

# WIRRAL COUNCIL

## SUSTAINABLE COMMUNITIES OVERVIEW AND SCRUTINY COMMITTEE

28 MARCH 2012

|                               |  |
|-------------------------------|--|
| SUBJECT:                      | PROGRESS ON THE CONTROL OF ILLICIT SALES TO YOUNG PEOPLE |
| WARD/S AFFECTED:              | ALL  |
| REPORT OF:                    | DIRECTOR OF LAW, HR AND ASSET MANAGEMENT                 |
| RESPONSIBLE PORTFOLIO HOLDER: |  |
| 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 as part of the annual work plan for the Committee.

### 2.0 BACKGROUND AND KEY ISSUES

#### 2.1 UNDER AGE SALES LEGISLATION

- 2.1.1 The following legislation places restrictions on the age at which certain products may 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 a 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.

## **2.2 NATIONAL POLICY CONTEXT**

2.2.1 Government has recognised the need to reduce the potential harm that the use of alcohol and tobacco can cause to young people. This is reflected in several national policy documents.

2.2.2 The National Institute for Health and Clinical Excellence (NICE) <sup>1</sup> has published its Guidance, (Alcohol use-disorders: preventing harmful drinking - reference PH024), which, there are aims that are designed to prevent disorder from adolescents misusing alcohol. 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).

- 2.2.3 The Department of Health<sup>2</sup> has published "A smoke-free future – a comprehensive tobacco control strategy for England" which, inter alia, has the objective of stemming the rate at which young people are taking up smoking. This 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.
- 2.2.4 Trading Standards is one of several partners working with NHS Trust Public Health to deliver the Wirral Tobacco Control Action Plan 2012/13<sup>1</sup>
- 2.2.5 In respect of alcohol partnership working. Trading Standards are contributing to the work of the "Community Alcohol Partnership" which is a unique partnership between The Retail of Alcohol Standards Group (RASG), Local Authority and Police, working together using existing provisions to provide a sustainable solution to the problems of under age drinking and associated anti-social behaviour<sup>3</sup>.
- 2.2.6 The Local Better Regulation Office (LBRO) national priority to: "Help people to live healthier lives by preventing ill health and harm and promoting public health", is incorporated into the Trading Standards service plans for 2012/13<sup>4</sup>.
- 2.2.7 On the 14<sup>th</sup> January 2010 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". The Report of the Scrutiny Panel<sup>5</sup>, "Access to Alcohol by Young People in Wirral"<sup>3</sup> included the following recommendation:

"The work of Trading Standards is considered an important element in combating the sale of alcohol to young people. An additional £40,000 was included in the 2010/11 budget of the Council to enable Trading Standards to continue tackling under-age sales of alcohol using a number of methods, including test purchasing, which had led to a reduction in sales to underage young people. Cabinet is urged to retain that financial support."

## **2.3 UNDER AGE SALES ACTIVITY**

### **Alcohol**

- 2.3.1 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 potential for anti-social behaviour and prevent risk of harm to young people, including regretted sexual behaviour and long term health risks. The Police and

Social Reform Act 2011, has a provision to double the fine for premises that persistently sell alcohol to under 18s. The length of the suspensions that can be imposed for such premises on Review is also increased.

- 2.3.2 Trading Standards Service has instigated the review of 12 premises licences and at this point in time 4 licences have been revoked and additional conditions applied to 4 others.
- 2.3.3 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. Trading Standards prioritises staff resources to provide training to all premises that have been found to be in contravention of the law with 22 business employees receiving training. The focus in 2011 was on enforcement activity. Trading Standards have used an intelligence led, robust, enforcement programme and so far 45 test purchase attempts were made using under age volunteers at off licences. Of these 45 visits 8 sales were made. This provides a failure rate of 18%, which is high but activity has been targeted where intelligence indicates a premises may be selling alcohol to young people.
- 2.3.4 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.
- 2.3.5 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. A total of 4 formal cautions were issued and 12 premises license reviews conducted.
- 2.3.6 Trading Standards are also working with NHS Wirral and the Wirral Drug & Alcohol Action Team and the Alcohol Strategy Programme Manager to deliver the "Citizen Card" initiative. The card is designed to be carried by young people to prove their age, and, with its distinctive PASS (Proof of Age Standards Scheme) logo, is designed to combat confusion over fake ID and novelty cards. Young persons are being invited to apply for a proof of age card which will be recognised by staff at licensed premises. The initiative raises awareness of underage issues and provides a method by which staff at licensed premises can assure themselves that they are not selling to an underage person. The cost of the card is £15 but as part of the launch the first 300 applicants will receive the card for £10 and they will receive a free cinema ticket. For those living in parts of Birkenhead, Tranmere, Rock Ferry and Wallasey, where there are higher incidences of under age sales occurring, the card is being provided free of charge. So far 600 applications have been distributed and 90 applications are being processed.

## **Fireworks**

2.3.7 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 2011 a firework test purchasing exercise was conducted and 14 premises visited. Only one of the premises tested sold fireworks to the under age volunteer. This resulted in a caution being signed by the owner of the business and the offer of training for all staff being made.

