

# WIRRAL COUNCIL

## SUSTAINABLE COMMUNITIES OVERVIEW AND SCRUTINY COMMITTEE

8 MARCH 2011

(SUBJECT:	PROGRESS ON THE CONTROL OF ILLICIT SALES TO YOUNG PEOPLE
WARD/S AFFECTED:	ALL
REPORT OF:	THE DIRECTOR OF LAW, HR AND ASSET MANAGEMENT
RESPONSIBLE PORTFOLIO HOLDER:	GILL GARDINER
KEY DECISION?	NO

### 1.0 EXECUTIVE SUMMARY

- 1.1 A report to advise members of the steps taken to control illicit sales to young people including under age sales and the sale of illicit tobacco and alcohol. The local authority has a statutory responsibility to enforce provisions prohibiting the sale of age restricted products and provisions requiring legible health warnings on tobacco products.
- 1.2 This report was requested in the work plan for the Committee.

### 2.0 RECOMMENDATION/S

- 2.1 That members consider the contents of the report

### 3.0 REASON/S FOR RECOMMENDATION/S

- 3.1 The report details the work undertaken by Trading Standards Service to control illicit sales to young people.

### 4.0 BACKGROUND AND KEY ISSUES

#### 4.1 UNDER AGE SALES LEGISLATION

- 4.1.1 The following legislation places restrictions on the age at which certain products can be sold.

- **Anti-Social Behaviour Act 2003**

It is an offence to sell aerosol spray paint to persons aged under 16.

- **Children and Young Persons (Protection From Tobacco) Act 1991**

- **Children and Young Persons Act 1933**

It is an offence for any person to sell cigarettes, tobacco products or cigarette papers to anyone under 18 years of age.

- **Cigarette Lighter Refill (Safety) Regulations 1999**

It is an offence to supply cigarette lighter refill canisters containing butane to anyone under 18.

- **Fireworks (Safety) Regulations 1997 (as amended)**

It is an offence to supply fireworks, including sparklers, to a person under the age of 18.

- **Intoxicating Substances (Supply) Act 1985**

It is an offence if volatile substances or solvent-based products are sold, and it is believed that they are for a person under the age of 18, and that they are likely to be inhaled for the purposes of becoming intoxicated. This offence applies even when it is known that another person is buying the product for the person under the age of 18.

- **Licensing Act 2003**

It is an offence to sell alcohol to anyone under 18, or for a person under 18 to sell alcohol, unless a responsible person has approved the sale.

- **National Lottery Etc Act 1993**

It is an offence to sell National Lottery tickets and scratch cards to any person under 16.

- **Offensive Weapons Act 1996**

It is an offence for a person to sell to a person under the age of 18: any knife, knife blade or razor blade; any axe; any other article which has a blade or which is sharply pointed, and which is made or adapted for use for causing injury to the person.

- **Video Recordings Act 2010**

It is an offence to supply a video recording to any person who has not attained the age specified on the recording. This legislation applies to video films and DVDs, video games and computer games.

## **4.2 NATIONAL POLICY**

4.2.1 Government has recognised the need to reduce the potential harm alcohol and tobacco can cause to young people and this is reflected in national policy documents.

4.2.2 The National Institute for Health and Clinical Excellence (NICE) has published guidance (Alcohol use-disorders: preventing harmful drinking - reference

PH024) which, amongst other aims, is designed to aid prevention of alcohol use disorders among adolescents. In relation to under age sales of alcohol the guidance recommends;

- Ensuring that sufficient resources are available to prevent under age sales, proxy sales (that is illegal purchases for someone who is under age) and the sale of illegally imported alcohol.
- Working in partnership with the appropriate authorities to identify and take action against premises that regularly sell alcohol to people who are under age.
- Undertake test purchases to ensure compliance with the law on under age sales.
- Ensure sanctions are fully employed to businesses that break the law on under age sales. This includes fixed penalty and closure notices (the latter should be applied to establishments that persistently sell alcohol to children and young people).

4.2.3 On the 14<sup>th</sup> January the Scrutiny Programme Board appointed the Alcohol Scrutiny Panel to "Carry out a Scrutiny Review of the impact that alcohol consumption by young people is having on those young people and the wider community".

