



Title: **Policy on the Protection of Children in relation to Tobacco Sales and Other Age Restricted Goods**

Public Agenda Item: **Yes**

Wards Affected: **All Wards in Torbay**

To: **Council**

On: **8 December 2011**

Key Decision: **No**

Change to Budget: **No**

Change to Policy Framework: **No**

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1. What we are trying to achieve and the impact on our customers

- 1.1 Torbay Council is required by Section 5 of the Children and Young Persons (Protection from Tobacco) Act 1991 to consider, at least once a year, the extent to which it is appropriate to carry out a programme of enforcement action in relation to tobacco and tobacco products. This report fulfils the requirements of this annual review, but also extends its remit to other age restricted goods. Through the control of age restricted products, Torbay Council has actively contributed to the reduction of anti-social behaviour and reduced the risks to children and other vulnerable groups. By reducing access to harmful products and raising awareness of risk taking behaviours, Torbay's community will be better informed and more aware of the implications of such products.

2. Recommendation(s) for decision

- 2.1 **That the Mayor be recommended to approve the Supply of Age Restricted Products Policy, as set out in Appendix 1 to the submitted Report.**

3. Key points and reasons for recommendations

- 3.1 Torbay Council has a statutory obligation to review annually its Under Age Sales Policy with regards to enforcement action on tobacco and tobacco products in relation to the protection of children and young persons. The existing Policy was last considered in December 2010.

3.2 Torbay Council's Children & Young Peoples Plan embodies our ambition to improve the outcomes for all children and young people living in Torbay. This Under Age Sales Policy contributes to the delivery of this ambition.

For more detailed information on this proposal please refer to the supporting information attached.

**Frances Hughes
Executive Head Community Safety**

Supporting information

A1. Introduction and history

- A1.1 The Cabinet last considered Torbay Council's Policy regarding enforcement of legislation prohibiting the supply of tobacco and tobacco products to children and young people, in December 2010. This report updates that Policy and renews our commitment to test purchasing, along with other early interventions to ensure that children and young people across Torbay are protected (see Appendix 1).
- A1.2 This Policy contributes directly to delivering Torbay Council's corporate priorities and delivers our statutory responsibilities. It also contributes to achieving the seven key priorities of staying safe in the Children and Young People's Plan 2010-13.
- A1.3 The Policy also relates to the Community Plan, in particular to the theme of 'Community Safety'. There are strong links between drug and alcohol problems and crime. The Policy is aimed at protecting children and young people from the harmful effects of cigarettes and alcohol. It also encompasses the sale of fourteen other age restricted products, including knives and solvents.
- A1.4 The Policy is linked to Torbay Council's responsibilities as a Licensing Authority, under the Licensing Act 2003. Trading Standards are statutory consultees under the Licensing Act 2003, in relation to 'The Protection of Children from Harm'. The Policy also contributes to Torbay Council's agenda for safeguarding children under the Children Act 2004 and the responsibilities of the Every Child Matters agenda.
- A1.5 One change to the Licensing Act 2003 is that there is now a requirement that all premises that sell or supply alcohol must comply with the following condition.

(1) The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.

(2) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.

Trading Standards in conjunction with Devon and Cornwall Constabulary have written an Age Verification Policy which is available for premises to complete and use. This will tighten the responsibility on premises to give due consideration to this important issue.

- A1.6 A regional bid was made by South West of England Regional Co-ordination of Trading Standards (SWERCOTS) for funding from the Department of Health, and Trading Standards across the South West are took part in a series of operations and activities between October 2010 and January 2012, in relation to:
- Detection and disruption of counterfeit tobacco

- Test Purchase from retailers and vending machines, though vending machines are being phased out with a full ban by 1st October 2011.
- 'Strengthening the Message' – advising businesses on how to train staff on writing a policy
- To assess the advertising of tobacco products at point of sale.

A1.7 Since the last report, Trading Standards Officer's have undertaken one test purchasing operation, with a second to take place this month. The first test purchasing operation was aimed at tobacco retailers. Twelve premises were targeted and two sold tobacco. One also sold alcohol as a buy product of the work. One of these premises is working with Torbay Council to improve its systems to ensure there isn't a repeated failure. The other had failed previously for alcohol, but has since changed hands in part due to the pressure put on them over this matter, as the confidence in management of the premises had been lost.

A1.8 This month, the Licensing and Public Protection Team will be undertaking a second underage test purchases in the area of alcohol on both On and Off Licensed premises.

A1.9 Despite ongoing local concerns about the availability of alcohol to young people, Trading Standards and the Licensing department receive relatively few complaints about traders and very little intelligence on Premises where access to under age goods is prevalent. For example during 2009/10 only 7 complaints were received, during 2010/11 another 17 complaints have been received, but this year to date that has reduced 5. Any premise that is identified receives a test purchase.

