

A PRACTICAL GUIDE TO TEST PURCHASING

**A practical guide for those organisations involved in the
conduct of test purchasing operations involving young people
and the sale of age-restricted products**

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<u>FOREWORD TO THE GUIDE</u>	

The original Code of Practice for test purchasing was published in 2002; it was an attempt to bring together the practice of the day and updated the original Home Office guidance contained in circular 17/1992.

Changes in particular to the alcohol licensing legislation have prompted a significant growth in the number of test purchase operations carried out by some Local Authorities and has also encouraged partnership working with other organisations, most notably, the Police. Other significant changes include an increase in the availability and use of Proof of Age Cards by young people, which again has an impact upon the nature of test purchase operations. There have also been a number of decided legal cases in this area.

The Guide brings together current thinking and practice and seeks to establish a benchmark for future operations.

The use of this Practical Guide to Test Purchasing is endorsed by the Home Office and the Trading Standards Institute.

This Guidance applies to England and Wales. Separate but linked guidance will apply in Scotland.

SUMMARY OF MAIN CHANGES

For ease of reference, the main changes to the original 2002 code are outlined below:

- I. "Under age" means any age up to the age at which sales are permitted for the product by the legislation;
- II. Under certain circumstances , young people may be employed and therefore paid for their participation in the operation;
- III. In limited exceptional circumstances , young people may be permitted to answer untruthfully about their age when attempting a test purchase;
- IV. It is recommended that Officers are checked by the Criminal Records Bureau prior to participating;
- V. It is recommended that Risk Assessments are carried out ; especially where test purchase operations are made at on-license premises;
- VI. Covert equipment may be used. Subject to risk assessment, it is not essential for an officer to be present in the premises ;
- VII. Inclusion of updated information relating to Covert Human Intelligence Sources (CHIS).

SECTION 1

1. INTRODUCTION

- 1.1 Local authorities have responsibility for the enforcement of legislation relating to the sale of age-restricted products such as tobacco, alcohol, knives and fireworks.

The participation of young people in test purchasing operations forms a valuable part of the local authority strategy designed to assess and maintain compliance with the legislation that deals with age restricted products (see Annex 1).

Test Purchase operations are designed to complement the overall enforcement programme dealing with age restricted sales and should not be viewed in isolation.

Increased compliance with age restricted legislation serves to protect the health, safety and welfare of young people and the communities in which they live and helps to prevent anti-social behaviour.

- 1.2 The Guide will be maintained on the LACORS website. Local Authorities will be advised of any amendments via email notification. The Guide will be regularly reviewed to take account of legal developments and updated practices employed by local authorities.

SECTION 2

2. OVERVIEW

2.1 Many Local Authorities have adopted test purchase operations as a part of their overall strategy to assess and improve compliance with legislation that controls the sale and supply of age restricted products. Other activities undertaken by Local Authorities to promote and / or improve compliance include:

- Carrying out programmes of education by means of publicity, business seminars, production of guidance material, visits, inspections etc;
- Implementation of Proof of Age Schemes, many of which are now PASS¹ accredited.

2.2 It is acknowledged that decisions around specific enforcement policies and actions will necessarily reflect local needs and priorities. This Guide is intended as a basis to assist in such local decision making. LACORS expects that all enforcement activities should be reasonable and proportionate given the circumstances and that the actions are undertaken in order to secure compliance with the legislation.

¹ "PASS" refers to the Proof of Age Standards Scheme which seeks to accredit legitimate Proof of Age schemes that meet established criteria

SECTION 3

3. OPERATIONAL CONSIDERATIONS

3.1 Risk Assessments and Criminal Records Bureau (CRB) checks

Local authorities that wish to carry out test purchase operations involving young people should have regard to current practice and the principles of risk assessment. These should be carried out in accordance with the Local Authorities own procedures in respect of health and safety.

This will be of particular relevance where operations are planned in “on-licence” premises.

An example of a ‘standard’ risk assessment that authorities may wish to undertake may be found at Annex 2 to this Guide. It is a matter for each Local Authority to determine how such an assessment is made.

Depending upon the outcome of any risk assessment, a decision may be made concerning the need, or otherwise, to have an officer/s present within the premises with the young person at the time of the attempted purchase.