4.2.4 Members will be aware that the Panel submitted a comprehensive report in December 2010, part of which dealt with the sale of alcohol to children and its long term ill effect on their health. This report will be submitted to Cabinet.

4.2.5 The Department of Health has published "A smoke-free future - a comprehensive tobacco control strategy for England" containing a number of objectives, including stopping the inflow of young people as smokers. The strategy recommends;

- Joint working between police, HMRC and Trading Standards to disrupt the sale of counterfeit, illegally imported or duty diverted tobacco products.
- Reducing the supply to children by conducting test purchasing campaigns.
- Targeting traders who sell tobacco product through the illicit economy e.g. street sellers, mobile shops and sales from domestic premises.
- Removal of the display of tobacco products by retailers.
- Prohibiting the use of cigarette vending machines.

### **4.3 UNDER AGE SALES ACTIVITY**

#### **Alcohol**

- 4.3.1 It is a criminal offence under the Licensing Act 2003 to sell alcohol to a person under the age of 18. Wirral Council's Trading Standards Division work closely with Merseyside Police to minimise the sale of alcohol to young people and reduce the consequent potential for anti-social behaviour and harm to young people, including regretted sexual behaviour and long term health risks
- 4.3.2 An important part of the overall strategy to reduce the sale of alcohol to young people is to engage with off licence businesses to enable them to accept their legal and moral responsibilities. This is achieved by carrying out advisory visits and providing staff training. In 2009 over 180 off licence staff received training and 46 advisory visits were carried out. In 2010 the focus was on enforcement activity. In a number of cases off licences were brought into review and a condition was attached to the premises licence that they attend training organised by Trading Standards. A recent training session was provided to 24 off licence staff resulting from these requirements.
- 4.3.3 As important as providing advice to businesses is a robust enforcement programme. In 2009 136 test purchase attempts were made using under-age volunteers at off-licences and only four sales were made. In 2010, 89 alcohol test purchases attempts were made at off licences and 12 sales were made. Two attempted sales were made at on-licence premises, both of which refused to sell alcohol. Whilst this failure rate is high test purchase activity is targeted at those premises which intelligence indicates may sell alcohol to young people.
- 4.3.4 In each instance where alcohol is sold to a minor the member of staff who sold the alcohol is referred to Merseyside Police Licensing team who issue an £80 fixed penalty notice. A further investigation is then carried out by Trading Standards to determine if the procedures adopted by the off licence are reasonable to satisfy the statutory defence available to the business i.e. that they had reasonable precautions in place to prevent the offence.
- 4.3.5 In accordance with the Council's enforcement policy traders can be advised or warned as to their future conduct, offered a caution or prosecuted. Additionally, a premises licence to sell alcohol can be brought into review, which may result in conditions being imposed on the licence, the licence being suspended or the licence being revoked.
- 4.3.6 One off licence was prosecuted and fined £270 with £475 costs awarded to the local authority, two off licences accepted cautions and nine warning letters were sent to the remaining premises. Further breaches may result in prosecution and/or licence review.

## **Fireworks**

- 4.3.7 Misuse of fireworks can be both dangerous and contribute to anti-social behaviour. Legal requirements reflect these concerns and only allow fireworks to be sold to a person over 18. In November 2010 a firework test purchasing exercise was conducted and 28 premises visited. None of the premises tested sold fireworks to the under age volunteer.

## **Tobacco**

- 4.3.8 One retailer who sold tobacco to an under age volunteer was given a conditional discharge with £100 costs awarded to the Council, and two retailers were fined £150 each with £100 costs to the Council awarded against each, for similar offences.
- 4.3.9 In a recent survey, conducted by Trading Standards and funded by the Department of Health, an under age volunteer was able to purchase cigarettes from vending machines situated in 8 licensed premises. This demonstrates the ease with which the age restriction can be circumvented and supports the Government's intention to ban the use of cigarette vending machines from 1<sup>st</sup> October 2011.

