
Environment Scrutiny Committee -5th November 2012

Report of the Director of the Urban Environment

Age Restricted Products Enforcement

Purpose of Report

1. To update Members on legislation enforcement and advice activity carried out by the trading standards service concerning the sale of alcohol to persons aged under eighteen.
2. To provide an annual report to Members on tobacco enforcement activity as required by specified legislation

Background

3. Enforcement and advice activity concerning age restricted products contributes to the Community Strategy themes of promoting health and well being and community safety by reducing harm to children by limiting access to alcohol and tobacco.
4. This report updates on enforcement activity through test purchasing for each product and the results obtained. It also covers legislation and preventative action through advice initiatives for sellers and members of the public.
5. **Alcohol Enforcement**
Trading Standards Service has a duty under the Licensing Act 2003 (the Act) to enforce the provisions of the Act so far as they relate to sales of alcohol made on or from premises to which the public have access and also provides Trading Standards with the power to authorise test purchases to this end.
6. The Act also states that a person commits an offence if he sells alcohol to an individual aged under 18 and also states that a person who knowingly allows the sale of alcohol to an individual aged under 18 is committing an offence. This includes persons who work at the premises.
7. Since October 2010 NHS Dudley has funded a full time Age Restricted Products Enforcement Officer post based within Trading Standards to focus on alcohol and tobacco enforcement.
8. The Trading Standards Service proactively enforces the legislation concerning each product by utilising child volunteers to carry out test purchases at local Sellers. Test purchases serve to test the reality of a sales situation when a young person presents a product for purchase at a till. All test purchase exercises are carried out in partnership with West Midlands Police and conducted in accordance with Local Government Regulation codes of practice. Enforcement action by way of Fixed Penalty Notices (FPNs) or through the courts is likely to follow any sale subject to a decision being made in line with the Council's Enforcement Policy.

- 9 The Licensing Act 2003 sets out proceedings for reviewing premises licences which represents a key protection for the community where problems associated with the licensing objectives are occurring after the grant or variation of premises licence. As a responsible authority the Trading Standards Service has the power to call for a review of an existing premises licence because of a matter arising in connection with any of the four licensing objectives namely the prevention of crime and disorder; public safety; the prevention of public nuisance; the protection of children from harm. Outcomes from the review process are summarised at paragraph 12.
- 10 Premises are targeted and risk assessed for test purchases as a result of intelligence received from West Midlands Police Her Majesty's Revenue and Customs (HMRC) as well as by information from elected members, resident's schools and concerned parents. Premises in areas with higher than average tobacco and alcohol use among under 18s are also targeted using data from NHS Dudley and the Safe & Sound Partnership
- 11 The enforcement of legislation related to the sale of alcohol to persons under 18 contributes in a positive manner to the reduction of crime and fear of crime across the Borough. In particular the Service achieves this by enforcing legislation relating to underage sales, through education and joint enforcement activities with the police and being an active partner in the Safe and Sound Partnership in particular the Crime and Reduction Implementation Group and Joint Activity Group.
- 12 Results achieved for the years highlighted below are as follows

Test Purchases 2010/2011	Sales 2010/11	% Sales 2010/11	Test Purchases 2011/2012	Sales 2011/2012	% Sales 2011/2012
74	6	8.1%	109	9	8.3%

Although the figure for percentage sales of alcohol may appear low and records a sale to a test purchase volunteer at a particular time, it is indicative of a wider pattern of offences and a general failure to comply with the licensing legislation. It should also be noted that there are 360 off licensed premises in the Borough Where illegal sales were made 11 Fixed Penalty notices were issued .A total of 13 requests were made for licence reviews of which there were 3 suspensions and one revocation. There are a number of matters pending with one premise being investigated for persistently selling alcohol under new legislation which came into force on 25th April 2012. This change in the law extends the period for Police and Trading Standards to serve a voluntary closure notice to 14 days (as an alternative to prosecution) and increases the fine for persistent sales of alcohol from £10,000 to £20,000.

- 13 While active enforcement remains a high priority for the Service, Trading Standards also places emphasis on preventative work with sellers, adults and young people.

14 Over 500 Citizen Card proof-of-age cards were issued to students in schools, colleges and further education establishments within the borough. The cards bear a Proof of Age Standards Scheme (PASS) Home Office approved hologram. PASS cards are the only nationally recognised proof-of-age card, alongside passports and photograph driving licences.

