

**Decision Session - Cabinet Member for
Crime & Stronger Communities**

17 January 2014

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

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 the last 12 months.
5. At the 'Decision Session – Cabinet Member for Crime & Stronger Communities, 30th November 2012 ', 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 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 action following illegal sales. This includes test purchasing at premises where intelligence suggests that illegal sales may be occurring and some 'random' 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.

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.

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. However, last year the percentage of illegal sales rose. We believe this was for two reasons; firstly test purchases were only made where there was intelligence that illegal sales were taking place (higher risk premises). And secondly, the test purchasing techniques have been altered so that they more closely replicate reality.

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).

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.

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.
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.
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**

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 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**

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**

27. There are no other implications to consider.

Risk Management

28. 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.

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

30. 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

31. 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.
32. Reason: So that the Council can meet its legal obligations and assess the level of illegal underage sales in the city.

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Report **Date** *Insert Date*
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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 – Cabinet Member for Crime & Stronger Communities, 30th November 2012

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

Annexes:

Annex 1 – List of Age Restricted Products

Annex 2 - Summary of key work undertaken in 2012-13

Annex 3 - The Results of Test Purchasing Activity 2003-2013

Annex 1 – List of age restricted products.

An age restricted product is any product that can only legally be sold to a person of a certain age. Below is a list of the main age restricted products and the legal age a person must be to purchase them:

Product	Age
Alcohol	18 or over
Tobacco	18 or over
Knives	18 or over
Fireworks	18 or over
DVD's	12,15 or 18
Video Games	12,15 or 18
Gas Lighter Refills	18 or over
Sun beds	18 or over
Solvents	18 or over
Lottery Tickets	16 or over
Spray Paints	16 or over

Age Restricted Products	
Product	Age
Liqueur Chocolates	16 or over
Petrol	16 or over

Annex 2 - Summary of key work undertaken in 2012-13

Alcohol

Four illegal sales of alcohol were made from 16 visits. At one premise there were two sales on two consecutive days. The owner of this store - who sold a bottle of WKD Vodka (4% ABV) to a 15 year old boy on one of the two occasions – was prosecuted. He was fined £100 and his personal licence was suspended for 4 months. He was also ordered to pay a victim surcharge of £20 and costs of £626.98. The other sellers – all employees – were issued with £80 fixed penalty tickets for disorder.

Tobacco

Officers participated in a peer review of our tobacco control measures using a tool kit developed by ASH. An external assessment team made a number of recommendations including looking to develop a city wide 'Tobacco Alliance' which we shall look to assist the Director of Public Health's team to implement.

We have also looked to improve the intelligence received in relation to the supply of cheap and illicit tobacco. We have facilitated regular meetings with local neighbourhood police teams and other council services like the Vulnerable Families team.

There was one illegal sale of tobacco to the underage test purchaser. The seller, an employee, signed a simple caution.

Fireworks

Businesses must register with the Council if they wish to sell and/or store fireworks. As part of this process, they 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 were no illegal sales to our test purchasers.

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 3 - The Results of Test Purchasing Activity 2003-2013

Product	2003/4		2004/5	
	No of visits	Illegal Sales	No. of visits	Illegal Sales
Alcohol	62	21 (34%)	64	11 (17%)
Tobacco	4	0	8	0
Fireworks	17	0	35	4 (11%)
Spray Paint	0	0	0	0
Computer Games	0	0	0	0
Knives	0	0	0	0
Solvents	0	0	6	3 (50%)

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 (0%)	61	11 (18%)
Fireworks	13	2 (15%)	10	0
Spray Paint	1	0 (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		2012/13	
	No. of visits	Illegal Sales	No of visits	Illegal Sales
Alcohol	73	1 (1.37%)	16	4 (25%)
Tobacco	30	1 (3.3%)	4	1 (25%)
Fireworks	4	1 (25%)	4	0
Spray Paint	0	0	0	0
Knives	5	0	1	0