



Essential Elements of Tobacco Control

EETSA Tobacco Control Toolkit

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East of England
Trading Standards
Association
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Executive Summary



This toolkit has been produced to enable Trading Standards to work more effectively with partners on tobacco control issues.

Tobacco is a legally available product, unrestricted in where it can be sold except for age of purchase. Tobacco brands have become household names and a familiar presence on the street, in the media and on our travels. Over a period of many decades, tobacco use has become a part of our culture. Tobacco is visible and freely available in retail outlets such as supermarkets, newsagents, petrol forecourts and vending machines. It is a highly addictive product that, when used as intended, can cause chronic illness and early death.

The UK is a signatory to the World Health Organisation Framework Convention on Tobacco Control¹ (FCTC). Signatories commit to update and implement effective legislative, executive, administrative or other measures relating to the six major strands of tobacco control within the treaty. Trading Standards Services are involved in enforcing legislation in regard to four of these areas:

- 1 Age-restricted Sales:** prohibiting access to tobacco by young people as part of measures to reduce the harm and burden that tobacco causes to society
- 2 Illicit Trade in Tobacco Products:** prohibiting the sale of counterfeit and non-duty-paid tobacco products
- 3 Point of Sale:** ensuring all tobacco, including smokeless products, adheres to all packaging and labelling requirements
- 4 Tobacco Promotion:** enforcing advertising and sponsorship restrictions.

However, Trading Standards is just one of a number of agencies involved in a wide range of health protection activities related to tobacco products. The NHS, Local Strategic Partnerships, local Tobacco Alliances, Voluntary and Community sector, Employers and Trade Unions are just some of the bodies who have a vital role to play in tobacco control.

We can all do more.

This toolkit identifies the key stakeholder groups working in tobacco control. It describes, for those less familiar with enforcement, the role of Trading Standards officers, before considering how these actions form part of a bigger picture, including the non-enforcement side of tobacco control. Although Trading Standards Services already carry out important educational and awareness-raising work within their communities, this guide aims to strengthen existing programmes by enabling agencies to identify complementary sources of expertise and information that will improve efforts through joint working and intelligence sharing. It also aims to stimulate the identification of good practice in this area and to encourage adoption of successful programmes on a wider scale.

¹ <http://www.who.int/fctc/en/index.html>

Definitions of Tobacco Control



Tobacco control is classified as any initiative which aims to reduce the demand for tobacco products. Enforcement is an example of a key intervention that contributes to tobacco control and Trading Standards Services are responsible for the following:

- Regulation of the age of sale
- Regulation of tobacco trading and counterfeit/non-duty paid tobacco products
- Regulation of the point of sale for tobacco
- Regulation of advertising and sponsorship

Trading Standards, or indeed, any enforcement organisation cannot afford to work in isolation and must endeavour to tackle the subject in conjunction and co-operation with the various partner agencies whose remit also covers wider issues of tobacco control. Important areas of tobacco control covered by other agencies include:

- Education and awareness raising to increase public knowledge
- Smokefree workplaces (including continued work with legislation exemptions)
- Smokefree cars and homes
- Cessation services
- Reducing health inequalities
- Helping those who cannot stop smoking
- Protecting children and young people from smoking
- Preventing people (including children) from taking up smoking



Further details of partnerships and multi-agency working are given in Section 4.

Role of Trading Standards in Tobacco Control



Trading Standards officers are committed to regulating tobacco control through tackling illegal and underage availability. This includes:

- **Reducing Supply and Availability** – targeting underage sales
- **Regulating Tobacco Trading** – targeting counterfeit/illicit products
- **Reducing Tobacco Promotion** – enforcement of advertising and sponsorship restrictions
- **Regulating Tobacco** – packaging and labelling requirements (including smokeless products)

This is achieved through advice, enforcement and engagement in both local and national initiatives, including:

- Providing support/educating retailers and representative organisations, through joint or corporate training events, to enable them to trade within the law
- Test purchasing
- Educational campaign on the increase in age restriction for tobacco
- Promotion of No ID No Sale
- Promotion of Challenge 21/Challenge 25 policies
- Press releases and radio interviews
- Routine inspections (statutory notice/advertising ban compliance)
- Developing partnerships

Although Trading Standards Services already work with other agencies on issues related to tobacco control, with the increasing emphasis on wider health development and health protection, these partnerships will need to be strengthened and new alliances formed. Current strengths include a committed and professional workforce, well-perceived by politicians and the media. Weaknesses include service fragmentation, a lack of recognition of its contribution to public health and serious recruitment and retention difficulties. Opportunities for funding are many and diverse, but often short term and/or difficult to access.

The burden of tobacco in society is not a problem that can be tackled by one organisation, region or country alone. A number of factors such as global marketing and the increase in counterfeit cigarettes have made the tobacco epidemic almost a global one. This has required that the measures taken to control it are on an international scale through the Framework Convention on Tobacco Control². Therefore, high impact changes will only be achieved if all agencies, both enforcement and non-enforcement, consider the partnership model set out in Section 4 and engage with each other to promote streamlined multi-agency working.

² <http://www.who.int/fctc/en/>

Partnerships and Multi-agency Working



Multi-agency working is very important to achieve the best results. Historically, many organisations have worked independently for the same goal with varying results. With all agencies working towards a common goal and with developments in information/intelligence sharing much greater results can be achieved.

In terms of dealing with organisations or individuals, the weight of information gathered by the multi-agency group can mean greater sanctions and long term results. This approach also creates excellent working relationships between agencies.

What is a Tobacco Control Alliance?

A Tobacco Control Alliance is a multi agency grouping including statutory, voluntary and business sector partners. The Alliance develops and supervises the implementation of the local Tobacco Control Strategy and all joint working on this agenda. No two alliances will be the same but most Alliances will include all or some of the following:

- Trading Standards
- Environmental Health
- NHS including representatives such as Smoking Cessation, Coronary Care, Mental Health and Respiratory Services
- Children and Young People
- HM Revenue and Customs
- Schools or Education Representatives
- Police
- Fire Services

- Smoke Free Co-ordinators
- Locally Elected Members
- Local Retailers
- Charities with an interest in tobacco control and health issues

In order for the Alliance to be successful, it needs to be equitable, multi-agency, accountable, have a shared goal and a clear delivery plan. It is very important that all partners are dedicated to the Alliance to ensure that it is successful.

Alliances provide an opportunity to increase the effectiveness of smoking prevention and cessation activities by co-ordinating the work of those organizations, thereby gaining maximum impact.

A holistic summary of the essential elements of tobacco control is detailed in the diagram below (which is based on the National Department of Health '6 strands model')



To achieve excellence in partnership, it is important that all aspects of this work are addressed:

- > **Purpose and Leadership** – share a common vision and purpose.
- > **Culture and Communications** – promote ‘can do’ values and effective communications at all levels.
- > **Managing Performance** – put in place necessary practices and resources and manage the changes needed to achieve partnership goals.
- > **Learning and Innovation** – seek improvements in activities and working practice, learning from each other and elsewhere.
- > **Outcomes and Customer Focus** – focus on the results and satisfying the needs and expectations of customers.

Success in partnership can only be secured when relationships are built and trust is gained between partners. This is a continual process and is assisted by the application of appropriate skills, tools and techniques from the partnership.

The Department of Health has issued an evidence-based resource for local Alliances titled ‘Excellence in tobacco control: 10 high impact changes to achieve tobacco control’. This document is designed to assist and guide Alliances. It is important that the ten changes listed in the document are used in conjunction with each other and not separately as there are interconnecting themes running through each of the ten changes. These changes are:

- 1 Working in partnership.
- 2 Gather data to inform of the problem in the given area.
- 3 Use tobacco control to tackle health inequalities.
- 4 Deliver consistent, coherent and co-ordinated communication.
- 5 An integrated stop smoking approach.
- 6 Build and sustain capacity in tobacco control.
- 7 Tackle cheap and illicit tobacco.
- 8 Influence change through advocacy.
- 9 Helping young people to be tobacco-free.
- 10 Maintain and promote smokefree environments.

