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## **Decision Session - Executive Member for Neighbourhoods and Housing**

**21 September 2010**

Report of the Director of Neighbourhood Services

### **Sales of Age Restricted Products**

#### **Summary**

1. To inform members of the work undertaken by the council's trading standards service to prevent the 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, members are required to approve the plan of action each year.

#### **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 Executive Member for Neighbourhood Services Decision Session on 17 November 2009, 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, and the 'Best Bar None Scheme' to on-licensed premises.
  - Respond to complaints made by residents.
  - Respond to intelligence from the police, other council departments and enforcement bodies about illegal sales.
  - Conduct 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 (LG Regulation – formally known as LACORS). 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.' This principal of 'telling the truth' has been applied to all underage test purchasing exercises carried out by the council
6. The LG Regulation guidelines were amended in March 2010 and now 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.

This change was introduced when it became apparent that in some areas sellers were very familiar with the original requirement of a local authority volunteer to 'tell the truth'. The normal practice adopted by some unscrupulous traders was to ask a young persons age simply to 'avoid getting caught' rather than to avoid selling to someone underage.

7. 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 make 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 7 years.
8. In 2010-11, officers are seeking to improve the collection of data from sources such as the police to help understand whether underage sales is a declining problem or whether sellers are avoiding detection through awareness of our enforcement techniques.

## **Alcohol**

9. In 2006, the trading standards service introduced a 'Responsible Retailer Scheme' to raise standards in 'off-licences' and recognise those premises 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. A review of the effectiveness of this scheme is planned by officers in 2010-11.

10. Where illegal sales occur in 'off licence' premises, formal action (either a caution or prosecution) has been taken against the seller. Where sales occur in 'on-licensed' premises, the police (who accompany trading standards officers on these visits) have issued £80 fixed penalty notices to the seller. The Chief Officer of North Yorkshire Police has now 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). This will ensure that enforcement action is now consistently applied in both 'on-licensed' and 'off licensed' premises.
11. The law now 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. The proportion of sellers making illegal sales of alcohol, as evidenced by officers through the test purchasing programme, is decreasing. These figures are shown in Annex 1.

### **Tobacco**

13. Officers have continued to undertake a programme of education and enforcement in relation to illegal tobacco sales.
14. In 2009-10, the trading standards service received £8,162.04 of funding from the Department of Health (via the Yorkshire & the Humber Trading Standards Group) to assist in enforcement work in relation to tobacco. There is continuing funding for education and enforcement activities in 2010-11. The service are planning to carry out inspections of premises to check tobacco advertising is kept to the minimum levels permitted by law, and to advise on the steps that can be taken to avoid illegal sales. Test purchasing operations are also planned.

### **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. Funding has also been 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 will help consumers identify legitimate retailers of fireworks. There is planned 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 2010-11 to help establish whether this is a problem in York.

### **Knives**

19. In response to the publicity surrounding youths involved in knife crime last year, officers undertook a programme of education and enforcement to help prevent the illegal sale of knives in the City. Similar work is planned for 2010-11.

### **Video Games**

21. Between April and June 2009 as part of an initiative funded by the Department for Children, Schools and Families and the Department for Culture, Media and Sport we asked some 15 year old volunteers to attempt to purchase age-restricted video games. There were 7 attempted purchases and no sales.

### **Consultation**

22. 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**

23. Option 1: The council should continue with the programme of education and enforcement action set out in paragraph 4 for the next 12 months, and the test purchasers should not be allowed to answer questions untruthfully even in exceptional circumstances.
24. Option 2: The council should continue with the programme of education and enforcement action set out in paragraph 4 for the next 12 months, and the test purchasers should be allowed to answer questions untruthfully. This would only be in exceptional circumstances following a review of the intelligence available and the approval of the Head of Environmental Health and Trading Standards.

## **Analysis**

25. Option 1: Will permit officers to continue with a programme of enforcement activity which has resulted in a general reduction in underage sales.
26. Option 2: Will permit officers to develop the programme of enforcement and identify sellers who are prepared to without challenging a young persons age robustly.

## **Corporate Priorities**

27. The trading standards work on tackling illegal sales of age restricted products links to the following priorities from the Corporate Strategy.
  - “Reduce alcohol related crime in York”. (Safer City)
  - “...tackle the public perception of anti-social behaviour”. (Safer City)
  - “We will improve the well-being, and support the independence of York residents” (Healthy City)

## **Implications**

- **Financial**

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

- **Human Resources (HR)**

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

- **Equalities**

30. There are no equalities implications associated with this report

- **Legal**

31. The Council are legally obliged to consider its activities in relation to tackling underage sales of alcohol, spray paint and cigarettes each year. Members are being asked to make a decision on enforcement action.
32. Properly conducted test purchase operations are a recognised and legitimate means of securing compliance with the law in this area.

- **Crime and Disorder**

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

- **Information Technology (IT)**

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

**Property**

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

- **Other**

36. There are no other implications to consider.

**Risk Management**

37. 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.

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

**Recommendations**

39. That the Executive Member notes the report and adopts the programme of enforcement action of the next 12 months outlined in option 1 (and there be no change in policy allowing the test purchasers to be untruthful about their age, even in exceptional circumstances).

Reason: So that the council can meet its legal obligations. The planned programme of reviewing intelligence (paragraph 9) may help support a change in policy in future years.

**Contact Details**

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**Report Approved**



**Date** 3 September 2010

**Wards Affected:**

**All**



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

## **Background Papers:**

Decision Session – Executive Member for Neighbourhood Services 17 November 2009.

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

## **Annexes**

***All annexes to the report must be listed here.***

Annex 1 – The results of test purchasing activity 2003-2010

Annex 2 – Responsible Retailer Scheme – Qualifying Criteria