



# Norfolk County Council

## Community & Environmental Services

### Trading Standards Service

Enforcement of Age Restricted Sales  
and Illegal Tobacco Plan 2018-19



### Minor Sales – Major Consequences

A strategy to improve community safety and public health in Norfolk by deterring the sale of age restricted products to young people and the sale of illegal tobacco.



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## **Enforcement of Age Restricted Sales and Illegal Tobacco Plan 2018-19**

### **Context**

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 54A of the Anti-Social Behaviour Act 2003. Trading Standards has a duty to enforce the compulsory health warning requirements on tobacco products and to enforce the age restrictions and legal composition requirements applicable to e-cigarette liquids which contain nicotine. This Plan fulfils these obligations, as part of the overall work of Trading Standards to improve community safety and public health.

The supply of illegal tobacco, frequently smuggled from Eastern Europe and prevalent in those urban areas where Eastern European citizens have settled, is a problem throughout the UK and Norfolk is no exception. Often these products are not packed in standardised packaging and fail to carry the health warnings required by Regulations. Very often they are counterfeits of established brands. Their unknown composition presents an additional health hazard to smoking, already the major cause of death in the UK. The Service receives intelligence that sales of illegal cigarettes are being made to young people. The relative cheapness of these products puts them easily within the limited financial resources of underage buyers. This plan integrates the Trading Standards Service's actions to tackle these products alongside the obligations outlined above.

### **Background**

The Trading Standards Service's community safety activities are intelligence-led and focus on both national and local priorities. Improving community safety and public health by tackling illegal/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 (including joint operations and licence reviews).

Trading Standards aligns its service delivery wherever possible to support the priorities of other council services. In order to align its community safety activities with Public Health priorities, the Service will focus activities on:

- Preventing the sale of alcohol to young people
- Taking action through alcohol licensing requirements
- Preventing the sale of cigarettes, hand rolling tobacco and regulated e-cigarette liquids to young people
- Disrupting the supply of illegal tobacco
- Working with the Norfolk Tobacco Alliance
- Working with Community Alcohol Partnerships (CAPs)

Public Health granted £47,280 to the Trading Standards Service in 2017/18 to support delivery of these actions. At the time of writing this report we are awaiting details of grant funding in the 2018/19 service year.

Service delivery will take place across the whole of the county based on intelligence received 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
- Targeted test purchasing, utilising 18 to 20 year-old volunteers to test the effectiveness of age verification policies such as 'Challenge 25'
- Recommendation to adopt a "Challenge 25" type policy
- Working with and supporting national or regional initiatives
- Multiagency/community group/industry partnership working.

Test purchases utilising underage volunteers, are carried out, usually with the assistance of Norfolk Constabulary, at targeted premises where intelligence suggests 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.

Test purchases utilising 18 to 20 year-old volunteers may be undertaken where information is supplied to the Service suggesting that a retailer's implementation of an age verification policy such as 'Challenge 25' is not robust.

Advice to Trading Standards Services by the Office of the Surveillance Commissioner (OSC) is that any test purchase by an underage volunteer 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 issued guidance in early 2015 that a Magistrate should not issue RIPA authorisation unless the targeted test purchase operation relates to a premises where overt measures have been attempted and failed or are not considered appropriate. Generally this will be premises where:

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

In exceptional circumstances a premises may be targeted for underage test purchasing immediately if it has a history of underage sales taking place and good information is supplied to the Service regarding continued sales. The Trading Standards' RIPA policy and application procedure require a scaled approach where intelligence continues to show that sales to underage volunteers are taking place.

Generally an underage volunteer test purchaser does not lie about their age if they are challenged by the retailer. However, in October 2016, Trading Standards

modified its policy to allow an underage test purchaser to lie about their age to test a retailer's implementation of the advice that age verification must be carried out when further information comes to the Service suggesting that it is not taking place.

The Service may use another form of check that age verification is taking place by utilising a young adult of approximately 18 to 20 years of age to make a test purchase. These volunteers do not lie about their age if challenged. Where such a test purchase goes unchallenged, the Service will apply for authorisation under RIPA to undertake an underage volunteer operation.

The volume of intelligence received regarding sales of age restricted products to underage persons has remained small. This includes complaints made to the police and the District Council licensing departments in the county.

