

**BUCKINGHAMSHIRE COUNTY COUNCIL AND  
SURREY COUNTY COUNCIL**

**TRADING STANDARDS JOINT COMMITTEE**

**DATE: 28 SEPTEMBER 2017**

**LEAD OFFICER: STEVE RUDDY**

**SUBJECT: TRADING STANDARDS TOBACCO WORK**

**SUMMARY OF ISSUE:**

The Children and Young Person's (Protection from Tobacco) Act 1991 requires Local Authorities to consider, at least once in every period of twelve months, the extent to which it is appropriate to carry out enforcement action to ensure that the provisions of the Children and Young Persons Act 1933, are effected. This seeks to prohibit the sale of cigarettes and associated items, such as nicotine delivery systems, to persons under the age of 18. This duty relates to tobacco enforcement only.

The Service undertakes work in this area supporting the delivery of the Public Health improvement outcomes and responsibilities that relate to the use of tobacco in order to help people to live healthy lifestyles; make healthy choices and reduce health inequalities.

This report considers the Service's work in relation to tobacco and is not restricted only to its sale to children and young people.

**RECOMMENDATIONS:**

It is recommended that:

**The Joint Committee consider the report as a reflection of activity over the financial year 2016 – 2017 and consider enforcement activities which may be undertaken in 2017– 2018.**

## **REASON FOR RECOMMENDATION:**

1. The Children and Young Person's (Protection from Tobacco) Act 1991 requires Local Authorities to consider, at least once in every period of twelve months, the extent to which it is appropriate to carry out enforcement action to ensure that the provisions of the Children and Young Persons 1933 Act, are effected.

## **DETAILS:**

2. To ensure coherence and to maximise the impact of our work, Trading Standards link closely to Public Health led strategies to reduce tobacco consumption. The Trading Standards role is mainly in relation to tackling supply. The Service has also enabled links to be made between Surrey and Bucks Public Health teams to share information and good practice.
3. In Surrey, Trading Standards chair the Tobacco Alliance. This group of partners oversee the delivery of the Public Health Tobacco Control Strategy for Surrey and reports back to the Health & Wellbeing Board. With the ambition for Surrey to have the lowest smoking prevalence in England, the Priorities include, among others; "helping young people to be tobacco free"; "tackling illicit tobacco" and "raising the profile of tobacco control". The Strategy can be found at:  
<https://www.healthysurrey.org.uk/your-health/smoking/smokefree-surrey/tobacco-control-strategy-for-surrey>
4. The Trading Standards Service in contributing to the development of the Bucks Strategy. When it is agreed the Service will support it where appropriate and we anticipate this work to be similarly overseen by the Bucks Health & Wellbeing Board.
5. The continued rise in retail sale and use of nicotine inhaling devices resulted in the Children and Family Act 2014 being amended to include two new important provisions (brought in by regulations): The Nicotine Inhaling Products (Age of Sales and Proxy Purchasing) Regulations 2015 make it a criminal offence for an adult to buy these items on behalf of a minor and also for a retailer to sell these items to a minor. A maximum fine of £2500 is available to the courts and Trading Standards are responsible for enforcement. The Service has advised relevant businesses of the requirements. There were no complaints relating to proxy sales in 16/17 and no formal action has been taken under these Regulations to date.
6. Other regulations to protect children against the harmful effects of tobacco include "plain packaging". The Standardised Packaging of Tobacco Products Regulations 2015 came into force on 20<sup>th</sup> May 2016 with a transition period lasting until May 2017. Research shows that younger people are now more likely to start smoking than older people and that it

is harder for them to stop the earlier the habit is begun. Currently, the smoking habit begins around the age of 14 (with girls in the majority.) As the tobacco industry is known to use enticing packaging as a life style type choice to encourage this early habit, these forthcoming plain packaging regulations are hoped to prove a powerful remedy for this insidious commercial tactic.