Trading Standards has an important role to play in Tobacco Control Alliances. Out of the ten changes recommended by the Department of Health, Trading Standards has a direct role to play in supporting seven of these. Indirectly, through multi-agency working, they can also offer support to partner agencies in delivering the other three objectives.

The most obvious role that Trading Standards can play is by working with local traders to develop their knowledge on a range of tobacco control issues as well as undertaking test purchases to support this work.

Trading Standards is encouraged to share information on test purchasing with their Tobacco Control Alliance and Health Improvement colleagues without divulging information about specific traders. This information will assist health professionals when targeting advice to at-risk groups under their remit.

Legislation Overview



A 'tobacco product' is defined as consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked or chewed. The legislation which regulates these products is outlined below (for further details follow the hyperlinks at the bottom of the page).

LACORS (the Local Authorities Coordinators of Regulatory Services) coordinate the services provided by councils and provide up to date legislation, information and guidance on tobacco control matters which can be found on their website.

<http://www.lacors.gov.uk/lacors/Home>

<http://www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=4F3E47A&id=5039>

Trading Standards Legislation

CHILDREN AND YOUNG PERSONS ACT 1933 (Section 7)³

- It is illegal to sell tobacco, cigarettes, and cigarette papers to a person under the age of 18. The offence can be committed by either the seller or the owner of the business.
- In the case of vending machines, the legislation implies that the owner of the machine or the proprietor of the premises can be guilty of an offence of not adequately controlling the use and access to vending machines. See LACORS advice for further explanation⁴.

- Further powers still exist in order for the police (and park keepers) to deal with the possession of tobacco by under-16s. Note: This was not amended when the age limit was increased to 18.

Note: The proposal for penalty notices (FPN) for the sale of tobacco etc. is yet to come into force; it is not known when this will be implemented. If it does, the power to issue the notices will derive from Section 39 (penalty notices for disorder) of the Regulatory Enforcement and Sanctions Act 2008 in relation to offences under 7(1) of CYPA.

CHILDREN AND YOUNG PERSONS (PROTECTION FROM TOBACCO) ACT 1991⁵

The Act amended and strengthened the existing Children and Young Persons Act 1933:

- The section now reads: 7(1) 'Any person who sells to a person under the age of eighteen years any tobacco or cigarette papers, whether for his own use or not, shall be liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.'
- A notice displaying the following statement 'It is illegal to sell tobacco products to anyone under the age of 18' shall be exhibited at every premise at which tobacco is sold by retail.
- A notice displaying the following statement 'This machine is only for the use of people aged 18 or over' shall be exhibited on every automatic machine for the sale of tobacco.

³ Children and Young Persons Act 1963 (c.37)

⁴ <http://www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=C87C0E&id=4015>

⁵ Children and Young Persons (Protection from Tobacco) Act 1991 (c. 23)

- Cigarettes must not be sold loose or pre-packed in quantities of less than ten.
- The local authority has a duty to consider on a yearly basis a programme of enforcement action in respect of Section 7. It is best practice for each authority to keep a record of this.

CHILDREN AND YOUNG PERSONS (SALE OF TOBACCO ETC) ORDER 2007⁶

This order updates the existing Children and Young Persons Act 1933 and the Children and Young Persons (Protection from Tobacco) Act 1991:

- Substitutes the age of 18 for the age of 16 with relation to the prohibition of the sale of tobacco products and cigarette papers to young persons.

COPYRIGHT, DESIGNS AND PATENTS ACT 1988⁷

- Establishes legal protection for designs and creates a criminal offence to combat counterfeiting.
- Controls making, importing or distributing infringing copies of copyright material.

CONSUMER PROTECTION FROM UNFAIR TRADING REGULATIONS 2008⁸

These regulations ban traders in all sectors from using unfair commercial practices towards consumers. They set out broad rules outlining when commercial practices are unfair. These fall into four main categories:

- A general ban on conduct below a level which may be expected towards consumers (honest market practice/good faith). This is intended to act as a 'safety net' protection for all consumers.
- Misleading practices, such as false or deceptive messages, or leaving out important information.
- Aggressive sales techniques that use harassment, coercion or undue influence.

For a practice to be unfair under these rules, they must harm, or be likely to harm, the economic interests of the average consumer.

- In addition, the regulations ban 31 specific practices outright.

CRIMINAL JUSTICE AND IMMIGRATION ACT 2008⁹

Section 143 inserts new sections 12A to 12D into the Children and Young Persons Act 1933:

- These create two new civil orders (Restricted Premises Orders and Restricted Sales Orders) which may be imposed by the Magistrates' Courts, prohibiting the sale of tobacco or cigarette papers, or keeping a cigarette vending machine, for up to one year.

⁶ The Children and Young Persons (Sale of Tobacco etc.) Order 2007 No. 767

⁷ Copyright, Designs and Patents Act 1988 (c. 48)

⁸ The Consumer Protection from Unfair Trading Regulations 2008 No.

⁹ Criminal Justice and Immigration Act 2008 (c. 4)

- To be used in cases of 'persistent sales of tobacco to persons under 18'.
- These can be imposed on anyone who has been convicted of an offence under Section 7 of the Children and Young Persons Act 1933, which prohibits selling tobacco to children under 18.
- **Restricted Premises Orders**
 - Local authority may apply to a Magistrates Court for an RPO where a person is convicted of a tobacco offence AND where, on at least two other occasions within a two-year period, the person has committed other tobacco offences in relation to the particular premises.
 - The two offences must have occurred after 1 April 2009.
 - Evidence of a warning letter, caution, penalty notice, or conviction must be provided by the local authority to prove the other two offences.
 - The decision to grant or refuse the application rests with the Court.
 - Local authority must inform every person affected about the application being made, within 14 days of the application being made, and in writing. Where this is a chain, it may include, amongst others: managers, company secretaries, head office.
 - Right of appeal by the person affected, if they were not informed and therefore unable to make representations to the Court.
 - May also appeal the decision to Crown Court.
- The issue of this order becomes a local land charge and must be noted on the Land Registry and applied for by the originating authority for the purpose of the Local Land Charges Act 1975 (i.e. the authority in which the premises are based).
- Remains in force irrespective of change of ownership.
- **Restricted Sale Orders**
 - Application process, appeal procedures and maximum time period for the duration of the order are as Section 12A, but the order applies to a named person, rather than a premises.
 - In addition to being prohibited from selling tobacco and cigarette papers, the named person is also prohibited from having any management function with regard to the sale of tobacco and from keeping automatic machines for the sale of tobacco.
 - Could be applied in scenarios where the same individual has made an underage sale on three occasions.
- LACORS advice is that these orders are likely to be used in rare circumstances e.g. where it is believed an individual may set up a new business and continue selling tobacco to under-18s where the business (i.e. single premises) is subject to an RPO.
- LACORS guidance is now available and a separate document has been produced for businesses, which has been written in consultation with the Department of Health tobacco policy team, business organisations (BRC/ACS and the National Federation of Retail Newsagents) and colleagues from the tobacco focus group.



ORAL (SNUFF) SAFETY REGULATIONS 1989¹⁰

- Prohibits the sale of oral snuff ('oral snuff' means goods which consist wholly or mainly of tobacco in fine cut, ground or particulate form or in any combination of those forms which are for oral use other than smoking).

PROTECTION FROM TOBACCO (DISPLAY OF WARNING STATEMENTS) REGULATIONS 1992¹¹

- A3 statutory warning signs, stating that 'It is illegal to sell tobacco products to anyone under the age of 18', must be displayed in shops and on vending machines. The characters must be at least 36mm high.

¹⁰ The Oral Snuff (Safety) Regulations 1989

¹¹ The Protection from Tobacco (Display of Warning Statements) Regulations 1992

¹² Tobacco Advertising and Promotion Act 2002 (c. 36)

¹³ The Tobacco Advertising and Promotion (Brandsharing) Regulations 2004

TOBACCO ADVERTISING AND PROMOTION ACT 2002¹²

- Prohibits the advertising of tobacco products. This includes billboards, magazine and cinema advertising. The Act also reduces the amount of sponsorship by tobacco companies of any event, including sporting events.

