



HEALTH, SOCIAL CARE AND WELLBEING SCRUTINY COMMITTEE – 23RD JUNE 2015

**SUBJECT: TRADING STANDARDS ENFORCEMENT OF AGE RESTRICTED
PRODUCTS LEGISLATION 2014-2015**

REPORT BY: CORPORATE DIRECTOR SOCIAL SERVICES

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 aerosol spray paints.
- 1.2 To provide an annual report to Members, as required by legislation, on enforcement activity in relation to tobacco and aerosol spray paints.
- 1.3 To inform members of forthcoming changes in tobacco control legislation and highlight the increase in prevalence of illicit tobacco products.

2. SUMMARY

- 2.1 This report details the nature and number of complaints received concerning under-age sales of alcohol, tobacco and aerosol spray paints 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 The Authority is required by law to annually review its approach to tackling under-age sales of tobacco and spray paints.
- 2.3 During the financial year 2014/15 the Trading Standards Service received 25 complaints about underage sales of products. 63 test-purchasing attempts were made of which there were sales in 11 cases. During 2014/15 2 prosecutions were concluded and currently 3 cases are still being investigated with a view to criminal proceedings being instituted. 5 Penalty Notices for Disorder were also issued and as a result of sales by one premise, a review of the Premises Licence is being considered.
- 2.4 Preventative activity is described, covering campaigns for age-restricted products and in particular alcohol, aimed at sellers, buyers and the public in general. A summary of future proposed legislation in the area of tobacco control is also provided.

3. LINKS TO STRATEGY

The enforcement of age-restricted legislation contributes to the Healthier Caerphilly, Safer Caerphilly, and Learning Caerphilly priorities within the Caerphilly Local Service Board single integrated plan, Caerphilly Delivers, and Objective 1 of the Council's Strategic Equality Plan 2012.

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. Complaint 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 2014/2015 the Trading Standards Service received:

- 1 complaint about tobacco sales
- 6 complaints about “on” licence alcohol sales
- 14 complaints about “off” licence alcohol sales
- 3 complaints about premises selling both tobacco and alcohol
- 1 complaint about aerosol spray paints
- 0 complaints about the supply of butane lighter refills
- 0 complaints about the supply of lottery tickets

4.1.1 In the previous financial year the service has carried out test purchases for alcohol, tobacco and aerosol spray paints. 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.

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

YEAR	14/15		13/14	12/13
	Sales/ Attempts	% Sales	% Sales	% Sales
Alcohol On	3/8	37.5%	50%	21.4%
Alcohol Off	5/34	15%	4.4%	13.2%
Tobacco	2/20	10%	0%	16.7%
Fireworks	0/0	N/A	0%	33.3%
AerosolSpray paints	1/1	100	N/A	N/A

4.1.3 During 2014/2015 Trading Standards dealt with complaints about premises believed to be deliberately selling alcohol to local youths or who are not preventing local youths from obtaining alcohol via proxy sales. In such cases, Trading Standards volunteer test purchasers are unlikely to be served. In tackling this problem it is necessary to work in partnership with Gwent Police utilising surveillance via CCTV or covert cameras, and officers with stop and search powers to seize 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. In relation to proxy sales, it is an offence dealt with by the police and not Trading Standards.

4.1.4 Presently there is no equivalent “proxy” sales offence for the supply of tobacco. The Children and Families Act 2014 creates an offence but as yet an implementation date is unknown.

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. 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.

4.2.2 Where alcohol is sold it is likely that the staff member will receive a £90 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

4.2.3 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. There are further sanctions for premises found to be repeatedly selling tobacco to underage persons. If a person / business is convicted of selling tobacco to persons under the age of 18 and at least two other offences occurred in the preceding two years relating to the same premises, trading standards can make an application to a Magistrates' Court for a restricted premises order and/or a restricted sales order.

A restricted premises order prohibits the sale from the premises of any tobacco products to any person, by the business or any of its staff for a period of up to one year.

A restricted sales order prohibits a specified person who has been convicted of a tobacco offence from selling any tobacco products to any person and from having any management function related to the sale of tobacco products for a period of up to one year. The maximum fine is £2,500. In the case of Aerosol Spray Paints the maximum penalty is also £2,500 and six months imprisonment.

4.2.4 Results for the preceding 12 months (which may have included cases from the preceding financial year) are shown in the table below.

Type of Enforcement Activity	Alcohol	Tobacco	Aerosol Spray Paints
Failed test purchases	8	2	1
Prosecutions	2	0	0
£90 Fixed Penalty Notices for Disorder	5	Not applicable.	
Reviews of Licence	0	Not applicable	

*3 premises are still being investigated for sales that took place in the final quarter of 2014/15, and it is expected that formal action will be taken against the sellers in each of these cases.

4.3 **New and Future Legislative Proposals**

4.3.1 Tobacco advertising and promotion was banned in 2004 and the smoking ban was implemented in Wales in 2007. In December 2012, Regulations controlling the display of tobacco products were introduced for stores over 280 square metres of floor space (generally large supermarkets). Since 6th April 2015 smaller stores (those under 280 square meters) also have to comply with the regulations. All retailers are now only able to display tobacco products temporarily and in specific 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

4.3.2 **Children and Families Act 2014**

The Children and Families Act 2014 received royal assent on 13 March 2014. The Act covers a huge remit but of note to Trading Standards are the provisions dealing with:

- Restricted access to e-cigarettes to persons under 18 years
- Proxy sales offence for tobacco
- Standardised packaging for tobacco products

Sections 91 to 95 make provision to protect children and young people from tobacco and nicotine addiction. Section 91 introduces an offence of “proxy purchasing” of tobacco products and cigarette papers. Sections 92 and 93 provide the Secretary of State with the power to make regulations to prohibit the sale of nicotine products to persons under the age of 18. Section 94 gives the Secretary of State the power to regulate tobacco packaging if he or she considers that regulations may contribute to reducing the risk of harm to or promoting the health or welfare of children. The Secretary of State must obtain the consent of Welsh Ministers before making regulations containing provision which would be within the legislative competence of the National Assembly for Wales.

