  
and Enforcement Services enforcement policy

Cochrane Review; Interventions for preventing tobacco sales to minors  
(Review).

[http://summaries.cochrane.org/CD001497/TOBACCO\\_can-illegal-cigarette-sales-to-underage-youth-be-prevented-and-does-it-change-their-smoking-behaviour](http://summaries.cochrane.org/CD001497/TOBACCO_can-illegal-cigarette-sales-to-underage-youth-be-prevented-and-does-it-change-their-smoking-behaviour)

**Annexes:**

Annex 1 – List of Age Restricted Products

Annex 2 - Summary of key work undertaken in 2013-14

Annex 3 - The Results of Test Purchasing Activity 2003-2014