

Report of the Assistant Director – Housing and Community Safety

Sales of Age Restricted Products

Summary

1. To inform 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

Existing programme of education and enforcement

3. Legislation exists to help to 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), cigarettes (18), fireworks (18), knives (18), aerosol paint (16); in recent years trading standards officers have carried out education and enforcement work in all of these areas. The food and safety team have recently carried out education and enforcement work in relation to the illegal supply of sunbed sessions (18), a new area of the law. Other age-restricted products that have not been part of the trading standards work programme in

recent years include films (12, 15, 18), certain video games (12, 15, 18), petrol (16), and solvents (16). Annex 1 contains a summary of enforcement action taken in relation to these items in 2011-12.

4. At the Decision Session - Executive Member for Neighbourhoods and Housing on 4 October 2011 ('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 (*words in italics have been added*).

- Visits to premises *and other promotional activities such as press releases and mail shots* to advise on legal requirements and the steps that may be taken to avoid illegal sales. *We also advise on other legal requirements, for example that the products are stored correctly and 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 action following illegal sales. This includes test purchasing at premises where intelligence suggests that illegal sales may be occurring and some test purchasing to check that businesses in general are compliant with the law.
- 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.

Test Purchases

5. Test purchasing by City of York Council trading standards officers has always been conducted in a way that the test purchasers should **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 are also instructed to say that they do not have any have proof of age.
6. However, the latest guidance from the Local Authority Coordinators of Regulatory Services says that the purchaser may falsely state that they are the minimum required age (18 or 16) in 'appropriate

circumstances'. Appropriate circumstances are where it is suspected that the seller is avoiding being 'caught' simply by asking for a young persons age.

7. The Better Regulation Delivery Office (BRDO) has published a draft 'Code of Practice for Regulatory Delivery in support of the Age Restricted Products and Services Framework' re-enforcing this position. This draft code also supports children wearing make-up and wearing dress appropriate for the establishment, for example it would be usual to dress up to visit a night club. It also supports the use of a PASS (Proof of Age Standards Scheme) Card that indicates the child's **true age** but gives a false name to protect the identity of the child. This approach is considered to more likely mirror reality, but it is a departure from the CYC approach to tell the truth in all circumstances.
8. When the visits are made, officers observe the young volunteers at all times (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.
9. The table in Annex 2 shows the number of attempted test purchases made and the number of sales for each product over the last seven years. It can be seen that the number of illegal sales is generally decreasing. It is not known whether this is due to increased compliance in the trade or it becoming practice for traders to ask a child's age knowing that our volunteers will answer truthfully and therefore always avoid committing an offence.

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, CYC is likely to be able to defend any challenge that its action has contravened a person's human right to a 'private life'. The Surveillance Commissioner has issued new 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).

11. On 1 November 2012 there will be significant changes governing how local authorities use RIPA. Firstly, authorisations will require a magistrates court order before they can take effect. Secondly, local authorities will only be granted an authorisation under RIPA for the use of directed surveillance 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 a directed surveillance authorisation cannot be given for test purchases of products such as spray paint and sunbed sessions.

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 set out in paragraph 4 for the next 12 months (recognising that any directed surveillance in the case of spray paint and sunbed enforcement will fall outside the protection of RIPA) and the volunteers should continue **to tell the truth about their age** when questioned.
14. Option 2: As above, except that the latest guidance should be followed ensuring the test purchasing more accurately reflects reality.
15. Option 3: The Council may adopt a different programme of education enforcement

Analysis

16. Option 1 will permit officers to continue with a programme of enforcement activity which has resulted in a general reduction in underage sales but may not be reflecting the true level of illegal activity.

Option 2 will permit officers to continue with a programme of enforcement that will more accurately reflect reality and give officers a better understanding of the true level of illegal activity.

Option 3: Any other programme will have to consider the impact it would make in reducing sales of age restricted products

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**

18. There are no financial implications associated with this report.

- **Human Resources (HR)**

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

- **Equalities**

20. There are no equalities implications associated with this report.

- **Legal**

21. The Council are 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.

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

23. There is a risk that after 1 November 2012, any 'test purchasing' operations in relation to the sale of spray paint and sunbed sessions will attract a challenge under human rights legislation as such activity cannot be authorised under the protection of RIPA.

