



Leicester
City Council

WARDS AFFECTED
Citywide

CABINET

8TH NOVEMBER 2010

**ENFORCEMENT OF LEGISLATION REGULATING THE SALE OF
AGE-RESTRICTED PRODUCTS TO YOUNG PEOPLE**

Report of the Strategic Director of Public Health & Health Improvement

1. PURPOSE OF REPORT

- 1.1 To seek the approval of Cabinet for a programme of preventative and enforcement activities relating to the sale of age-restricted products to young people.

2. RECOMMENDATIONS (OR OPTIONS)

- 2.1 Cabinet is recommended to approve the programme of preventative and enforcement actions as set out in the Trading Standards Service Enforcement Plan 2010-2011 as set out in Appendix One.

3. SUMMARY

- 3.1 The Council has a statutory duty to enforce a number of Acts that place legal prohibitions on the sale of products to persons under the age set by law, in most cases 18 years of age. Two of these enactments, relating to the under-age sales of tobacco and aerosol paints, also require that the authority gives annual consideration to its enforcement programmes.
- 3.2 In addition to the legal requirements placed upon the Council this report contains details of activities linked to local priorities including the Wellbeing & Health Priority Board's contributions to Leicester Partnership's Health Inequalities Improvement Plan and, the Safer Leicester Partnership's Overall Crime Delivery Group Action Plan.
- 3.3 Therefore, for the first time, this annual report is based on not only our statutory duty to enforce the law but also on an intelligence-led process with our partners that has identified some clear, mutually understood and outcome-focused priorities.

4. REPORT

- 4.1 In previous years the Trading Standards Service has set its priorities for the enforcement of under-age sales legislation by reference to policies relating to the health

and welfare of children and the prevention of anti-social behaviour set down by Leicester City Council, the Department of Health and the Home Office. In this report a number of these priorities have now been set through mutual agreement with partner agencies, as set out below.

4.2 The most significant change in our tactical approach has been brought about by the Leicester Partnership Health Inequalities Improvement Plan (HIIP) which was published in November 2009. The HIIP was the Partnership's strategic response to a red flag in the Audit Commission's 2009 Comprehensive Area Assessment which highlighted a range of health inequalities in Leicester with particular emphasis on higher than expected levels of death and disease caused by smoking and alcohol misuse. Actions outlined in the HIIP relating to under-age sales of tobacco and alcohol are to be incorporated in the Wellbeing & Health Priority Board Commissioning Statement for 2011/12.

4.3 Cigarettes and tobacco:

4.3.1 Included in the HIIP are actions focused on reducing the inflow of young people recruited as new smokers. The Trading Standard Service's response is to reduce the availability of cigarettes and other forms of tobacco through a mix of advice to businesses and enforcement operations.

4.3.2 Our programme will include 60 test purchases at targeted premises, ten of which will be from vending machines on licensed premises. We shall use, as a proportionate response, new powers to apply for a Restricted Premises Order against "repeat offenders".

4.3.3 In 2010/11 we shall target the small, but growing, number of Shisha cafes in the city. This will be a response to intelligence that indicates a range of regulatory non-compliance at some businesses, including information that under 18s are regular smokers at these outlets. A programme of joint Trading Standards/Health & Safety team business advice visits will be followed by under-age test purchases at those businesses assessed to be the highest risk.

4.3.4 For the second year running, our tobacco enforcement will be part-funded by a Department of Health grant. This includes a specific allocation for the higher costs of test purchasing at Shisha cafes. Funding is also provided for our activities to detect and disrupt the supply of counterfeit and other illicit sources of cigarettes. It is probable that these illicit supplies are being sold to under 18s as well as to adults.

4.4 Alcohol:

4.4.1 Under-age drinking not only has adverse effects on health and personal development but frequently results in anti-social behaviour and personal injuries to young persons. Although government statistics indicate that the numbers of young people who are drinking has declined, they also show that those who do drink are drinking more alcohol, more often.

4.4.2 To assist in the prevention of supply of alcohol to young people we shall, in partnership with Leicestershire Police, re-launch the "Challenge 21" scheme, initiated in the city in

2005. Research has shown that 90% of the target age group are aware of Challenge 21. The launch will coincide with the introduction of new mandatory licensing conditions on 1 October 2010 under which all sellers of alcohol must have in place a “due diligence” refused sales procedure. Many large retailers have corporate procedures in place but, in order to assist smaller businesses in the city, we shall produce guidelines as part of the launch.

4.4.3 To help reduce alcohol abuse by young people we aim to reduce availability to under 18s through a continuing programme of 120 under age “mystery shopper” test purchase operations. These will be targeted at off licences suspected or known to sell alcohol to under 18s and will include a random element to assess general compliance levels.

4.4.4 This level of activity is made possible through the appointment of two Alcohol Control Officers, funded by the RIEP until July 2011, who are shared with Leicestershire and Rutland county councils.

4.5 Knives:

4.5.1 As part of its response to a red flag relating to crime levels in the 2009 Comprehensive Area Assessment, the Safer Leicester Partnership has produced a Tackling Knives Action Plan (TKAP) to address serious youth violence. As partners, the Trading Standards Service’s contribution to TKAP will be actions to improve retailers’ awareness of the under-age sales law and a series of test purchase operations. Test purchasing will be carried out before and after the business education campaign to assess whether compliance levels have improved.