There may be occasions where the nature of the business premises precludes the presence of an officer, for example the premises may be too small to accommodate an Officer without drawing undue attention to themselves

Where there is no Officer within the premises, other means must be provided to ensure that communication with the young person is possible; this may be by means of mobile phone for example. It may also be desirable for such attempts to be recorded, the use therefore of covert equipment is deemed appropriate but not essential.

Nothing in this Guide precludes the use of more than one young person in a test purchase operation if, in the opinion of the Authority, this increases the security of the young persons within a premises and presents a more realistic setting for the operation to take place.

It is recommended that all officers undertaking work with children and young persons complete a standard disclosure as prescribed by the Criminal Records Bureau – commonly known as a CRB check. Local Authority Social Services or Human Resource staff should be able to assist with this process.

3.2 Selection of Young People

Local authorities must ensure that the young person and their parent(s)/carer(s) are fully conversant with the nature of the test purchase operation and the possible outcomes where any illegal sale is made.

- a) Participation may be on a voluntary basis or paid but must have the consent of the young person and his/her parent(s) or carer(s) – see note on employment in section 3.5.

- b) The parent/carer of the young person must fully understand the nature of the task involved and give their written consent and example of standard documentation is provided at Annex 3 & 4.
- c) Volunteers may be sought from any source, for example, the relatives of Local Authority staff, local youth groups, schools or police cadets see also section on employment below. If, in the opinion of the Officer a young person appears to be over-eager to take part and to obtain a purchase, they should be rejected for the purposes of that operation

Whilst the actual age of the young person selected is a matter for each Local Authority to determine within the context of the particular operation the young person must be younger than the age stated for the purchase of the particular product for example, for a test purchase of cigarette lighter refills, the young person must be less than 18 year old.

- d) The young person must not look older than their age. It is acknowledged that child development is not an exact science; however, the young person should be representative of their age group.

A useful test may be drawn from Section 146 the Licensing Act 2003 where part of the defence states “nobody could reasonably have suspected from the individual's appearance that he was aged under 18”. If therefore a reasonable person assesses the age of the test purchaser to be below that stipulated for the product being tested then the young person will be deemed to be suitable for the operation.

(Note the provisions of the Intoxicating Substances (Supply) Act 1985 where in addition to the age restriction imposed, for the offence to be proved the seller must know that the product is to be used to intoxication and inhalation purposes).

Consideration should also be given to the clothing, jewellery and makeup worn by the young person. The purpose is to replicate as far as possible reality, therefore, within reason, the young person should be permitted to wear their normal clothing for visiting the particular establishment under test. For example, if the operation involves an on licensed premises, it may be normal practice for the young person to wear make up and jewellery. Nothing in this guide advocates that the young person should make a deliberate attempt to make themselves look older than they are.

- e) Where the test purchase operation is for the purpose of obtaining evidence for potential legal proceedings, then at the outset, proof of the age of the young person must be obtained. This may be in the form of the birth certificate produced by their parent or guardian, or by evidence of photographic ID such as a Passport, Driving Licence or PASS accredited Proof of Age Card.

3.3 Welfare of Young People involved in Test Purchase Operations

The welfare of the young person involved in the test purchase operation is paramount, to assist with an interpretation of what this means reference may be made to :

The **UN Convention on the Rights of the Child** (International Treaty) has been ratified by the UK Government and provides the rights and welfare principles specifically for children.

Of particular relevance is **Article 3** which provides that:

“The best interests of the child shall be a primary consideration in all actions concerning children, and administrative measures shall be appropriate to ensure each child such protection and care as is necessary for his or her wellbeing, taking into account the rights and responsibilities of his or her parents or guardians. Institutions, services and facilities responsible for the care and protection of children shall conform with the established standards, particularly for safety, health, the number and suitability of staff, and competent supervision”

In particular:

- a) If at any time during the operation the young person indicates that he/she does not wish to continue, or he/she show signs of distress, the operation must be halted immediately
- b) If, whilst in the care of the officer the young person is injured or suffers loss or damage to his/her property, the incident must be reported to the parent/guardian and the appropriate Local Authority senior officer without delay.

