

Community & Environmental Services

Trading Standards Service

Enforcement of Age Restricted Sales Plan 2016-17

Minor Sales – Major Consequences

A strategy to deter the sale of age restricted products to young people in Norfolk, with the intention of improving community safety and public health.



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1. Context

- 1.1 The Children and Young Persons' (Protection from Tobacco) Act 1991 requires a Local Authority to review its enforcement activity relating to the supply of cigarettes and tobacco to persons under the age of 18 on an annual basis. There are similar duties arising from Section 54 of the Anti-Social Behaviour Act 2003. This Plan fulfils these obligations, as part of the overall work by Trading Standards to improve community safety and public health.

2. Background

- 2.1 Trading Standards community safety activities are intelligence led and focus on both national and local priorities. Improving community safety and public health by tackling illicit/age restricted products is a key priority for the Service. Trading Standards recognises that effective enforcement of legislation to prevent the sale of age restricted goods requires a multi-agency approach and seeks to work in partnership with a range of agencies and stakeholders to ensure accurate identification of priority and high-risk areas, share best practice and engage in collaborative work (e.g. joint operations and licence reviews).
- 2.2 Trading Standards aligns its service delivery wherever possible to support the priorities of other council services. The Service will focus activities on:
- Alcohol Licensing
 - Illicit tobacco, and
 - The Norfolk Tobacco Alliance
- to align its community safety activities with Public Health priorities.
- 2.3 Operations and activities are delivered across the whole of the county based on the intelligence derived from information about the sale of age restricted products. A scaled approach is adopted with due regard to the Community and Environmental Services Enforcement Policy. This includes:
- The provision and publicity of advice and support materials
 - The delivery of advice and help to new retailers of age restricted products
 - The investigation of complaints together with the delivery of advice and assistance to prevent the recurrence of underage sales
 - Targeted test purchasing utilising young people and where appropriate, underage volunteers
 - Requirement to adopt a "Challenge 25" type policy
 - Working with and supporting national or regional initiatives
 - Multiagency/community group/industry partnership working

Where targeted advice and assistance is given following the receipt of information that a retailer has sold to underage purchasers, test purchasing by a young person, approximately 18 - 20 years old may be used to ascertain the robustness of the implementation of the Challenge 25 type policy.

Test purchases utilising underage volunteers are carried out, usually with assistance from Norfolk Constabulary, at targeted premises where information shows that sales to underage purchasers are taking place. Teams work within agreed procedures and

protocols that cover the sharing of information and the recruitment of young persons for test purchase programmes.

- 2.4 Advice to Trading Standards Services by the Office of the Surveillance Commissioner (OSC) is that any test purchase by an underage volunteer now requires covert surveillance authorisation in accordance with the Regulation of Investigatory Powers Act 2000 (RIPA) by a service manager which must then be endorsed by a Magistrate.

The Office of the Surveillance Commissioner has issued further guidance in early 2015 that a Magistrate should not issue RIPA authorisation unless the targeted test purchase operation relates to a premises where:

1. Intelligence indicates that underage sales are taking place
2. The trader has been advised of their legal responsibilities and warned
3. Further intelligence indicates that underage sales continue to take place.

In light of this advice Trading Standards has modified its RIPA application procedures and policy of enforcement actions with traders where intelligence is received regarding underage sales.

- 2.5 During the 2015-16 service year the number of complaints received from the public or traders regarding the underage sale of regulated products has fallen considerably when compared to that of previous years. This includes complaints made to the police and licensing departments of the district councils in the county. As a result and in light of the OSC advice described at paragraph 2.3 above the number of underage test purchases currently stands at zero in the 2015-16 service year.

In October 2015 Trading Standards modified its policy of action to include a test of the advice it has given to retailers where information regarding sales to underage purchasers is received; to test the effectiveness of the implementation of that advice. Now, a young adult of 18 - 20 years of age is utilised to test the effectiveness of the implementation of the Challenge 25 type policies. Where such a test purchase goes unchallenged, the Service is then able to apply for authorisation under RIPA to undertake an underage volunteer operation.