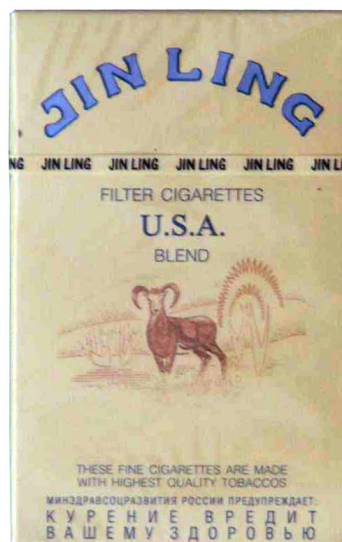
### **4.4 CONTROLLING OTHER ILLICIT SALES**

- 4.4.1 During 2010 an increase in the possession of illicit tobacco and alcohol for sale was found. Illicit tobacco or alcohol are either counterfeit copies of legitimate products or legitimate products which have been either diverted from export stock, or illegally imported, to evade duty.
- 4.4.2 Two retailers were prosecuted for possessing illicit tobacco. In both instances counterfeit hand rolling tobacco was seized together with illegally imported cigarettes which did not have the required health warnings in English.
- 4.4.3 At Birkenhead Magistrates Court one retailer, who pleaded guilty to Trade Marks Act offences was fined £400, ordered to pay a £15 victim surcharge and costs of £288 were awarded to the local authority. At Liverpool Crown Court a second retailer was sentenced to 180 hours community service with £1000 costs awarded to the local authority after pleading guilty to offences under the Trade Marks Act and Tobacco Products (Manufacture, Presentation and Sale)(Safety) Regulations 2002, which require a legible health warning to be indicated on tobacco products. In both cases the seized product was ordered to be destroyed.
- 4.4.4 The purpose of the health warning is to give smokers adequate warnings of the risk smoking can cause to their health. The failure to give the warnings may have little effect on hardened smokers but a proper health warning may prevent a young person from starting to smoke.

4.4.5 Examples of correct health warnings:



#### 4.4.6 Examples of incorrect / illegal health warnings:



- 4.4.7 Illicit tobacco and alcohol not only undercuts legitimate businesses who can't compete with the low prices their illegal competitors offer but also steals tax revenue from HM Treasury. Trading Standards work closely with colleagues in HM Revenue and Customs to target those selling illicit tobacco and alcohol.
- 4.4.8 Far from being a victimless crime, the trade in illicit tobacco has serious consequences for health, crime and community cohesion. It is linked to both low level and large scale organised crime. Illicit tobacco sellers target poor and disadvantaged communities. In March 2010 a small regional illicit tobacco team, based at Warrington Trading Standards, was established. The main aim of the team is to assist in the development of effective illicit tobacco enforcement work across the region. As a support service they aim to assist each constituent local authority as that authority may require.
- 4.4.9 The work of the regional team is also supported by the "Get some answers" publicity campaign which provides information to the public and business about the dangers posed by illicit tobacco - <http://get-some-answers.co.uk>.

### **Operation Strandhogg**

- 4.4.10 Merseyside Police, Trading Standards and the Council's Licensing team are working together to investigate allegations that certain sectors of the off licence sector are selling illicit tobacco and employing illegal immigrants.
- 4.4.11 Due to restrictions on reporting live investigations this report is limited to advising members that Trading Standards are currently gathering evidence concerning seizures of suspected counterfeit or illicit spirits and wine, totalling 787 bottles (617.8 litres) from a total of 7 different licensed premises. As well as working with other enforcement agencies Trading Standards works closely with legitimate businesses such as trade mark holders and the International Federation of Spirit Producers, who represent the interests of the major spirit manufacturers and importers.

## **4.5 RESOURCING OF UNDER AGE SALES WORK**

- 4.5.1 In 2007 the local authority signed a service level agreement with Wirral NHS (at the time Wirral PCT) agreeing to provide an under age sales prevention and detection project. The NHS provided funding of £75,000 p.a. which enabled 2 officers to be employed on fixed term contracts until March 2010.
- 4.5.2 In financial year 2010/11 provision was made in the Council budget for funding of £40,000 to continue this work.
- 4.5.3 By November 2010 both of the staff appointed on fixed term contracts, were successful in obtaining full time employment in other local authority's Trading Standards Services. This reduction in staff (from 3 to 1) has had an obvious impact on the ability to deliver the range of services previously available to the local authority. However, remaining funding from the previous policy option and from Wirral NHS funds combined with income generated from the



Department of Health for tobacco work will enable continued support for under age sales and associated work. Additionally, Trading Standards have recently obtained funding of £700 to monitor on line tobacco sales together with the possibility that further funds may become available from the Department of Health for similar work.