TOBACCO ADVERTISING AND PROMOTION (BRANDSHARING) REGS 2004¹³

- Prohibits any form of tobacco advertising at the point of sale.

TOBACCO FOR ORAL USE (SAFETY) REGS 1992¹⁴

- Prohibits the sale of tobacco intended for oral use.
- Products intended to be smoked or chewed are not covered by this legislation.
- Products in powder or particulate form, or presented in a form resembling a food product, are also not covered by this legislation.

TOBACCO PRODUCTS LABELLING (SAFETY) REGS 1991¹⁵

- Cigarettes must be correctly labelled e.g. with proscribed health warnings and information as to the tar and nicotine yields.

TOBACCO PRODUCTS (MANUFACTURE, PRESENTATION AND SALE) (SAFETY) REGS 2002¹⁶

- Cigarettes must not exceed set yield levels for tar, carbon dioxide and nicotine.

¹⁴ The Tobacco for Oral Use (Safety) Regulations 1992

¹⁵ The Tobacco Products Labelling (Safety) Regulations 1991

¹⁶ The Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002

- A list of code markings to enable the identification (place, date and time of manufacture) of the product must be displayed.
- Surface warnings: product must state on 30% of the most visible surface (the front) one of the two statements:
 - 1 'Smoking kills'
 - 2 'Smoking seriously harms you and others around you'

**Smoking
Kills**

**Smoking
seriously harms
you and others
around you**

On the rear, an additional warning from the schedule should cover 40% of the surface. Both warnings should be indelible, legible, black on a white background, correctly positioned etc.

TOBACCO PRODUCTS (MANUFACTURE, PRESENTATION AND SALE) (SAFETY) (AMENDMENT) REGS 2007¹⁷

- Lays down a series of picture warnings that must appear on tobacco products. Some examples:



TRADE MARKS ACT 1994¹⁸

- Controls on fraudulent use of trademarks.

¹⁷ The Tobacco Products (Manufacture, Presentation and Sale) (Safety) (Amendment) Regulations 2007 No. 2473

¹⁸ Trade Marks Act 1994 (c. 26)

Acts currently being considered by parliament

HEALTH ACT 2009¹⁹

Was introduced to parliament on January 2009 and received royal assent in November 2009 and proposes to:

- Remove all display of tobacco products.
- Prevent the display of tobacco products on websites
- Prevent the advertising of tobacco products (excl. specialist tobacconists)
- Create powers that will allow the Secretary of State to control the sale of tobacco from vending machines, by prohibiting such machines and/or restricting access so that only those who are over 18 can access them.

Other important pieces of legislation enforced by other agencies

SMOKEFREE (PREMISES AND ENFORCEMENT) REGULATIONS 2006²⁰

- Enforced by (a) a unitary authority; (b) a district council in so far as it is not a unitary authority; (c) a London borough council; (d) a port health authority; (e) the Common Council of the City of London; (f) the Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple; and (g) the Council of the Isles of Scilly.
- Smoking in enclosed public places is prohibited.

TOBACCO PRODUCTS DUTY ACT 1979²¹

- Enforced by HMRC and Trading Standards.
- Excise duty must be paid on tobacco products, namely: cigarettes; cigars; hand-rolling tobacco; other smoking tobacco; and chewing tobacco.
- Requires the carrying of Fiscal Marks by cigarettes, cigars and hand-rolling tobacco indicating:
 - That excise duty has been paid on the products
 - The rate at which the excise duty was paid on the products
 - The amount of excise duty paid on the products
 - When excise duty was paid on the products
 - Any time-limit restrictions on the sale of products

TOBACCO PRODUCTS REGULATIONS 2001²²

- Enforced by HMRC.
- Requires tobacco products to carry a 'UK Duty Paid' marking; any retailers failing to comply are liable to a fine of up to £5,000

¹⁹ http://www.opsi.gov.uk/acts/acts2009/ukpga_20090021_en_1

²⁰ The Smoke-free (Premises and Enforcement) Regulations 2006

²¹ Tobacco Products Duty Act 1979 (c.7)

²² The Tobacco Products Regulations 2001

Tackling Illegal and Underage Availability



Trading Standards has a traditional role in tackling age-restricted sales and is ideally placed to complement the work of key partners such as Health, the Police and Crime and Disorder Reduction Partnerships (CDRP). By using a crime-reduction problem-solving methodology, it may be possible to tackle the issue of underage tobacco sales.

An effective way of problem-solving is using the SARA (Scanning Analysis Response Assessment) model which is used by the majority of police services and plays an integral part in local policing. This concept can be adopted by Trading Standards to tackle the issues of underage sales.

The model is described as:

Scanning

Scanning allows problems to be grouped into clusters. These problems comprise of similar, related or recurring incidents and are identified from data and intelligence from partner agencies and calls from members of the public. They could be in one particular area or related to a particular chain or premise.

Problems identified in the scanning phase of the process should be made up of recurring problems and not isolated 'one-off' incidents.

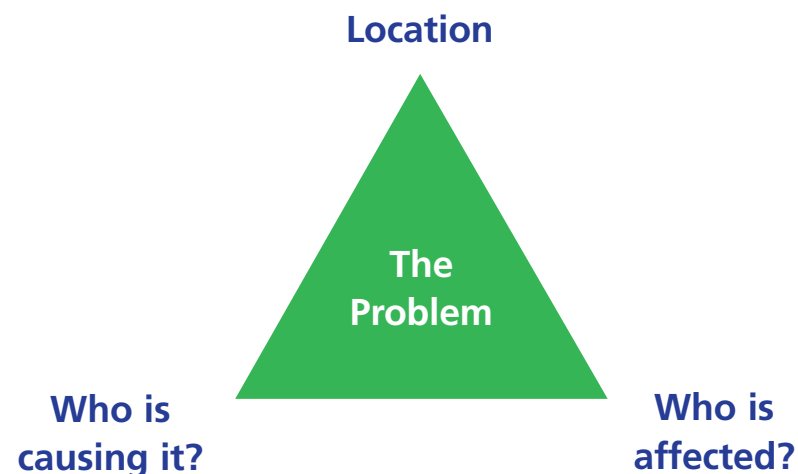
Analysis

This phase consists of identifying the conditions that give rise to a particular problem by examining the characteristics and impact of the problem in greater detail. For example, scanning might reveal the area in which the problem occurs, but analysis will provide the hour, day or month when the problem occurs and from which shops.

Analysis may involve collecting information on the time of occurrence, location and other details; the history of the current problem; the motivations, gains and losses of involved parties; the apparent (and hidden) causes and competing interests; and the results of current responses.

Partner agencies may need to speak to colleagues, partners, local businesses or members of the community to better understand the problem. All data held by partner agencies is important as this may be useful in solving the problem.

The Problem Analysis Triangle (PAT) can be used at this stage of the process as it can help to identify the key factors in the process. Firstly, what is the problem? Who is causing it? Who is affected by it and where is it happening?



It helps to be as precise as possible in defining the problem, having identified the incidents to be included in the analysis. It is crucial to establish what it is about the place, when it is happening and why. This may need some lateral thinking to define the factors behind a problem.

An accurate assessment of the problem is necessary. If at the response stage the problem persists, then it will be necessary to return to the analysis stage to see whether another element might be influenced.

Response

Response refers to any action taken to try to address a problem. This might vary from the simple: for example, a practitioner advising someone what they should or should not be doing, to the complex, such as a practitioner involving the community and local bodies to set up a project to help young people.

Work done in the analysis phase helps to identify or isolate the element that can most easily and effectively be tackled to try to resolve a problem. Often, responses will combine actions to tackle more than one aspect of the problem identified during the analysis phase.

In selecting responses, it is crucial to work out in detail how they are expected to produce their intended effects.