## **Tobacco**

2.3.8 During 2011 and into 2012, 35 test purchasing visits were made to shops in Wirral and 5 were made from mobile vans. Of these premises, 3 made sales of a tobacco product to the child volunteer.

2.3.9 On the 1<sup>st</sup> October 2011 the Protection from Tobacco (Sales from Vending Machines) (England) Regulations 2010 came into force. During November, Trading Standards was able to access external funding to enable 30 visits to be made to premises to ensure compliance with the new Regulations. Out of the 30 visits 2 premises were in breach of the new rules, however these were minor breaches and compliance has been achieved informally.

## **2.4 CONTROLLING OTHER ILLICIT SALES**

2.4.1 During 2011 an increase in the possession of illicit tobacco and alcohol for sale was noted. Illicit tobacco and 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.

2.4.2 Trading Standards North West<sup>6</sup> (TSNW) has reported that the volume of illegal tobacco bought has gone down by 11% in the North West between 2009 and 2011. This equates to nearly 60 million fewer illegal cigarettes and over £13m less duty and VAT evasion in the region.

2.4.3 In Cheshire & Merseyside the number of people who admit to buying illegal tobacco has fallen from 17% in 2009 to 15% in 2011

2.4.4 The extensive TSNW<sup>6</sup> survey of over 4,111 people across the North of England including 1,045 people in Cheshire & Merseyside, first carried out in 2009 and repeated in 2011, has found that fewer people are buying illegal tobacco and those buying it are buying less:

- There are fewer smokers and of those there has been a drop in average daily tobacco consumption from 15% in 2009 to 12% in 2011.
- Likelihood to report sellers if selling to children has increased from 68% in 2009 amongst non-smokers and smokers to 73%, including those who admit to buying illegal tobacco.
- Likelihood to report sellers has risen from 24% in 2009 to more than a quarter (26%) in 2011.
- Awareness of illegal tobacco has increased from 49% in 2009 to 69% in 2011.

- The number of non smokers that have come across illegal tobacco has fallen from 24% in 2009 to 21% in 2011.
- The number of smokers buying illegal tobacco has fallen from 17% to 15%.
- 58% of people say that they are very uncomfortable with illegal tobacco which has increased from 55% in 2009.
- There has been a big drop in the number of people buying duty free cigarettes from 49% in 2009 to 32% in 2011.

2.4.5 Illicit tobacco and alcohol not only undercuts legitimate businesses who can't compete with the low prices their illegal competitors offer but is also a significant loss tax revenue from HM Treasury. Trading Standards Service works closely with colleagues in HM Revenue and Customs to target those selling illicit tobacco and alcohol.

2.4.6 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 sales are targeted in disadvantaged communities where people are most vulnerable.

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

2.5.1 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. The appointed officers have since left the employment of the Council.

2.5.2 In financial year 2010/11 provision was made in the Council budget for funding of £40,000 to continue this work and an appointment of a dedicated enforcement officer has been made in October 2011.

## **3.0 RELEVANT RISKS**

3.1 Failure to tackle underage sales places vulnerable adults and children at risk of harm and criminal activity goes undetected.

## **4.0 OTHER OPTIONS CONSIDERED**

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

## **5.0 CONSULTATION**

5.1 None

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

6.1 None

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

7.1 None

## **8.0 LEGAL IMPLICATIONS**

8.1 The Regulation of Investigatory Powers Act (as amended) has required the Council to review its procedures for authorising directed surveillance, access to communications data and the use of covert human intelligence sources.

## **9.0 EQUALITIES IMPLICATIONS**

9.1 (c) No because of another reason which is

This report is an information report and the activity described is separately subject to impact assessment.

## **10.0 CARBON REDUCTION IMPLICATIONS**

10.1 None

## **11.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS**

11.1 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

## **12.0 RECOMMENDATION/S**

12.1 That Members note contents of the report.

## **13.0 REASONS FOR RECOMMENDATION/S**

13.1 The report was requested as part of the work programme for this Committee. It provides information about the underage enforcement activity undertaken by Trading Standards Service and their partners. The report is presented for the consideration of Members.

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## **APPENDICES**

None

## REFERENCE MATERIAL

1 National Institute for Clinical Excellence: Alcohol-use Disorders: preventing the development of hazardous and harmful drinking, (June 2010).  
<http://www.nice.org.uk/PH24>

2 Department of Health, A Smokefree Future, a comprehensive tobacco strategy for England (February 2010).  
[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_111749](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_111749)

3. Community Alcohol Partnership Activity Document



2. Partner Activity document.doc

4. Appendix 1 - Wirral Tobacco Control Action Plan 2012/13



Action Plan V1.xls

5. Wirral, Report of the Alcohol Scrutiny Review: Access to Alcohol by Young People in Wirral, (December 2010).



C:\espasa\Temp\Alcohol\AlcoholScrutir

6. Trading Standards North West: Young Persons Alcohol and Tobacco Survey North West Results, (June 2011)



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## SUBJECT HISTORY (last 3 years)

| Council Meeting   | Date       |
|---|------------|
| Sustainable Communities Overview and Scrutiny Committee: Progress on the Control of Illicit Sales to Young People | 10-03-2011 |
| Sustainable Communities Overview and Scrutiny Committee: Sale of Alcohol to Young People.                         | 08-03-2010 |