A range of legislation supports the Service's work, setting out controls for the following products:

- Alcohol
- Cigarettes and tobacco products, including electronic cigarette liquids (containing nicotine)
- 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. However given the recent statistics on knife crime in Norfolk, underage sales of knives will also be a priority for 2018/19.

## **Alcohol**

A number of reports have put the cost of alcohol related crime in the UK at between £8 billion and £11 billion 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 the highest proportion of under-18-year-old admissions to hospital for alcohol related harm in East Anglia is still at the James Paget Hospital in the town.

However, a 2014 Drink Aware 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, young people 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. 12% of those young people who drink said that in the last 12 months they had experienced a

serious harm (trouble with the police, being a victim of crime, being taken to hospital or getting into a fight).

Based on Public Health figures of persons under 18 admitted to hospital for alcohol related conditions the top three areas for underage alcohol consumption in Norfolk are:

- Great Yarmouth
- Norwich, and
- Broadland

In the first three quarters of the 2017/18 service year, intelligence was received about eight premises selling alcohol to underage persons. All premises have been visited and advised on their responsibilities in relation to underage sales. Four of these premises were tested with 18 and 19 year old volunteers and all sold. Three premises were tested by 15 year-old volunteers, identification was requested and no sale was made.

A premises which sells alcohol to underage purchasers twice in three months is deemed to be 'persistently selling alcohol to under 18s'. Any premises found to be selling alcohol to underage persons will be retested before the end of 3 months following the date of the first sale.

The Trading Standards Service is a Responsible Authority in licensing matters. 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. Where a premises is found to be selling alcohol to underage persons, Trading Standards, in conjunction with Norfolk Constabulary, will apply for a review of the premises licence.

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 continued to decrease in 2016. Alcohol users get support from local agencies.

Unfortunately, in the first three quarters of the 2017/18 service year, 5 out of the 8 premises complained about to the Service for underage sales of alcohol were in the CAP area. Part of the CAP initiative is that retailers will implement a Challenge 25 policy and this is tested utilising volunteers aged approximately 18 to 20 years old. 19 off-licences were tested within the CAP area and 14 sold alcohol to our 18 and 19 year old volunteers. These retailers were offered free of charge training on age restricted sales by this Service in conjunction with the CAP. There was a poor take-up with just five businesses attending. The Service, is planning to support and deliver more work in this initiative's area during 2018/19 to ensure its continued success.

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.

In 2017 Norwich became a Local Alcohol Action Area in response to an application by Public Health and Norfolk Constabulary. Trading Standards will continue to support our Public Health colleagues with this scheme.

## **Tobacco**

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 illegal tobacco and underage sales. During 2018/19 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.

Smoking remains the single greatest cause of premature death and disease in Norfolk and the UK. Smoking is an addiction which is still taken up by a large number of young people. Two thirds of smokers start before the age of 18. It is of concern that the illegal trade in tobacco makes cheap, poor quality tobacco available to many young people. It is known that the illegal tobacco trade funds the activities of organised criminal gangs.

11.4% of young people aged 15 years of age currently smoke in Norfolk. This is higher than the England average (8.2%) and the East of England average (8.9%).

The Public Health Tobacco Control Strategy aims to reduce this to 5% by 2020 and Trading Standards has an important role to play in this reduction.

In the first three quarters of the 2017/18 service year, the Service received only two complaints about premises selling cigarettes or hand rolling tobacco to persons aged under 18 (excluding those premises selling illegal tobacco products). Both premises were visited and offered advice. One premises was visited by a 19 year old volunteer and a sale was made of cigarettes without requesting identification. This premises was then tested by a 15 year old and no sale was made.

Trading Standards delivers advice to businesses on legal tobacco requirements, including underage sales. Where a business does not follow that advice Trading Standards has the power to enforce this legislation in respect of age-restricted goods and illegal tobacco. Trading Standards has 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 illegal/counterfeit products, and ensures that we always limit our engagement with industry for the purposes of enforcement of the relevant legislation.

Illegal 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 18s. Illegal tobacco is being sold by unscrupulous businesses from under the counter in most cases. Such sales make it more accessible to young people as it is more affordable. For example, prices are £4 to

£5 for a pouch of hand rolling tobacco as opposed to £17 and £2.50 for a pack of cigarettes instead of £8 or more.

In addition to counterfeit tobacco, there is an increasing amount of illegally imported tobacco which bears only 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. Illegal tobacco is mainly sold in our market towns which have a high ethnic minority population, particularly Eastern Europeans. Young people having ready access to illegal tobacco poses a significant problem in Norfolk, particularly in Great Yarmouth.