7. The Trading Standards service has been active in forging stronger links with local communities through a variety of routes including local authority fora, neighbourhood policing units and volunteers. The Service has been developing a training programme for local young volunteers to help us help their communities. This assistance to us includes information on levels of peer group smoking, any known rogue retailers and levels of proxy purchasing. We hope that such links will also prove useful in gathering intelligence to respond effectively to local issues and in the case of the Trading Standards volunteers to participate in the services response to the demands of new legislation.
8. The combination of young persons' specific tobacco-use education and (albeit resource-limited) effective enforcement continues as Trading Standards main approach to help reduce the number of young people who start smoking. The proposed activities contained in this report aim to support this goal.
9. Tobacco use among young people is considered as risk-taking behaviour (by themselves as much as anyone else) and may be seen therefore as gateway-behaviour for other risk taking activities. These would include experimenting with alcohol and new psychoactive substances (NPS), when this is combined with carrying offensive weapons and misuse of fireworks the resulting anti-social behaviour adversely affects how safe people feel in their own communities.
10. The programme for the financial year 2016/2017 was as follows:-

#### **10.1 Use all complaints to provide intelligence to target resources correctly.**

Following guidance contained in 'challenge 25 training pack' combined with in-shop training, retail premises continue to improve their own precautionary procedures. This increasing diligence has seen the level of complaints received by this service concerning underage sale of cigarettes (including sales of illegal tobacco products) fall to be less than 2 per month on average. Such intelligence (if deemed reliable) is added to our database for intelligence led work.

Information received about illicit tobacco was used to target premises for visiting with a tobacco sniffer dog leading to two prosecutions in 16-17 in relation to illicit tobacco. The retailers were fined and one had the

conditions of their alcohol licence varied during the subsequent licence review.

One prosecution was of a convenience store in Laleham where 600 counterfeit Benson & Hedges cigarettes and 26 pouches of duty evaded tobacco was seized. All of the tobacco products were found without the required statutory health warnings. The value of the items, if legitimate, was around £775-£800. The total fine including costs was £2301.

The other prosecution was against a shop in High Wycombe where 50 pouches of tobacco and 200 packs of cigarettes were seized. All were labelled in a foreign language or were duty free and so were illicit. The total fine including costs was £1830. This business was also subsequently subject to a licence review and additional conditions were placed on the licence to stop this happening again.

The Trading Standards service is building up a relationship with Border Force at Heathrow. The intelligence they provide includes details about consignments of oral tobacco coming into the country. Oral snuff tobacco cannot be supplied in the UK. In 16/17 a consignment of 500kg of oral snuff tobacco was stopped at the border and forfeited over to Trading Standards for destruction.

## **10.2 Ensuring statutory warning notices are displayed in premises where tobacco is sold and advising traders about the legislation**

Compliance with this legislation is generally good. The Service continues to provide advice to relevant Primary Authority Partner companies and associations on all aspects of tobacco legislation.

Trading Standards doesn't tend to get complaints specifically that such a notice is not being displayed, however it would be one of the things officers would look for when carrying out a visit to a premises for any reason. 5 visits carried out in 16/17 found that no such notice was on display, retailers were provided with a notice to display and advised of the offences under the legislation. No further enforcement action was required.

## **10.3 Ensuring tobacco packaging is compliant**

All tobacco sold after May 2017 should be compliant with the new labelling/packaging requirements. We will respond to complaints received about premises selling non-compliant tobacco. With compliance in the legal tobacco sector generally good, it is expected that it will mainly be illicit tobacco that is not complying with these new requirements.

**10.4 Where appropriate, issue to trader's Challenge 25 Training Pack to help avoid age restricted sales.**

Retail premises rely on accurate up to date information and subsequent training/experience to be compliant with laws. Accordingly Trading Standards continues to provide the above training pack wherever a need is identified or a request is made.

During 16 -17, 27 underage sales advice packs were distributed to retailers, either during a visit to a premises or sent to them by post.

