AGENDA ITEM NO 20
REPORT NO 184/11

ANGUS COUNCIL

INFRASTRUCTURE SERVICES COMMITTEE – 1 MARCH 2011

TRADING STANDARDS ACTION ON TOBACCO CONTROL

REPORT BY THE DIRECTOR OF INFRASTRUCTURE SERVICES

ABSTRACT
This report comprises the annual consideration of enforcement by Angus Council Trading Standards Service in relation to the protection of young persons from tobacco.

1. RECOMMENDATIONS

1.1 It is recommended that the committee:

(i) consider and note the contents of this report; and,
(ii) approve the programme of action outlined at section 3 below.

2. BACKGROUND

2.1 From 1st April 2011, there becomes a statutory duty, under section 26 of the Tobacco and Primary Medical Services (Scotland) Act 2010, that each local authority in Scotland carry out a program of enforcement action, in relation to chapters 1 and 2 of the Act. This new duty replaces the previous condition under the Children and Young Persons (Protection from Tobacco) Act 1991, requiring local authorities to consider annually a program of enforcement action in relation to tobacco control legislation. 2011/12 is therefore a year of transition and all action on tobacco will become a duty under the above Act.

2.2 In addition to a restatement of a pre-existing offence in relation to the sale of tobacco products to persons under the age of 18, from 1st April 2011, the Tobacco and Primary Medical Services (Scotland) Act 2010 also implements substantial changes to the landscape of tobacco control in Scotland.

New provisions include:

- The creation of a compulsory registration scheme for tobacco retailers
- Creating an offence for an under age person to attempt to purchase a tobacco product
- Creating an offence for any person to purchase tobacco and then pass on to an under age person (a proxy sale)
- Banning the use of vending machines for the sale of tobacco; and
- The removal of all point of sale advertising by banning the display of tobacco products to the public. This provision is subject to a phased introductory period between 2011 and 2013

2.3 The cost to the country as a result of tobacco use is significant in terms of premature death, illness, hospital care and lost productivity. This disproportionately affects those disadvantaged by poverty.
2.4 Rigorous enforcement of the various laws that apply to the legitimate tobacco market, whether that is underage sales or the marketing and advertisement of tobacco products, is seen as an important element of reducing the availability and desirability of tobacco to children and young persons. A partnership with HMRC, to counteract the illicit sale of smuggled and counterfeit tobacco, is equally regarded as important in the effort to ensure that the illicit supply of tobacco products is addressed and the public purse protected. To date HMRC have not had the capability to mount the number of operations specified for each local authority but future funding has been promised to address illegal tobacco supply.

2.5 In conjunction with the Society of Chief Officers for Trading Standards in Scotland, the Scottish Government developed a protocol to better address the enforcement of tobacco control legislation. The targets for the project are ultimately to reduce the number of regular smokers in Scotland, using SALSUS lifestyle data as a reference. There are also process measures which require that:
- 20% of tobacco retailers are visited with advice
- 10% of tobacco retailers are subject to test purchases
- Operations are mounted with HMRC to target and prevent the illicit trade in tobacco products.

2.6 In order to finance this enhanced enforcement, £1.5 million per annum of additional funding was provided to local authorities. As part of the allocation of these funds, Angus Council received £35,371, for the purposes of tobacco control in each financial year from 2008/9 to 2010/11. The same annual amount has now been allocated to the Council, on an ongoing basis and is included in the Environmental & Consumer protection base budget.

