

Northern
Ireland
Office

TEST PURCHASE OF ALCOHOL

Equality Impact Assessment and Guideline Principles

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Equality Impact Assessment for Test Purchase of Alcohol

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Annex A: Research Papers

Test purchase of alcohol powers in Northern Ireland

1. INTRODUCTION

1.1 The purpose of this consultation document is to seek views from interested parties on an Equality Impact Assessment and guideline principles relating to test purchase of alcohol powers as contained in Article 67 of the draft Criminal Justice (Northern Ireland) Order 2008.

1.2 This consultation document provides an overview of the content of the proposed draft legislation; an assessment of the equality considerations with regards to equality of opportunity for all groups specified under Section 75 of the Northern Ireland Act 1998; guidelines on how test purchase might operate; and how to respond to this consultation.

1.3 The original screening form and its supporting equality impact assessment, along with this current EQIA may be found on the NIO website at www.nio.gov.uk.

1.4 The draft Order and its full Explanatory Document which contains the test purchase power may also be found on the website.

2. SCREENING THE POLICY ON TEST PURCHASE OF ALCOHOL

Introduction

2.1 As a public authority under Section 75 of the Northern Ireland Act 1998, the NIO is required to have due regard to the need to promote equality of opportunity:

- Between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- Between men and women generally;
- Between persons with a disability and persons without; and
- Between persons with dependants and persons without.

2.2 This legislation also requires public authorities to identify whether a policy has a differential impact upon relevant groups; the nature and extent of that impact; and whether such impact is justifiable. These obligations are designed to ensure that equality and good relations considerations are made central to government policy development.

Test purchase of alcohol powers

2.3 Under Article 67 of the draft Criminal Justice (NI) Order 2008 a “test purchase” power is to be created to allow police officers to identify bars and off-licences selling alcohol to under 18s. The purpose of the power is, in essence, a protective one, to protect young people from access to alcohol – an age-restricted product. The power will allow the identification of licence holders who ignore such protections and sell alcohol to minors.

2.4 Specifically, Article 67 adjusts the Licensing (NI) Order 1996 to allow a person under 18 years of age, under the direction of a police constable acting in the course of his duty, to enter licensed premises and to seek to purchase alcohol. Any subsequent sale would be a breach of the law and could lead to a prosecution.

2.5 The police officer must take all reasonable steps to avoid risk to the person undertaking the test purchase exercise. The consent, in writing, of both the young person concerned and a parent must be obtained before the young person attempts to purchase alcohol. The Secretary of State must issue guidance as to the exercise of these powers.

Screening

2.6 In line with the NIO Equality Scheme the proposal to introduce test purchase of alcohol was the subject of an equality screening exercise at the time the legislative proposals were published. Although the screening exercise acknowledged that the policy would impact on a small number of young people it was noted that safeguards had been built into the policy to ensure the protection of young people taking part in the test purchase operations. The screening exercise concluded that there would be no significant adverse differential impact and a full equality impact assessment was not recommended.

Review following consultation

2.7 In light of representations made during consultation on the then draft proposed Criminal Justice (NI) Order 2007 the Northern Ireland Office agreed that a full equality impact assessment would nevertheless be carried out. This is that EQIA.

2.8 In so doing, this EQIA will review current legislation and the proposal as originally published in the draft Order. It will again review the scale of the problem of under-age drinking and consider test purchase schemes more generally as they already exist in both Northern Ireland and Great Britain. The EQIA will then re-assess the impacts on society as a whole and on scheme participants and describe the mitigating factors. It also includes the guideline principles as to the exercise of these powers.

2.9 Views on this EQIA and the proposed principles would be welcome. Details of how to respond are included at Section 12 of this document.

3. CURRENT LEGISLATION

3.1 Current legislation restricting access to and use of alcohol by minors – that is, those under 18 years of age – is a combination of licensing laws and police powers. And drinking in public, irrespective of age, is currently governed by district bye-laws.

Licensing laws

3.2 Specifically in terms of minors, the Licensing (NI) Order 1996 bars under-18s from licensed premises and from buying alcohol.

3.3 Article 58 of the Licensing (NI) Order 1996 prohibits young people from certain premises. In terms of licensing law generally during opening hours, a young person under the age of 18 is not allowed in a part of any licensed premises which contains a bar or is used primarily for the sale and consumption of alcohol. This prohibition impacts mainly on pubs and off-licences but also affects any other licensed premises containing a bar counter.

3.4 The prohibition does not apply to an off licence where the young person is accompanied by an adult and to other licensed premises which have a children's certificate. A court will grant a children's certificate if satisfied that the part of the premises for which the certificate is sought is a suitable environment for a young person. Meals and soft drinks must be available and the area must have an adequate number of tables and chairs.

3.5 The employment and training of a person under the age of 18 in licensed premises is prohibited unless they have attained the upper limit of compulsory school age and where they are employed in an off licence must be supervised at all times.

3.6 Young persons 14 and over may consume alcohol in private premises. A young person under the age of 14 may only consume alcohol for medical or other urgent purposes.

3.7 Article 60 of the Licensing (NI) Order 1996 details the offence of selling intoxicating liquor to young persons.

Penalties in place for those caught selling alcohol to children are as follows:-

- £80 fixed penalty notice for shop staff who make the sale;
- £5,000 fine for licensees on conviction; and
- Licenses could be suspended, altered or revoked.

Powers of confiscation

3.8 In terms of police powers under the Confiscation of Alcohol (Young Persons) Act 1997 the police may require underage drinkers to surrender alcohol in their possession. This power also applies to those over 18 years old who have alcohol in their possession which is intended for consumption by someone under that age. The maximum penalty on conviction of this offence is a £500 fine.

Bye-laws

3.9 At present it is against the law for any person to consume alcohol in certain public places that are designated in by-laws by district councils. The maximum fine for this offence is £500.