- 2.6 A range of legislation supports this work, setting out controls for the following products:
- Alcohol
 - Cigarettes and tobacco products, including electronic cigarettes
 - Fireworks
 - Video, DVD, Blu-ray & gaming products
 - Aerosols, petroleum spirit and other intoxicating substances (butane/solvents)
 - Lottery and scratch cards
 - Knives, blades and crossbows
 - Psychoactive substances

Alcohol and tobacco continue to be the main focus of our enforcement activity.

3. Alcohol

- 3.1 A number of reports have put the cost of alcohol related crime in the UK at between £8bn and £11bn per annum. Alcohol-related crime and disorder by young people is currently estimated to cost society £1 billion per year. Despite the success of the Community Alcohol Partnership (CAP) in Great Yarmouth (see section 3.5), the highest proportion of admissions to hospital for alcohol related harm in East Anglia is at the James Paget Hospital in the town.

However, a 2014 NHS survey has found that the proportion of 11-15 year olds who have never had alcohol has increased to 62%. This is the highest proportion since records have been kept and is in line with past surveys which have shown this figure is rising gradually over recent years. This appears to show that safe drinking messages are getting through to young people. However, children who are drinking are consuming large amounts. In 2014, the average (mean) alcohol consumption by pupils who had had alcohol in the last week was 9.8 units – albeit a reduction of 3.1 units over the level in 2012.

- 3.2 A premises which sells alcohol to underage purchasers twice in three months is deemed to be 'persistently selling alcohol to under 18s'. All premises found to be selling alcohol to underage persons are retested before the end of 3 months following the date of the first sale.
- 3.3 The Trading Standards Service is a Responsible Authority in licensing matters. During 2013/2014 a premises licence was revoked on appeal to the Magistrates by the owner following a review applied for by the Trading Standards Service on behalf of Norfolk County Council because of repeated sales of alcohol to underage persons. Trading Standards continues to work closely with the other Responsible Authorities, in particular Norfolk Constabulary Licensing and Regulation Unit, in order to ensure the licensing objectives are upheld in Norfolk.
- 3.4 In the first quarter of 2015, Trading Standards has visited a total 10 premises as part of its activity in this area. The Service conducted a number of advisory visits and four test purchasing operations, resulting in one sale to a young volunteer of both alcohol and tobacco. Test purchase sales were made at premises where intelligence suggested there was a likelihood of illegal sales of alcohol, including those with increased incidence of anti-social behaviour linked to alcohol consumption. Further visits are planned as part of joint work with the Police during 2016/17.
- 3.5 The Community Alcohol Partnership (CAP) launched in Great Yarmouth continues to take a multi-agency/organisation approach to reducing underage access to alcohol. The partnership includes the Police, youth services, the Matthew Project, schools, and retailers. The partnership has proved to be successful in reducing the prevalence of underage and street drinking which has continued to decrease in 2015. Alcohol users get support from local agencies. The service will continue to support this initiative during 2015/2016 to ensure its continued success.
- 3.6 We continue to support the development of joint strategies for Alcohol Harm Reduction with partners. This includes additional support for the night time economy via local initiatives led by the Police in Norwich, Great Yarmouth and Kings Lynn.

4. Tobacco Control

- 4.1 Smoking remains the biggest cause of preventable death in Norfolk (and globally). The chart at Annex 1 shows the extent of the cause of death by smoking to greatly exceed that of any other preventable cause. A survey has shown that the NHS spends £2.0 billion a year on treating smoking-related illness.

In England it is encouraging to find that the proportion of children (11-15 year olds) who have never smoked continues to rise – 82% in 2014. However it is estimated that 8 children start smoking each day in Norfolk. 66% of smokers take up the habit by the age of 18. Studies have shown that smoking just one cigarette in early childhood doubles the chance of a teenager becoming a regular smoker by the age of 17. 80% of adults regret starting smoking by the time they are 20 years old.

The problem of underage smokers is still a real issue in the county. Public Health England's statistics show that Norfolk has a higher number of smokers at age 15 than other counties in England. 11.4% of Norfolk's 15 year olds are smokers and 19% are using or have used e cigarettes.