- **Crime and Disorder**

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

- **Information Technology (IT)**

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

- **Property**

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

- **Other**

26. There are no other implications to consider.

Risk Management

27. 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.

28. The safety / welfare of the test purchasers involved is fully risk assessed and appropriate control measures are put in place.

29. There is a risk that fewer test purchasing attempts will be authorised as after 1 November 2012 they require the approval of magistrate before they can take effect. This is particularly in the case of routine 'test purchases' to check general compliance.

Recommendations

30. That the Cabinet Member notes the report and adopts the programme of enforcement action for the next 12 months set out in paragraph 4, and adopts the approach to underage sales outlined in option 2 above.
31. Reason: So that the Council can meet its legal obligations and more accurately assess the true level of illegal underage sales in the city.

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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 – Executive Member for Neighbourhoods & Housing
on 4 October 2011

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

Annexes:

Annex 1 – Summary of key work undertaken in 2011-12

Annex 2 – The results of test purchasing activity 2005-2012

Annex 1 - Summary of key work undertaken in 2011-12

Alcohol

Amendments to the law now allows Premises Licence Holders to be prosecuted and fined up to £20,000 for persistent selling of alcohol to minors. Two sales in three months representing the minimum frequency required. Additionally the period for which the premises may be closed down by the police has been increased from 48hrs to 2 weeks. (Licensing Act 2003 (Persistent Selling of Alcohol to Children) (Prescribed Form of Closure Notice) Regulations 2011.

One illegal sale of alcohol was detected during trading standards test purchase programme of 2011/12. This resulted in a Penalty Notice for Disorder being issued to the seller.

Tobacco

On 1 October 2011 it became illegal to sell tobacco from vending machines.

On 6 April 2012 it became illegal for large shops (3000sq ft/280m²) to advertise and display tobacco products.

Officers conducted a series of advisory visits to premises in respect of the prohibition of cigarette vending machines and cigarette advertising.

There was one underage sale of tobacco products to a child during the 2011/12 test purchase programme; the case resulted in the seller signing a simple caution.

Fireworks

Traders must register with the Council if they wish to sell and/or store fireworks. Traders are sent a guidance leaflet on all aspects of the law relating to firework sales with their registration certificate. Officers 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 are made to ensure the correct notices are displayed.

There was one underage sale of fireworks to children during the 2011/12 test purchase programme; this case was referred to Slough Trading Standards under the Primary Authority Principle.

Aerosol Paint

Officers receive very little 'intelligence' on businesses illegally selling spray paint to children either from the public or other sources. Investigations into the problem of graffiti have indicated that the majority of the paint is believed to be stolen and many of the known offenders are 16 years or more and are therefore legally able to buy it.

Annex 2 - The Results of Test Purchasing Activity 2005-2012

Product	2005/6		2006/7	
	No. of visits	Illegal Sales	No. of visits	Illegal Sales
Alcohol	195	29 (15%)	272	33 (12.1%)
Tobacco	3	0	10	0
Fireworks	28	0	31	6 (19.4%)
Spray Paint	38	0	7	0
Computer Games	7	0	0	0
Knives	0	0	21	2 (9.5%)
Solvents	0	0	0	0

Product	2007/8		2008/9	
	No. of visits	Illegal Sales	No. of visits	Illegal Sales
Alcohol	291	23 (8%)	71	6 (8.45%)
Tobacco	11	0	61	11 (18%)
Fireworks	13	2 (15%)	10	0
Spray Paint	1	0	0	0
Computer Games	0	0	0	0
Knives	0	0	25	1 (4%)

Product	2009/10		2010/11	
	No. of visits	Illegal Sales	No. of visits	Illegal Sales
Alcohol	35	1 (2.9%)	26	1 (3.85%)
Tobacco	18	1 (5.6%)	41	5 (12.19%)
Fireworks	9	0	6	0
Spray Paint	0	0	0	0

Computer Games	7	0	0	0
Knives	25	2 (8%)	0	0

Product	2011/12	
	No. of visits	Illegal Sales
Alcohol	73	1 (1.37%)
Tobacco	30	1 (3.33%)
Fireworks	4	1 (25%)
Knives	5	0