Public Processions

3.10 Under the Public Processions (NI) Act 1998 police may require anyone consuming or possessing alcohol whilst taking part in, or assembled to take part in, a public procession, in a public place, to surrender any intoxicating liquor in their possession. This power also extends to anyone who is a passenger in a vehicle in the vicinity of the route of the public procession.

Current proposals

3.11 The proposed Article 67 in the draft Criminal Justice Order 2008 to allow test purchase operations to take place introduces a new Article 60A to the Licensing (NI) Order 1996 to state that articles 58 and 60 do not apply in

relation to a person under the age of 18 who is sent into licensed premises to purchase intoxicating liquor by a constable who is acting in the course of his duty.

3.12 The draft proposed Criminal Justice Order 2008 also contains provisions to provide police with more effective powers to act against those creating nuisance and disorder as a result of drinking in public. It proposes powers for Councils in consultation with police to designate public areas where alcohol can be seized by police. Areas would be designated on the basis of disorder caused by alcohol consumption; opened and closed containers could be seized by police; and a fixed penalty imposed for non-compliance. Court prosecution would also be possible.

4. CONSULTATION ON THE POLICY

4.1 In November 2007, a screening form relating to test purchase powers was published for consultation with the proposed draft Criminal Justice (NI) Order 2007. Relevant groups, organisations and individuals were invited to indicate any equality related problems specific to them during the public consultation.

4.2 As a result of the consultation the NIO received a number of responses expressing concern regarding the impact of test purchase operations on children and young people and requests for an Equality Impact Assessment. The main areas of concern may be summarised as follows:-

- The proposal is in breach of the best interests of the child and the child's right to be protected from exploitation prejudicial to the child's welfare;
- Young people will not be protected and involvement would put participants at risk;
- Young people could be coerced, vulnerable or misused;
- There will be no clear and consistent policies during test purchasing operations and any subsequent prosecutions;
- The interests of licence holders and their staff will not be protected in terms of entrapment or being put at risk.

4.3 The proposal was considered by the Northern Ireland Assembly by way of an Ad Hoc Committee established to consider the draft Order as a whole. On balance the Assembly Ad Hoc Committee supported the proposal for test purchase powers. Their support was subject to the NIO undertaking an Equality Impact Assessment on the test purchase scheme taking into account the views and concerns raised by the NI Human Rights Commission (NIHRC) during their evidence. NIHRC concerns were around the safety of

participants, consent, and “entrapment” of licence holders. The Ad Hoc Committee’s report on the Order as a whole was subsequently endorsed by the Northern Ireland Assembly.

Recommendations of the Northern Ireland Assembly

4.4 Based on the Committee’s report the Assembly made a number of other recommendations on the operation of any such scheme.

- The Committee recommends that the PSNI should publicise widely in advance that they will be using the test purchase power to detect retailers who sell alcohol to persons under 18.
- The Committee recommends that the PSNI should develop operational guidelines for personnel involved in the test purchase scheme. These should address specifically issues such as the ages of young persons to be used and the need to ensure their welfare is protected. The guidelines should also make it clear that in no circumstances should a vulnerable young person be considered for use in the scheme.
- The Committee recommends that DSD and PSNI should also consider the feasibility of schemes used elsewhere for tracking sales of alcohol to minors.

Government Response

4.5 The Government accepted these recommendations and has been in discussion with PSNI and DSD on the way forward.

Two specific changes were made to the draft legislation.

- The consent of the young person participating in any test purchase scheme will be required in law.
- There is a statutory requirement for Government to publish guidance on how such schemes should operate.

4.6 The Government has referred the recommendation for sales tracking to the Department of Social Development for discussion with the police. The Minister for DSD is responsible for the development of policy and promotion of legislation on liquor licensing, and we can confirm that the Department is currently considering all the issues arising from the review of liquor licensing laws in March 2004. A copy of this review and associated public consultation may be found on the DSD website at:

http://www.dsdni.gov.uk/index/publications/social_law/liquor_licensing_review_gateway.htm

4.7 This document fulfils the commitment to complete a full EQIA and in so doing includes the principles and guidance under which schemes should operate.

5. UNDERAGE DRINKING IN NORTHERN IRELAND

5.1 Children, who drink, especially in their early teens, are a cause of concern. In addition to concerns regarding their health and safety; for this age group there are clear and worrying connections between excessive alcohol consumption and other social problems including anti-social and criminal behaviour. There is increasing public concern about anti-social behaviour associated with the misuse of alcohol including noise, nuisance, litter, criminal damage and verbal or physical abuse. And alcohol misuse more generally is often linked to violence and crime and is a factor in many accidents on the roads.

5.2 Over the last few years, a number of surveys have demonstrated that the use of alcohol among young people in Northern Ireland has been increasing and young people themselves have reported that access to alcohol is not difficult. Key areas of concern highlighted in these reports include the following:-

- A high number of young people in Northern Ireland have taken drink at some time – this may range from 60% to over 80% (depending on the age of children participating in the survey or project);
- The average age for young people taking their first drink is 11.9 years;
- There are links between heavy binge drinking and injuries as a result of violent crime;
- Children themselves report they have no problem with access to alcohol – younger children are more likely to get drink from off-licences while those 16 or over are taking part in pub/club life;
- The number of children in treatment for alcohol misuse is increasing – in March 2007, 377 children and young people under 18 were receiving treatment.

5.3 Beyond the fact that the issue in hand is in itself age-related, the various pieces of research have shown that the problem of under-age drinking is not restricted to any particular Section 75 group.

Range of the problem

5.4 Anti-social behaviour related to alcohol consumption is often seen as an urban problem. It has been associated with night life in city centres. However it is also recognised as a problem in rural and residential areas as well and is therefore an issue for Northern Ireland as a whole. A number of Community Safety Partnerships and District Policing Partnerships have noted concerns. And in their consideration of the draft legislation, Members of the NI Assembly who were also District Councillors reflected on the level of the problem and concern at a local level.