#### **4.6 REGULATION OF INVESTIGATORY POWERS ACT**

- 4.6.1 When conducting test purchase operations sales are attempted using a young volunteer usually aged between 14 and 15. The volunteer is carefully briefed to ensure that any request to buy age restricted goods can not be interpreted as entrapment. To limit the prospect of the volunteer having to give evidence usual practice has been for an officer to be on the premises to witness the sale. This can lead to practical difficulties, particularly in small premises, as the seller may say that the thought the product was for the adult or refuse to sell the product in front of a potential witness.
- 4.6.2 To overcome these difficulties Trading Standards have fitted the under age volunteer with body worn surveillance camera. This form of surveillance requires authorisation under the Regulation of Investigatory Powers Act (RIPA).
- 4.6.3 Members will recall public and media concern about the use of surveillance for inappropriate purposes. At the meeting of the Audit and Risk Management Committee on the 28<sup>th</sup> September 2010 members received a report from the Director of Law, HR and Asset Management outlining Government proposals which would have the effect of severely limiting the use of surveillance by local authorities. Members endorsed the recommendation of the Director of Law, HR and Asset Management to recommend to the Home Office that local authorities be allowed to continue to use covert surveillance to detect crime and disorder, provided it has been authorised by an independent magistrate, be referred to the Cabinet for consideration.
- 4.6.4 On the 25<sup>th</sup> November 2010 Cabinet endorsed the report and noted that the number of cases where RIPA had been used in Wirral continues to be relatively low and the responsible and proportionate use of this legislation in tackling extreme cases of anti-social behaviour, underage sales, fly tipping, trading standards and licensing contraventions be supported.
- 4.6.5 In July 2010 the Home Secretary announced a review focusing on which security powers could be scaled back in order to restore the balance of civil liberties, including the use of RIPA by local authorities. The review was overseen by Lord MacDonal QC. The Local Government Association provided considerable evidence showing how evidence obtained through proper use of RIPA helped local authorities support communities.
- 4.6.6 On the 26<sup>th</sup> January 2010 the Home Office published its review and made the following recommendations concerning local authorities;

- Magistrate's approval should be required for local authority use of RIPA and should be in addition to the authorisation needed from a senior officer and the more general oversight by elected councillors.
- Use of RIPA to authorise directed surveillance should be confined to cases where the offence under investigation carries a maximum custodial sentence of six months or more. But because of the importance of directed surveillance in corroborating investigations into underage sales of alcohol and tobacco, the Government should not seek to apply the threshold in these cases.

4.6.7 Further details are awaited on the practical implications but this response shows that the Government has listened to the views of the Local Government Association and recognised that surveillance is a necessary and proportionate tactic in controlling the sale of age restricted products.

## **5.0 RELEVANT RISKS**

5.1 The inability to effectively investigate offences concerning under age sales and the supply of illicit tobacco can have an adverse effect on the health of young people and anti-social behaviour.

## **6.0 OTHER OPTIONS CONSIDERED**

6.1 Trading Standards provide advisory material and training to business owners and staff but offences are still detected.

## **7.0 CONSULTATION**

7.1 None

## **8.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS**

8.1 None

## **9.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS**

9.1 Since the end of Primary Care Trust funding the dedicated resources to continue this work has reduced from three to one full time equivalent.

## **10.0 LEGAL IMPLICATIONS**

10.1 The current review of the Regulation of Investigatory Powers Act will require the Council to review its procedures for authorising directed surveillance, access to communications data and the use of covert human intelligence sources.

## **11.0 EQUALITIES IMPLICATIONS**

11.1 All enforcement action is taken in accordance with the Council's enforcement policy. Any directed surveillance used will be authorised and conducted in

accordance with the requirements of the Regulation of Investigatory Powers Act, including any new requirements concerning approval by a magistrate.

11.2 An equality impact assessment has been carried out.

## **12.0 CARBON REDUCTION IMPLICATIONS**

12.1 None

## **13.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS**

13.1 No planning implications. Reducing the access young people have to age restricted products will minimise the risk of harm to them and reduce anti social behaviour

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## **APPENDICES**

## **REFERENCE MATERIAL**

## **SUBJECT HISTORY (last 3 years)**

<b>Council Meeting</b>	<b>Date</b>
<b>Sustainable Communities OSC</b>	8 <sup>th</sup> March 2010