Assessment

In the final stage of SARA, partners review attempts to deal with a problem and evaluate how successful they have been. There are three major reasons why the assessment stage is very important:

- 1** To find out whether a particular problem still exists and requires continuing attention. This is important in deciding whether to continue to respond to the problem.
- 2** To improve problem-solving skills by finding out what seems to work in differing circumstances. This avoids 'reinventing the wheel' and contributes to the 'what works' knowledgebase and the dissemination of good practice.
- 3** To enable effective problem-solving to be recognised by partner agencies and acknowledging individuals' efforts.

Assessment can be difficult to do well and, as a result, is often largely overlooked. It must be a routine feature of any problem-solving structure. Assessment is not an evaluation of the performance of those involved but what happened when a problem was tackled.

Good assessment should:

- Be a clear definition of the problem and a description of how it is being addressed in order to focus measurement where success is most realistically to be expected.
- Be a good description of what was actually done and when action was taken as there is often a difference between what was planned and what was actually done.
- Identify whether a response failed to achieve its hoped-for outcomes because it was not applied as had been intended, or whether it genuinely failed to make an impact.
- Be a collection of incidents and other data about the problem before and after the response and the identification of the precise action taken to resolve the problem, rather than basic 'before and after' measures at an aggregate level.

After completing the SARA process, there may be no final conclusion to the problem and purely a reduction in the incidents of the problem. SARA can sometimes require dedication over a long period of time from all partner agencies in order to tackle the problem.

Good problem-solving relies on good communication and gathering of evidence. Intelligence needs to be gathered and analysed properly in order to direct the resources needed to deliver the practical side of the problem-solving. Trading Standards plays a key role in tobacco control and the problem-solving response put in place. However, this cannot be achieved without the partner agencies identified in the Partnership section of this document.

a) Focus on Underage Sales

Trading Standards Services have an obligation to enforce statutes aimed at protecting young people from tobacco.

Ten recommended steps towards achieving good practice

- 1 Intelligence-led enforcement. Consumer complaints are only the start; authorities should consult key partners such as the Police, HMRC, NHS and Smokefree Alliances.
- 2 The Children and Young Persons (Protection from Tobacco) Act 1991, as amended, provides enforcement powers allowing the test purchasing of tobacco to discover if offences are being committed. Operations should always be conducted as far as practicable in accordance with LACORS Guide to Test Purchasing (September 2009)²³.
- 3 Young volunteers are recruited to make the attempted purchases so as to simulate, as closely as possible, the actual conditions where an underage person would buy tobacco products. Of primary importance under this code of practice is the welfare of the volunteer and these attempted test purchases are closely supervised by trained enforcement staff. Sources of volunteers can be found via schools, local authority leisure services, education departments and through youth organisations.

²³ <http://www.lacors.gov.uk/lacors/upload/22513.pdf>

- 4 Ensure your council has a policy in place regarding authorisation under the Regulation of Investigatory Powers Act 2000 (RIPA). LACORS guidance currently states ‘there can be no doubt’ that authorisation is required for test purchasing. Keep abreast of the latest Office of the Surveillance Commission (OSC) opinion²⁴.
- 5 Contemporaneous notebook entries, signed by the seller: remember to caution. A signed notebook entry followed by a warning letter can be sufficient to prove admission of the offence.
- 6 Consideration of contractual issues regarding vending machines and owners/proprietors of premises.
- 7 Look for appropriate signage. Statutory tobacco notice must be displayed (see below) and also look for Challenge 21/25 or No ID No Sale posters.
- 8 Authorities may wish to inform retailers of both their legal responsibilities and that a test purchasing exercise is commencing before undertaking any visits. While test purchasing of age-restricted products is a legitimate enforcement tool, it is advisable to ensure that traders within the local authority area are fully aware of the offences, defences and practical steps they can take to avoid making any illegal sales.
- 9 Encourage Think 21/25, No ID No Sale, check training records and examine refusals logs. Encourage the use of a challenge book.
- 10 Work with retailers; encourage them to sign up to a ‘charter’ or ‘code of practice’ detailing the measures they will adhere to in order to prevent the sale of age-restricted goods at their stores.

Training and education

Adequate staff training

Officers should ask to see staff training records and it is a good idea to ask to see the records for the staff on duty during the visit.

Recording of refusals/challenges

A refusals or challenge book could be used. A challenge book goes further than a refusals book and includes a record of all requests for ID. This may be beneficial in certain premises. A till prompt to remind members of staff to check for ID when scanning age-restricted products may also be useful.

Challenge 21/25

The principle of Challenge 21/25 asks the seller to assess whether or not the purchaser appears to be older or younger than the age of 21/25, and to challenge for ID if in doubt. It is intended to provide staff with some leeway when assessing the age of the purchaser in relation to the age-restricted item.

The real message should be: **IF IN DOUBT – CHALLENGE!**

The Retail of Alcohol Standards Group (RASG), who launched the original Challenge 21 campaign, has recently launched Challenge 25 signage which is used by the larger retailers. Posters, badges and shelf-sliders are freely available for retailers to download from the RASG website²⁵. Encouraging stores to adopt Challenge 25 promotes a consistency of approach which allows retailers to recognise that if customers are over 18, yet look under 25, they will need to carry an

²⁴ <http://www.surveillancemissioners.gov.uk/index.html>

²⁵ The Wine and Spirit Trade Association – Challenge 25

acceptable form of ID should they wish to purchase tobacco or any other form of age-restricted product.

Age-check scheme

Lancashire Trading Standards has put together an age-restricted sale pack entitled 'The Age-check Scheme', which has been successfully rolled out across Lancashire. The pack is comprised of the following three elements:

- 1 A 45-minute interactive DVD informing retailers of the law, offering useful advice on handling age-restricted sales, realistic examples of scenarios which they may face and tips on how to avoid confrontation when refusing an underage sale. The film has the facility to broadcast in Urdu, Hindi, Punjabi and Gujarati as well as in English.
- 2 Various printable documents including:
 - A guide to saying no and issues surrounding refusing sales
 - Best practice – contains useful steps to avoid breaking the law
 - Refusals records forms – an ideal way to spot potential offender patterns
 - Training record sheets – to ensure that staff training has been documented
 - The Law – a synopsis of current legislation and possible penalties
 - A summary of age limits – a visual reminder of minimum age limits
 - Test your knowledge section – interactive quiz to test staff members

- Details of acceptable forms of ID – essential in verifying the age of customers

- 3 Posters, stickers and tear-off pads, which are designed for the following purposes:

- To inform retailers of the legal age limits for all age-restricted products
- To alert any potential purchaser that they may be asked for proof of age
- To inform both retailers and customers of the forms of identification that will be accepted as proof of age
- To warn customers that the retailer may be prosecuted if they sell to an underage person
- To inform the purchaser on how to obtain a recognised proof of age card

This resource is available free of charge to retailers throughout Lancashire. If you are based on outside of Lancashire and would like to find out more about this work then, you can visit their website.²⁶

Proof of age

Acceptable forms of ID are:

- UK Photo Driving Licence
- Passport: The passport of any nation should be accepted (as long as the photograph is a good likeness, even an expired passport is acceptable)
- PASS accredited card

²⁶ Lancashire County Council Trading Standards

PASS scheme

This is the national Proof of Age Standards Scheme. The aim of this scheme is to establish a common standard for those who retail age-restricted products. The scheme also gives confidence to the retailer that the form of identification is nationally recognised. PASS is supported by the Trading Standards Institute, the Home Office and the Association of Chief Police Officers. Retailers can visit the PASS Scheme website to download free documents including posters, leaflets, and a PowerPoint presentation explaining the scheme.²⁷

All genuine PASS accredited forms of identification will bear the PASS hologram:



National PASS approved schemes include:

1 CitizenCard



CitizenCard is available across all age ranges and is operated by a variety of commercial and non profit-making concerns with an interest in proof of age. Cards can be applied for using postal forms, in schools and colleges, and directly via the website (from where postal forms

can also be downloaded). CitizenCards cost £9 (free for under-18s). Information can be obtained from www.citizencard.com or by calling 01782 741982

2 Validate UK



VALIDATE UK cards are available for all ages. Information leaflets, retailer and licensee packs and application forms are available on the website. VALIDATE UK covers the whole of the UK; cards are produced in English, Welsh and Gaelic. Further information can be found on their website www.validateuk.co.uk

3 ProofGB



Proof GB cards are available to all ages and come in the following age bands: under 16, 16/17, 18+, 21+, 25+ and 60+. Proof GB application forms can be downloaded via the Proof GB website www.proofgb.com

There are also a number of regional schemes that use the PASS hologram, for example:

²⁷ <http://www.pass-scheme.org.uk>

Essex County Council – BITE Card

The Bite card is available in three age groups: 11-13, 14-15 and 16+. It can be used on buses and in shops to prove the holder's age and is also a library card.



