

**Environment Scrutiny Committee – 7<sup>th</sup> November 2011**

**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.
- 3 To inform Members of current and forthcoming tobacco control legislation .

**Background**

4. 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.
5. This report updates on enforcement activity through test purchasing for each product and the results obtained. It also covers legislation and preventative action through educational and advice initiatives for sellers and members of the public.

6. **Alcohol Legislation**

- The Licensing Act 2003 creates a criminal offence where a person sells alcohol to an individual aged under 18.
- The Council has delegated enforcement responsibility to the Trading Standards Service.
- The Police and Crime Act 2009 amended the offence of persistently selling alcohol to under 18s from three strikes in three months to two strikes in the same period. The Government's current Rebalancing the Licensing Act consultation includes a proposal to increase the fine for this offence from £10,000 to £20,000.
- The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010 introduced a mandatory condition for licensed premises to have an age

verification policy with effect from 1<sup>st</sup> October 2010. The policy must, as a minimum, require individuals who appear to be under the age of 18 to produce on request (before being served alcohol) identification bearing their photograph, date of birth and a holographic mark. Examples of acceptable forms of identification are passports, drivers' licenses and Proof of Age Standards Scheme (PASS) cards.

7. Alcohol Enforcement

- NHS Dudley has funded a full time Age Restricted Products Enforcement Officer post based within Trading Standards to focus on alcohol and tobacco enforcement. An initial 12 month contract has been agreed.
- The Trading Standards Service proactively enforces the legislation concerning each product by utilising child volunteers to carry out test purchases at local sellers. Test purchasers 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 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.
- Premises are targeted for test purchases due to intelligence received from partner agencies such as West Midlands Police and Her Majesty's Revenue and Customs, as well as by complaints from Councillors, members of the public and concerned parents. Premises in areas with higher than average tobacco and alcohol use among under 18s are also targeted.

8. Results achieved for the years highlighted below are as follows:

Product	Test Purchase 2010/2011	Sales 2010/11	Sales 2009/2010	Sales 2008/2009
Alcohol	74	6	3	5

9. Test purchases of alcohol are carried out in partnership with West Midlands Police who are able to issue £80 Fixed Penalty Notice (FPN) for the sale of alcohol to under 18s. Six individuals accepted £80 FPNs following the sale of alcohol to test purchase volunteers.
10. The Trading Standards Service has the power under the Licensing Act to call for a review of an existing licence on the grounds of protecting children from harm. Two premises where alcohol was sold to persons under 18 were taken to review in 2010/2011. Both shops had conditions added to their licence which required them to undertake formal staff training, enhance their CCTV systems and put mechanisms in place to prevent under-age sales of alcohol. One additional shop voluntarily agreed to the addition of the same licence conditions following negotiations with Trading Standards. This has sent out a positive message to licensees and the community that the Council will robustly enforce breaches of the Licensing Act.

11. Alcohol Advice Activity

- While active enforcement remains a high priority for the Service, Trading Standards also places emphasis on preventative work with sellers, adults and young people.
- During the year the “No ID, No Sale” business advice pack, which assists businesses in complying with the law, was distributed to 121 off licensed premises within the Borough.
- Proxy sales warning material was delivered to stores. The material warned adults that it is an offence to purchase alcohol on behalf of a young person.
- Over 1400 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.

12. Tobacco Enforcement Activity

- 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.
- 17 Visits were carried out to 20 premises in partnership with Her Majesty’s Revenue and Customs to check for counterfeit and illicit (non duty paid) alcohol and tobacco. At one premise over 100 pouches of counterfeit hand rolling tobacco was seized.

13. Results achieved for the years highlighted below are as follows:

Product	Test Purchase 2010/2011	Sales 2010/11	Sales 2009/2010	Sales 2008/2009
Tobacco	21	0	4	0

14. Tobacco Legislation

- 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.

- The Act bans the sale of tobacco products to persons under the age of 18 and the sale of single cigarettes. There is also a legal requirement to display notices stating that the sale of cigarettes to children is illegal.
- On 1<sup>st</sup> April 2009 the Criminal Justice and Immigration Act, 2008 amended the Children & Young Persons Act 1933. New sanctions were given to the Council to enable it to tackle those offenders who make three or more proven illegal sales of tobacco in a two year period.
- The Act states that where there is evidence of two previous sales in the preceding two years, the new sanctions will allow a Court Order to be sought, which will prevent either a specific business premise or a named person from selling tobacco for up to 12 months. If a Court Order is breached the maximum fine on summary conviction is £20,000.
- 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 1<sup>st</sup> 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.

### **Finance**

15. The costs associated with the activities contained within the report are covered by existing budgets.

### **Law**

16. The council's duties with respect to age restricted products are set out in:
  - Children and Young Persons (Protection from Tobacco) Act 1991
  - Anti-social Behaviour Act 2003
  - Licensing Act 2003
  - Cigarette Lighter Refill (Safety) Regulations 1999
  - Consumer Protection Act 1987
  - Criminal Justice and Immigration Act 2008

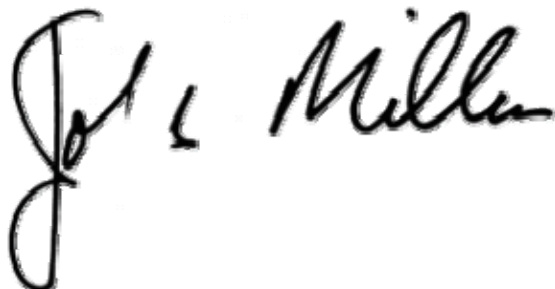
### **Equality Impact**

17. The proposals in this report do not impact on relevant groups or conflict with the Council's commitment to equality. Account is taken of the diversity of the ethnic origins of local business proprietors and efforts made to assist those whose first language is not English, for example by providing interpreters where necessary and by providing advice literature in a range of languages.
18. The Trading Standards Service Plan contributes towards reducing health inequalities for all residents in the borough by promoting health and wellbeing. In particular harm to children is reduced by limiting access to alcohol and

implementing the Tobacco strategy for Dudley through inspection and enforcement of underage sales legislation.

**Recommendation**

19. That Members note the contents of this report.

A handwritten signature in black ink that reads "Joe Miller". The signature is written in a cursive style with a large, stylized initial 'J'.

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**Director of the Urban Environment**

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**List of Background Papers**

Dudley Alcohol Strategy 2006  
A Tobacco Strategy for Dudley- Creating a Smoke Free Generation 2006  
National Alcohol Strategy-Safe Sensible Social 2007