



Northern
Ireland
Office

EQUALITY IMPACT ASSESSMENT AND GUIDELINE PRINCIPLES FOR TEST PURCHASE OF ALCOHOL

SUMMARY OF RESPONSES TO CONSULTATION

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December 2008

1. Introduction

The Northern Ireland Office (NIO) sought 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 Criminal Justice (Northern Ireland) Order 2008. The consultation ran for a period of 12 weeks from 28 April 2008 until 18 July 2008.

The NIO received a total of **8** responses to the consultation.

This document summarises the responses now received and sets out how the Government intend to proceed in relation to the test purchase of alcohol.

A list of bodies consulted is provided in Annex A of this report.

Copies of the EQIA and Guidance Principles consultation document; this report; and the Guidance Principles document which has now been prepared are available on www.nio.gov.uk.

The Criminal Justice (NI) Order 2008 which contains the underpinning test purchase powers is available on the Statute Law Database website www.statutelaw.gov.uk.

The EQIA and report on consultation on the draft Criminal Justice (NI) Order 2007 when published in November 2007 as a proposal is also available on www.nio.gov.uk.

2. Background

Article 67 of the Criminal Justice (NI) Order 2008 provides a “test purchase” of alcohol power to allow police officers to identify licensed premises selling alcohol to under 18s. In its effect, Article 67 sets aside the restrictions placed on minors entering licensed premises to allow them to be sent in to purchase alcohol by a police constable acting in the course of his/her duty.

During the consultation on the powers as proposed in the draft Criminal Justice (NI) Order 2007, support was expressed for the provision as a means of restricting minor’s access to alcohol. The Northern Ireland Assembly supported the proposals subject to advance publicity being delivered and an EQIA being undertaken in light of the NI Human Rights Commission’s comments. NIHRC comments related to safety of participants and the need for informed consent. A number of responses to the consultation, particularly from children and young people’s groups, expressed similar views. Others, particularly members of the licensed trade, considered the proposals were based on powers of entrapment and expressed concern that staff could be the victim of an attack from someone who they had refused to serve.

In response, the legislation was adjusted to include the written consent of both the young person involved and a parent before a test purchasing exercise can be undertaken. The Secretary of State was also required to issue guidance on how to exercise these powers highlighting the importance of ensuring the health and safety of participants and avoiding any implication of entrapment. The Government welcomed the Assembly’s support and undertook to produce a revised EQIA assessment on the powers including guidance principles.

This report now provides the results of the Government’s consultation on a revised EQIA assessment and guidance principles.

3. General comments

Introduction

Four topics emerged which could be classified as “general comments”: some additional welcoming of the powers not previously logged; and, to the contrary, a question about the need for any test purchase powers at all. Another took the opportunity to re-visit the underpinning policy and legislation. A number of procedural points about how the consultation itself was undertaken were also raised.

Responses

Whilst the consultation was specifically in relation to an EQIA assessment two further responses **welcomed the proposals** for test purchase powers as part of a wider range of initiatives to reduce the availability of alcohol to children. One response agreed that the proposed powers, supplemented by the recommendations of the NI Assembly to publicise in advance and to develop operational guidelines, would address and respond to their concerns regarding problems associated with young people and alcohol. Another agreed with the proposals response noting that sufficient resources should be allocated to ensure that the proposed powers are used effectively.

In the alternative, one response noted that there was **no convincing explanation** of why these powers were necessary and recommended that the legislation should not be commenced. In a similar vein another challenged the underpinning policy and legislation.

Three responses focused on the **consultation process** stressing the importance of and asking for further detail regarding consultation with children and young people on the proposals. Another commented on the need for an easy read version of the consultation and one asked for details of the system used to analyse responses.

Government response

The Government welcomes the additional **support** provided by a number of respondents and affirms its view that these powers are required and appropriate.

In relation to **challenges to the need and appropriateness of the legislation**, Chapter 5 of the consultation document clearly demonstrated the problem of under-age drinking in Northern Ireland - surveys showing between 60% and 80% of young people taking drink; average age at first drink 11.9 years; almost 400 children and young people being treated for alcohol misuse.

Indeed since the publication of the EQIA consultation, results from the District Policing Partnership (DPP) Public Consultation Survey during February 2008 has confirmed that under age drinking is a concern for communities across Northern Ireland. When asked 'What do you feel are currently the biggest policing problems in your District Council area?' 49% of respondents included underage drinking and 48% cited young people causing a nuisance among their greatest concerns. (A copy of the results from the survey may be found on the NI Policing Board website using the following link <http://www.nipolicingboard.org.uk/news/article.htm?id=8948>.)

Chapter 7 of the consultation document showed the importance of the legislation and demonstrated the difficulties in securing convictions for under-age sales. Chapter 8 demonstrated the successful use of similar powers already in existence in England and Wales.