Tobacco notices

The following warning notice must be exhibited in a prominent position which is clearly visible to anyone purchasing tobacco products, at every retail premises at which tobacco is sold. It must not measure less than 297mm x 420mm (A3), with no character being less than 36mm in height:

It is illegal to sell tobacco products to anyone under the age of 18

Fake Proof of Age Cards

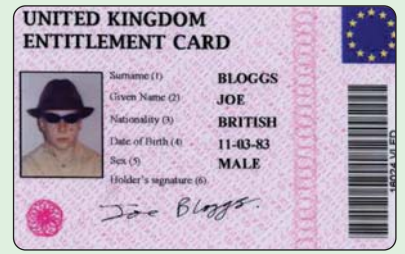
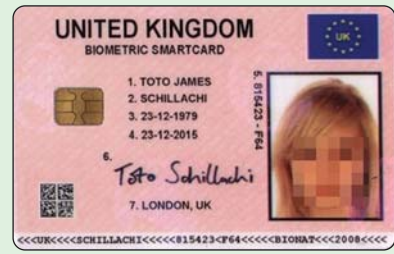
These cards were ordered from websites which made no checks as to the accuracy of the applicant's details.

Some of them appear to be official cards issued by national agencies; they even contain flags and logos which seem to support their official status. Others have features which you might expect on official cards such as holograms, electronic chips, barcodes and overlays. ALL of them are bogus. The list of cards is not exhaustive and retailers should be advised to only accept cards which bear the PASS hologram.

Websites selling fake ID cards may commit offences under the Fraud Act 2006. Section 7, Making or Supplying Articles for Use in Frauds states:

(1) A person is guilty of an offence if he makes, adapts, supplies or offers to supply any article (a) knowing that it is designed or adapted for use in the course of, or in connection with, fraud, or (b) intending it to be used to commit, or assist in, the commission of, fraud.

Cheshire County Council has successfully prosecuted a company who sold fake ID cards on the internet²⁸.



²⁸ BBC NEWS | England | Couple jailed for fake ID factory

Proxy sales

A 'proxy sale' is when an adult purchases an age-restricted product on behalf of those who are underage. An offence exists under the Licensing Act 2003 with respect to alcohol, whereby the adult can be issued with a PND (Penalty Notice for Disorder) or be prosecuted. The seller can also be subject to sanctions but, in order to do so, 'Mens rea' must be proved (that the seller sold to an adult knowing that the alcohol would be passed to minors). However, as yet there is no offence for the 'proxy sale' of cigarettes. There has been much consultation and debate regarding the need, or not, for such an offence to be applied to tobacco products.

Further articles showing the retail sector's support for a ban on proxy sales (February 2009) and for a debate that took place in parliament on 9 March 2009 can be found at:

<http://www.thegrocer.co.uk/a.articlespx?page=articles&ID=197572> and:
<http://www.publications.parliament.uk/pa/ld200809/ldhansrd/text/90309-gc0004.htm>

Vending machines

Current industry code of practice regarding tobacco vending machines is as follows:

- **IT IS ESSENTIAL** that all members of the National Association of Cigarette Machine Operators (NACMO) must install machines that display the current vending machine warning notice **'THIS MACHINE IS ONLY FOR THE USE OF PEOPLE AGED 18 OR OVER'**

- Machines must be located in a monitored supervised area, where a responsible person at the site can supervise and maintain the machine.
- That person will be responsible for ensuring that young people do not gain access to the machine.
- Any legal or voluntary requirements of machine labelling, siting or display must be explained to a responsible person at the site.
- All machines must carry the NACMO member's company name and should carry a NACMO membership label. Machines should also be installed in an area where the risk of vandalism is reduced.
- All decals and display material affixed to a machine must carry the relevant legal health warnings.

However, it is apparent from both regional and national test purchasing campaigns that vending machines are ineffectively controlled. There is a call for them to become one of the following:

- Token-operated, as in Holland, whereby the staff issuing tokens have the opportunity to check for ID beforehand
- Card/code operated, as in parts of Germany, whereby bar staff must use a swipe card and enter a pass code for the machine to operate, again giving them ample opportunity to check for ID
- Banned altogether

The Health Bill 2009 intends to make provision for the Secretary of State to make regulations on access to tobacco vending machines.²⁹

²⁹ <http://services.parliament.uk/bills/2008-09/health.html>

Internet sales

This is an area of fast growth and has generated concerns from both the government and healthcare professionals. There are many internet-based companies that are selling tobacco products and, following test purchasing, it would appear that there are no restrictions on being able to purchase goods from companies based outside of the EU. The companies claim that this is legal but that you may be subject to some import duty. This roughly translates as 'we will ship the item but you are responsible if it gets stopped your end'.

In November 2006, the European Court of Justice ruled against consumers being allowed to purchase tobacco and alcohol online from countries with lower rates of duty and having the items sent to the UK. This does not prevent people entirely from making purchases abroad but they will have to travel with their purchases instead. See HMRC guidance on purchasing tobacco on the internet³⁰. The impact of being able to buy cheap tobacco online would have a detrimental effect on the health of the country.

When test purchasing from the internet, consideration should be given to the location of the supplier and their liability in relation to UK legislation. Tobacco products sold via the internet by UK suppliers are covered by UK legislation, which includes those governing age restrictions and advertising. At present, LACORS believes that the principles of their test purchasing code of practice, referenced above, should cover such sales.



In respect of suppliers in the UK, they should be advised to implement a system that can check the age of the purchaser and record that such a check has been carried out. The Online Purchasing of Goods and Services (Age Verification) Bill 2009³¹ intends to require anyone selling age-restricted goods or services on the internet to take steps to verify online whether customers are old enough to purchase those goods or services.

³⁰ HM Revenue & Customs

³¹ Online Purchasing of Goods and Services (Age Verification) Bill [HL]



b) Focus of Illicit Tobacco

Illicit Tobacco

Illicit Tobacco is described as not having had the duty paid on it or it having been smuggled or produced illegally. The Tobacco Products Duty Act 1979 provides the provisions for paying duty on tobacco and tobacco products. The UK tax on tobacco products including cigarettes, cigars and hand-rolled tobacco is amongst the highest in the European Union. Cheap and illicit tobacco undermines any work that the impact of taxation and other tobacco control measures have put in place. Measures such as raising the age of sale to 18 and pictorial health warnings on packaging are, therefore, ineffectual whilst illicit tobacco exists. It is thought that one in six cigarettes smoked in the UK is illicit.

The current economic climate is believed to have led to an increase in the consumption of illicit tobacco as more smokers take advantage of cheaper products. Smuggling and counterfeiting of tobacco increases its availability with it being sold at less than half the tax-paid UK legitimate price.

There are three sources of cheap and illicit tobacco which are described below:

1 Smuggling

This is usually part of large-scale organised crime and involves the illegal transportation, distribution and sale of genuine tobacco products. This means that legitimately-manufactured products are diverted through the supply chain and thus tax is evaded. Whilst the products are cheaper to the consumer, there is still a profit to be made to the smugglers. Generally, smuggled tobacco is transported in containers (by way of sea,

road or rail), by postal routes and via tourists. HMRC reports that this accounts for 70-80% of illicit cigarette imports.

