



**REGENERATION AND ENVIRONMENT SCRUTINY COMMITTEE –
18TH SEPTEMBER 2012**

**SUBJECT: TRADING STANDARDS ENFORCEMENT OF AGE RESTRICTED
PRODUCTS LEGISLATION 2011-2012**

REPORT BY: CHIEF EXECUTIVE

1. PURPOSE OF REPORT

- 1.1 To update Members on enforcement work undertaken by the Trading Standards Service in relation to the under age supply of alcohol, tobacco and fireworks, by persons aged under 18.
- 1.2 To provide an annual report to Members, as required by legislation, on enforcement activity in relation to tobacco and aerosol spray paints, although during this last year there was no intelligence received regarding spray paints and therefore no enforcement action to be reported.
- 1.3 To inform members of forthcoming changes in tobacco control legislation.

2. SUMMARY

- 2.1 This report details the nature and number of complaints received concerning under-age sales of alcohol, tobacco and fireworks over the previous financial year. An overview of test purchasing activity is provided including the results of enforcement action and the penalties that may be applied.
- 2.2 Preventative activity is described covering campaigns for age-restricted products and in particular alcohol, aimed at sellers, buyers and the public in general.
- 2.3 A summary of future proposed legislation in the area of tobacco control is also provided.

3. LINKS TO STRATEGY

- 3.1 The enforcement of age-restricted legislation contributes to the following corporate strategy aims:

Health, Social Care and Well-Being Strategy (2011 - 2014)

Strategy Theme 1 – To improve public health by promoting factors which contribute to healthy lifestyles and well-being.

Under the strategy the following outcomes are identified:

- People are not dependent on drugs and/or alcohol

- People are smoke free
- Reducing the prevalence of smoking across the county borough.
- Reduce the harm caused from alcohol and drugs.

Safer Caerphilly Community Safety Partnership Plan

Priority 1 – Reduce anti social behaviour and improve the street scene.

Priority 2 – Reducing the harm caused by alcohol.

Corporate Improvement Plan 2009 – 2012

Building Better Lifestyles – making Caerphilly a safer place to live and work by restricting access to products associated with anti-social behaviour.

Building Futures Changing Lives – raising the awareness of the benefits of a healthy and active lifestyle.

Strategic Equality Plan 2012

Objective 1: Individuals, families and groups in the communities of Caerphilly county borough feel safe living their own lives at home, at work and in the community at large.

4. THE REPORT

4.1 Complaints and Enforcement Exercises

Complaints about premises supplying age-restricted products are received from members of the public, local elected Members, Police Officers, Community Safety Wardens, and other businesses. Complaints data is used to target enforcement activities and also to support authorisations for directed surveillance using covert recording equipment, under the Regulation of Investigatory Powers Act 2000. During the financial year 2011/2012 the Trading Standards Service received:

- 6 complaints about tobacco sales
- 7 complaints about premises selling alcohol and tobacco
- 21 complaints about “on” licence alcohol sales *
- 48 complaints about “off” licence alcohol sales *
- 0 complaint about aerosol spray paints
- 0 complaint about the supply of butane lighter refills

* some premises were duplicated.

4.1.1 A number of the complaints concerning the supply of alcohol to under 18s from off licences also contained further information that “proxy” sales were taking place at the premises. Proxy sales occur where an adult buys alcohol on behalf of a child. Where the seller ‘knows’ a proxy sale is being requested they commit an offence if they allow a sale to go ahead.

4.1.2 Test purchasing occurs within the service for all age-restricted products legislation. Over the previous financial year the service has carried out test purchases for alcohol, tobacco and fireworks. Test purchasing is achieved by using young volunteers selected in accordance with national guidelines. The volunteers, who often work in pairs, carry covert recording equipment, which captures sound and images. If a sale is made the recording is used to support enforcement action. Where volunteers are test purchasing in “on” licence premises support is provided by a witnessing team of officers, including officers from Gwent Police, in order to secure the health and safety of the young people in an adult environment. All activities are risk assessed and parental consent is required before a volunteer is allowed to work with the Trading Standards Service.