In terms of **consultation processes**, the consultation exercise was conducted in accordance with Cabinet Office guidance and the statutory duties under Section 75 of the Northern Ireland Act 1998. The Equality Commission's publication '*Let's Talk, Let's Listen, Guidance for public authorities on consulting and involving children and young people*' was also used.

In overall terms, the consultation paper was circulated to over 400 individuals and bodies including a number of organisations with a specific child-focus including the NI Commissioner for Children and Young People, the Children's Law Society, the NI Youth Forum and Include Youth. A list of the bodies who received the written consultation is attached at Annex A.

The NIO also contacted a range of smaller youth groups identified through the Participation Network, (an organisation sponsored by government to effectively engage children and young people in public decision making) in an attempt to ensure we spoke directly with young people themselves. Youth leaders were contacted to explain the proposals for test purchase and to offer to meet with young people to hear their views. Few of the groups contacted had any particular interest in discussing the proposals for test purchase but with the assistance of Include Youth we organised two consultation group meetings of young people from North Belfast. One group was from the Protestant community and one from the Catholic community; both had a balance of boys and girls and were made up of 14-16 year olds. The results of these young person focus groups are included in this report on responses.

In terms of **easy read** we previously provided an Easy Read paper highlighting all the changes proposed by the Criminal Justice (NI) Order 2008 (including the alcohol powers in the Order and which was accessible from our website through the EQIA consultation) but we also provided a straightforward one page summary of the proposals for the discussions.

In terms of **analysis of responses** all those received were treated with the same regard and weighting and were considered alongside our own legal analysis and advice and were treated on their individual merits. We have tried to address all of the issues and concerns raised by respondents in this report on responses.

In conclusion, the Government's view is that the problem of under-age purchase of alcohol exists and is significant and that a proper consultation process was conducted.

4. Comments on the Equality Impact Assessment

Introduction

The Equality Impact Assessment aspect of the consultation built on the original screening form and impact assessment contained in the overarching EQIA on the draft Criminal Justice (NI) Order 2007. That assessment concluded that there was no significant adverse differential impact arising from the test purchase powers and that a full EQIA was not required. In light of representations made during consultation on the draft Order a full EQIA was subsequently carried out.

The EQIA concluded that the powers were of benefit to the public as a whole across all section 75 groups and that they would benefit young people as a whole by reducing access to and problems associated with alcohol. Young people participating in the scheme would do so voluntarily with full personal and parental consent. Schemes would be carried out safely, fairly and would be based on a set of key principles contained in Government guidance.

Responses

Six responses commented specifically on the Equality Impact Assessment.

One response did not believe that statistics on the Belfast City Council's test purchase operations in relation to other age-restricted products (cigarettes, solvents etc.) - and used in the EQIA to demonstrate that test purchasing already exists and operates in other areas without difficulty - illustrated success. They considered that the statistics and successes provided by test purchasing in England and Wales should not justify test purchasing in Northern Ireland. Another response asked for further clarification on Operation Alcopop – a test-purchase approach previously adopted by PSNI.

Three responses stated that they were not satisfied that mitigating steps taken by Government were sufficient to address any impact on participants. Government's view was that any impacts on the relatively small numbers that might be involved would be justifiable in terms of the greater and beneficial impact this will have for society.

Government Response

In terms of ***statistical information***, the Government has looked again at the data available from similar schemes and is content with their findings. Under-age purchase, consumption and related anti-social behaviour remains a problem regularly in the media and frequently raised at – for example – District Policing Partnerships. Chapter 8 of the consultation showed that 45% of on-licences and 31% of off-licences were selling to minors at the start of the powers being available in England and Wales. A couple of years later these had fallen to 29% and 20%. Supermarket compliance increased in a shorter period from 50% to 83%. No difficulties around safety or welfare of participants were identified. Information on Operation Alcopop may be found on the PSNI website.

http://www.psnipolice.uk/index/media_centre/press_releases/pg_press_releases_2004/pr_2004_june/pr_080604_police_take_measures_to_combat_anti_social_behaviour.htm

In terms of ***mitigating steps***, earlier paragraphs of the EQIA as published explored the potential adverse impacts on young people. All were identified during the earlier consultation and our assessment was that where concerns about the impact on young people had been identified we had taken a number of steps we had taken to mitigate these impacts. Steps to mitigate these impacts included a review of the operation of test purchase schemes both locally and in Great Britain and amendments to the legislative proposals to include the young person's consent.

We also included a statutory requirement for the Secretary of State to produce guidance on the powers. And as a result of the current consultation, Government has now produced its guidance for undertaking and participating in alcohol test purchase exercises. A copy of the Secretary of State's guidance – dealt with more fully in the next section of this document - is available on the NIO website www.nio.gov.uk.