Smoking in young people is highly prevalent within the Great Yarmouth area. One school reports 100% of attendees being regular smokers. Charities such as The Matthew Project and the NHS are keen on dealing with the health matters associated with young people smoking and enforcement agencies for illicit tobacco, underage sales and litter.

- 4.2 Trading Standards Officers have the power to advise business and enforce legislation in respect of age-restricted goods and illicit tobacco and therefore have a vitally important role to play in supporting health improvement by reducing access to these products. We recognise that the most effective way of doing this is by working in partnership with a range of agencies and stakeholders, including the tobacco industry. Our approach in doing so relies on intelligence, such that we take appropriate action against suppliers of a range of illicit/counterfeit products, and ensures that we always limit our engagement with industry for the purposes of enforcement of the relevant legislation.
- 4.3 Illicit tobacco continues to be an area of great concern; not only in terms of the associated (additional) health risks but also in the potential for extending illegal sales of tobacco products to under 18's. In addition to counterfeit tobacco, there is an increasing amount of illegally imported tobacco which only bears foreign labelling. Not only is this tobacco being sold without UK duty being paid, but the mandatory health risks labelling on the packaging is missing.
- 4.4 Illicit tobacco is being sold by unscrupulous businesses from under the counter in most cases. It follows that this makes it more accessible to young people as it is more affordable (for example, £3:00 for a pouch of hand rolling tobacco as opposed to £15).
- 4.5 Illicit tobacco is mainly sold in our market towns which have a high ethnic minority population, particularly Eastern Europeans, The service has adopted a multi-agency approach during 2015 to tackle this problem. Action by the service alone is not stemming the supply even when the perpetrators are prosecuted. Trading Standards Services have instigated a number of unannounced inspections of retailers where

intelligence has shown that illicit tobacco is being sold. The numbers of cigarettes seized has been much lower than other years and it appears that sophisticated concealment is being used to store the bulk of these products away from the retailing premises.

- 4.6 Targeted action was taken by HMRC against retailers of illicit tobacco products in the Great Yarmouth area during 2015. Trading Standards gave considerable support to this operation both in intelligence sharing and in carrying out test purchases utilising a Polish employee of a Trading Standards contractor. This resulted in sales from 3 premises which provided the legal basis of an application to Magistrates to carry out forced entry to the premises (if needed). 200,000 cigarettes and 15kg of hand rolling tobacco was seized in the subsequent operation carried out at 3 retailers and an industrial storage unit.

5. Other areas of focus for 2015/2016

- 5.1 Alcohol and tobacco sales to under 18's remained a priority area because of the problems identified at both local and national level. However compliance visits targeted all age restricted products.

5.2 Fireworks

The levels of antisocial incidents reported to Norfolk Police and Trading Standards during the Guy Fawkes period has shown a steady reduction over the past 4 years. However, one District, Breckland, did show a significant increase in 2014. The Trading Standards Service sustained further cuts in its funding during the 2014/2015 year and had to make careful decisions regarding where it targets its depleted resources. In view of the reduced level of incidents, targeted activities were only conducted in the Breckland area in relation to firework sales both in the run up to November the 5th and the New Year.

Incident reports for the Guy Fawkes period of 2015 have shown that in 6 of the 7 districts, antisocial behaviour associated with fireworks has remained at a low level. In Breckland, the incidents have halved in number in comparison to 2014; but remain at a significant level.

5.3 Aerosols, DVDs and Knives

Underage sales test purchase operations were planned should intelligence be received of sales to young people in respect of other age restricted products including knives, DVDs and aerosol products. However, in 2015, no reports of such sales to underage purchasers were received during this period. The service will treat aerosols, DVDs and knives as it does fireworks and put appropriate resources into this area of enforcement should it be required.

5.4 **New Psychoactive Substances (NPS)**

Synthetic drugs designed to mimic illegal drugs like cocaine, cannabis and ecstasy are increasingly and extensively available through the internet. Throughout the UK the sales of these substances through retailers known as 'Head Shops', particularly to young adults, is a major cause of anti-social behaviour and admission to A&E services. These substances are sometimes referred to incorrectly as 'Legal Highs'. Those selling them believe that they are not breaking the law as the contents are not currently controlled under the Misuse of Drugs Act. Enquiries by drug workers with the users of NPS has also shown that users mistakenly believe there is less risk with these substances than with controlled drugs.