5.5 A recent police operation - 'Operation Marsham' – demonstrated this issue. 'Marsham' was a special police initiative aimed at seizing alcohol from groups of teenagers which ran recently in Co Antrim and through which PSNI seized hundreds of items of alcohol from young people. Operations took place in Lisburn, Dunmurry, Moira, Glenavy, Antrim, Newtownabbey, and Carrickfergus. Many welcomed these initiatives noting that young people drinking on the streets and the associated anti-social behaviour was a weekly occurrence - indeed calling for further such actions to tackle what they see as an all year round problem.

5.6 Previous police operations to seize alcohol from young people have taken place across Northern Ireland including areas of Belfast, Derry, and Ballynahinch and high levels of underage drinking and anti social behaviour have recently been reported in Warrenpoint, Coleraine, and Bangor.

5.7 On 1 April 2008, the NI Assembly also specifically considered and approved a Private Members' on concern at the levels of underage drinking and called on the Executive's Ministerial Sub-Committee on Children and Young People to bring urgently before the Assembly proposals to combat underage drinking.

<http://www.niassembly.gov.uk/record/reports2008/080401.htm>

5.8 It is clear that under-age drinking continues to be a problem and a matter of concern to many communities and across all Section 75 groups. Despite the strenuous efforts of police and others, current legislation may not be enough. Increased powers and wider strategies will be important in both a preventative and protective context.

6. GOVERNMENT STRATEGIES TO PREVENT ALCOHOL MISUSE

DHSSPS New Strategy Direction for Alcohol and Drugs 2006 to 2011

6.1 The DHSSPS New Strategic Direction for Alcohol and Drugs 2006 to 2011 (<http://www.dhsspsni.gov.uk/nsdad-finalversion-may06.pdf>) contains a

number of key priorities and five pillars: –

- prevention and early intervention;
- Treatment and support;
- law and criminal justice;
- harm reduction and monitoring; and
- evaluation and research.

6.2 Delivery of the strategy is led by a group consisting of senior representatives from across the NI Government Departments, the NIO and associated agencies with support and advice from the medical profession, PSNI, Her Majesty's Revenue and Customs (HMRC) and others as necessary.

6.3 Research during development of the strategy highlighted concerns about the high proportion of young people who were drinking alcohol and specific proposals for children and young people within the strategy include:-

- developing a 4 Tier Model for services for children, young people and adults
- developing young people's services; and
- targeting those at risk and vulnerable (including vulnerable young people).

Prevention and Awareness

6.4 There is a high priority given to prevention and early intervention, treatment and support for all age groups. A key aspect of the strategy is working in partnership with others and the criminal justice system has contributed to a number of initiatives', including preventative efforts, through education and support to local communities. PSNI in particular has

undertaken a great deal of preventative work within the formal education and youth setting i.e. in schools and clubs.

Reducing Young People's Access to Alcohol

6.5 Within the criminal justice system, in addition to promoting awareness and understanding among young people about the dangers associated with drinking, there are various strategies which aim to restrict access to and availability of alcohol to young people.

6.6 The traditional focus for dealing with this problem involves police being deployed in hot spot areas to seize alcohol from young persons. PSNI has been working on a number of initiatives and schemes in partnership with councils and relevant agencies, in particular the licensing trade, to tackle underage drinking. 'Operation Marsham' was one such scheme.

6.7 The NIO Community Safety Unit and PSNI work in partnership with Belfast City Council and local community leaders in promoting the 'Get Home Safe' campaign. The vision of the partnership is to 'create a vibrant, safe and attractive night time environment in Belfast.' The campaign aims to discourage young people from attempting to purchase alcohol and encourages off-licenses in Belfast to sign up to a code of practice agreeing to ask for identification from people who don't look over 21.

6.8 This is complimented by a campaign led by the Federation of the Retail Licensed Trade (FRLT) and supported by the Department for Social Development (DSD) and the Chief Electoral Officer for Northern Ireland to tackle the issues of underage drinking and low level of voter registration amongst young people in one swoop by introducing the 'Challenge 21' initiative. It is recognised that it can be easy for teenagers under 18 to get fake identity cards from the internet etc so it is essential that pub and off license trade only accept recognised forms of identification. This campaign promotes the use of the electoral identify card as an acceptable form of age-proof; urges young people to register to vote; and apply for the free ID card.

6.9 The test purchase power will be a further method of reducing access; preventing problems; and protecting the young.

7. THE PROBLEM OF UNDER-AGE SALES

7.1 Despite the powers that currently exist, under-age drinking and in particular, the selling of alcohol to minors continues to be a problem. And statistics show that there have only been a limited number of prosecutions and convictions for offences of selling alcohol to underage drinkers in each of the last five years.

Table 1: Number of licensees prosecuted and convicted for selling alcohol to a minor 2002-2006¹

	Licensee selling intoxicating liquor to a minor		Licensee selling liquor to person for consumption by minor in licensed premises		Licensee selling liquor to person for consumption by minor off licensed premises	
	Prosecuted	Convicted	Prosecuted	Convicted	Prosecuted	Convicted
2002	1	1	0	0	0	0
2003	0	0	0	0	0	0
2004	0	0	0	0	0	0
2005	0	0	0	0	0	0
2006	1	0	0	0	0	0

1. Data for 2006 are provisional.

Table 2: Number of prosecutions and convictions for the offences of 'selling intoxicating liquor to a minor' and 'permitting minor to consume alcohol on licensed premises' 2002-2006¹

	Selling intoxicating liquor to a minor		Permitting minor to consume alcohol on licensed premises	
	Prosecutions	Convictions	Prosecutions	Convictions
2002	3	1	0	0
2003	5	3	0	0
2004	7	2	0	0
2005	8	3	5	0
2006	5	3	0	0

1. Data for 2006 are provisional.

7.2 Perhaps the most important aspect of the problem lies in the *detecting* of these crimes. Under current law to actively observe and pursue the issue of

under-age sales would require the law itself to be broken. A young person would not be allowed to be on licensed premises.