**10.5 Explore alternative means of detecting sales other than by test purchases, particularly where it is apparent sellers know the purchasers concerned.**

Surveillance exercises with police and police community support officers at premises thought to be selling to local underage persons are an available strategy. However, as these exercises are highly resource intensive, and the restrictions of RIPA 2000 bear heavily, these are increasingly considered a 'last resort'. The police do have a duty to confiscate tobacco from under age persons which in combination with other activities might well contribute in the drive to reduce underage tobacco use.

11. For 2017-18 we will:

**11.1 Continue to participate in those new projects and initiatives that fit within our enforcement activities outlined above together with our own initiatives where they are felt necessary.**

These will include, in relation to e-cigarettes, new labelling requirements and stipulations on the size of the containers have also recently come into force. In 17/18 we are carrying out a project looking at the level of compliance with these new requirements for e-cigarettes. We will also be using tobacco sniffer dogs to target potential suppliers.

**11.2 Promote the education message about the harm illicit tobacco causes and the smoking cessation message and gather any intelligence about sales of illicit tobacco to identify sources.**

This will include by running a series of four illicit tobacco roadshows across Surrey, being jointly funded between Trading Standards and SCC Public Health.

Using intelligence gathered from the roadshows and other intelligence that has come into the service, Trading Standards plans to carry out operations in both Bucks and Surrey using the tobacco sniffer dogs to inspect identified premises for illicit tobacco.

**11.3 Promote the smoke free homes and playgrounds initiatives in Surrey.**

This promotion will largely be through our social media channels, re-tweeting messages from Public Health to support and extend the reach of their messages.

**11.4 Support the development of the tobacco reduction strategy with Public Health in Buckinghamshire by providing input around tackling supply routes.**

**11.5 Continue to use local, regional and national intelligence to ensure we target our interventions and resources appropriately by: exploring ways to improve intelligence sharing between relevant partners; upgrading intelligence from all viable sources; and exploring alternative means of detecting sales (other than by test purchases).**

**11.6 Seek licence reviews through the relevant District Council when appropriate.**

Prosecutions for illicit tobacco can be used to add additional conditions onto the premises licence including the installation of CCTV at the premises, price labels on the alcohol to include the name of the shop, or the imposition of clear and stringent stock control measures.

**11.7 Continue to support retailers by promoting the use of the Challenge 25 Training Pack and advising traders about legislative requirements in this area.**

This would be done in response to requests for advice on underage sales legislation and also will be promoted proactively during visits to traders for other reasons.

**11.8 Continue to ensure that the restrictions of both price marking and visual display requirements of tobacco products in retail premises are adhered to.**

12. Should we discover persistent sales of tobacco to under 18's (2 or more occasions within a two year period) we will consider using powers contained in Section 143 of the Criminal Justice and Immigration Act 2008 to make a complaint to a Magistrate for an order either to prohibit tobacco sales from the premises or prohibit a specific person from selling tobacco products. This order is for a period of up to 12 months.

**CONSULTATION:**

13. No external consultation has occurred.

## **RISK MANAGEMENT AND IMPLICATIONS:**

14. We are supporting an important strand of tobacco reduction strategies by seeking to reduce the supply of tobacco products. If we are unable to carry out this work the effectiveness of this will be reduced and it is more likely that such products will be available to children and young people.

## **Financial and Value for Money Implications**

15. The work in this area is carried out by a number of officers as a small part of their wider role. At times work in this area, such as advice to businesses, is combined with other visits that officers are carrying out to the same premises or area to maximise efficiency. Overall less than 1 FTE per year is usually spent on this work in total. This report is suggesting that the Service broadly maintains its approach to this work and therefore there is no additional financial implication beyond that which is already committed.

## **Legal Implications**

16. None.

## **Equalities and Diversity**

17. Tobacco consumption is disproportionately prevalent in particular socio economic groups; tackling tobacco consumption is likely to have a positive impact in helping tackle health inequalities. There is no likely negative disproportionate impact arising from the work described in this report on people with protected characteristics.

## **WHAT HAPPENS NEXT:**

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### **Contact Officer:**

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### **Consulted:**

**Annexes:** None

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