

GATESHEAD METROPOLITAN BOROUGH COUNCIL
TYNE AND WEAR TRADING STANDARDS JOINT COMMITTEE MEETING

Thursday, 23 June 2022

PRESENT: Councillor K Dodds (Chair)

Councillor(s): C Buckley, T Graham, I Patterson, Heron,
Councillor J O'Shea, Hunter, Mulvenna, ALamonte,
R Porthouse, IAli and Councillor M Lowson

IN ATTENDANCE: Councillor(s):

APOLOGIES: Councillor(s): Councillor J Fletcher, Councillor S Graham,
S Dean and Lovatt

TW61 APPOINTMENT OF CHAIR

RESOLVED - That Councillor Kevin Dodds (Gateshead Council) be appointed as Chair for the 2022/23 Municipal Year

TW62 APPOINTMENT OF VICE-CHAIR

RESOLVED - That Councillor Jill Fletcher (Sunderland) be appointed as Vice-Chair for the 2022/23 Municipal Year.

TW63 CONSTITUTION

RESOLVED - That the constitution of the Committee for the 2022/23 Municipal Year be noted.

TW64 MINUTES

RESOLVED - that the minutes of the meeting held on 7 October 2021 were approved as a correct record.

TW65 REPORT AND STATISTICAL RETURN FOR THE QUARTER ENDING JUNE 2022

The Committee received the report to inform them of the work of the Joint Metrology Laboratory for the period to end of June 2022.

The Laboratory has undergone some staff changes with both the Laboratory Manager and Admin Assistant serving notice periods before leaving in December 2021.

The laboratory is back to its full complement of 6 staff and currently on a temporary basis the Laboratory manager and technical manager role are split between two

staff. Discussions are ongoing with a longer-term plan on structure of staff and an update will be brought to a future committee.

The submissions to the laboratory have been constant and consistent with the same periods as in previous years. Turnaround times in returning work to clients with being a staff member down were increased by an additional 3 days. The turnaround times are now returning to pre-pandemic levels.

Local weighing machine repairers, chemical, food manufacturers, pharmaceutical and aeronautical companies continue to submit their test weights, scales and measures in for calibration. During the pandemic, many customers expressed their gratitude that they were still receiving a service as their business would suffer if this service was not provided.

The laboratory does offer the facility to companies to hire some of our test weights and there have been several hires of a few tonnes of weights over the last few months.

The Public Weighbridge is still being utilised by clients and provide an essential service to the road haulage operators, especially those sending ISO containers through the ports in line with the Safety of Live at Sea Regulations (SOLAS). The weighbridge has continued to have its six-monthly checks to ensure accuracy.

There have been no UKCA verifications submitted in this period only re-verification of existing equipment that has already been placed on the market.

The UKAS Calibration submissions have been consistent and there have been more items submitted in 2021 than the previous years.

The laboratory underwent its annual audit by UKAS in February 2022. This was the first face-to-face audit for over 2 years due to Covid restrictions and was a successful audit with only minor points raised for both mass calibrations and toy testing which have all now been signed off, so the accreditation remains in place for another year.

As was reported previously the laboratory has been appointed by Office of Product Safety and Standards as the produce safety laboratory and sample hub for the North East, Yorkshire and Humberside regions and as such have been organising the testing of products on behalf of the Local Authorities that we represent.

The laboratory has played a pivotal role in the successful prosecution of a trader who was hiring dangerous sunbeds to the public. The same trader was prosecuted by Sunderland Council many years ago before moving to Hartlepool and North Yorkshire. He continued to trade, with sunbeds from Hartlepool tested at the laboratory as part of the current prosecution, the trader will be sentenced in September.

The laboratory hosted a meeting between the Lead Officers of Metrology in the Chartered Trading Standards Institute and the new Chief Executive of the Institute to establish policy on metrology provision in the UK. The visit included an open

discussion with all laboratory staff and a tour of our facilities.

RESOLVED - That the information presented be noted.

TW66 FINAL OUTTURN FOR FINANCIAL YEAR 2021/22

The Committee received a report to provide an update on the final outturn for the financial year 21/22. The Committee were advised that the accounts have not yet been audited but are not expected to change.