7.3 The introduction of test purchasing of alcohol is therefore proposed to supplement actions to tackle under-age drinking by helping to prevent the under age drinkers from obtaining access to alcohol in the first place rather than seizing the alcohol afterwards.

7.4 The following Section on test purchase operations demonstrates how effective such powers can be – and already have been in Great Britain by building in all of the necessary guidances and protections.

8. TEST PURCHASE OPERATIONS

8.1 Restricting access to products on the basis of the age of the purchaser is not a new concept. Such laws are based on the need to protect young people from products not suitable for minors. Over many decades legislation has been implemented with the aim of preventing access by young people to age restricted products, for example, alcohol, cigarettes & fireworks. There are existing examples of good practice in test purchase exercises from England, Wales, Scotland and Northern Ireland.

Northern Ireland

Test Purchase of cigarettes

8.2 District Councils in Northern Ireland have a statutory duty to enforce the legislation relating to the sale of some age-restricted goods such as cigarettes, tobacco and cigarette lighter refills containing a volatile substance.

8.3 Belfast City Council introduced test purchasing in a bid to combat the problem of shops selling cigarettes to children under the age of 16. The first test purchases, which also included butane gas refills, took place in February 2005. Since 2005 (the period for which figures are available) Belfast City Council undertook 16 test purchase operations for under-age sales of tobacco and/or butane. Under those operations, 44 premises were visited with 11 sales being detected. Five premises were warned, 2 were cautioned and 1 prosecuted. At the time of data supply, three other investigations were ongoing.

8.4 Prior to the test purchase exercise the Council delivered letters to hundreds of outlets across Belfast, reminding retailers of the law on selling cigarettes to children and reminding shopkeepers that they are legally obliged to display notices advising customers of the law. Belfast City Council continues a programme of education by means of press release, media coverage and regular visits and inspections of outlets which sell tobacco to remind them of their legal obligations and to ensure that staff are aware of

their responsibilities. Test purchase operations are carried out under guidance drawn from best practice and the experience of other Local Authorities.

Test Purchase of alcohol

8.5 The use of test purchase of alcohol sales in Northern Ireland was first proposed in 2004 during a meeting between local Police, the Chief Enforcement Officer from Belfast City Council and representatives from the Belfast Community Safety Partnership. A range of strategies and options that were available to address the problem of complaints in relation to youths causing annoyance and disorderly behaviour were considered and later that year PSNI ran an operation to help prevent young people from getting access to alcohol.

8.6 'Operation Alcopop' in North Belfast was an assessment of the scale of under-age sales and how effective licence holders' procedures were. In the months leading up to the operation, every off-licence was visited to highlight the problem of underage drinking and police also wrote to all major off-licence chains asking for details of their policies and procedures and asking ideas on how they could deal with the problem. Police in North Belfast worked to the LACOTTS guidance on test purchasing to ensure that the exercise ran smoothly.

8.7 As a result of the exercise purchase of alcohol was successful in eight out of the fourteen premises visited and, in three similar operations province wide, 40 premises were tested and 14 (35%) sold alcohol to the underage children. Specifically in North Belfast there was an 18% reduction in criminal damage and 19% reduction in alcohol related disorder - particularly significant as the operation took place over July and August when traditionally there can be increase in both of these problems. There was extremely positive media coverage following the exercise and local community impact assessments highlighted the degree of support police had for their initiative.

8.8 The central thrust of the operation, which was to try to get off licences to check anyone/ask for identification of anyone they suspected to be underage, was also very successful. For example, since the operation, a leading Northern Ireland firm with 72 off licences and 13 bars provide wide has changed its cash till software. Now, if anyone tries to purchase alcopops or other favoured drink the till will automatically lock out and display the message 'Have you checked that this person is over 18 years, Yes/No?' Staff are now trained to ask for identification and thereby confirm via the till record that they have done what is required of them.

8.9 The results demonstrated that test purchasing provided an important tool that can, if used proportionately and according to best practice guidelines, impact in a positive and significant way on underage drinking. Further information may be found on PSNI's website using the following link;

http://www.psni.police.uk/index/media_centre/press_releases/pg_press_releases_2004/pr_20_04_june/pr_080604_police_take_measures_to_combat_anti_social_behaviour.htm

8.10 PSNI also researched a number of recent campaigns in England, Wales and Scotland which focused on tackling alcohol related behaviour and targeting those selling alcohol to children, including a number of Alcohol Misuse Enforcement Campaigns (AMEC) undertaken by police forces in England and Wales and the test purchase exercises in Scotland.

England and Wales

The law and guidance

8.11 In England and Wales, legislation around test purchase of alcohol was created by way of the Criminal Justice and Police Act 2001, and commenced in December of that year. Similar legislation to that proposed for Northern Ireland was inserted into Section 169 of the Licensing Act 1964 and consolidated into the single Licensing Act 2003 by way of Section 149. England and Wales have therefore had such test purchase powers for the past six years.

8.12 In terms of function and guidance, the duty to ensure that retailers comply with age restrictions lies with the police and Trading Standards service. Guidance is currently available from best practice followed by Local Authorities - the LACOTS (Local Authorities Co-ordinating Body on Food and Trading Standards) guidance 'Test Purchasing – Code of Best practice'. This Code takes account of the Human Rights Act 1998, the Regulation of Investigatory Powers Act 2000 and the Police and Criminal Evidence Order 1998.

Campaigns

8.13 Since 2004 police forces in England and Wales have carried out a number of campaigns focused on tackling alcohol related behaviour and targeting those selling alcohol to children. The first national Alcohol Misuse Enforcement Campaign (AMEC) took place in the summer of 2004 and was a great success in developing tactics which can have a real effect on reducing more serious violent crime and disorder. Following on from that success various national, regional, and local campaigns have taken place.

