

<b>Title of Report:</b>	<b>Underage Sales Test Purchase Exercises -Tobacco and Nicotine Inhaling Products</b>
<b>Committee Report Submitted To:</b>	<b>Environmental Services Committee</b>
<b>Date of Meeting:</b>	<b>14<sup>th</sup> November 2023</b>
<b>For Decision or For Information</b>	<b>For Information</b>
<b>To be discussed In Committee</b>	<b>NO</b>

<b>Linkage to Council Strategy (2021-25)</b>	
Strategic Theme	Healthy and Engaged Communities
Outcome	Implementation of statutory requirements
Lead Officer	Head of Health & Built Environment

<b>Budgetary Considerations</b>	
Cost of Proposal	N/A
Included in Current Year Estimates	N/A
Capital/Revenue	N/A
Code	N/A
Staffing Costs	N/A

<b>Legal Considerations</b>	
Input of Legal Services Required	<b>NO</b>
Legal Opinion Obtained	<b>NO</b>

<b>Screening Requirements</b>	Required for new or revised Policies, Plans, Strategies or Service Delivery Proposals.		
Section 75 Screening	Screening Completed:	N/A	Date:
	EQIA Required and Completed:	N/A	Date:
Rural Needs Assessment (RNA)	Screening Completed	N/A	Date:
	RNA Required and Completed:	N/A	Date:
Data Protection Impact Assessment (DPIA)	Screening Completed:	N/A	Date:
	DPIA Required and Completed:	N/A	Date:

## **1.0 Purpose of Report**

- 1.1 The purpose of this report is to update Council on the outcome of underage sales test purchase exercises for tobacco and nicotine inhaling products undertaken during 2022-23.

## **2.0 Background**

- 2.1 District Councils in Northern Ireland have a statutory duty to enforce the legislation relating to the sale of certain age-restricted products such as cigarettes, tobacco products, nicotine inhaling products (i.e. e-cigarettes/vapes) and cigarette lighter refill products.
- 2.2 The Children and Young Persons (Protection from Tobacco) (NI) Order 1991 and Children & Young Persons (Sale of Tobacco) Regulations (NI) 2008 make it an offence to supply any cigarettes or tobacco products to any person under the age of 18. Both the salesperson and the business owner can be liable for any illegal sales, even if they thought the purchase was being made on behalf of an adult, or if the person looked like they were over 18.
- 2.3 The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations (NI) 2021 contain provisions making it an offence to sell nicotine inhaling products to persons aged under 18 and for an adult to purchase nicotine inhaling products on behalf of a person aged under 18.
- 2.4 The Tobacco Advertising and Promotion (Display) Regulations (NI) 2012 make it an offence to display tobacco products on sale in public view in all tobacco retail premises. Where appropriate, age checks must be carried out before any tobacco product is shown to a customer who asks to buy or asks for information about a tobacco product. Temporary display is permitted following requests to purchase tobacco products by customers over 18; incidental displays while staff are actively assessing stock levels, restocking, undertaking staff training, cleaning, maintaining or refurbishing the storage unit or upon request by an enforcement officer.
- 2.5 To raise awareness of the above legislation and assess compliance by commercial premises test purchase exercises were conducted throughout the borough during 2022-23.

## **3.0 Test Purchase Exercise Protocol**

- 3.1 All test purchase exercises are carried out in accordance with Local Government Regulation (formerly LACORS) 'Code of Best Practice' on test purchasing as endorsed by the Home Office.
- 3.2 The test purchase involved sending a young person under 18 years of age into retail premises to ask for cigarettes or nicotine inhaling products.
- 3.3 As per Council policy all retailers selling relevant products are written to once per year reminding them of their legal responsibilities with guidance on how to

prevent the underage display/sale of age restricted goods and advising they may be subject to a test purchase exercise.

#### **4.0 Outcome**

4.1 A total of 29 test purchase visits were carried out at premises for tobacco and 31 visits made for nicotine inhaling products throughout the Borough during 2022/2023 resulting in the following:

- 1 underage sale of cigarettes
- 2 premises displayed cigarettes
- 6 underage sales of nicotine inhaling products

4.2 The above represents an 89.6% compliance rate by the retailers tested in relation to the selling of tobacco and an 80.6% compliance rate for the retailers tested in relation to selling nicotine inhaling products.

4.3 Decisions on the appropriate course of action when a premises fails a test purchase are made in accordance with Council's Enforcement Policy. These decisions consider whether all necessary precautions were taken and due diligence exercised to prevent the commission of an offence, as well as whether reasonable steps were taken to verify the individual's age

4.4 Taking into consideration all relevant factors at each premises all retailers and sellers who failed the cigarette test purchase exercise received warning letters.

4.5 1 fixed penalty was issued to, and paid, by a retailer for the underage sale of nicotine inhaling products and warning letters issued to the remainder of retailers and sellers. The Fixed Penalty amount is £250 which is reduced to £187.50 if paid within 14 days.

#### **5.0 Discussion**

5.1 The overall compliance rate shows that the majority of retail premises are diligent in applying the legislation. This is attributable to the ongoing commitment of the Environmental Health Department in this education and enforcement programme which includes raising awareness of the legislation by mailshot and advisory visits by Council's Tobacco Control Officer.

5.2 Failures are disappointing, and those in relation to nicotine inhaling products may partly be due to the legislation being relatively recent, coming into effect in 2022.

5.3 Councils test purchase programme for 2023-24 is ongoing.

#### **6.0 Recommendation**

6.1 **It is recommended** that the report is noted.