2 Bootlegging

This is a form of smuggling. The products are purchased from countries with low levels of taxation (generally EU or Eastern Europe/Russian countries) and brought back into the UK.

3 Counterfeiting

This is the most dangerous of the illicit tobacco products. It involves the illegal production of tobacco products made from inferior materials made to look genuine. This usually originates from Eastern Europe or East Asia; it can also originate in the UK from tobacco rejected by tobacco manufacturers. These products are then distributed covertly and sold in order to evade taxation. There are vast profits to be made and it is estimated that the profit margin is, in fact, greater than that achieved from Class A drugs.

In 2000, the government introduced a Tackling Tobacco Strategy which has seen a reduction of smuggling into the UK. In 2001, a Fiscal Mark was placed on all packaging of tobacco products, making it easier to identify if an item is duty-paid or not. By 2006, the government had moved to a new phase and introduced 'New responses to new challenges: Reinforcing the Tackling Tobacco Smuggling Strategy'. This emphasised the new challenges that were emerging with regard to counterfeit tobacco and the increase in smuggling of hand-rolled tobacco. This meant that more resources were needed in order to monitor and strengthen the key points along the supply and distribution chain. This was also enhanced with an increase in public awareness of the harm caused by illicit tobacco.

HM Revenue and Customs (HMRC) is the lead agency responsible for tackling the illicit trade in tobacco products. The operational responsibility for enforcement at our borders is the responsibility of the UK Borders Agency (UKBA). Trading Standards is the primary agency that enforces legislation regarding the sale of these products. In the year 2008/2009, a joint working protocol was written dealing with tobacco offences between HMRC and LACORS (for and on behalf of Trading Standards). This protocol provides a framework for joint working and information sharing in order to further enforce tobacco control procedures.

Use of tobacco readers



The reader is a hand-held device that can be easily transported to identify counterfeit and non duty-paid tobacco. The majority of packs manufactured on or after 1 October 2007 by the four largest tobacco companies, which represent 97% of the UK duty-paid market, now have an anti-

counterfeit mark incorporated into the pack. Hand-rolling tobacco packs are similarly marked since October 2008. The reader detects the mark and identifies if the product is genuine. It is not 100% accurate; however it gives a good indication as to the product's authenticity.

Emerging Issues

Initially, the illicit tobacco trade comprised of cigarettes manufactured in the UK. They would be exported and then smuggled back into the UK. However, this has progressed and is now becoming more diverse. Whilst counterfeit cigarettes still hold a majority share of the market, the increase in 'cheap whites' has been dramatic. 'Cheap whites' are independently-made cigarettes and are brands that are not sold on the legitimate UK market.

Following the increase in 'cheap whites', a new and emerging trend is in the part of the industry related to hand-rolling tobacco. Previously, the market was dominated by a small number of genuine brands being smuggled into the UK from the lower-duty countries. This is now being overtaken by hand-rolling tobacco coming into the UK in bulk shipments from the Far East. Alternatively, this is entering the UK via the postal system and it is anticipated that this area will see a sustained increase over the next few years.

The overall objective is to restrict the illicit tobacco trade and this can be done in a number of ways. Trading Standards officers, along with partnership agencies, are encouraged to take a proactive approach to the illicit tobacco trade. This joint approach will help to reduce the loss in revenue through loss of duty and deal with any criminal offences. There should also be a decrease in the amount of smoking-related illnesses.



c) Smokeless tobacco and emerging products

Smokeless tobacco is a very broad term covering over 30 different types of products which can be chewed, sucked or inhaled; the main types are:

- **Chewing tobacco:** Comes in loose-leaf, plugs or twists. Some common examples of chewing tobacco include: Gutkha, Paan, Zarda and Baba. These products are particularly associated with South Asian populations and are often highly-scented.
- **Snuff:** Available dry or moist, in loose-leaf or in pouches that look like small tea bags. May be placed between the cheek and the gum or inhaled into the nostrils.
- **Snus:** A moist version of snuff containing approximately 50% water. This is banned in the UK.
- **Betel quid:** A product of India, Africa and Asia; it consists of a dried paste for chewing that often includes tobacco, areca nuts, catechu and scent or flavouring.
- **Blunts:** These consist of a brown paper-like material, often with a strong food odour. There are numerous 'flavours' available including honey, passion fruit and apple. Brands include: Blunt Wrap Platignums, Kingpin, E-Z Roll Tube, Cyclones, Tobacones, Juicy and Brown Sugar.
- **Shisha Tobacco:** Also called tabac, tombak, tumbak, gouza, guza, moassel or sheesha; it is tobacco that has been mixed with molasses and fruit flavours and is smoked in a hookah. However, it is important to be aware that not all Shisha contains tobacco.



- **e-Cigarettes/e-liquid:** These are battery-powered, steel gadgets designed to look like real cigarettes. Instead of inhaling tobacco, the user breathes in a mist of nicotine that is absorbed into the lungs. Most are reusable and cartridges can be topped up with flavoured e-juice such as Menthol, Chocolate, Coffee, Almond, Strawberry and Cherry.

The Department of Health, LACORS and LOTSA are constructing a resource/database of smokeless tobacco products which will contain photographs of products, translation of labels, ingredients, analyst reports and applicability of legislation. The Department of Health is also working with the Food Standards Agency and HMRC in a cross-government approach. The resource/database will be hosted by LACORS with a completion date of December 2009.

<http://www.lacors.gov.uk/lacors/Home>



d) Advertising and Displays

Tobacco Advertising

Useful definitions

The Tobacco Advertising and Promotion Act 2002 contains the following definitions:

Tobacco advertisement means an advertisement:

- Whose purpose is to promote a tobacco product, or
- Whose effect is to do so

Over the years, tobacco advertising has been a major tool used by the tobacco companies to ensure that their product is seen by as many people as possible. Each tobacco company had its own branding and this was rolled out to shops, billboards and any other possible media available. There were advertisements on TV and radio and branding in shops in the form of clocks, canopies, posters and clothing. Some of the most distinctive brands are known simply by their colour.

Naturally, the advertising did not mention any of the health risks associated with smoking. In the early 1990s, rulings at the United States Supreme Court meant that people with smoking-related illnesses would be able to proceed with compensation claims against the cigarette manufacturers. Solicitors from British firms then had a flood of enquiries from people hoping that they would also be eligible for some kind of compensation. However, there were no firm rulings against the tobacco companies. If the rulings had been in the favour of the claimants, then the level of compensation that would have had to be paid by the

tobacco companies would have meant that they would have gone out of business or been affected so badly that they would not have survived in the long term.

Following these claims, there was a need to change the way in which tobacco was seen in the public domain. As a result of the pressure on the industry and government, new legislation was needed to protect consumers, some of whom were young people.

The Acts involved are explained below:

UK Tobacco Advertising and Promotion Act 2002

The Act was put in place to prohibit the advertisement of tobacco products. The definition of 'tobacco product' within this Act is a product consisting wholly or partly of tobacco and it has to be intended to be smoked, sniffed, sucked or chewed.

The Act makes it an offence for a person in the course of their business to knowingly publish, print or distribute a tobacco advertisement which will be published in the UK. This includes advertising in newspapers, periodicals or other publications published in the UK.

There are a number of exclusions:

- If the advertisement is published as part of a tobacco trade publication
- If it is, or it is contained in, a communication in reply to a particular request by an individual for information about a tobacco product
- It is contained in a publication whose principal market is not the United Kingdom
- It is contained in an internet version of such a publication

It is illegal for a tobacco product or coupon to be given away in the UK. It is irrelevant whether this product or coupon accompanies something else or is given away separately. Either way it is prohibited, the only exception being if the product or coupon is given away as part of the tobacco trade as long as the person receiving it is engaged in, or employed by, the tobacco trade. An offence also occurs if a person who is party to a sponsorship agreement does, as a result, promote a tobacco product in the UK.