8.14 The third national AMEC which began in the middle of November 2005 was the largest campaign with 230 Basic Command Units from across England and Wales taking part. As well as using the standard AMEC tactics police employed the new powers contained in the Licensing Act 2003, which came into force on 24 November 2005. Police and trading standards carried out 27,154 visits to licensed premises and over 6000 test purchase operations.

Test Purchase Operations November 2005 campaign*

	On licenses	Off licenses inc supermarkets	Supermarkets	Total
Test purchase operations	1674 (25%)	5023 (75%)	1564 (23%)	6697
Alcohol sold	489	985	259	1474
% failure rate	29%	20%	17%	22%

Test Purchase Disposals November 2005 campaign*

	On licenses	Off licenses inc supermarkets	Total
Warnings	75	113	188
Reported	176	392	568
Closures	5	4	9
Fixed Penalty Notice	277	567	844

*As well as selling to minors the table above includes the offences of selling to intoxicated people and proxy purchasing. From visits and test purchase operations police and partners detected 169 offences of selling to people already drunk and 36 offences of purchasing by proxy.

8.15 Results from the AMEC campaign in November 2005, also highlighted the reduction in violent crime during a Christmas blitz on alcohol related disorder. During the campaign police force data showed that all violent crime decreased by 11% and serious violent crime decreased by 21%; within this category wounding and other acts endangering life fell by 14%

Comparisons with previous campaigns

8.16 AMEC 3 was the largest AMEC so far and the activity which took place demonstrates this when compared to previous campaigns.

Test Purchase operations and failures compared to previous campaigns

	AMEC 1	AMEC 2	Mini AMEC Summer 2005 25 BCUs	AMEC 3
Test purchase operations	1864	989	909	6697
On license/Off license split	391 1473	334 655	239 670	1674 5023
On license failure rate	45%	32%	51%	29%
Off license failure rate (inc supermarkets)	31%	32%	36%	20%
Supermarkets failure rate	-	-	50%	17%

8.17 This table demonstrates two key aspects of test purchase for alcohol schemes. Firstly, the growth in such exercises across the past few years demonstrating in itself the importance and value of such enforcement in England and Wales.

8.18 Secondly, and perhaps more importantly, the effectiveness such AMEC operations can have. From an initial exercise under which 45% of on-licences and 31% of off-licences were failing the test, such rates fell to 29% and 20% by the third test purchase exercise. In other words, whereas initially over half of on-licences and two thirds of off-licences were breaking the law, after these exercises between 70%-80% of licence holders were complying with the law.

8.19 Following the AMEC exercises an alcohol strategy to reduce harm to young people was launched in 2007 combining law enforcement and education dimensions. A national Tackling Sales of Under Age Sales of Alcohol Campaign led to increased – and successful – use of test purchase operations. In nearly 9,000 operations across E&W young people were only able to obtain alcohol in 15% of cases.

8.20 In overall terms, putting these various exercises, tests and rates together, compliance has increased from 50% in 2005 to 80% in 2006 and

85% in the latest exercise during which there was only a 15% failure rate overall.

Retail sector

8.21 Retailers have worked closely with the police and trading standards to share best practice on how to best reduce opportunities for young people to purchase alcohol. The Retail of Alcohol Standards Group (RASG) formed in 2005 represents the alcohol retail trade and by disseminating best practice and helping to change culture it has increased retailer determination to sell alcohol responsibly. RASG members use 'Under 21' signage which has been designed to support the 'Challenge 21' approach to the sale of alcohol. This encourages anyone who is over 18 but looks under 21 and wishes to buy alcohol to carry acceptable ID. This policy is now becoming established as standard practice across the industry.

Scotland

The law and guidance

8.22 Under the Licensing (Scotland) Act 1976 it is an offence to sell intoxicating liquor to a person under the age of 18. Also it is an offence to buy alcohol whilst under 18, therefore for test purchasing purposes it is only legal to seek assistance of children for this purpose if they are authorised to so under section 105 of the Licensing (Scotland) Act 2005 otherwise the test purchasers will themselves be committing an offence.

8.23 **'A Practical Guide to Test Purchasing in Scotland'** was developed for local authorities and police forces undertaking test purchasing. This guide ensures the safety and welfare of the young people taking part and provides a fair, effective and even handed approach to test purchasing procedure across Scotland. A copy of this guide may be found on the Scottish Government website <http://www.scotland.gov.uk/Publications/2007/10/25155751/0>.

8.24 Additionally, the Licensing (Training of Staff) (Scotland) Regulations 2007 sets out a required schedule of training for staff working in licensed

premises including offences under the Licensing (Scotland) Act 2005 particularly those involving children under 18, the test purchase of alcohol, proof of age regulations and best practice as regards standards of service and refusing service.

Impact on Licensees

8.25 Test purchasing exercises were first used in Fife in May 2006. This followed prosecution guidance by the Lord Advocate to allow test purchasing of age restricted goods by children and young people under the age of 18.

8.26 During the first test purchases 20% of premises failed the test purchase visit. Given the publicity launch, the media coverage and pilot information events for licensees, as well as actual visits to bars and shops carried out by police officers, the fact that one in five premises failed the first visit was considered quite high. It was also noted that on and off sale outlets of all types (apart from off licenses) failed the first test purchase visits.

8.27 Only 7% of premises failed the revisit, suggesting that the first visit had an impact on the practice of shop and bar staff. Thirty six per cent of licensees stated that they made changes to their premises or their retail practice as a result of being targeted during the pilot exercise. In total, taking all types of test purchases into account, about 18% of shops, bars and nightclubs failed the test.

8.28 The pilot found that being targeted as part of the scheme greatly increased licensee knowledge and awareness and licensees were offered advice and support after test purchases had taken place. The pilot emphasised the importance of staff training, particularly for junior staff working at the point of sale, who were found more likely to sell alcohol to their peers. Twenty three per cent of junior staff failed, compared with 12% of licensees.

