

CABINET MEMBER DELEGATED DECISIONS - SAFER AND STRONGER COMMUNITIES - 12 NOVEMBER 2012

TRADING STANDARDS SERVICE AGE RESTRICTED PRODUCTS ENFORCEMENT REPORT AND PLAN

Report by Director for Social and Community Services

Introduction

1. The Trading Standards Service is the principal body for the enforcement of legal controls over age-restricted products in Oxfordshire. There are a broad range of age controlled products including alcohol, fireworks, knives, lottery tickets, solvents, spray paints, tobacco, videos and video games.
2. The Children and Young Persons (Protection from Tobacco) Act 1991 requires local authorities to consider annually what programme of enforcement action is appropriate to prevent the underage sale of tobacco.
3. This report summarises the work carried out over the last twelve months to enforce age-restricted products legislation and proposes a way forward for the next twelve months.

Exempt Information

4. None

Tobacco

5. The Children and Young Persons (Protection from Tobacco) Act 1991 states that a programme of enforcement should involve all or any of the following:-
 - Proportional enforcement activity, including prosecutions;
 - Investigation of complaints;
 - Other measures intended to reduce the availability of tobacco products to the under 18s.
6. Unlike the sale of alcohol, tobacco is not strictly regulated through a licensing regime. This means any business can sell cigarettes and tobacco and a test purchasing regime is considered necessary to identify and address any non-compliance.
7. In 2011-2012 7 complaints were received concerning premises allegedly selling tobacco to under 18s. In total 37 retail premises were tested through an under-age volunteer attempting to buy cigarettes from the business whilst

being observed by a Trading Standards enforcement officer. In total 9 of these sold cigarettes (24%). In addition licensed premises were visited to check compliance with regard to cigarette vending machines. Of the 4 premises that were visited 2 sold cigarettes (50%). Due to the outlawing of vending machines since 1 October 2011 this particular problem area will no longer be an issue.

8. In April 2012 new legislation was introduced to control the display of tobacco products. This is being introduced in two phases. The initial phase covers the larger retailers with a relevant floor area exceeding 280 square metres and came into force on 6 April 2012. The second phase to cover all other outlets comes into force on 6 April 2015. This legislation makes it an offence to openly display tobacco products. In addition, as well as the offence of selling tobacco products to under age people there is an offence of showing tobacco products to persons under 18 years of age.

Alcohol

9. The Licensing Act states that alcohol test purchases can only be carried out legally under the supervision of a Police Constable or an Inspector of Weights and Measures. Trading Standards can only enforce the provisions of the Licensing Act that relate to the sale of alcohol to under aged persons, while the Police can, in addition, enforce other provisions relating to proxy sales (sales to an over 18 year old who then supplies the product to an under 18 year old) and drinking in public.
10. In 2011-2012 4 complaints were received concerning premises allegedly selling alcohol to under 18s. In total 14 retail premises were tested of which 2 sold alcohol (14%).

Fireworks

11. In 2011-2012 test purchases were carried out at 5 retail premises with no sales taking place. This is encouraging to see and is likely to be due to the fact that, unlike other age-restricted products, fireworks are only sold for a very short period of time and as such staff are more aware of the risks of selling the product. This low level of illegal sales is also an outcome of the Fireworks Partnership which has brought together a range of partners to organise work around the fireworks period to prevent firework misuse and reduce firework accidents.

Knives

12. There has been no intelligence to suggest that there are any local problems relating to under age knife sales. However, with knife crime having a high national profile it is appropriate to test this product. From previous work in this area it appears that retailers are aware of what they consider to be knives that could be used for violence but are ignorant when it comes to less obvious threats such as craft knives.

13. In 2011-2012 3 retail premises were tested and all 3 sold knives.

Solvents

14. There has been no intelligence to suggest that there have been any problems relating to the supply of solvents during the last year.

Proposals

15. The positive contribution that under age test purchasing makes in preventing illegal sales and helping to reduce alcohol fuelled anti-social behaviour, improve the environment and health and wellbeing of the young indicates a need to continue in this area of work. Age restricted sales test purchases are recognised as being an important part of the overall alcohol harm reduction strategy for Oxfordshire by the Oxfordshire Safer Communities Partnership. In addition, actions to enforce product age restrictions also link closely with priorities under the Oxfordshire Health and Wellbeing Strategy, in particular;
 - a. All children have a healthy start in life and stay healthy into adulthood.
 - b. Keeping all children and young people safer.
 - c. Preventing early death and promoting quality of life in later years.
16. It is proposed that the Trading Standards service continues to raise awareness of the issues relating to the misuse of age-restricted products by young people. It is also proposed that the Service continue to undertake business advice visits to retailers to advise on how to best achieve compliance with the legislation relating to the sale of age-restricted products.

Enforcement Approach

17. Under our Enforcement policy, formal legal action is usually the last resort. Normally, unless serious or deliberate malpractice is identified we seek to work with businesses to ensure compliance with age restricted product legislation. Advice is also provided on request, to help businesses establish good systems that should ensure illegal sales of age restricted products do not occur. In the event of a sale during a test purchase exercise we normally employ business advice and warnings before considering any formal action. Once a business has failed a test purchase we will revisit that business on a number of occasions to ensure that our advice has been implemented. In relation to alcohol sales we can also instigate a licence review if this may be necessary to ensure practices are improved.
18. In conducting enforcement work we will continue to have regard to intelligence, whether from partner agencies or the general public. The receipt of information or intelligence concerning a business will normally result in an advisory visit to the business followed by a test purchase. Routine checks on compliance will also be conducted through test purchasing with young volunteers. We do not set a minimum or target number of test purchases. Rather, we respond to any intelligence received before considering what level of test purchasing is required. This is appropriate since an observed test purchase constitutes surveillance under the Regulation of Investigatory

Powers Act 2000 and therefore the necessity and proportionality of the operation must be considered on each occasion.

19. It is proposed to only visit retail outlets to which tobacco display restrictions apply (larger outlets) when we receive information or intelligence to suggest any breaches. These will initially be dealt with by way of business advice and will only be followed up with a test purchase attempt where considered necessary. More work will be carried out in this area, including test purchasing, from April 2015 when the legislation will apply to all premises.
20. Endorsement is sought to continue with this method of enforcement.

Financial and Staff Implications

21. No additional financial or staff implication arise from this proposed course of action. The Trading Standards Service invests resources in actions to prevent age restricted goods being sold illegally each year and these proposals form part of those activities.

Recommendation

22. **The Cabinet Member for Safer and Stronger Communities is RECOMMENDED to give her approval for the Trading Standards Service to continue to enforce the legislation controlling the supply of age restricted products on the basis set out in the report.**

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Background papers: None
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