5.5 In order to deal with the considerable health impacts some of these substances are having, the Government has brought a number of NPS ingredients under the control of the Misuse of Drugs Act.

5.6 The products offered on the internet and via head shops are often labelled "not for human consumption" or with instructions to use them as bath salts and plant feeders in the belief that this will also exempt the products from legislation governing the sale of medicines. Many NPS have considerable potential side effects and with no equivalent medical trials/testing carried out, the long term effects of these products are unknown. There have been numerous reports of incidents where the users of these products suffer serious ill effects.

5.7 NPS is retailed in head shops for between £5 and £30. These products are much cheaper when bought online. NPS is a growing and considerable problem in prisons with substances thrown over the fences to order.

5.8 The sale of NPS to young people from a head shop in the county is thought to be very rare but it is believed that proxy purchasing does take place by adults who are able to make a considerable mark up in the cost to the young person. However, young adults are a targeted audience of these drugs.

In its submissions to Parliament the Children's Society said: "‘Legal highs’ are increasingly becoming a factor in our work with England's most vulnerable children and young people. A recent national poll of 16 and 17 year olds found that 6% said they had taken a ‘legal high’ and 4% said they had felt pressured to take legal highs.

For the most vulnerable children, however, the consequences of using legal highs can be much more serious, resulting in criminal and sexual exploitation. Evidence from our practitioners suggests that ‘legal highs’ are increasingly being used by offenders as part of the grooming and exploitation process."

5.9 Trading Standards Officers, using their general powers under product safety legislation have issued "Requirement to Mark" notices to head shops in the county where they failed to provide consumers with the relevant information to assess any risk associated with the use of these products. Fines issued in the Magistrates Court have not acted as a deterrent due to the considerable mark up when retailing these substances.

- 5.10 The legislation which Trading Standards uses to enforce the giving of accurate and full information regarding the contents and effects of using an NPS is the General Product Safety Regulations 2005. However, using this approach is costly because of the exceedingly high analytical costs and those of medical experts who can interpret what the substance's effect is on the user. Powers were made available to the police and district councils under the Anti-Social Behaviour Crime and Policing Act 2014. These powers enable Orders to be made to prohibit activities, like the sale of NPS, which lead to antisocial behaviour. Their use in some districts outside Norfolk has been effective in stopping the retailing of NPS by head shops on the high street.
- 5.11 Court action was concluded against two head shops in Norwich during 2015 by the service. This has resulted in the premises giving a legally binding undertaking to cease to sell the NPS they previously offered for sale. This has left Great Yarmouth as the only high street source of NPS in the county.
- 5.12 The Psychoactive Substances Act 2016 received royal assent on 28 January 2016 following its introduction as a Bill in May 2015. This Act introduces both criminal and civil sanctions relating to the manufacture and commercial supply of any substance that can have a psychoactive effect. It creates an offence of possessing a psychoactive substance in a prison or custodial establishment and for the purposes of sentencing recognises that the supply of these substances near a school aggravates the offence. The Act gives a wide range of powers to the Police and HRMC. Powers are also given to the police and local authorities (including district and county councils) to tackle individuals and premises used in the manufacture or commercial supply of psychoactive substances.

5.13 **Electronic Cigarettes (or Vaporisers)**

The use of electronic cigarettes/vaporisers has considerably increased during the year. The fluids used in these products are now subject to the same age restrictions as cigarettes and tobacco. Trading Standards has received only one report alleging their sale to young people but this was considered to be ill informed when the matter was investigated.

There is some controversy amongst health professionals in that some believe e-cigarettes are a safer alternative to tobacco. Public Health England appears to endorse their use as a tool to wean tobacco users away from nicotine. Trading Standards does not have a particular view on this but feels that the long term health impacts of inhaling the substances used to create the vaporising fluids is unknown at present. Recent reports suggest that some flavoured e-cigarettes may use the chemical diacetyl, which has been linked to the incurable disease, popcorn lung, when inhaled over prolonged periods.

