

**NORTH LANARKSHIRE COUNCIL**

**REPORT**

To: ENVIRONMENTAL SERVICES COMMITTEE		Subject: NEW TOBACCO LEGISLATION ENFORCEMENT STRATEGY AND ACTIVITIES
From: HEAD OF PROTECTIVE SERVICES		
Date: 26 JULY 2011	Ref: CM/PF	

**1. Purpose of Report/Introduction**

- 1.1 It is a duty of the Council to consider, at least once in every period of twelve months, the extent to which it is appropriate to carry out a programme of enforcement action relating to section 18 of the Children and Young Persons (Scotland) Act 1937 – supply of tobacco products (cigarettes, cigars and cigarette papers) to those under 18 years of age – now re-enacted by Section 26 of the Tobacco and Primary Medical Services (Scotland) Act 2010.
- 1.2 To advise members on the level of enforcement activities relating to the Children & Young Persons (Protection from Tobacco) Act 1991, and the Tobacco and Primary Medical Services (Scotland) Act 2010 (from 1/4/2011), and to seek continued approval of an enforcement strategy in relation to the activity.
- 1.3 To advise members of the new regulations under the Tobacco and Primary Medical Services Act 2010, which:
  - restate the existing prohibition on selling tobacco products or cigarette papers to under 18s,
  - introduce a new requirement to establish proof of age if the customer appears to be under 18 and prescribes the documents to be used for that purpose (a photographic driving licence, a passport or a PASS photo card such as the Young Scot / National Entitlement Card),
  - create new offences of underage and proxy purchase,
  - update police powers of confiscation of tobacco from under 18s,
  - restate existing provisions requiring the display of a warning notice at point of sale,
  - create a national register for tobacco retailers,
  - provide a new system of banning orders to be placed on retailers who repeatedly flout the law,
  - create a new enforcement regime of fixed penalty notices for offences coupled with an increased duty on local authorities to enforce the law,
  - introduce a requirement that large retailers end open displays of tobacco by April 2012, with smaller retailers having a longer lead-in to April 2015; and
  - introduce a ban on self-service sales of tobacco products from vending machines,

The last named has been postponed during ongoing legal proceedings.

**2. Background**

- 2.1 The Children & Young Persons (Protection from Tobacco) Act 1991 and the Children and Young Persons (Scotland) Act 1937 sought to prevent the supply of tobacco products to young persons under the age of 18 years by:
  - Making it an offence to sell cigarettes to young people
  - Prohibiting the supply of single or loose cigarettes
  - Requiring warning notices to be displayed in shops
  - Controlling sales of cigarettes by vending machine

The North Lanarkshire Council had a duty under section 6 of the Children & Young Persons (Protection from Tobacco) Act 1991, now under Section 26 of the aforementioned Act of 2010, to carry out an appropriate enforcement programme and to review this programme at least once a year.

- 2.2 The enforcement programme is carried out by the Trading Standards Service of the Protective Services Division.
- 2.3 This report details the Service's Enforcement Strategy in relation to the sale of tobacco products and records the level of enforcement activity carried out by the department during the period 1 April 2010 and 31 March 2011.
- 2.4 The standard return on activities under the Act, as required by the Scottish Government, will be submitted based on the information contained in this report.

### 3. Considerations

#### 3.1 The Enforcement Strategy shall be:

- The Trading Standards Service will provide literature to retailers of tobacco, advising them of the law and confirming North Lanarkshire Council's commitment to enforcing its provisions.
- The Service will carry out, as part of the normal pattern of enforcement visits, checks on retailers to ensure compliance with the law.
- Complaints from members of the public about sales to under age persons will be investigated.
- Written warnings will be issued to specific retailers where illegal sales are suspected to have taken place.
- The Service will issue fixed penalty notices where breaches of legislation have taken place and report any failure to pay to the Procurator Fiscal for consideration for prosecution.
- The Service will seek to work in partnership with other services and organisations to raise public awareness and to issue publicity material and other information.
- An enhanced enforcement programme including covert test purchase exercises will be carried out in line with the Scottish Government's Smoking Prevention Action Plan.

#### 3.2 Enforcement Activities

The statistics detailed below relate to the period 1 April 2010– 31 March 2011

#### TRADER COMPLIANCE LEVELS WITH REQUIREMENTS TO DISPLAY WARNING NOTICES

Visits To Retail Outlets	Notices Displayed	Notices Not Displayed	Not Displayed but Rectified at time of visit
232	212	20	20

#### ACTIONS

COMPLAINTS RECEIVED	WRITTEN WARNINGS	REPORTS TO PROCURATOR FISCAL	INFORMATION TO TRADERS
6	20	8	462

#### TEST PURCHASES

ATTEMPTS	SALES	% SALES
146	18	12.1

- 3.2 As a result of the Service's enforcement activities there is a clearer understanding and awareness by traders in North Lanarkshire of the provisions prohibiting the sale of tobacco products to persons under the age of 18 years. There was an overall fall in the percentage of sales from 15.4% to 12.1%. The number vendors selling on a second occasion rose to 8 (from 24 attempts) and were reported to the Procurator Fiscal.
- 3.3 The business training pack, 'It's Your Call' published in conjunction with the North Lanarkshire Partnership, traders and trade bodies in order to further the education of all with regard to age-restricted products has been delivered to over 700 known vendors of tobacco products by the trading standards service and police colleagues. An education pack for use in schools, 'Age Matters' has also been produced and distributed to all secondary schools.
- 3.4 The introduction of the fixed penalty notice regime, from 1<sup>st</sup> April, has seen seven fixed penalty notices (FPNs) issued in respect of four sales of tobacco to Trading Standards underage volunteers; this from 23 attempts. All FPNs were paid within 14 days, thereby attracting a reduced penalty of £150 each rather than the £200 initially labelled. The service has continued to provide guidance to individual traders and via local media releases.
- 3.5 North Lanarkshire Trading Standards service continues to be one of the leading exponents of advice and enforcement in the area of age restricted products in Scotland.
- 3.6 The recommendations are consistent with policy and there are no personnel, legal or property implications.

#### **4 Recommendations**

- 4.1 That the Committee note the activities carried out by the Trading Standards Service to protect young persons from tobacco and tobacco products.
- 4.2 That the Committee endorses the enforcement strategy as set out in paragraph 3.1 albeit the strategy may need to be revisited once the new legislation is wholly enacted.

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**CRAWFORD MORGAN  
HEAD OF PROTECTIVE SERVICES**

Local Government Access to Information Act: for further information about this report, please contact Peter Fergie, Enforcement and Projects Manager (Trading Standards), on 01698 274249