It is anticipated that there will be a surplus for 2021 / 2022 in the region of £36,000 due to staffing. This will be added to the reserves which will amount to £166,000.

The proposed budget for 2022/203 is £380,000. The main changes is in relation to contributions going up by 3%. There have also been some minor tweaks to bring in line with the actuals.

It was noted that this was a fantastic outturn and next years budget looks good.

RESOLVED - That the information contained within the report be noted.

TW67 AVIAN FLU JUNE 2022

The Committee received a report on the seasonal threat and the response from the five local authorities within the region from avian flu. This is another area which Trading Standards would deal with and it is a notifiable animal disease which can affect many birds. It can also affect humans and other mammals.

All bird keepers (whether they have pet birds, commercial flocks or just a few birds in a backyard flock) must keep a close watch on them for signs of disease and maintain good biosecurity at all times. If anyone has any concerns about the health of their birds, they should seek prompt advice from their vet.

Individuals keeping birds should register their poultry, even if only kept as pets, so that they can be contacted during an outbreak. This is a legal requirement if anyone has 50 or more birds. Poultry includes chickens, ducks, turkeys, geese, pigeon (bred for meat), partridge, quail, guinea fowl and pheasants.

An Avian Influenza Prevention Zone (AIPZ) has been in force across Great Britain since 3 November 2021 and in Northern Ireland since 17 November 2021. Mandatory housing measures for poultry and captive birds were introduced on the 29 November 2021 and ended on Monday 2 May 2022. However, the Avian Influenza Prevention Zone (AIPZ) remains in force across the UK until further notice, with only the housing measures component being lifted. This means while birds are allowed to range outside it remains a legal requirement for all bird keepers across the UK (whether they have pet birds, commercial flocks or just a few birds in a backyard flock) to follow strict biosecurity measures to limit the spread of and eradicate the disease.

The risk of incursion of highly pathogenic (HPAI) avian influenza H5 in wild birds in Great Britain has reduced from very high to high. With the risk of poultry exposure to HPAI H5 in Great Britain has reduced from medium (with low uncertainty) to low (with high uncertainty) where good biosecurity is applied and has reduced from high (with low uncertainty) to medium (with high uncertainty) where biosecurity is suboptimal.

The UK Health Security Agency (UKHSA) has said that avian influenza is primarily a disease of birds and the risk to the general public's health is very low. The Food Standards Agency has said that on the basis of the current scientific evidence, avian influenza poses a very low food safety risk for UK consumers. Properly cooked poultry and poultry products, including eggs, are safe to eat.

During the outbreak, officers have continued to work closely with a range of partners including poultry keepers, small-holdings, urban farms, and allotment societies to ensure that the biosecurity measures around avian flu are being closely adhered to. Officers have also had to deal with the full ramifications of three confirmed outbreaks.

Avian Flu was confirmed in birds at premises near Washington, Sunderland on 11 December 2021. Following a risk assessment a 3 km Captive Bird (Monitoring) Controlled Zone was put in place surrounding the premises.

Following successful completion of disease control activities and surveillance within the disease control zone surrounding this premises, the 3km captive bird (Monitoring) controlled zone has been revoked.

Highly pathogenic avian flu was confirmed in birds at premises near Byker, Newcastle upon Tyne on the 25 January 2022. A 3km protection zone and 10km surveillance zone was put in place around the premises. All poultry on the suspect premises have been humanely culled. Following successful completion of disease control zones surrounding the premises the 3km protection zone has ended and the 10km surveillance zone has been revoked.

Highly pathogenic avian flu was confirmed in a small poultry flock at a premises near Blaydon, Gateshead on 23 February 2022. A 3km protection zone and 10km surveillance zone was put in place around the premises. Birds on the infected premises have been humanely culled.

Following successful completion of disease control activities and surveillance within the disease control zones surround this premises the 3km protection zone has ended and the 10km surveillance zone has been revoked.

RESOLVED - that the information presented be noted.

The Committee received a report to provide an update on the issues related to the proposed Brexit Freedoms Bill (the Bill). The relevant announcement was made in the Queens Speech on 5 May 2022.