Licensees

8.29 Most of the licensees agreed that test purchasing was a good idea, although they thought it should not operate in isolation. Others thought that it did not address the issue of adults being asked to purchase alcohol by groups of young people outside retail outlets and the need for police to deal with large groups of young people drinking on the street corner or public parks. The issue of young people having responsibility for the sale of alcohol, with inadequate supervision, was identified as a cause of some concern.

Impact on Young People

8.30 The pilot was viewed as being very successful and results suggested that there were few grounds for concern for the young people taking part. The volunteers were all aged 16. The volunteers all said that taking part in the pilot was very much as they expected as the police had covered all possible scenarios during the initial briefing. All the volunteers indicated that they would be willing to take part in future test purchase exercises. They found the experience worthwhile and felt they had hopefully been responsible for helping the community in some way.

8.31 The only negatives for a few of the volunteers involved some embarrassment when being asked for their age during actual visits and the boredom waiting around for police to finish the necessary paperwork. Parents viewed their children's participation in the pilot as good work experience and also beneficial for the community.

Views of Police

8.32 The police reported that the pilot had been a useful education exercise for licensees and staff. They were very positive about the conduct of the whole pilot and recommended test purchasing, in combination with the development of a proof of age card scheme, as the best way of restricting sales to young people. The proof of age card scheme, recommended by the licensed trade, was thought to help licensed trade staff get into the habit of asking for a buyers age and test purchasing visits could then assess how successfully retailers and bar staff were implementing the policy.

Conclusions

8.33 In conclusion the pilot was viewed as a success. It had tightened up the practice of licensees in the area and resulted in improved training programmes for staff, as well as increased requests for proof of age information and there was an increased awareness of the problems related to alcohol and young people among the general public. Licensing board representatives also thought that bar and shop staff were now aware that someone responsible had to be at the point of sale at all times and that more outlets had adopted an over 21 years of age sales policy for alcohol.

<http://www.scotland.gov.uk/Resource/Doc/200257/0053533.pdf>

9. TEST PURCHASE IN NORTHERN IRELAND: EQIA IMPACTS

Introduction

9.1 In light of the representations made during consultation on the proposed powers, the Government undertook to review the impacts of the test purchase provisions. And whilst the focus of this EQIA has been on the issues of concern that arose out of that consultation – and those are largely around the impacts on those directly involved in the scheme – it is also worth emphasising the broader and positive impacts that accompany this policy. There are positive impacts not only for all categories of Northern Ireland society but also for young people themselves through the contribution the powers will make to reduce under-age drinking and the damages it causes.

Society as a whole

9.2 Earlier sections of this assessment have demonstrated the linkages between disorder, crime and problem consumption of alcohol. Social surveys show the public concerns around alcohol sales, consumption and disorder. Such issues are raised at Community Safety and District Policing Partnerships. Under-age and public drinking is a problem across Northern Ireland.

9.3 Crime, disorder, and the fear of crime affect the quality of life across the range of demographic and Section 75 groups. Victims of crime also come from across the full social spectrum: young and old; all sexual orientations; religions; and races. Many are victims of crimes or experience public disorder amongst the young that has been fuelled by alcohol.

9.4 Reducing the capacity for young people to purchase alcohol illegally will have positive benefits for all. The public as a whole, across all Section 75 groups will benefit from a reduction in under-age sales of alcohol.

Young people

9.5 Young people themselves will also benefit from the additional powers: young people from all Section 75 groups. Restricting access will go in some way towards reducing the numbers of young people who experience problems with alcohol. The powers will not be a cure-all – there are other more far-reaching strategies in place – but tackling the problem of under-age sales will have a contribution to make. As part of a range of initiatives it will help reduce health problems; assist family life; and improve community safety by attempting to tackle anti-social behaviour and disorder caused by alcohol misuse. And all young people across all Section 75 groups will benefit.

Participants

9.6 Respondents did, as has been outlined, express concerns about impacts on young persons who might participate in schemes. We have therefore taken a number of steps to address concerns.

9.7 We have taken stock of the current local test purchase schemes on the sale of tobacco and we have reviewed test purchase powers more generally in Great Britain. Those schemes that exist appear to be both safe and successful and have had a demonstrable impact on under-age sales practice. We recognise that similar steps must be taken to ensure that the vast majority of our society and our young people benefit from this test purchase initiative.

9.8 We have amended the legislative proposals to include young person's consent. And we have included a statutory requirement for the Secretary of State to produce guidance on the powers. The substance of that guidance is detailed more fully in the following Section where we describe how any impacts on those participating will be mitigated.

9.9 We are also mindful that the numbers who may participate in such schemes are likely to be quite limited – for example Belfast City Council schemes for tobacco and butane tests use around ten participants per year. And also that, based on the Scots experience, they see themselves as

contributing to society, that it is enjoyable, educational, and for the wider social good.

9.10 And this is an important aspect of such assessments - that any impacts on the relatively small numbers that might be involved are justifiable in terms of the greater and beneficial impact this will have for society. Benefits that will apply to all ages but equally to young people themselves.

9.11 The key to these provisions will be in ensuring the protections and rights of participants not only in equality terms but also in more overarching ways around consent, safety and protection, and working within consistent and appropriate guidelines. Government believes that the principles and guidance offered in the next section will address any concerns.

10. MITIGATION OF IMPACTS AND GUIDANCE

Legislative requirements

10.1 In response to consultation, two major changes have been made to the draft legislation previously published.

- When published, the proposals only included the written consent of the parent or guardian of the young person involved. This has now been enhanced to also require the written consent of the young person her/himself.
- When published, there was no requirement in law for guidance on how to use the powers as proposed. In response to the representations made, the legislation will now require the Secretary of State to publish such guidance.