3.4 Briefing of the young person

The test purchase will, as far as possible, be made in the same manner as a member of the public would seek to make a purchase, however there are some particular considerations that must be applied to test purchasing operations and thus the young person must be trained prior to any operation taking place:

- a) They must be told as far as is reasonably possible exactly what to say and what not to say;
- b) For routine test purchase operations, the young person must be told to answer any questions that the seller may ask about their age truthfully;
- c) In exceptional circumstances, the Local Authority may consider whether it is appropriate to undertake test purchase operations where the young person is instructed not to answer truthfully any questions relating to their age posed by the seller.

This may be considered in cases where the Local Authority has credible evidence for example from Police, Community Safety Wardens, CCTV, covert surveillance or other credible and identifiable source, that a

specific premises is selling age restricted products to young persons that are underage AND that the action of the seller is always to ask the young person their age. Given that test purchasers will answer truthfully, the seller avoids making a sale whereas, had the young person not answered truthfully a different outcome may have ensued.

In such exceptional circumstances, where it is clear that illegal sales are taking place and that the seller is not taking all reasonable steps to avoid the commission of the offence, the Local Authority may determine that this course of action is appropriate in order to prove breaches of the legislation and ultimately to gain compliance with the legislation.

If a Local Authority determines that alternative action is required for a particular premise, then a risk assessment must be carried out and the reasons for the decision must be documented;

- d) It is not recommended that the young person produce their own genuine PASS accredited Proof of Age card or other such document if they are asked to produce it by the seller. This may reveal the identity of the young person to the seller which is not desirable. The young person should be instructed to state that "I don't have it with me" or some other similar phrase. Young people should not use fake Proof of Age cards;
- e) If the initial request to purchase a product/s is refused, the young person must be told not to attempt to persuade or coerce the seller to make a sale. They should leave the premises and return to a predetermined location.

3.5 Definition of Child and Employment

The Education Act 1996, Section 558 defines a child as "any person who is not over the compulsory school age" thus any person under the age of 16 years and still in full time education is deemed to be a child. It follows therefore that where the young person is deemed to be a child, their involvement in test purchase operations is not considered to be employment by virtue of the Children and Young Persons Act 1933, Section 30(1). Such a child may not be in the paid employment of the Local Authority.

Where the young person involved in the test purchase operation is over 16 years of age and has ceased full time education they may be employed and paid by the Local Authority for the purposes of the operation.

Note: Regard should be had to the Working Time Regulations 1998. A young worker is defined as someone who has attained the age of 15 years but not 18 years and is over compulsory school age (Education Act 1996), such young workers may work and be paid for up to 8 hours a day and up to 40 hours per week.

Consideration should be given at the planning stage of test purchase operations to the hours that are worked by the young person whether they are employed or not, particularly where visits are to be made to licensed premises where the

opening hours may be later than those of non-licensed premises. This should be agreed with the parents/carer.

Nothing in this Guide precludes an authority from paying reasonable expenses to any young person engaged in assisting an Authority with test purchase operations. This may include travel, subsistence and a gratuity (for example a voucher or token) to the young person.

3.6 Working with other agencies

It is recognised that whilst the majority of test purchase operations are carried out by Local Authority Trading Standards Services staff, there may be occasions when other agencies are involved, notably, but not exclusively, the police and employees of the National Lottery operator.

Where joint operations are planned, it is recommended that a memorandum of understanding is agreed between the organisations at the outset such that roles and responsibilities are clear. It is further recommended that the partner organisations agree to the use of this Guide as the standard to be adhered to for the operation.

SECTION 4

4. LEGAL REQUIREMENTS & CONSIDERATIONS

4.1 Evidence from young people

Consideration should be given at the outset to the likelihood of the operation giving rise to legal proceedings being instituted by the Local Authority (or the Police). It is recommended that the operation be organised in such a way as to avoid the young person being called as a witness. As a general principle a witness statement need not be taken from the young person. The evidence of any sale will be provided by the officers where they accompany the young person whilst he/she attempts to make a purchase.