Trading Standards has instigated a number of unannounced inspections of retailers where intelligence has shown that illegal tobacco is being sold. The amount of illegal tobacco seized in the first three quarters of the 2017/18 Service year is 160,000 illegal cigarettes and over 65kg of hand rolling tobacco.

Increasingly the Service finds that sophisticated concealment is being used to store the bulk of these products both on and away from the retailing premises. The Service is heavily reliant on specialist tobacco detection dogs to discover stashes of illegal tobacco.

In 2016 Trading Standards introduced a procedure to seek to review premises licences where illegal tobacco retailers also sell alcohol. This has continued in the 2017/18 service year. Four Norwich premises licences and one Great Yarmouth premises licence have been through the review process as a result of illegal tobacco being found. One had its licence suspended for 2 months and four premises had their licences revoked. We have also worked with Norfolk Police to prevent a further three premises obtain a licence where we had evidence they were involved in illegal tobacco supply.

Other actions currently being developed, which will continue into the 2018/19 service year, are:

- working with landlords to encourage the eviction of tenants who sell illegal tobacco, and
- exploring the use of surveillance.

Whilst surveillance is extremely costly, other Local Authorities have had success in tracing the supply chain of illegal tobacco; leading to seizures of large amounts that have had a real impact on the supply of illegal tobacco in their areas.

The Service has continued to adopt a multi-agency approach during 2017 to tackle this problem. Partners include Norfolk Constabulary and HMRC. We are also working very closely with other local authorities and sharing intelligence as cross-border offenders have been identified.

In addition to enforcement action, the Service organised another five day illegal tobacco roadshow, utilising Public Health funding, to raise awareness of the problem of illegal tobacco supply in Norfolk. We were joined on the roadshow by staff from the Stop Smoking Service.

The Standardised Packaging of Tobacco Products Regulations 2015 came into force in May 2017. These regulations introduced requirements for plain packaging of cigarettes and hand rolling tobacco as well as minimum pack sizes of 20 cigarettes and 30g of hand rolling tobacco. Utilising Department of Health funding, Trading Standards ensured that retailers were aware of these requirements and that they were being followed. A very small number of premises were found to have a small amount of old packaged products available and these were removed from sale.

### **Nicotine inhalation products (electronic cigarettes)**

The use of electronic cigarettes has increased considerably during the past few years. The fluids used in these products are now subject to the same legal age restricted sales requirements as cigarettes and tobacco.

A national project was carried out in the early part of 2016 utilising young volunteers to test retailer compliance with the age restriction on sales of nicotine inhalation products. During the project 246 visits were carried out and sales were made to the volunteers at 39% of the premises. A second round of testing was carried out to 260 premises (at the same premises and some new ones) when there was a 25% sale rate. Whilst this showed an improvement in awareness and compliance, a quarter of retailers were failing to meet the requirements.

Trading Standards has not received any intelligence in the 2017/18 service year regarding underage sales of nicotine containing liquids. However, the use of e-cigarettes at age 15 years in Norfolk is 18.6%, which is above the England average of 18.4% and the East of England average of 16%.

Given that e-cigarettes are relatively new, the long term health impacts of inhaling the vaporising fluids is not yet known. There is debate amongst health professionals as to whether or not e-cigarettes are a safer alternative to tobacco but Public Health England endorses their use, purely as a tool to wean smokers off cigarettes and tobacco.

The provisions of the Tobacco & Related Products Regulations 2016 concerning e-liquids which contain nicotine are now in force. These mainly cover labelling, quantity and nicotine content of the liquids supplied for use in e-cigarettes. Trading Standards is participating in a Department of Health project looking at the compliance of products in the market place. Targeted inspections will be carried out in the last quarter of the 17/18 service year. This may include sampling of products for their nicotine levels as other local authorities have found non-compliance with the permitted or stated nicotine levels.

### **Other areas of focus**

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



**(a) Fireworks**

In 2016 in Norfolk there was a drop in the number of anti-social behaviour incidents involving fireworks over previous years. None of the recorded incidents were attributed to juveniles. Trading Standards therefore advised Norfolk Constabulary the Service would assist in any action they were carrying out in 2017 but would not lead on enforcement.