2.7 In 2010/11:
- 155 visits have been made to 120 unique traders, for the purpose of giving advice in respect of tobacco legislation. This represents 30.5% of applicable retailers (target 20%).
- The innovative “compliance testing” initiative was rolled out further, in conjunction with Tayside Police, in order to both advise and test retail premises to a higher standard without the immediate threat of prosecution. This enabled both agencies to better target test purchase activity, based upon risk and intelligence and entailed a volunteer over 18 years (but below the threshold age for “Challenge 21" or “Challenge 25" policies), attempting to purchase a basket of restricted goods including tobacco and alcohol. To date, a series of 41 further compliance tests have been carried out, in 27 unique premises. These tests resulted in 13 failures (31.7%). All traders that pass the tests are advised at the time with a following letter of congratulation. Where a problem is identified, an opportunity is given to raise standards before formal test purchasing is considered to be appropriate.
- To date, 37 formal tobacco test purchases have been made, in 34 unique premises, using under age volunteers. This represents 8.6% of applicable retailers (target 10%, 40 premises). 11 test purchases have, so far, resulted in failure (30%). Warnings were issued on 9 occasions. 2 cases have been reported to the Procurator Fiscal. One case resulted in a fine of £170. An outcome for the second case is still pending.
- HMRC have, so far, again been unable to commit to joint operations. The tobacco pack reader that identifies illicit tobacco has continued to be used in 2010/11. To date, 6 operations have been carried out in order to detect and deter the illicit tobacco trade.
3. PROGRAMME OF ACTION

3.1 For 2010/11 the proposed programme of action is again largely based upon the Scottish Government targets for tobacco control.

3.2 Additional work in this coming year will also involve advising retailers on the requirements of new legislation (see 2.2 above), monitoring registration amongst local premises, implementation of the display ban and the ban on automatic tobacco vending machines.

3.3 It is planned to visit at least 20% of tobacco retailers for advisory purposes.

3.4 It is planned to undertake formal test purchases of tobacco products from at least 10% of tobacco retailers.

3.5 It is planned to contact HMRC to target the illicit trade in smuggled and counterfeit product. If HMRC resources do not permit this level of co-operation then some other form of activity will be undertaken to address this problem as in previous years.

3.6 It is planned to continue working in close partnership with Tayside Police through the Community Safety Partnership to target sales of all age-restricted products, combining and sharing available resources wherever possible. A further range of compliance tests are planned, in order to both support reputable businesses and inform formal test purchasing activities.

3.7 It is planned to further promote the Angus Age Restricted Sales Code of Practice, to support compliance by legitimate businesses. Following Scottish Government guidance on this issue will help ensure a consistent and uniform approach to advice to businesses throughout Scotland.

4. FINANCIAL IMPLICATIONS

4.1 The allocation of £35,371 from the Scottish Government is included in the Environmental and Consumer Protection base revenue budget for the purposes of the project. This allocation is primarily utilised to employ and support an officer to carry out the duties associated with tobacco enforcement.

4.2 The officer will require support from other trading standards staff. For evidential reasons, it takes 4 staff to mount a test purchase operation, in accordance with Crown Office guidelines. The duties associated with the post are expanded to cover other aspects of trading standards work.

4.3 The work carried out on tobacco sales control in 2011/12 will be contained within the existing revenue budget for 2011/12.

5. HUMAN RIGHTS

5.1 There are no human rights implications arising from this report.

6. EQUALITIES IMPLICATIONS

6.1 The issues dealt with in this Report have been the subject of consideration from an equalities perspective. An equalities impact assessment is not required.
7. SINGLE OUTCOME AGREEMENT

7.1 This report contributes to the following local outcome(s) contained within the Single Outcome Agreement for Angus.

- Our children have the best start in life and are ready to succeed
  - Children and young people in Angus enjoy the highest attainable standards of physical and mental health.

- We live longer, healthier lives
  - Harm caused by the misuse of drugs and alcohol is reduced resulted in improved quality of life in Angus.

- We have improved the life changes for children, young people & families at risk
  - Children are protected from abuse, neglect and harm by others at home, at school and in the community.

- We live our lives safe from crime, disorder and danger
  - Communities in Angus are safe, secure and vibrant.

8. ENVIRONMENTAL IMPLICATIONS

8.1 Pre-screening in terms of the Environmental Assessment (Scotland) Act 2005 indicates that there is minimal environmental impact.

9. CONSULTATION

9.1 The Chief Executive, Director of Neighbourhood Services, Head of Law and Administration and Head of Finance have been consulted on the contents of this report.

Eric S Lowson
Director of Infrastructure Services

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above report.

E&CP/PL/GK
31/1/2011