15 Tobacco Enforcement

Smoking is the single greatest cause of illness and premature death in England. It is also a major cause of circulatory disease, respiratory disease and cancer. Between 2003-2005 there were 1,628 smoking related deaths in Dudley. Two thirds of adult smokers state that they began smoking before the age of 18.

16 69 inspection visits were carried out in partnership with Her Majesty's Revenue and Customs to check for counterfeit and illicit (non duty paid) alcohol and tobacco. In the period 2011-2012 over 100 bottles of counterfeit spirits with a retail value in excess of £1,300 have been seized. Also 60,000 cigarettes with an approximate retail value of £18,000 and 115Kg of hand rolling tobacco with a retail value of approx £33,300 were seized.

17 Results achieved for years highlighted below are as follows

Test Purchases 2010/2011	Sales 2010/2011	% Sales 2010/2011	Test Purchases 2011/2012	Sales 2011/12	% Sales 2011/2012
21	0	0	9	1	11

Finance

18. Financial implications from enforcing the Licensing Act 2003 regarding the sale of alcohol to persons under the age of 18 years and legislation regarding the sale of tobacco products are met from within existing budgets.

Law

19. Alcohol

The Trading Standards Service has a duty under Section 154 Licensing Act 2003 (the Act) to enforce the provisions of the Act so far as they relate to sales of alcohol made on or from premises to which the public have access and also provides Trading Standards with the power to authorise test purchases to this end.

20. Section 146 of the Act states that a person commits an offence if he sells alcohol to an individual aged under 18. S.147 of the Act states that a person who knowingly allows the sale of alcohol to an individual aged under 18 is committing an offence. This includes persons who work at the premises.

21. Section 147A(1)(a) of the Licensing Act 2003 (as amended), states that a person is guilty of an offence if on 2 or more occasions within a period of 3 consecutive months alcohol is unlawfully sold on the same premises to an individual aged under 18, at the time of each sale the premises were either licensed premises or premises authorised to be used for a permitted temporary activity by virtue of Part 5 and that person was a responsible person in relation to the premises each such time.

22. Section 182 of the Licensing Act 2003 creates the power for a responsible authority or an interested party to request that the licensing authority review a license on the grounds that there is a contravention of one or more of the licensing objectives. These are the prevention of crime and disorder, public safety, the prevention of noise nuisance and the protection of children from harm

23. Tobacco

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. This legislation is designed to protect children from the health risks associated with smoking tobacco

24. The Health Act 2009 introduced a prohibition on the sale of tobacco from vending machines and a ban on the display of tobacco products in retail outlets, with the exception of specialist tobacconists, as measures to safeguard children. The prohibition on sales of tobacco from automatic vending machines will come into force on 1st October 2011. The ban on the display of tobacco products in retail outlets will come into force for large retailers from April 2012 and for smaller retailers from April 2015. The enforcement agency for these measures will be the Trading Standards Service

Equality Impact

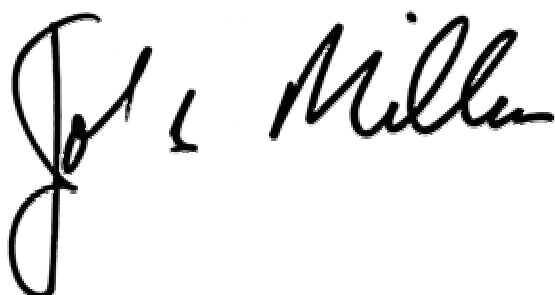
25. The proposals in this report do not impact on relevant groups or conflict with the Council's commitment to equality. The Trading Standards service is delivered impartially and borough wide to all service users

26. Children and young persons may be particularly vulnerable to persons willing to sell them alcohol and tobacco .Particular emphasis is placed on securing compliance with the Licensing Act 2003 and Children and Young Persons (Protection from Tobacco) Act regarding the sale of alcohol and tobacco to persons under the age of 18 years.

Recommendation

27. It is recommended that:-

The committee note the enforcement action taken by the Trading Standards Service under legislation regarding the sale of alcohol and tobacco to persons under the age of 18 years.

A handwritten signature in black ink, appearing to read 'John Millar'. The signature is fluid and cursive, with the first name 'John' written in a stylized, overlapping manner.

John Millar
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List of Background Papers