In addition fire safety concerns have been raised where e-cigarettes left charging, often with cheap chargers, have exploded resulting in house fires.

6. Looking ahead to 2016/17

6.1 Enforcement Activity (including test purchasing programmes)

- 6.1.1 As identified in paragraph 5.2 of this plan, the resources available to Norfolk Trading Standards have been considerably reduced in the past three years and as a result of this the Service has had to cut back on its proactive planned enforcement activities. This has impacted on the extent of the work relating to the sale of age restricted products (which was first reduced in the 2014/2015 service year). However, the impact of these reductions has been mitigated by ensuring the service receives and shares intelligence with its partner agencies and by targeting our service delivery at locations where intelligence tells us there is a problem with the sale of age restricted products to young people.
- 6.1.2 Trading Standards will continue to focus on alcohol and tobacco. The health impacts of the sale of NPS and vaporiser fluids to children are also considered to be significant and the service will put resources into ensuring that these products are not offered for supply to them. We will also respond to intelligence related to other products as detailed below, where there is an identified need.
- 6.1.3 The service will continue to take a graduated approach to information which indicates that underage sales are taking place at particular off licence premises or in an identified area. This approach will usually begin with the delivery of targeted advice and support, including the provision of refusal books. Following the giving of advice and support the service will test 'Challenge 25' type policies where a judgement is made that due regard is not being taken of the advice given. Where information continues to indicate that underage sales are taking place, test purchasing by underage volunteers will be undertaken with support from Norfolk Police.

We will also continue to provide officers and utilise Trading Standards young volunteers to support Norfolk Police in relation to their lead role for 'on licence' premises.

- 6.1.4 Norfolk Trading Standards will continue to work with the Police and other agencies in support of local initiatives to reduce knife crime. Analysis of crime data does not highlight Norfolk as having a particularly high level of knife related crime, and Trading Standards have received no complaints relating to illegal sales of knives to under 18's in the past 12 months. However national intelligence continues to identify knife crime as a serious concern and one which the government is keen to see effectively tackled. Trading Standards has a role to play in preventing the sale of knives to young people under the age of 18 and so will on an intelligence-led basis conduct test purchase operations and provide advice and education to businesses. Where necessary, formal action including prosecutions will be taken, in accordance with our enforcement policy.
- 6.1.5 The recruitment, selection and utilisation of young persons for test purchasing will only be in accordance with the protocols, systematic procedures and risk assessments adopted and developed in line with the Home Office and other guidelines. These protocols and procedures are maintained in the Service's

Management System and are thus subject to rigorous internal audit. All Officers involved in the test purchase programme have been subject to police vetting procedures.

- 6.1.6 In view of the continued reduced numbers of incidents associated with fireworks, with the exception of Breckland District, Trading Standards does not plan to carry out targeted work on sales to underage purchasers of fireworks in 2016/17. Targeted advice and information will be delivered in the Breckland area to build on the reduced (but significant) numbers of incidents in this district.

The service will continue to monitor information regarding the sale of fireworks and any anti-social behaviour attributed to them. The service will put appropriate resources into enforcement in this area if such information shows a significant increase in incidents.

- 6.1.7 The service is recruiting young adults from within the employ of the Fire Service and from Further Education establishments. These volunteers are utilised to test the effectiveness of the 'Challenge 25' type policies of retailers who have received advice and assistance.

6.2 Tackling Anti-social Behaviour

- 6.2.1 The link between anti-social behaviour and the consumption of alcohol and substance abuse is established. The strategy of preventing the upstream supply of a number of restricted products to underage persons and thus reducing the level of anti-social behaviour associated with the use of these products will continue to be supported.
- 6.2.2 This plan will contribute to community objectives and those arising from Government strategy for community safety and public health. Alcohol and associated anti-social behaviour will continue to be a particular focus.

