



Increased sanctions for illegal tobacco sales to young people

The Criminal Justice and Immigration Act 2008

A guidance note for Retail Businesses on the new strengthened retailer sanctions for the persistent sale of tobacco products to persons under the age of 18 years and the steps that a business can take to avoid making illegal sales.

Come into force: 1st April 2009.

Introduction

In 2004, the Government announced in its White paper *Choosing Health* that it would take action to prevent young people buying tobacco through strengthening sanctions against retailers who repeatedly sell tobacco to young people that are under the legal age. Retailer sanctions were the subject of consultation in 2006. As a result of that consultation, the Government introduced new legislation that was the subject of extensive Parliamentary debate earlier this year.

The new legal sanctions agreed by Parliament come into force on the **1st April 2009**.

These new sanctions can be imposed by a magistrate's court IF you or your staff repeatedly sells tobacco products or cigarette papers to young people under the age of 18 years **in addition** to the penalties that already exist i.e. a fine of up to £2500.

Remember that you, as the owner of the business, are liable for the actions of your staff. Legal action may be taken against you even if you did not sell the product yourself.

The purpose of this legislation is to tackle the persistent illegal sale of tobacco products to young people under the age of 18 years. It is envisaged that the sanctions available are likely to be used only in extreme circumstances and only where there has been evidence of previous illegal sales.

What are the new sanctions?

A Local Authority may apply to a Magistrates Court for a **restricted premises order or a restricted sale order or in certain circumstances both** to be made.

A **restricted premises order** means that the retail business at the location where the offences took place is prohibited from selling tobacco products for a period of up to 12 months – to be determined by the court. This means that NO sales of tobacco or tobacco papers may take place from that business premises. This does not affect other businesses within the same group or chain. For example where a National Company is the subject of a restrictive premises order, it will apply ONLY to the specific location where the illegal sales have taken place.

A **restricted sale order** means that a **named person** within a business is prohibited from selling tobacco or from having any management role in any premises relating to tobacco sales within a business for a period of up to 12 months – to be determined by the court. This means that the business premises may still sell tobacco products but that the **named individual** may not. The order will apply to the named individual regardless of where they are employed.

You should therefore be aware when recruiting staff to your business that a person who is the subject of a restrictive sale order MAY NOT sell tobacco products from any premises; including yours as their new employer. This is a matter that you seek to confirm when recruiting new staff for example via references.

What triggers a sanction?

In deciding what type of order is appropriate, the Local Authority will consider all of the circumstances surrounding the illegal sales. A restrictive premises order is likely to have a severe impact upon a business; due consideration will be given to this fact

These sanctions will only be sought where there have been **persistent illegal sales of tobacco** made to young people. It is an action of last resort for a Local Authority Trading Standards service to take. Support will be given by the Local Authority wherever possible to assist the business to comply with the requirement of the law. It is recognised that businesses and local authorities in communities need to work together to prevent underage sales. The purpose of this legislation is to tackle those who persistently sell tobacco products to young people under the age of 18 years and where advice and support has failed to gain compliance.

Where a person is **convicted** of a making an illegal sale to a young person under the age of 18 years (or where a sale has taken place from a vending machine), **AND** where, on **at least two other occasions** within a **2 year period**, the person has committed other similar offences (these do NOT need to have resulted in a conviction) in relation to the particular premises a sanction may be applied for. This may relate to either the premises or to a named person.

Where for example a business or individual has received and accepted a simple caution or a warning letter from the Local Authority in respect of an illegal sale of tobacco, these may be considered as "similar offences" for the purposes of seeking an order. Similarly, a penalty notice¹ issued in respect of an illegal sale would also be

¹ It is not known at the time of writing (26/01/09) when these provisions will be implemented. It is expected that there will be a period of consultation in respect of this matter.

considered by the court.

If however, a Local authority has investigated an illegal sale and taken no further action as a result of that investigation, this will not "count "as one of the two other occasions within a two year period referred to above.

Can I appeal?