4.6 Aerosol paints:

4.6.1 Our contribution to the Council’s One Clean Leicester anti-graffiti campaign will be a test purchasing operation to assess compliance levels of the prohibition of sales of spray paints to under 16s. This will be the first test since the new law was introduced in 2005. The main purpose of the enforcement action will be to raise awareness of both the law and of the local problems caused by graffiti amongst a retail sector that has so far not generally been included in other under-age sales campaigns.

4.7 Fireworks:

4.7.1 We will carry out one test purchasing operation in the October-November permitted sales period which coincides with Diwali and Bonfire Night we shall target businesses identified as high risk during 2009 and respond to new complaints.

4.7.2 In addition to protecting children from injury, our enforcement of this under-age sales law is linked to the noise-nuisance caused by unsupervised use in public places. We liaise with local police in this respect.

4.8 Other age-restricted products:

4.8.1 The Trading Standards Service Enforcement Plan (Appendix 1) sets out the full range of legislation that prohibits the sale or supply of age-restricted products that can be

enforced by the Service together with the current operational responses in each product area.

5. FINANCIAL, LEGAL AND OTHER IMPLICATIONS

5.1. Financial Implications

This report raises no financial implications. Any enforcement action will be included in the Trading Standards Service plans at no additional cost to the authority.

Martin Judson, Head of Resources, Extension 29 7390

5.2 Legal Implications

5.2.1 As an authority having the statutory duty to enforce, Leicester City Council is required by virtue of Section 5 of the Children and Young Persons (Protection from Tobacco) Act 1991 and Section 54A of the Anti-Social Behaviour Act 2003 to consider, at least once in every period of twelve months, the extent to which it is appropriate to carry out a programme of enforcement action in relation to the prohibition of the sale of tobacco and aerosol paint to young people.

5.2.2 The Regulation of Investigatory Powers Act 2000 (RIPA) applies to activities whose purposes are to prevent or detect crime, particularly where covert actions are used. Failure to comply may lead to any evidence obtained being ruled as inadmissible by the courts.

5.2.3 The welfare implications of using children in test purchase operations are set out in Article 3 of the UN Convention on the Rights of the Child. The UK Government has ratified this international treaty.

5.2.4 The legal and welfare implications have been addressed in national guidelines, "A Practical Guide to Test Purchasing", revised by the Local Authority Coordinating Body on Trading Standards (now "LG Regulation") and the Trading Standards Institute in March 2010. This revision includes new advice received from the Office of the Surveillance Commissioner relating to compliance with RIPA.

5.2.5 All under-age test-purchasing operations carried out by the Trading Standards Service follow the principles set out in this guidance.

Anthony Cross, Head of Litigation and Advocacy Law, Extension 29 6362

6. CLIMATE CHANGE IMPLICATIONS

None

7. OTHER IMPLICATIONS

OTHER IMPLICATIONS	YES/NO	Paragraph references within the Report
Equal Opportunities Policy	No	
Sustainable and Environmental Crime and Disorder	Yes	5.2: Statutory requirement to make policy considerations annually.
Human Rights Act	No	
Elderly/People on Low Income	Yes	4.2, 4.3, 4.4, 4.5: Anti-social behaviour resulting from use of purchased products.
Corporate Parenting	Yes	5.2: Welfare considerations of use of young persons in test purchasing.
Health Inequalities Impact	No	
	Yes	Reducing under-age sales of tobacco will help to reduce smoking in the city.

8. BACKGROUND PAPERS – NONE

9. CONSULTATIONS - NONE

10. REPORT AUTHOR

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Key Decision	No
Reason	N/A
Appeared in Forward Plan	N/A
Executive or Council Decision	Executive (Cabinet)

APPENDIX ONE

TRADING STANDARDS SERVICE ENFORCEMENT PLAN 2010-2011

Product	Age	Legislation	Enforcement Plans
Aerosol paints	16	Anti-Social Behaviour Act 2003, Section 54	Test purchasing operation as part of LCC anti-graffiti campaign. Respond to complaints.
Air weapons	18	Firearms Act 1968, Section 24	Respond to complaints. Enforcement action undertaken in partnership with the police.
Alcohol	18	Licensing Act 2003, Sections 146, 147, 147A, 149.	Programme of test purchasing operations to test compliance. Relaunch of "Challenge 21" Respond to complaints.
Cigarette lighter refills	18	Cigarette Lighter Refill (Safety) Regulations 1999, Reg.2	Respond to complaints.
Crossbows	18	Crossbows Act 1987, Section 1	Respond to complaints. Enforcement action undertaken in partnership with the police.
Fireworks	18	Fireworks (Safety) Regulations 1997, Reg.6 and Fireworks Act 2003	Test purchasing operation in Oct/Nov to test compliance. Respond to complaints.
Knives	18	Criminal Justice Act 1988, Section 141A	TKAP project with SLP to include business advice/awareness campaign and test purchasing operations. Respond to complaints
Liqueur confectionery	16	Licensing Act 2003, Section 148	Respond to complaints.
Lottery products	16	National Lottery Act 1993, Section 13 and, National Lottery Regulations 1994	Refer complaints to the National Lottery's own enforcement team.
Party poppers, caps etc.	16	Explosives Act 1875, Section 31	Respond to complaints.
Solvents	18	Intoxicating Substances (Supply) Act 1985, Section 1	Respond to complaints.
Tobacco	18	Children and Young Persons Act 1933, Section 7	Programme of test purchasing operations to test compliance. Shisha cafes project to include business advice and test purchasing operations. Respond to complaints.
Video recordings, including some games	12 15 18	Video Recordings Act 1984, Section 11	Respond to complaints