Both of these undertakings are expanded upon in the following sections.

Consent of Volunteers and Parent/Guardian

10.2 In keeping with the legislation as proposed, there should be full consultation with the child and the child's parent(s)/guardian on all the issues involved. The consent of both parties will now be a requirement of the law.

10.3 Consent and participation may be withdrawn at any point. Parent(s)/guardian(s) and participants will have full details on any scheme and should they agree to participate, full briefing and training will be a requirement.

Welfare Issues

10.4 The importance of the welfare of those involved in the exercise of test purchase powers is fully recognised. Advice is already provided by the LACOTS guidance and Scotland's guide for local authorities and police forces undertaking test purchasing. PSNI may also wish to draw on the advice provided in from Belfast City Council's guidance on test purchase procedures in Northern Ireland.

10.5 In carrying out any test purchase exercise, police will ensure that the welfare considerations of the young person are paramount. Participants will have to be supervised at all times both in and outside the premises. And if at any time during the exercise the participant indicates that they do not wish to continue the exercise must stop.

10.6 The anonymity of the young person will be an important consideration during test purchases. Test purchases should not occur in an area where they are likely to be recognised, such as near their home, school club etc. Participants will not be used for publicity purposes.

Employment

10.7 In response to a point made in consultation, for clarification, a young person engaged in a test purchase exercise will not be employed. Any involvement will however be subject to restrictions on hours of working or other conditions that would be required under relevant law. Participants can, nevertheless, be reimbursed with reasonable expenses. These may include travel expenses, subsistence, vouchers or a cash payment.

Appearance at Court

10.8 Concerns were expressed about young persons being called as witnesses at court. The LACOTS guidance notes that operations likely to result in prosecutions should be organised in such a way as to avoid the individual being called as a witness. A witness statement should not be taken from the child. Procedurally, police officers should enter the premises before the young person and position themselves to witness the outcome of an

attempted purchase. It would be the police officer who would then testify as to what they had seen and heard. Only in an exceptional case a child might be asked to attend court as a witness.

Police procedure

10.9 Based on the guideline principles provided in this EQIA, it is anticipated that PSNI will develop internal operating procedures and protocols to ensure that test purchasing in Northern Ireland is carried out safely, fairly and effectively. We understand that PSNI officers plan to visit a number of police forces in England, Wales and Scotland to discuss the campaigns and ensure best practice is fully captured.

Licence holder concerns

10.10 Two main issues were raised on the part of licence holders: an assertion that the proposals were based on powers of entrapment; and that the powers would put licence holders' staff at risk from those whom they might refuse to serve – an increased likelihood if test purchase powers were to be regularly deployed.

“Entrapment”

10.11 The powers proposed are not powers of entrapment - they are in fact means of legitimate crime detection. Measures to avoid any implication of entrapment, will include the need for advance notice and publicity in areas where the powers are likely to be deployed; and a warnings system whereby those found to be selling to minors may not be prosecuted in the first instance but warned as to future behaviour. In many respects, this opening approach will be more akin to a validation of licence holders' policies and procedures in dealing with minors.

10.12 Participants themselves should not seek to mislead retailers. Those taking part will be told to answer all questions, asked by the seller, truthfully. In particular they must give their correct age, if challenged. They must also be at least 18 months below the age of purchase; will not be “made up” or disguised as someone older; and will avoid the possibility of genuine mistakes

on the part of staff. If asked whether there is anyone with them, the young person will be told to identify the officer present. If an initial request is refused there must be no attempt to persuade or coerce the seller to make a sale.

Staff concerns

10.13 The issue of young people having responsibility for the sale of alcohol, with inadequate supervision, was identified as an issue in the consultation. Some responses highlighted a concern from retailers that staff could be the victim of an attack if they challenged young people.

10.14 It is already the case that it is an offence to sell alcohol to minors. The law is not being changed in that regard – the change is simply a means to ensure that the law is applied. And the issues raised are ones that the licensed trade faces more generally. We know that retailers are alert to the challenges their staff can face. They are already ensuring staff deployment, training and supervision and have wider strategies in place to deal with abusive or difficult customers of any age.

10.15 Having said that, steps are already being taken to improve matters in the under-age area. The ‘Challenge 21’ campaign and Belfast City Council’s ‘Get Home Safe’ campaign has seen police and council working with retailers, developing support tools and programmes designed to reduce the risk of harm for staff. That work has been very successful and will continue.

10.16 Publicity and advance notice of schemes will also be crucial. Announcements will be made on the introduction of test purchasing in an area with the intention that attempts at under-age purchase will reduce.

Monitoring

10.17 Test purchase operations should be piloted and the outcomes monitored to ensure that guidance principles are followed and that schemes are effective and compliant. Outcomes will be published.

11. CONCLUSION

11.1 Research has highlighted concerns about the high proportion of young people in Northern Ireland who were drinking alcohol and how important it is to restrict children's access to alcohol. There is also increasing public concern about anti-social and criminal behaviour associated with the misuse of alcohol.

11.2 A key aspect of the DHSSPS New Strategic Direction for Alcohol and Drugs 2006 to 2011 is working in partnership with others and the criminal justice system has contributed to a number of initiatives', including preventative efforts, through education and support to local communities.

11.3 Within the criminal justice system there are already various strategies which aim to restrict access to and availability of alcohol to young people. The introduction of test purchase powers is proposed to enhance existing methods of dealing with underage drinking and restricting children's access to alcohol.

11.4 This document provides guideline principles to help safeguard the welfare of children and young people taking part in test purchase operations. PSNI will be developing internal operational procedures and protocols based on this guidance as well as the existing LACOTS and 'Guidance on test purchase operations in Scotland' to ensure the protection of children taking part in the test purchase operations and to ensure they are carried out safely, fairly and effectively.

11.5 Publicity will ensure that the public, licensed trade and children and young people are aware of the new test purchase exercises and PSNI will be working with retailers to ensure policies and procedures are in place and staff are adequately trained.