If your business is the subject of a **restricted premises order** or an individual **restricted sale order** you may make representations to the court about why the order should not be made if:

You did not receive a notice from the Local Authority that an application had been made to the court and, as a result, you had no chance to tell the court why the order should not be made.

The court may then decide to vary the order or to discharge it entirely.

What happens if I don't comply with the sanction?

If you sell tobacco or cigarette papers (to anyone) when there is a restricted premises order on the business and it would be reasonable for you to know that the order was in place then you commit an offence.

The maximum penalty for this is a fine of £20,000.

If you or your business is the subject of a restricted sales/ premises order and you sell tobacco or cigarette papers (to anyone) then you commit an offence.

Can I sell the business when there is a restricted premises order still in force?

You can, but the order will remain in force for the new owner until the end of the period specified in the banning order.. This means that if the prohibition was for a period of 6 months, and you sold the business after 4 months, the new owners would be unable to sell tobacco or cigarette papers for 2 months until the end of the whole 6 months ban period.

A restricted premises order is a local land charge which means that the restriction is noted on the land registry.

What can I do to prevent a sanction being imposed on my business?

First and foremost you must do all that you can to avoid selling tobacco products and cigarette papers to young people under the age of 18 years .

There are several important steps that you are advised to take:

1. If there is any doubt about the age of the customer, always ask to see valid photo proof of age. (see section below)

2. You must train your staff in this policy; this means all of them whether part time, members of your family or long serving members. Keep a record of the training and when it was done. Repeat the training at regular intervals.
3. Keep a refusals or incident log. Record when refusals to sell tobacco products are made. A refusals book would normally contain a record of the date and time of any refusal, the member of staff responsible and brief details of the attempted purchase; it will show you if there are members of staff that rarely refuse sales. This might mean that additional training is required.
4. Consider implementing a restricted age 25 policy such as challenge 25 in your business. When a person asks to buy tobacco or cigarette papers and you think they look younger than 25 years this acts as a trigger for you and your staff to ASK FOR and check their PROOF OF AGE. This policy has been widely adopted by businesses particularly those retailing alcohol as a means of eliminating illegal sales to the under age. When used in conjunction with asking for Proof of Age, it may help protect your business.

Proof of Age

Asking for and checking acceptable proof of age is the key to avoiding illegal sales. You are advised to accept only the following forms of Proof of Age:

- **Photo drivers license**
- **Current Passport**
- **PASS accredited proof of age cards (insert named examples as appropriate to your LA area eg Validate , BITE , Citizencard etc)**

There are a number of PASS card issuers in the scheme – visit the proof of age standards scheme website – www.pass-scheme.org.uk for more information.

You must check that the person in front of you is the person in the photograph and that they are old enough to purchase the product requested. You may need to work out their age from a date of birth – take your time doing this. Check that the document or card has not been tampered with in any way.

Remember that if you have any doubts at all about the validity of the proof that is presented to you – refuse the sale.

The majority of retailers sell tobacco responsibly. However, 23% of businesses tested sold tobacco illegally to young people between October 2007 and March 2008. Do not take the chanceask for Proof of Age.

What will Trading Standards do?

Remember that these sanctions are intended to be used against those businesses that persistently break the law.

Any actions taken by the Local Authority prior to the 1st April 2009 will not be considered as evidence of previous offences having been committed. However, if you

have previously made under age sales of tobacco or cigarette papers then it is likely that this information will be used as intelligence by the Local Authority to help them focus their test purchase operations (where the Local Authority send in an underage purchaser to attempt to buy from you).

Trading Standards acknowledge that the majority of businesses want to comply with the law; but they will still test businesses by conducting test purchase operations. To assist the majority of those that wish to comply, and who value training their staff as a key aspect of "getting it right", Local Authorities have been requested to issue a report after each test purchase operation to the business giving details of success (no sale made) or failure (sale made).

Where the business has a head office, a copy will be sent to the head office as well as the individual store. The report will be issued by trading standards within 21 days of the operation.

It is NOT a legal requirement for the Local Authority to do this but it is a recommendation of good practice.

For further information about any of the points made in this guidance note please contact : INSERT DETAILS of Local Authority