2017 saw the lowest recorded number of incidents of firework related anti-social behaviour in the last seven years (since incidents have been tracked). In 2017 the largest number of recorded incidents were in Breckland, all specifically within Thetford. Of the five incidents recorded in Broadland, four were recorded with a Gender Age Code Description of 'juvenile'.

Therefore consideration will be given to multi-agency proactive visits in Thetford in 2018. These will include provision of advice and test purchasing, where necessary. Consideration will also be given to targeted advice through schools.

**(b) Aerosols, solvents & DVDs**

Intelligence regarding the sale of aerosols, solvents or age rated DVDs is rare. Where this is received the premises will be visited and offered advice. An underage test purchase will be carried out where necessary.

In 2016 and the first three quarters of the 2017/18 service year no complaints have been received about underage sales of aerosols, solvents or DVDs.

There is currently a Government consultation on whether to impose an age restriction of 18 on sales of certain corrosive substances. Trading Standards will take part in this consultation. Any resultant legislation may lead to a new area of work in 2018/19.

**(c) Knives**

Norfolk Trading Standards will continue to work with Norfolk Police and other agencies in support of local and national initiatives to reduce knife crime. Trading Standards has received no complaints relating to illegal sales of knives to under 18s in the past two years. However, it has been reported that knife crime is rising in Norfolk and that knives are being found in schools.

It is therefore planned that for the service year 2018/19, proactive work will be carried out around the underage sales of knives by advising retailers and undertaking test purchasing utilising 18 to 20 year-old volunteers to test the retailers' age verification policies.

There is currently a Government consultation on whether to ban online sales of knives for delivery to residential addresses. Trading Standards will take part in this consultation. Any resultant legislation may lead to a new area of work in 2018/19.

## **Looking ahead to 2018/19**

### **(a) Enforcement activity (including test purchasing programmes)**

Trading Standards will continue to focus its limited resources on alcohol and tobacco (including nicotine inhalation products). We will also respond to intelligence related to other products as detailed earlier in this plan, where there is an identified need. The Service, working with our police partners, will take a robust stand regarding anyone found to be purchasing alcohol or tobacco products on behalf of a young person.

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 provision of advice and support the Service will test the business' underage sale policies. Where information continues to indicate that underage sales are taking place, test purchasing by underage volunteers will be undertaken with support from Norfolk Police.

The Service continues to provide officers and utilise Trading Standards' young volunteers to support Norfolk Police in relation to their lead role for 'on licence' premises.

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

The Service is recruiting young adults from the Police Cadets force and from further education establishments. These 18 to 20 year old volunteers are utilised to test the effectiveness of the underage sales policies of retailers who have received advice and assistance.

Enforcement activity will also be carried out at premises where intelligence is received regarding the sale of illegal tobacco. Much of the intelligence Trading Standards receives around illegal tobacco also alleges sales to young persons. This activity will include visits with specialist tobacco detection dogs with a view to finding concealed illegal tobacco. Formal action will be taken against businesses where it is found, as appropriate.

### **(b) Tackling anti-social behaviour**

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.

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.

#### **(c) Proof of age schemes**

The Trading Standards Service does not promote any specific proof of age scheme but supports those schemes that conform to the PASS Scheme criteria. Many retailers have adopted the “Challenge 25” policies in relation to all age restricted products. Trading Standards will continue in 2018/19 to encourage all premises involved in the sale of any age restricted products to adopt a policy which achieves the aims of “Challenge 25”. Our ‘Minor Sales Major Consequences’ pack includes a section on adopting a Challenge 25 type policy.

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.

#### **(d) Education programmes**

- **Businesses**

The Minor Sales: Major Consequences Information Pack was reviewed in 2016. 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. The pack is shortly to be further reviewed to allow for an electronic refusals log so businesses can download the complete pack online. It will also be updated to include information about illegal tobacco.

Publicity, including the reporting of enforcement action outcomes, will also be used to raise trader awareness about specific issues.

- **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.

#### **(e) Publicity and media campaigns**

The Trading Standards Service will produce a number of articles to raise awareness through the press, social media and radio. This will include the reporting of enforcement action outcomes and 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.

As stated previously, reports of underage sales of alcohol in the 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.

Multi-agency work will be actively promoted and reported, including regional or national coverage where relevant.

**(f) Community Involvement**

Support and publicity will be sought for new initiatives launched during 2018/19. Where possible local members and/or community representatives will be invited to support or attend relevant activities.

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.

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.

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.