The Government is planning to introduce a Brexit Freedoms Bill to end the special domestic legal status of EU law and make it easier to amend or remove retained EU Law. The Prime Minister announced the bill in January 2022, on the second anniversary of the UK's departure from the EU. The Government also said a cross-government drive to reform, repeal or replace 'outdated' retained EU Law could cut £1bn of red tape for UK businesses.

"Retained EU law" is a concept created by the European Union (Withdrawal) Action 2018 (EUWA 2018). The act (amended in 2020 to take account of the Brexit transition period) took a 'snapshot' of EU Law as it applied to the UK at the end of the transition period. It provided for this body of retained EU law to continue to apply in domestic law. EUWA 2018 also sets out how retained EU law can be modified (whether primary or secondary legislation is required depends on the type of retained EU law) and how the courts should interpret it.

The Government has made hundreds of regulations using this power, for example to remove references to "other member states" from domestic law. This power expires at the end of 2022. Depending on the status they are given under EUWA 2018, some types of retained EU Law can also be modified through other delegated powers, not just the section 8 power.

The policy paper said the new legislation would "clarify the status and operation of retained EU law", "simplify the complex status provisions" in EUWA 2018 and ensure retained EU law could be amended "in a proportionate and sensible way". It said the Cabinet Office was currently reviewing questions including:

- Revising the status of certain types of retained EU law for the purposes of amendment, to "normalise" their status in domestic law and make them easier to repeal or replace.
- Creating a "targeted" power to enable the amendment of retained EU law for certain purposes without requiring primary legislation. The Government argued it was "not a good use of finite parliamentary time" to require primary legislation to amend retained EU laws that currently have a status equivalent to primary legislation when it comes to making amendments to them.
- Removing the continued effect of the supremacy of EU law over domestic law that was made before the end of the transition period.

The proposed Bill will lead to a great deal of scrutiny on all EU derived legislation many of which related Regulations and Orders have been developed over the past fifty years and are enforced by officers in areas of consumer protection such as metrology, product safety, fair trading, animal health and welfare and food safety.

It was queried whether the Kite Mark would come back. It was noted that it is likely to be CE mark. It was noted that manufacturers will strive to export and that our current standards will be accepted and meet EU standards.

RESOLVED - that the information be noted.

TW69 SAFETY OF ELECTRONIC CIGARETTE PRODUCTS KNOWN AS "DISPOSABLE PUFF BARS" OR "BARRS"

The Committee received a report to provide an update on the issue related to the safety of certain electronic cigarette products known as "Disposable Puff Bars" or "Bars" and the response from the five local authorities within the region to this emerging issue.

The Medicines and Healthcare products Regulatory Agency (MHRA) is the competent authority for a notification scheme for e-cigarettes and refill containers in Great Britain and Northern Ireland and is responsible for implementing the majority of provisions under Part 6 of the Tobacco and related Products Regulations (TRPR) and the Tobacco Products and Nicotine Inhaling Products (Amendment) (EU Exit) Regulations 2020.

The TRPR introduced rules which ensure:

- minimum standards for the safety and quality of all e-cigarettes and refill containers (otherwise known as e-liquids)
- that information is provided to consumers so that they can make informed choices
- an environment that protects children from starting to use these products.

The requirements:

- restrict e-cigarette tanks to a capacity of no more than 2ml
- restrict the maximum volume of nicotine-containing e-liquid for sale in one refill container to 10ml
- restrict e-liquids to a nicotine strength of no more than 20mg/ml
- require nicotine-containing products or their packaging to be child-resistant and tamper evident
- ban certain ingredients including colourings, caffeine, and taurine
- include new labelling requirements and warnings
- require all e-cigarettes and e-liquids be notified to the MHRA before they can be sold

The 2020 Regulations sets out the requirements for new products to be notified from 1 January 2021. This means that:

- Producers placing products on the Northern Ireland market will be required to notify using the EU Common Entry Gate (EU-CEG) system for the notification of tobacco and e-cigarette products.
- Producers placing products on the Great Britain market will be required to notify on the Great Britain domestic system.
- Notifiers will be required to pay one fee if they notify in relation to placing products on one of the Great Britain or Northern Ireland markets and the same one fee if they

notify in relation to placing products on the two markets.