In conclusion, Government considers that the test purchase schemes already in operation locally and in Great Britain are both safe and successful and that

the statistics demonstrate a positive impact on under age sales practice. And that, coupled with the additional requirements in law, this statutory guidance addresses the concerns that have been expressed.

5. Comments on the Guideline Principles

Introduction

A series of Guideline Principles were included with the EQIA in the consultation document to allow Government to publish guidance for the use of police in using the test purchase powers. The guidance principles covered a number of areas: welfare, safety, consent and selection of participants as well as test purchase operations including publicity and working with the licensed trade.

Responses

Five responses commented on the Guideline Principles for the operation of test purchase exercises.

In overall terms one response considered test purchase operations to be in breach of Article 3 of *ECHR* prohibition of torture, inhuman or degrading treatment and 3 responses noted that procedures need to be in line with the UN Convention on the Rights of Children.

Three responses asked for more specific guidelines on *consent* including: the need for fully informed consent; explanations of potential risks and benefits; and competence of minors in consenting – some might have literacy or other problems. The young people focus groups – most of whom would not want to “help” police - were not prepared to volunteer. Five responses asked for more detailed guidance on *welfare considerations* to ensure the safety of young people taking part in test purchase operations. Robust safeguards; identifying and recruiting young people; and the potential to be called as a witness were mentioned. Possible retaliation or punishment attacks against young people if they were identified whilst taking part in test purchase operations were mentioned.

Government Response

It is the Government's view that the powers as provided are *ECHR compliant* and in line with the UN Convention on the Rights of Children. Fundamental to that position is the fact that participation in test purchase operations is entirely voluntary and requires written consent of the young person and their parent or guardian. Schemes already operate in Great Britain as do parallel schemes locally to detect under-age sales of cigarettes and solvents.

The proposed Guidance document further enhances this position and addresses *consent, as well as welfare and safety* issues. Amongst the key features are:

- The safety and welfare considerations of participants are paramount. The best interests of the young person will be a primary consideration.
- Participants must not be put at risk or placed in danger as a result of participating in the test purchase scheme
- Participation in test purchase operations must be entirely voluntary, without inducement, and must be on the basis of written consent of the young person and their parent(s)/guardian(s).
- Participants can withdraw from the scheme at any time.
- Police should be fully trained in how best to conduct safe, effective, and fair test purchasing operations and practice must be based on human rights compliant operating procedures and protocols.
- Where appropriate, test purchase exercises should be announced in advance and there should be no attempt to actively mislead sellers.

A number of other principles are included in the Guidance including guidance on the selection of participants, protection of identities and further guidance on test operations.

In conclusion it is the Government's view that the Guidance Principles are valid, suitable for publication, and form a solid foundation on which procedures can be built.

6. Related matters and Alternative Policies

Introduction

The consultation made reference to existing powers already available alongside the test purchase powers. It also highlighted wider strategies that are in place to prevent alcohol misuse. A number of respondents chose to comment on these and related issues.

Responses

Four respondents took the opportunity to comment on such matters: some considered that the range of powers already available to police are more than adequate; others asked for further consideration of alternative policies. Comments and/or suggestions included:- the feasibility of schemes used in other jurisdictions for tackling sales to minors should be researched; internet sales would still present a problem; better education and community supports as a more positive way to address needs young persons needs in terms of recreation should be undertaken.

One response recommended that the legislation should not be enacted until PSNI has proved through strict guidance and training. The young people focus groups also commented on the importance of positive relations with police - many had negative relations – and that building trust was essential. Advertising campaigns and “naming and shaming” licensed premises were suggested.

Government Response

In terms of **statutory powers**, police have already been making significant use of powers of confiscation under the Confiscation of Alcohol (Young Persons) act 1967 and under the Public Processions (NI) Act 1998. A considerable amount of alcohol was seized around the July marches and by way of a number of general and targeted exercises in recent months. In September of this year, for example, PSNI announced the results of

'Operation Snapper' their largest ever initiative to tackle underage drinking in public.

The operation took place during the school summer holiday period targeting hot-spot public areas throughout all eight police districts to confiscate alcohol from underage drinkers and person drinking in public places in contravention of Council Bye-laws. Across Northern Ireland, officers confiscated over 10,000 items of alcohol; referred 293 young people to Youth Diversion Officers; and referred 169 persons to local councils, for contravening laws on drinking in public places. Preventing purchase in the first instance will be an important development and a test purchase power will begin to close that gap.

In terms of **wider strategies**, Chapter 6 of the EQIA set out the high priority given to prevention and early intervention treatment and support provided for young people in the DHSSPS New Strategic Direction for Alcohol and Drugs 2006 to 2011 and provided some detail of ongoing work within the criminal justice system to restrict availability of alcohol to young people. PSNI has also 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 and the test purchase power will be a further method of reducing access, preventing alcohol related problems and protecting the young.