6.3 Proof of Age Schemes

- 6.3.1 The Trading Standards Service does not promote any specific proof of age scheme but supports those schemes that conform to the PASS Scheme criteria. The large supermarket chains have adopted the "Challenge 25" policies in relation to all age restricted products. Trading Standards will continue in 2016/17 to encourage all premises involved in the sale of alcohol to become engaged with "Challenge 25"; our 'Minor Sales Major Consequences' pack includes a section on adopting a Challenge 25 type policy.
- 6.3.2 The Trading Standards Service will also encourage and promote the use of a 'Refusals Log' by traders to provide evidence that proof of age is being sought and sales refused in appropriate circumstances.

6.4 Additional Activities in 2016/17

- 6.4.1 The Government's Tobacco Control Strategy is key to the Trading Standards Service's response in enforcing legislation in relation to both the supply of illicit tobacco and underage sales. During 2016/17 it will remain a priority to gather and then act upon any intelligence received, including that received from our partners. Norfolk Trading Standards is an active member of the Norfolk Tobacco Alliance and will be striving to help achieve CLear (Challenge, Leadership and Results) status in tobacco control for Local Government specifically for Norfolk County Council.
- 6.4.2 In October 2015 the Children and Families Act 2014 placed controls on the proxy purchasing of tobacco products for young people. The service, working with our police partners, will take a robust stand regarding anyone found to be purchasing on behalf of a young person. This legislation has also placed age restrictions on the sale of e-cigarette fluids to young people where the fluid contains nicotine. The service will undertake a project to ensure this legislation is embedded in the regulatory controls that e-cigarette sellers should be adopting.
- 6.4.3 The government has voted in favour of introducing requirements for plain packaging of cigarettes in the UK. It is possible that elements of the legislation supporting this will come into effect in 2016/17. The service will ensure that retailers are aware of these requirements and that they will be followed.

6.5 Education Programmes

6.5.1 Businesses

The Minor Sales: Major Consequences Information Pack was reviewed in 2015. It will continue to be distributed to new sellers of age restricted goods in the county, on request and, where appropriate, when an inspection visit to a business is undertaken.

Publicity will also be used to raise trader awareness about specific issues and this will include the reporting of enforcement action outcomes.

6.5.2 Young Persons

The Trading Standards Service Underage Sales Education Pack has previously been distributed to schools. The Alcohol Education Trust has a large amount of materials that are being used within the schools in the CAP area in Great Yarmouth. The Service will continue to support this work.

All volunteers who participate in test purchasing programmes receive training primarily designed to equip them with the knowledge and skill to undertake the task.

6.6 Publicity and media campaigns

- 6.6.1 The Trading Standards Service will produce a number of articles to raise awareness through the press, social media and radio. This will include the results of test purchase operations, both positive and negative. Our approach will be to advise businesses and the public of the legal requirements and health risks associated with underage sales and to encourage intelligence reports in relation to them.
- 6.6.2 As stated in section 3.5, reports of underage sales in Great Yarmouth CAP area have continued to decrease significantly. However, young people are still accessing alcohol. The likely supply chain is from adults purchasing on behalf of young people. Where appropriate, enforcement action will be reported through local media outlets.
- 6.6.3 Multi-agency work will be actively promoted and reported, including regional or national coverage where relevant.

6.7 Community Involvement

- 6.7.1 Support and publicity will be sought for new initiatives launched during 2016/17. Where possible local members or community representatives will be requested to support or attend relevant activities.
- 6.7.2 Where possible, the Trading Standards Service will participate in or support community based projects that develop resources to assist in reducing underage drinking, including where there are links with the supply coming from an adult. As part of a wider review of its work the Service has strengthened its response to locality issues, working with key partners to ensure that local needs are addressed. We will work with local communities to understand if this might be one solution to issues of anti-social behaviour associated with underage drinking.
- 6.7.3 The Trading Standards Service will continue to promote underage sales work through presentations at community group meetings and diversify its activity according to requirements emerging from the localism agenda.
- 6.7.4 Where resources allow, the Service will undertake to tackle specific problems identified by a community group regarding underage sales. A community group will need to provide sufficient evidence of a credible nature in support of the request before the Service will undertake any activity.
- 6.7.5 The Service may also look to participate in other local projects if relevant to underage sales activities.

Annex 1

Causes of Preventable Death in the UK