A producer is anyone who manufactures or imports these products or who re-brands any product as their own. Retailers do not need to submit information for any products they sell unless they also qualify as a producer.

If any consumer feels unwell after using an e-cigarettes product they can report side effects and safety concerns with e-cigarettes or refill containers to the MHRA through the Yellow Card Scheme.

Yellow Card reports submitted to the MHRA are added to their vigilance database where reports are looked at by their specialist team of assessors. Reports are assessed for potential patterns of concern by their team of scientists, doctors, and pharmacists. Should any potential safety concerns be identified the MHRA are able to take regulatory action to safeguard the public.

When sourcing new supplies of any e-cigarette or e-liquid product, retailers are advised to check that a compliant notification has been published in one of the Notified Product lists. If the product cannot be found on the MHRA's website, then the retailer should ask their supplier to confirm that it has been published and provide details to enable them to confirm the products status. If a product has yet to achieve publication status, they may not supply it to the retailer.

A retailer does not need to notify any products they sell unless they are also a 'producer' of the product. A producer is anyone who manufactures or imports e-cigarette or refill container products and anyone who re-brands them as their own.

If a retailer imports or re-brands products, they should check with their supplier whether they have already made a UK notification for the specific product that is to be sold. If they have done so, the retailer does not need to submit a duplicate notification.

The issue of non-conforming electronic cigarette products appearing on the market, has caused a great deal of concern to local authority Trading Standards services nationally. There appears to be a great deal of misunderstanding 'intentionally or otherwise' on what the legislation does permit to be marketed, on behalf of both retailers and producers. Market surveillance, responding to complaints, has taken place and where appropriate enforcement actions have been taken.

Officers with the City of Newcastle upon Tyne were involved in an enforcement action in November 2021, which resulted in the seizure of some £190,000 worth of non-compliant products. The action followed concerns expressed by schools in the city that underage pupils were accessing the non-compliant products.

It was noted that there is concern that these types of e cigarettes are becoming popular with young people. They are fruity and addictive. Children are now taking up vaping as a habit. Trading Standards are finding lots of products that are not approved, some of which contain more nicotine than permitted. Kids are getting hold of these products and taking them into the toilets at school at break time. The price varies from £8 - £20.

There is hopefully something going out on BBC Breakfast. Officers from Newcastle did a test purchase with Radio 5 live. Public Health are very clear that these should be used as an alternative to smoking for those looking to give up smoking and gradually reduce the amount of nicotine they inhale.

It was noted that officers are looking to have them treated in the same way as cigarettes then there may be a reduction in the attraction of them to young people.

It was suggested that the Chair of the Committee write to the relevant government departments on behalf of the Committee.

RESOLVED - That arrangements be made for a letter to be sent on behalf of the Committee to relevant government departments on the need for a tightening of restrictions in relation to e-cigarettes.

TW70 FOOD PROMOTION AND PLACEMENT REGULATIONS

The Committee received a report to provide an update on the proposed Food (Promotion and Placement) (England) Regulations 2021 (the regulations).

The regulations provide for restrictions on the promotions and placement in retail stores and their online equivalents of certain foods and drinks that are high in fat, salt, or sugar (HFSS) or 'less healthy'.

The Government consulted in 2019 on [restricting the promotion of HFSS products](#) by volume price (for example, multibuy offers such as 'buy one get one free') and location, both online and in store. The Government then consulted on [technical enforcement of the restrictions](#) in 2020.

Following these consultations, the Government introduced legislation to restrict the promotion of HFSS products by volume price (for example, 'buy one get one free') and location, both online and in store in England. (HFSS is otherwise known as 'less healthy food and drink') These regulations were planned to come into full force on 1 October 2022.

Government believes that evidence shows that food retail price promotions are widespread and effective at influencing food preferences and purchases (particularly for children).