- 4.1.3 Test purchasing is prioritised towards those products that cause most concern for local residents. During the financial year activity focused on alcohol, tobacco and fireworks, as these are the products that either carries risks of anti-social behaviour or health concerns for young people.

YEAR		11/12	10/11
Product	Target for Test Purchase	Sales/Attempts	% Sales
Alcohol On Alcohol Off	70 alcohol (set by Corporate Improvement Plan)	7/23 9/51	30% 18%
Tobacco	30 other products	5/37	14%
Fireworks		0/4	0%

- 4.1.4 In 2011/2012 four alcohol operations were conducted as proxy sales exercises. Where complaints are received about proxy sales it is often the case that the premises are believed to be deliberately selling alcohol to local youths or are not preventing local youths from obtaining alcohol via proxy sale. Usually the youths approach adults outside the store to ask them to purchase. In such cases the shop may not be acting deliberately and are therefore unlikely to sell to Trading Standards volunteers. In tackling the proxy sale problem it is necessary to work in partnership with Gwent Police utilising surveillance via CCTV, and officers with stop and search powers to seize the alcohol from youths and establish the dispersal routes away from the premises. Such exercises are complex to set up and also costly in terms of police and local authority resources. However, given the levels of anti-social behaviour associated with such complaints they are prioritised wherever possible.
- 4.1.5 There is no equivalent “proxy” sales offence for the supply of tobacco although the Welsh Assembly Government has undertaken to look into the possibility of creating one.

4.2 **Legislation and Penalties**

- 4.2.1 The Children and Young Persons (Protection from Tobacco) Act 1991 requires the authority to consider its enforcement programme in respect of under age sales of tobacco on an annual basis.
- 4.2.2 The Clean Neighbourhoods and Environment Act 2005 places a duty on the authority to consider activity regarding the under-age sales of aerosol spray paints.
- 4.2.3 Where a premises sells alcohol a number of actions can follow.

Where alcohol is sold it is likely that the staff member will receive an £80 on the spot penalty notice issued by a Trading Standards Officer. The owner/seller of the alcohol will be investigated formally and unless the business has an adequate defence it is likely that they will be prosecuted in court. The maximum fine under the Licensing Act 2003 is £5000.

If it is deemed likely that the premises may not improve their systems the licence may be taken to review before the Licensing Committee. The Committee has a number of options open to it: -

- Impose additional conditions
- Remove the designated premises supervisor (responsible person named on the licence)
- Suspend the licence for up to three months.
- Revoke the licence

- 4.2.4 Where tobacco is sold both the staff member and the business owner may be liable to court action unless there is an adequate defence in place. The maximum fine is £2,500. In the case of fireworks the maximum penalty is £5000 and six months imprisonment.
- 4.2.5 Results for the preceding 12 months (which may have included cases from the preceding financial year) are shown in the table below. One application for the review of premises licence after both supplying to under age volunteers, and deliberately supplying alcohol to local children, resulted in the licence being revoked.

Type of Enforcement Activity	Alcohol	Tobacco
Failed test purchases	16	5
Prosecutions	2	0
£80 Fixed Penalty Notices for Disorder	16	Not applicable
Reviews of Licence	1	Not applicable

4.3 Future Legislative Proposals

- 4.3.1 Tobacco advertising and promotion has been banned since 2004, however it is still currently legal to group large quantities of packets together to make an eye-catching display. Since 2007, and the implementation of the smoking ban in Wales, there has been a raft of enhanced legislation designed to control uptake of tobacco use.
- 4.3.2 Regulations are currently in force in England regulating the display of tobacco products. It is thought the Regulations will be in force in Wales in December 2012. Stores over a certain size will only be able to display tobacco products temporarily in some circumstances-
- Following requests to buy or view tobacco by customers over 18 (age checks must be carried out **before** showing them the tobacco product)
 - Incidental displays while staff are: restocking, assessing stock levels, cleaning, maintaining or refurbishing the storage unit or undertaking staff training
 - In specified circumstances by bulk tobacconists or specialist tobacconists
 - Following a request by an enforcement officer
- 4.3.3 Evidence from countries that have imposed such a ban suggests that youth uptake has reduced by between 10% and 25% due to the lack of visibility and also the barrier of having to request a product specifically. Timescales are not yet confirmed. The Trading Standards Service will enforce the new provisions.
- 4.3.4 A consultation on the plain packaging of cigarettes has been launched in Wales. The consultation will ask individuals whether they think standardised packaging will have an impact on people's health and reduce the uptake of smoking. The consultation suggests for the first time what requirements for standardised packaging could consist of, including no branding, a uniform colour and a standard font and text for any writing on the pack. If introduced this new legislation could help cigarette packaging look less attractive to children, make the health warnings stand out more and stop young smokers believing that some brands are less harmful than others. Enforcement of the plain packaging legislation is likely to be the responsibility of Trading Standards.