On 11 March 2015 MP’s voted overwhelmingly in support of the regulations to implement standardised tobacco packaging. This could mean plain packaging legislation for tobacco products by the end of the financial year 15/16.

4.4 **Regulation of Investigatory Powers Act 2000, Protection of Freedoms Act 2012**

4.4.1 On 1 November 2012, the Protection of Freedoms Act 2012 changed the way in which Local Authorities conduct certain surveillance activities. Surveillance, the use of “undercover” officers and other legitimate methods used by law enforcement bodies has been strictly controlled by The Regulation of Investigatory Powers Act 2000. The Act introduced a strict regime of internal checks and balances prior to conducting surveillance, to ensure that any interference with individual’s Human Rights were for the purpose of preventing and detecting crime and was both necessary and proportionate.

4.4.2 Since November Local Authority law enforcers carrying out surveillance activities have to be internally authorised and obtain Judicial Approval from the Courts. The new system has had an impact on the number of test purchase attempts made along with a reduction in complaints and intelligence received. The latter however could be regarded as a positive outcome due to the previous and ongoing work of the Service in attempting to restrict the availability of alcohol and tobacco to children. Enforcement is also now better focused on businesses that appear to deliberately break the law.

4.4.3 Under the 2012 Act Local Authorities also face restrictions over the types of offences that surveillance can be used to investigate, including the Supply of Aerosol Spray Paints and the Proxy Sale of alcohol. This hinders the ability to effectively enforce the law, and forces Trading Standards to be more innovative in relation to testing businesses and individuals who flout the law.

4.5.1 **Illicit tobacco products**

4.5.2 An increasing problem for Trading Standards is the supply of “illicit tobacco” through totally unregulated sources, such as private houses and itinerant street peddlers. Such sellers do not have any controls on the age of purchasers and the products are either counterfeited or “illicit whites”, cigarettes made outside the UK specifically to be smuggled into the country. These products are manufactured with little or no controls in relation to quality and subsequently the yields of tar, nicotine and other toxins are far higher than legitimate products. The very low price of the products does little to assist smokers to give up the habit, and there are no controls over the sale to children, as the trade is completely illegal. Due to health and safety concerns, it is not possible to use under age volunteers to test purchase the products from private dwellings.

4.5.3 In 2014/15 Trading Standards employed the services of BWY Canine, an accredited Dog Handler who utilises a Tobacco Detection Dog for the purposes of locating concealed tobacco and cigarettes. During the retail inspections of convenience stores as part of an illicit tobacco survey, Trading Standards located counterfeit Hand Rolling Tobacco. Whilst it was not the dog who located the tobacco on this occasion, it was felt that the presence of the dog was well received and the subsequent PR went down very well. The Tobacco Detection Dog is very effective, both for sniffing out ‘concealed’ consignments but also for the PR that follows. Trading Standards have further planned operations with BWY Canine, which will spill over into the next financial year.

4.5.4 Trading Standards have powers under legislation to fight the supply of illicit and counterfeited tobacco and a number of operations were undertaken in the last year targeting these sellers, resulting so far in convictions against 2 suppliers with further investigations ongoing.

4.5.5 This year Trading Standards are raising awareness of the problem of illicit tobacco with the help of The Councils Health Improvement Team who secured funding for an Illegal Tobacco Campaign. The Campaign was launched on No Smoking Day on 11 March 2015 and highlighted the accessibility of illegal tobacco to young people and has the strap line “Cheap tobacco gets kids hooked”. The Campaign is already showing signs of success as the number of reports about the sale of illegal tobacco has risen compared with the same time last year.

4.6 **Preventative Activity**

4.6.1 Prevention is an important aspect of the work of the Trading Standards Service and 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.

Young People

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.

Trading Standards also focus on the consequences of alcohol misuse and under-age drinking at Drug and Alcohol days organised by Gwent Police in secondary schools. Additionally the Service responds to requests from individual schools or youth groups to deliver educational talks on age restricted products.

Adult Purchasers

Trading Standards support the police in operations on proxy sales of alcohol. However the introduction of the new controls on surveillance in November 2012 (see paragraph 4.4) removed the ability for local authorities to utilise surveillance for proxy sales operations.

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 and 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 a £90 on the spot penalty if they are found supplying alcohol to under 18.

Under Age Sales Prevention Award training was offered free of charge to alcohol retailers including both on-licence and off-licence trade. The training session was funded through the Bridges into Work scheme, which provided training with a short exam on preventing sales of alcohol to those underage. On successful completion of the training, attendees would get an award. There was a poor take up for the training with only a hand full of premises participating.

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 General activity is managed within existing budgets. Validate Proof of Age cards have previously been funded by external grants, which are no longer available and more recently via reserves. Alternative options / providers will need to be considered for future years including cessation of free card provision.

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 all comments received are reflected in this report.

9. RECOMMENDATIONS

- 9.1 Members note the content of the report.

10. REASONS FOR THE RECOMMENDATIONS

- 10.1 To apprise members of activities undertaken in this area aimed at preventing access to all age restricted products.
- 10.2 To ensure that the Authority complies with its legal obligation to annually review its approach in relation to tobacco and spray paints.

11. 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 Powers Act 2000
National Lottery etc Act 1993
Protection of Freedoms Act 2012

* Require an annual consideration of approach

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