Furthermore, the shopping environment plays an important part in the way products are marketed to us, with simple factors such as the location of products within stores significantly affecting what we buy. The current retail promotional environment:

- does not always align with government healthy eating guidelines
- makes it harder for families to make healthier choices when shopping

The Government believes that compliance by industry with the promotion and

placement regulations can significantly improve our food environment by ensuring healthier food is more easily accessible and more visible in shops, ultimately supporting people to lead healthier lives.

The regulations aim to restrict promotions of HFSS or 'less healthy' products by:

- volume price – for example, multibuy offers
- key locations (store entrances, aisle ends and checkouts) when retail stores are over 185.8 square metres (m²) (or 2,000 square feet (sq. ft)) and the equivalent key locations online

These restrictions apply to medium and large businesses (with 50 employees or more). Failure to comply with regulations may result in a business being issued with an improvement notice and subsequently a fixed monetary penalty if compliance is not achieved as required.

The regulations may be enforced by trading standards or environmental health officers depending on local arrangements. Officers will be authorised to carry out their functions to enforce these regulations.

Enforcement authorities will check:

- whether a store is part of a medium or large business (where the total number of employees operating under that business name is 50 or more) – if not, the business is out of scope of the regulations
- whether a store is a specialist store selling one type of product (exempt from location restrictions)
- whether a store size is less than 185.8m² (2,000 square feet) (exempt from location restrictions)
- the presence of any products that are part of the food in scope categories in a restricted volume price or location promotion, in store and online
- if there are products in these categories on volume price or location promotions, to ascertain from the retailer how they have ensured that these are not HFSS or 'less healthy'.

On the 14 May 2022 the Government announced that the full implementation of the regulations will be delayed in light of unprecedented global economic situation and in order to give industry more time to prepare for the restrictions on advertising

- Rules limiting the location of unhealthy foods in shops will go ahead as planned in October 2022.
- Rules banning multibuy deals on foods and drinks high in fat, salt, or sugar (HFSS) – including buy one get one free (BOGOF), '3 for 2', and restrictions on free refills for soft drinks – will be delayed for a year.
- Restrictions on the placement of less healthy products – a key part of the government's commitment to reduce obesity – will still come into force in October 2022 as planned. These will mean less healthy products are no longer promoted in key locations, such as checkouts, store entrances, aisle ends and their online equivalents.

RESOLVED - That the information contained within the report be noted.

The Committee received a report to provide them with an update on the implementation of the Offensive Weapons Act 2019 (the Act). The relevant provisions of the Act were brought into force on 6 April 2019.

The Act includes new legislative measures to control the sale of knives and corrosive products, and it introduces new offences relating to their possession and use.

The Act creates a new criminal offence of selling a corrosive product to a person under the age of 18. The substances and concentration levels that constitute corrosive products for this purpose are set out in Schedule 1 of the Act. The Act contains a delegated power to amend the Schedule to add, remove or modify substances and concentration levels as required.

The Act provides defences that can apply to the offence of selling bladed articles to under 18s, in the case of the remote sales. Remote sales include online sales, mail-order or over the phone sales. The defence requires proof that the seller took all reasonable precautions and exercised due diligence to avoid committing the offence of selling to an under 18 offence. To rely on the defence, as a minimum, all of the conditions set out in section 35 of the Act must be met.

Where the seller is based outside of the UK, the delivery of a bladed product to a person under 18 is a criminal offence for the delivery company that delivers the product on behalf of the overseas seller. There are defences to this offence where the delivery company takes all reasonable precautions and exercises all due diligence to avoid delivering the bladed product into the hands of a person under 18.

The Primary Authority scheme, that applies to Trading Standard Authorities, has been extended to cover the sale, delivery etc of knives (including bladed articles and bladed products), corrosive products and other offensive weapons.

The Act updates the definition of a flick knife to include those where the mechanism is not within the handle. It also prohibits the possession of flick knives and gravity knives in private. The sale, importation, manufacture, supply, and possession in public is already prohibited.

It was noted that in a global market it is difficult as is it only possible to take action with traders who live in the zone of enforcement.

It is hoped that this legislation whilst may not prevent attacks all together will reduce them.

RESOLVED - That the information contained within the report be noted.

Chair.....