In terms of **training and implementation**, our Guidance Principles stress the importance of officers - and participants – being fully trained in how best to conduct safe, effective, and fair test purchasing operations. PSNI are already researching best practice in other jurisdictions and ensuring that full training will be in place.

We recognise the importance of publicity in terms of implementation – indeed it was a specific recommendation of the NI Assembly in supporting these powers. Publicity in itself will play an important part in preventing attempted purchasing. The intention is to prevent sales happening as much as it is to detect them and publicity around test purchase powers – both generally and in

local areas where schemes may be mounted – will be important. Publicity will be to the benefit of young people and to retailers in preventing under-age sales.

In conclusion, it is Government's view that current powers are being used but that they will be enhanced by the availability of a test purchase power. A strategic approach to alcohol misuse is already in place. And training, implementation and publicity requirements will be fully met.

7. The Way Forward

In conclusion, the Government thanks all of those who contributed to the consultation on a test purchase of alcohol EQIA and Guidance Principles. The consultation has provided an important and beneficial in allowing a critical stock-take of the powers before they are commenced.

In reviewing the problem, there is no doubt that under-age and public drinking is a problem across Northern Ireland. Social surveys show that to be the case; it is a problem which regularly appears in the media; and one which is frequently raised at district policing levels. Linkages are frequently made between disorder, crime and alcohol consumption. Young people themselves are increasingly demonstrating alcohol-related problems.

Reducing the capacity for young people to purchase alcohol illegally will have positive benefits for all. Benefits to society in reducing anti-social behaviour and disturbances; benefits to the Health Service; and benefits to young people themselves in terms of their personal health.

In reviewing the **proposals** it remains true that similar powers already exist and are very successfully deployed in Great Britain. And similar test purchase operations already operate locally in respect of other age-restricted products. All are ECHR compliant and there has been no evidence of unsafe practices. Figures from GB demonstrate the significant impact such powers can have on alcohol sales compliance.

In terms of the **representations** made Government is of the view that the publication of the Secretary of State's Guidance on test purchase of alcohol schemes will address any remaining concerns. Many of the comments/suggestions submitted following this consultation exercise have been incorporated into the proposed guidance document.

The Government already accepted recommendations from the NI Assembly and suggestions for change from respondents following the initial screening

consultation exercise in November 2007. Two specific changes were made to the draft legislation. The first provided a requirement in law for the written consent of the parent and young person participating in any test purchase scheme. The second created a statutory requirement for Government to publish guidance for police. That guidance has now been produced and is available on the NIO website www.nio.gov.uk.

In conclusion, the Government's view is that test purchase powers are an important extension of current legislation to tackle under-age drinking. The powers will not provide the complete solution – a range of actions are already possible and a number of more far-reaching strategies are also in place – but tackling the problem of under-age sales will have a contribution to make.

The Government is therefore publishing the Secretary of State's guidance on test purchase of alcohol and will now move to commence the statutory powers.

**Northern Ireland Office
December 2008**

LIST OF BODIES CONSULTED

Criminal Justice Agencies

Probation Board for Northern Ireland
Police Service Northern Ireland
Northern Ireland Prison Service
Northern Ireland Court Service
Public Prosecutions Service Northern Ireland
Youth Justice Agency

District Councils

NI Government Departments

Office of the First Minister and Deputy First Minister
Department of Agriculture and Rural Development
Department of Culture, Arts and Leisure
Department of Education
Department for Employment and Learning
Department of Enterprise, Trade and Investment
Department of the Environment
Department of Finance and Personnel
Department of Health, Social Services and Public Safety
Department for Regional Development
Department for Social Development

NI Political Parties

Representative Organisations

Age Concern
Amnesty
AnMuniatober
Barnardos
Belfast Medical Association
Chinese Welfare Association
Coalition on Sexual Orientation
Committee on Administration of Justice
Community Development and Health
Community Foundation
Community Relations
Confederation of Community Groups
Deaf Youth
Disability Action
Equality Commission Northern Ireland
Extern
Falls Community Council
Fermanagh Women's Group
Gay Lesbian Youth
Gingerbread

Help the Aged
Human Rights
ICC
Include Youth
Interfaith
Islamic Centre
Law Centre
Law Commission
Mandarin Speakers
MENCAP
Mental Health Commission
Methodist Church
Multi cultural Resource Centre
NI Association for Mental Health
NI Community Relations Council
NI Housing Executive
NI Human Rights
NI Muslim Families
NI Pakistani Association
NIACRO
NICCY
NICEM
NSPCC
Office of the Oversight Commission
Policing Board
Polish Welfare
Presbyterian Church
Prison Fellowship
Prison Reform Trust
Quakers Service
Queer Space
RNIB
RNID
Save the Children
Victim Support NI
Victim and Survivors Trust
Women's Aid
Youth Council for NI
Youth Forum
Youth Net