As with all statutes of law, there are many defences and the main ones used in this Act relate to whether a person knowingly advertises or allows such an advertisement. However, if a person is advised of a breach and no action is taken to rectify this matter, then they will become liable. This will happen even if, in the first instance, they had committed the offence unknowingly. Enforcement of this Act falls to the enforcement authority for that area.

An authorised officer has the power to enter premises at any time to carry out an inspection in relation to this Act. Whilst on the premises he can, if necessary, ask the owner or his representative to produce any book, document, data, record or product and take copies or extracts from it. It is also possible that possession can be taken of these items. An officer can also require any person to give him information that he considers necessary for this purpose. It is an offence for a person to obstruct or fail to comply with an officer in the execution of his duty. It is also an offence if a person gives false information to an officer.

Tobacco Advertising and Promotion (Point of Sale) Regulations 2004

Prior to December 2004, shops could advertise tobacco products in any way they wished. Many of the gantries behind the counter were covered in advertising of various forms of the different tobacco companies. It was also permissible for advertising boards in the street to display full-size images from the tobacco company, the most recognised of these being Marlboro Man on a horse. The Regulations came into place to limit the advertising of tobacco; they prohibited the advertising of tobacco on billboards, in newspapers and in magazines.

In retail premises, all outward-facing advertisements for tobacco or cigarettes on doors, windows or awnings are banned; this extends to posters displayed in shop windows.

Inside the premises, one A5-size advertisement is allowed at the point-of-sale. This is defined as the cigarette gantry or display unit which has to be at a fixed location inside the premises. Regardless of the number of point-of-sale areas within a shop, only one sign is allowed.

The exemption to this relates to Specialist Tobacconists. A specialist tobacconist is a shop where over 50% of its business comes from the sale of tobacco and associated products. They are allowed to have specific tobacco advertising within their premises or its curtilage.

Point-of-sale

Even though there are strict regulations in place with regard to the display of tobacco products, there are other issues with the display of these products since the introduction of the regulations. Some of these display problems are:

- Health warnings are obscured by the price on the shelf sticker
- Counter-top display is full of a specific product whereby money or items have to be passed over the top of it
- The use of advertising via display items such as clocks fixed into cigarette gantries
- Cigarette displays being placed close to products aimed at children, such as confectionery

The use of these elaborate display areas almost employs a 'silent salesman' to deliver the message to the seller without actually having to say it out loud. This is used as a deliberate tool by the tobacco industry in order to promote its products. Small retailers are not the main benefactors of such advertising and, in fact, some of them are left with cigarette displays that they do not want or need. However, due to the cost of replacing them, they are unable to change them to something that fits the regulations.

The branding used on these display stands is very important for the enticement of new smokers. For the established smoker, it does not really matter what the stand is selling but, to the uninitiated, it is helpful in deciding on the tobacco product of choice. Price to the new smoker is not necessarily a problem but they need to be seen to smoke the right brand of cigarette to be 'accepted'. Established smokers generally keep

to the same brand but they will, if necessary, change their brand depending on their financial situation. If their current brand is priced too highly, they may change to a cheaper, less-known brand. A new smoker is less likely to change to a cheaper brand if it is one that they do not recognise.

Further point-of-sale regulations are expected which could see the introduction of covered displays or removing displays altogether. These regulations are currently in consultation and no final decision has yet been made. International evidence suggests that removing packs from sight at point-of-sale could reduce young people's brand recognition by over 83% (figures from Cancer Research UK).

There are two main objections to the proposal of new regulations that come from within the tobacco industry and its retailers. Not only are the tobacco companies concerned about the lack of awareness of their products but there is a real concern that if a new generation of smokers is not recruited by them, the industry could, at some point in the future, stop altogether. There are also concerns by the retailers themselves for the extra burden that the new regulations may place upon them. There may be a need for new equipment which could be costly, plus the problems of storage of the items. There is also the extra responsibility for sales assistants in having to get the items from wherever they are being stored in that particular shop. The problems could even extend to a rise in shoplifting as the shops may become vulnerable if the assistant has to turn his back to the customers. This, in turn, could compromise sales assistants' personal safety in some areas. It is also thought that by making the availability of tobacco products restricted, there will be a rise in the illicit sale of tobacco products.





In an article written in December 2008 by Stephen Robertson, director of the British Retail Consortium, he stated: 'This will hit small stores, which lack the space and resources, particularly hard. The government is right to try to stop children smoking but banning displays in shops is just not the way. It will impose thousands of pounds of pointless refit costs on stores, ultimately met by customers, and create delays and inconvenience for customers and staff.'

The health organisations have a strong argument that overrules industry objections in that the government has a responsibility to the health of the nation, rather than the freedom to market tobacco.

Within the advertising regulations, no provision was made in relation to the display and advertisement of tobacco-related articles e.g. matches, lighters and cigarette papers. These items are not regulated and provide advertising for the tobacco industry. As an example, on the rear of a packet of some brands of matches, the emphasis is mainly on the product being used for the tobacco industry and very little else. The conventional use of a match as a household item is being phased out following advancements in technology. In fact, the match is becoming redundant apart from its use for the lighting of tobacco products.

Schemes and Campaigns across the UK



There are a number of schemes and campaigns that are being run across the UK. It is important to be aware of these so that officers can continue to share best practice and develop ideas for tobacco control.

Present schemes/campaigns put forward by Trading Standards departments:

Essex Trading Standards

Essex Trading Standards has enhanced all underage sales advice visits to cover the concept of Challenge 25. The aim is to improve compliance by developing a culture of challenging for proof of age if those asking for tobacco (and other products) do not appear to be over 25. The concept of entering into an agreement gives clear direction to the business; by signing the contract the owner or manager of the business takes responsibility for ensuring compliance with the relevant legislation. The contract allows us to identify a single point of contact at the store as well as demonstrating our partnership approach. To add both support and customer focus, a poster is issued for all businesses that sign the contract.

This has resulted in the embedding of a culture of No ID No Sale and Essex Trading Standards has been able to show communities that they will respond to concerns and the intelligence they provide. Trading Standards can test the premises which sign up to Challenge 25 with an 18-year-old, which means they are able to reinforce the advice without having to result to formal action.

The scheme was piloted with success in Harlow and is currently rolling out in Basildon, Chelmsford and Colchester, with the rest of the county to follow.

Below are examples of the poster and agreement:



Hampshire Trading Standards

Summer Newsletter: compiled and delivered to 18,000 UAS retailers across all 19 local authorities. It was accompanied by a local covering letter from each local authority and posters were provided for the larger supermarkets and DIY stores. Feedback has been good; the scheme cost about £1.20 per newsletter (delivered)³².

³² Newsletter – Summer 2009

Posters for retailers:



West Berkshire Trading Standards

West Berkshire Council Trading Standards is working in partnership with the local Chamber of Commerce and Thames Valley Police and the local Business Action Group to combat the sale of counterfeit goods (including counterfeit tobacco) in this area. This includes the sale of counterfeit and smuggled goods in the workplace and door-to-door. The campaign also seeks to raise awareness of the problems such sales may pose to legitimate business.

SWERCOTS

SWERCOTS has produced a No Proof of Age – No Sale toolkit. This covers all age restricted products and is used across all the SW and can also been purchased by authorities outside of the region.

<http://www.swercots.org.uk/SWERCOTS%20public%20site/No%20Proof%20of%20Age%20-%20No%20Sale/NPOANS%20homepage.php>

SWERCOTS has also produced all the National tobacco control films recorded on behalf of LACORS (as circulated on DVD throughout the UK in Sept).

<http://www.swercots.org.uk/SWERCOTS%20public%20site/Tobacco%20control%20activities/Tobacco%20control%20homepage.php>

National campaigns:

Beyond Smoking Kills

In 1998, the government published Smoking Kills, the first UK White Paper on tobacco control. Beyond Smoking Kills reviews progress made since then and sets out an agenda for a comprehensive tobacco control strategy³³.