4.3.5 A ban on the sale of cigarettes from vending machines was introduced in Wales on 1st February 2012. This measure, which was contained in the 2009 Health Act, will help to protect children from having easy and illegal access to cigarettes.

4.4 **Preventative Activity**

4.4.1 An important aspect of the work of the Trading Standards Service is preventative activity, which is focussed at all the points of supply, with the youths themselves, with adults who may purchase alcohol on their behalf, and with the retailers.

Youths

Trading Standards currently issues around 2000 Home Office accredited proof-of-age (Validate) cards free of charge to 16 year olds within every secondary school. Systems are also in place to issue the cards to those young people not in employment, education or training. Cards are also issued free of charge via main Police Stations.

Annually approximately 2000 schoolchildren attend Crucial Crew, the Year 6 safety awareness event; advice is given to children by Trading Standards Officers through a mock-up shop on age-restricted products.

Trading Standards runs a station focussing on the consequences of alcohol misuse and under-age drinking at Drug and Alcohol days organised by Gwent Police in secondary schools.

Adult Purchasers

A proxy sales warning poster campaign is used in off licence premises. The campaign warns adults that they could face an £80 on the spot penalty or a £5000 fine in court. The campaign is supplemented by stickers and shelf wobblers placed at strategic locations in shops

Retailers

A trader advice pack, "No Proof No Sale", is used to highlight the need to implement preventative systems, including staff training, at premises. The pack is available on-line and also as an Urdu translation. The pack is used at all Trading Standards inspections. Dedicated advice visits are also undertaken whenever a new person takes over control of a licensed premise.

A poster campaign has been used in on licensed premises warning bar staff how easy it is to fail to identify the correct age of purchasers. As well as posters, till and shelf edge stickers have been distributed which warn staff that they face an £80 on the spot penalty if they are found supplying alcohol to under 18.

Seminars have been provided tailored to specific sectors of the alcohol supply trade e.g. bar staff, private members clubs, off licence managers and off licence staff. In the case of off licence staff the training included conflict management in refusing sales and dealing with difficult customers.

5. EQUALITIES IMPLICATIONS

5.1 There are no potential equalities implications of this report and its recommendations on groups or individuals who fall under the categories identified in Section 6 of the Council's Strategic Equality Plan.

5.2 Equalities Impact Assessments would be undertaken on specific action plans and projects related to Trading Standards work.

6. FINANCIAL IMPLICATIONS

- 6.1 Activity is managed within existing budgets. Late night economy working is managed by giving preference to officers who will work for time off in lieu in order to minimise the burden on overtime budgets. However as operations require regular working at evenings and weekends some overtime is required in order to respond to the level of intelligence received.

7. PERSONNEL IMPLICATIONS

- 7.1 There are no personnel implications.

8. CONSULTATIONS

- 8.1 This report has been sent to the consultees listed below and there are no responses that have not been reflected in the recommendation.

9. RECOMMENDATIONS

- 9.1 That Members consider this report as discharging the authorities obligation to consider annually its approach to tackling under-age sales of tobacco and spray paints.

That Members endorse the current approach to preventing access to all age-restricted products.

10. STATUTORY POWER

Children and Young Persons (Protection from Tobacco) Act 1991*
Clean Neighbourhoods and Environment Act 2005*
Children and Young Persons (Sale of Tobacco etc) Order 2007
Licensing Act 2003
Gambling Act 2005
Pyrotechnic Articles (Safety) Regulations 2010
Regulation of Investigatory Procedures Act 2000

* Require an annual consideration of approach

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