

TOBACCO & CIGARETTE LIGHTER REFILL UNDERAGE SALES TEST PURCHASE EXERCISES	5th June 2018
TO: ENVIRONMENTAL SERVICES COMMITTEE	
FOR INFORMATION	

Linkage to Council Strategy (2015-19)	
Strategic Theme	Resilient Healthy & Engaged Communities
Outcome	Compliance with Statutory Duty
Lead Officer	Food, Health & Safety and Consumer Protection Manager
Cost: (If applicable)	N/A

Background

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 and cigarette lighter refill products.

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. The Cigarette Lighter Refill (Safety) Regulations 1999 make it an offence to supply any cigarette lighter refill canister containing butane or a substance with butane as a constituent part to any person under the age of 18. Both the sales person 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.

The Tobacco Advertising and Promotion (Display) Regulations (NI) 2012 make it an offence to display tobacco products on sale in public view in all retailers of tobacco. 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.

To raise awareness of the above legislation and assess compliance by commercial premises 3 test purchase exercises were conducted between January and March 2018 across the Ballymoney, Limavady and Moyle legacy council areas. A test purchase in the Coleraine legacy area was carried out earlier in 2017/18.

Test Purchase Exercise Protocol

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. The test purchase involved sending a young person under 18 years of age into retail premises to ask for cigarettes or a cigarette lighter refill canister containing butane.

As per Council procedure 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.

Outcome

2 premises were visited and tested for butane cigarette lighter refills and both refused the sale to the child. This represents a 100% compliance rate by the retailers tested in relation to the selling of butane volatile substances to an underage person.

A total of 45 premises were visited and tested for tobacco sales. 35 premises refused sales to the child for cigarettes. This represents a 78% compliance rate by the retailers tested in relation to the selling of tobacco to an underage person.

Decisions on the action to be taken against a premises that fails a test purchase exercise are based on whether all reasonable precautions were taken and due diligence exercised to avoid commission of the offence and whether reasonable steps were taken to establish the individual's age.

Of the 10 retailers that failed the test purchase exercise and sold cigarettes to the child 3 Fixed Penalty Notices and 1 written warning were issued to business owners and 6 Fixed Penalty Notices were issued to the sales person.

The Fixed Penalty amount is £250 which is reduced to £187.50 if paid within 14 days.

Discussion

The overall compliance rate for the exercises is fairly high and shows that the majority of retail premises are diligent in applying the legislation. This is attributable to the ongoing commitment shown by Council and staff of the Environmental Health Department in this education and enforcement programme.

Although the failure rate of the test purchase exercises on this occasion is disappointing this may be due to the change in Council policy of not giving prior notice that a test purchase exercise is to take place and instead writing to retailers once per year reminding them of the ongoing test purchase programme throughout the year and their legal responsibilities.