Campaign for Reduced Ignition Propensity Cigarettes

The Reduced Ignition Propensity Cigarettes (RIP) Coalition is an alliance of groups that want the government to reduce the avoidable suffering caused by cigarette-started fires through the introduction of sensible product regulation³⁴.

Out of Sight Out of Mind

With the aim of protecting children from tobacco advertising, Cancer Research UK is campaigning to remove all forms of tobacco from view, as well as trying to implement a ban on cigarette vending machines.³⁵

No-Smoking Day (10th March)

No-Smoking Day is the UK's leading health campaign for smokers who want to stop. Their website has all the information and resources you need to quit smoking or if you want to organise your own event on No Smoking Day (10 March)³⁶.

World No Smoking Day

World No Smoking Day is an initiative run by the World Health Organisation and is the global equivalent of Great Britain's "National No Smoking Day." However it tends to be themed year on year.

<http://www.who.int/tobacco/wntd/2009/en/index.html>

Plain Packaging of Tobacco Products

The World Health Organisation Framework Convention on Tobacco Control believes that tobacco packaging and its display are a means of advertising. They acknowledge that current tobacco packaging is misleading by implying that some tobacco products are less harmful than others. This misleading packaging is believed to also contravene the EU directive on tobacco products. If the colours and branding are removed from the packets, then the health warning to the consumer would be more effective. They also urge the government to introduce new measures to require plain packaging by regulation.

³³ http://www.ash.org.uk/files/documents/ASH_691.pdf

³⁴ Reduced Ignition Propensity Cigarettes

³⁵ Help protect children from tobacco marketing : Cancer Research UK

³⁶ No Smoking Day – Take the first step



Quitlines

Local NHS Stop Smoking Services³⁷.

The Asian Quitline³⁸: telephone help available in Bengali, Gujarati, Hindi, Punjabi, Urdu, Turkish and Kurdish.

Sale of Tobacco from Vending Machines

Over 100 health organisations have approached the government urging them to take action to ban tobacco sales from vending machines. Statistics show that these machines are used by young people to purchase cigarettes. The majority of the vending machines are not adequately supervised to ensure that sales are not made to young people. The health organisations wish to ban these machines to ensure that a new generation of young people does not take up the habit of smoking. It is also recognised that tobacco machines constitute a form of tobacco advertising and promotion of tobacco. Initially, measures suggested were to impose greater restrictions on vending machines. However, in a massive turnaround in October 2009, MPs voted to ban vending machines altogether. It has been agreed by the government that this decision would not be opposed.

³⁷ Free Local NHS Stop Smoking Services – SmokeFree

³⁸ <http://www.asianquitline.org/aboutus.htm>

Conclusion



Supporting Enforcement

There can be no doubt that Trading Standards departments have a key role in the enforcement of tobacco control, but what has been illustrated is the extensive list of stakeholder groups that are also responsible for regulating the sale/supply of tobacco products.

Trading Standards officers must support the enforcement of legislation by taking a role in educating retailers of tobacco products and working in partnership with these groups. The interests of all those working within tobacco control overlap to some degree so partnership/multi-agency working, through the formulation of Tobacco Alliances, is vital to enable a coordinated approach in support of all tobacco control measures, including:

- Regulation on the age of sale
- Regulation on tobacco trading and counterfeit/smuggled tobacco products
- Regulation of the point-of-sale for tobacco
- Regulation on advertising and sponsorship
- Education and awareness-raising to increase public knowledge
- Smokefree workplaces (including continued work with legislation exemptions)
- Smokefree cars and homes
- Cessation services
- Reducing health inequalities

- Helping those who cannot stop smoking
- Protecting children and young people from smoking
- Enabling smokers to switch to less harmful products
- Preventing people (including children) from taking up smoking

This document has sought to recognise that enforcement action, whilst important, will not be sufficient in countering or preventing illegal sales. As a result, the vision for the future of tobacco control would see Trading Standards departments working alongside:

- **Public health professionals** – to promote healthy policy development and tackle ill-health, target general health inequalities and improve quality of life in many ways, for example improving tobacco control, food and transport.
- **Other enforcement agencies within the council** – to improve intelligence around compliance with smokefree public places legislation.
- **Schools, police, voluntary organisations and the media** – to develop targeted education campaigns and legislative controls which will particularly help vulnerable communities, including children.
- **Schools and youth organisations** – create opportunities for involvement in, and discussion of, citizenship obligations.
- **HMRC** – to develop a wider net for information-gathering regarding counterfeit and non duty-paid tobacco products.



- **Retailers** – all retailers should have access to guidance provided by enforcement bodies. This includes provision of free written guidance which clearly explains the obligations of traders in relation to the law and which provides support and advice including contact details for local authorities.
- Retailers and public health professionals – to encourage retailers to display information about local stop smoking services to enhance the dissemination of information regarding smoking cessation support in the community.

These are just some of a multitude of possible partnerships available to Trading Standards departments.

This toolkit is by no means exhaustive and further research and information can be found on the internet websites that are listed in the Reference section.

References



Below is a list of websites which were used to enable the compilation of this document:

Legislation

Office of Public Sector Information <http://www.opsi.gov.uk>

Organisations

LACORS

<http://www.lacors.gov.uk>

Tobacco Control Activities 2009

<http://www.lacors.gov.uk/lacors/ContentDetails.aspx?id=21846>

Department of Health

<http://www.dh.gov.uk>

The Future of Tobacco Control in England – Consultation Responses

http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/DH_091382

Excellence in Tobacco Control: 10 high impact changes to achieve tobacco control

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_084847

Trading Standards

<http://www.tradingstandards.gov.uk/>

HMRC

<http://www.hmrc.gov.uk>

Available 24/7 HMRC have a secure web site for you to pass on information relating to smuggled or counterfeit cigarettes, tobacco or alcohol. Quote ID 34 www.hmrc.gov.uk/customs-hotline

Action on Smoking Health – ASH

<http://www.ash.org.uk/>

Beyond Smoking Kills

http://www.ash.org.uk/files/documents/ASH_691.pdf

ASH Briefing: Plain Packaging

http://www.ash.org.uk/files/documents/ASH_699.pdf

ASH Briefing: Vending Machines

http://www.ash.org.uk/files/documents/ASH_700.pdf

ASH Briefing: Point of Sale Display

http://www.ash.org.uk/files/documents/ASH_701.pdf

UK Borders Agency

<http://www.bia.homeoffice.gov.uk/>

Tackling Tobacco Smuggling Together: An integrated strategy for HM Revenue & Customs and the UK Border Agency (Nov 2008)

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/tobaccostrat08>

NHS

<http://smokefree.nhs.uk/>

Articles:

The truth about plain packaging. Gerard Hastings, Karine Gallopel-Morvan, Juan Miguel Rey. Tobacco Control 2008; 17; 361-362
<http://tobaccocontrol.bmj.com/cgi/content/full/17/6/361?rss=1>

Point of Sale Display of Tobacco Products, Cancer Research UK (August 2008)
http://info.cancerresearchuk.org/images/pdfs/tobcon_pointofsalereport

Some useful websites

ACAS – Advisory, Conciliation and Arbitration Service
www.acas.gov.uk

Action on Smoking & Health (ASH)
www.ash.org.uk

British Heart Foundation
www.bhf.org.uk/smoking

British Lung Foundation
www.britishlungfoundation.org

Cancer Research UK
www.cancerresearchuk.org

The Centre for Tobacco Control Research
www.marketing.strath.ac.uk/ctcr

Department of Health
www.doh.gov.uk/home/fs/en
www.givingupsmoking.co.uk

GASP – the one-stop-shop for smokefree solutions
www.gasp.org.uk

NHS On-line
www.giveupsmoking.co.uk

No Smoking Day
www.nosmokingday.org.uk

QUIT
www.quit.org.uk

Smoke Free England
www.smokefreeengland.co.uk

The Roy Castle Lung Foundation
www.roycastle.org.uk

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