A1.10 Torbay Tobacco Control Alliance Action Plan for 2011/12 includes working towards

- Smoke free homes, where there are packs available and people can sign up
- Smoke free cars, where the alliance is looking to promote
- Smoke free play parks, which is being trialled
- Supporting regional work on illegal tobacco supplies, which includes partnership working between the Alliance, Trading Standards and Customs and excise.

A1.11 This policy went to the Children's Trust Commissioning Board (Learning and Skills for the Future) last year on the 10th November 2010, and the Board supported the recommendation. This year, the Children's Trust Commissioning Board is being replaced by the Health and Well Being Board, however due to the transitional arrangements and that the policy has not altered, it was agreed that the report will not be forwarded to them. The Safeguarding Manager has seen the report.

A2. Risk assessment of preferred option

A2.1 There are no risks in accepting the recommendation, as the test purchase operations will be met from existing resource allocation. Additional test purchasing operations this year will be funded by the Home Office.

A2.2 Remaining risks

A2.1.1 The only significant risk is not reviewing the Policy annually.

A2.1.2 Torbay Council is required by Section 5 of the Children and Young Persons (Protection from Tobacco) Act 1991 to consider, at least once in every period of 12 months, the extent to which it is appropriate to carry out in the area a programme of enforcement action in relation to tobacco and tobacco products. This is a statutory requirement with limited impact, as the work is already ongoing.

A3. Other Options

A3.1 None

A4. Summary of resource implications

A4.1 There are no significant resource implications, as the activities set out in the Policy will be met from within existing resources. However this is clearly dependant on Community Safety retaining those existing resources into 2012-13.

A5. What impact will there be on equalities, environmental sustainability and crime and disorder?

A5.1 There is no impact on environment, sustainability or the economy.

A5.2 With regard to crime and disorder, the continued enforcement of the sale of age restricted products is only possible through a regime of test purchase initiatives. This approach helps to reduce the number of age restricted products which are available to children and young people. Reducing the sale of knives and alcohol impacts on the 'Bay family' by helping to deter crime and supports compliant traders, 'by ensuring that those who do not comply with the law are dealt with accordingly'.

A5.3 The impact on our partners is alcohol related admissions to Torbay Hospital. These had been increasing year on year between 2002/03 and 2010/11. However the three year rolling total for children has shown a decrease per 100,000 of population over the same period.

A6. Consultation and Customer Focus

A6.1 None since 'You Said We Did Event 2010'.

A7. Are there any implications for other Business Units?

A7.1 There are no significant implications for other business units.

Appendices

Appendix 1 Policy on the Supply of Age Restricted Products – Enforcement Statement

Documents available in members' rooms

None

Background Papers:

The following documents/files were used to compile this report:

Supply of Age Restricted Products – Enforcement Statement

Torbay Council is committed to achieving compliance in a fair, consistent, proportionate, transparent and targeted manner. The emphasis will be on advice and education but other means of enforcement will also be used, if necessary. In so far as the supply of age restricted products is concerned, priority will be given to the legislation in Schedule A below which the Council has a duty to enforce; enforcement action in respect of legislation in Schedule B below will principally be in response to any complaints which may be received.

1. Premises selling these products will be included in the routine inspection programme. During these inspections Traders will be reminded of their responsibilities and checks will be made on the display of required notices, labelling of products and the removal of vending machines.
2. All complaints will be investigated and appropriate action taken.
3. Legal proceedings will be taken where appropriate in accordance with the agreed Enforcement and Prosecution Policy and Torbay Council's responsibilities under the Licensing Act 2003.
4. Schools will be advised of the Council's commitment to enforce the law. Teachers and Childrens Services staff having information about under-age sales from specific shops will be asked to contact the Trading Standards Service (part of the Community Safety Business Unit).
5. Each year the Community Safety Business Unit will carry out at least two surveys using volunteer under-age purchasers. The national LACORS guidelines will be observed in carrying out the surveys.
6. Consultation with local residents and organisations will be undertaken and the action taken monitored. Information gathered will be used in periodic reviews of policies.

Schedule A – Statutory Duty to Enforce

Children and Young Persons Act 1933

Protection of Children (Tobacco) Act 1986

The Cigarette Lighter Refill (Safety) Regulations 1999 made under Consumer Protection Act 1987

Explosives (Age of Purchase) Act 1976

Fireworks (Safety) Regulations 1997 as amended by the Fireworks (Safety) (Amendment) Regulations 2004

Video Recordings Act 1984 as amended by Video Recordings Act 1993

Licensing Act 2003

Schedule B – No Duty to Enforce

Children and Young Persons (Protection from Tobacco) Act 1991 BUT Local Authority must consider annually a programme of enforcement and Local Authority may enforce
Anti-Social Behaviour Act 2003 (Sale of aerosol paint to under 16) - Local Authority may enforce

Criminal Justice Act 1988 as amended by Offensive Weapons Act 1996 (sale of knives) -
Local Authority may enforce

National Lottery Regulations 1994 - Local Authority may enforce

Intoxicating Substances (Supply) Act 1985, - Local Authority may enforce

Crossbows Act 1987 - Local Authority may enforce