Summary

11.6 In conclusion, we trust that the concerns expressed during consultation have now been addressed in this Equality Impact Assessment. We have provided more detail on the potential impact the introduction of the new test purchase exercises might have on the children and young people who take part and provided guidance on the safeguards needed to mitigate these impacts.

11.7 We would welcome views on this EQIA and on the guidance principles contained in Section 10 of this document. Based on the outcome of any views received the Government will then produce its guidance for test purchase of alcohol schemes.

Details of how to respond are included in the following Section.

12. HOW TO RESPOND TO THIS CONSULTATION

Responding to this Consultation



12.1 Any queries or responses to this consultation should be made to:

Northern Ireland Office
Criminal Justice Policy Division
Massey House
Stoney Road
Belfast
BT4 3SX
E-mail: cjd.public@nio.x.gsi.gov.uk

 Telephone: 028 90 527142
 Text phone: 028 90 527668

12.2 If you have any queries or concerns about the way in which the consultation has been handled please contact the NIO Consultation Co-ordinator at the following address:

Donna Knowles
Equality Branch
Central Management Unit
Northern Ireland Office
Room 14
Stormont House Annexe
Stormont Estate
Belfast
BT4 3SH
E-mail: donna.knowles@nio.x.gsi.gov.uk

 Telephone: 028 90 527015
 Text phone: 028 90 527668

12.3 In line with guidance from the Cabinet Office this consultation will run for a period of 12 weeks from 28 April 2008. All responses should therefore be submitted by 5pm on 18 July 2008. Comments are welcomed by post, e-mail or text phone and responses will be acknowledged on receipt.

12.4 An electronic version of this document is available on the NIO website www.nio.gov.uk. Hard copies will be posted on request. The text phone contact details are provided above.

12.5 Copies in other formats, including Braille, large print, computer disk etc may be made available on request. Please let us know if you need copies in an alternative language or format.

Confidentiality of Responses

12.6 The NIO will publish a summary of responses following the completion of the consultation process. Unless individual respondents specifically indicate that they wish their response to be treated in confidence, their name and the nature of their response may be included in any published summary of responses. Respondents should also be aware that the NIO's obligations under the Freedom of Information Act may require that any responses, not subject to specific exemptions in the Act, may be disclosed to other parties on request.

Research Papers

Source	Research Paper
Dr Martin Dempster, G Newell & J Marley (2006) British Dental Journal	Facing up to binge drinking: Reducing Binge Drinking among Adolescent Males http://www.psych.qub.ac.uk/Research/Projects/project.aspx?id=2
Sarah Hannaford Queens University working with staff from Young Life and Times (YLT)	Drinking, smoking, drugs and sexual intercourse Education and Influences for Young People in Northern Ireland http://www.ark.ac.uk/publications/updates/update37.pdf
NI Statistics and Research March 2007	Census of Drug and Alcohol Treatment Services in Northern Ireland 1 March 2007 http://www.dhsspsni.gov.uk/census-drug-alcohol-treatment-mar07.pdf
NI Statistics and Research March 2005	Census of Drug and Alcohol Treatment Services in Northern Ireland 1 March 2005 http://www.dhsspsni.gov.uk/census-of-drug-alcohol-treatment05.pdf
NI Research and Statistics Central Survey Unit January 2007	Knowledge and Use of Alcohol, Cigarettes and Drugs, Primary School Survey 2006 http://www.dhsspsni.gov.uk/ps_report_jan_07.pdf
Robert Miller and Lizanne Dowds ARK Northern Ireland Queens University	Drug and Alcohol Use Among Young People in Northern Ireland http://www.dhsspsni.gov.uk/drug_alcohol_use_among_young_people.pdf
Patrick Miller PhD and Martin Plant PhD Alcohol and Health Research Centre City Hospital Edinburgh	Drinking, Smoking and Illicit Drug use among 15 and 16 year old School Students in Northern Ireland http://www.dhsspsni.gov.uk/smoking_drinking_teens.pdf
NI Statistics and Research January 2007	Northern Ireland Health and Wellbeing Survey 2005/06 http://www.dhsspsni.gov.uk/hwb_topline_bulletin.pdf

Source	Research Paper
NI Assembly Debate	
NI Assembly Official Report Hansard 1 st April 2008	Assembly Debate, Private Members' Business, Combating Underage Drinking http://www.niassembly.gov.uk/record/reports2008/080401.htm#2
Home Office Research	
Home Office Research	Home Office research on alcohol related crime and disorder http://www.homeoffice.gov.uk/rds/alcohol1.html
NI Government policy on Alcohol/liquor licensing	
DHSSPS	DHSSPS New Strategic Direction for Alcohol and Drugs 2006 to 2011 http://www.dhsspsni.gov.uk/nsdad-finalversion-may06.pdf
DSD review of liquor licensing laws	http://www.dsdni.gov.uk/index/publications/social_law/liquor_licensing_review_gateway.htm .
Test Purchase in Northern Ireland	
Belfast City Council Regulatory Services	http://www.belfastcity.gov.uk/regulatoryservices/alcoholbyelaws.asp?menuitem=alcohol
Test Purchase in England and Wales	
Home Office Alcohol Misuse Enforcement Campaigns	Alcohol Misuse Enforcement Campaigns (AMEC) http://police.homeoffice.gov.uk/operational-policing/crime-disorder/alcohol-misuse
Test Purchase in Scotland	
Andy Macgregor Scottish Centre for Social Research September 2007	Evaluation of Test Purchasing Pilot for Sales of Alcohol to Under 18s – Final Report http://www.scotland.gov.uk/Resource/Doc/200257/0053533.pdf
Scottish Government October 2007	The Scottish Government's Guide for Local Authorities and Police Undertaking test purchase exercise. http://www.scotland.gov.uk/Publications/2007/10/25155751/0