4.2 Test Purchasing and CHIS

The Human Rights Act 1998 (HRA), the Regulation of Investigatory Powers Act 2000 (RIPA) regulate use of undercover officers by the police and other enforcement agencies, for test purchasing or other functions.

Part II of RIPA provide a statutory basis to safeguard against challenges under Article 8 of the European Convention on Human Rights (ECHR). They create a system of authorisations for various types of surveillance and the conduct and use of covert human intelligence sources (CHIS).

A young person will be acting as a CHIS or 'source' under section 26(8) of RIPA if he/she:

- a) Establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraph (b) or (c);

- b) Covertly uses such a relationship to obtain information or to provide access to any information to another person;
- c) Covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.

There are therefore unlikely to be RIPA implications where a young person is used to carry out a test purchase from retail premises, as the young person does not establish or maintain any relationship with the seller.

This is clarified further in a letter dated 17 December 2004 written by Simon Watkin of the Home Office Covert Investigation Policy Team: A full copy of the letter may be found at Annex 5 to this guide.

The guidance relates to the authorisation and tasking of minors undertaking retail test purchasing and the legal basis for their conduct and that of their handlers.

It is particularly worth noting that: "Ultimately only the courts can interpret legislation with any authority. However it is the view of the Home Office that, in the majority of instances, alcohol test purchasing by persons under 18 years of age is not conduct to which Part II of RIPA need be applied. Any use of persons aged under 18 to make test purchases must nonetheless be subject to risk assessment and must take account of the safety and welfare of the child."

Whilst the young person is therefore not deemed to be a CHIS, it may still be considered good practice to follow the requirements of the Regulation of Investigatory Powers (Juveniles) Order 2000 (SI 2000 no. 2793) (RIP(J)O) i.e. to ensure that:

- The safety and welfare of the young person child has been fully considered;
- The officer is satisfied that any risk has been properly explained to, and understood by the young person; and
- A risk assessment has been undertaken, covering the physical dangers and the moral and psychological aspect of the young persons deployment.
- A record is kept of the operation

4.3 **Entrapment and the Gathering of Evidence etc.**

Entrapment in relation to the conduct of a test purchase operation must be considered by those seeking to gather evidence of offences. This is of particular relevance for example where the matter of a young person lying about their age as part of the test purchase operation is considered (see section 3.4) .

In the light of the ECHR, HRA, RIPA, together with section 78 PACE which deals with the circumstances in which evidence is obtained and its effect on the fairness or otherwise of any proceedings, those involved in the planning and conducting of test purchasing exercises will need to have regard to:

- a) The avoidance of inciting, instigating, persuading, pressurising or wheedling a person into committing an offence that, otherwise, would not have been committed;
- b) The requirements for gathering/retaining relevant, admissible and sufficient evidence – an “unassailable” record of events – in order to prove the commission of an offence and to ensure that a fair trial takes place;
- c) The necessity of ensuring that any interference with the right to privacy, of any person affected by the activity, is lawful; in particular the need for public authorities to consider whether it is conduct which could be authorised under RIPA;
- d) Other specific issues, such as legislative provisions (e.g. section 149(2) of the Licensing Act 2003 where a test purchase of alcohol by a person under eighteen years of age must be at the request of a constable or an inspector of weights and measures).

4.4 **Appeal Cases**

There have been a number of appeal cases concerning test purchase operations including:

- *Teixeira de Castro V Portugal* (1998) 28 EHRR 101
- *Tesco Stores Limited v Brent LBC* [1993] 2 All ER 718
- *Hereford and Worcester County Council v T & S Stores Plc* (1994) 93 LGR 98
- *LB of Ealing v Woolworths Plc* [1995] Crim LR 58
- *R v Loosley Attorney Generals Ref.(No3 of 2000)* [2002] 1 UKHL 53
- *City of Sunderland Council v Dawson* (CO/4130/2004)
- *Davies v Carmarthenshire County Council* [2005] EWHC 464

Note: Domestic law on the subject has been shaped by these cases based on the rules for excluding evidence, in particular, section 78 of the Police and Criminal Evidence Act 1984 (PACE) - and the power to stay proceedings as an abuse of process.

4.5 **Enterprise Act 2002**

Local Authorities may wish to consider the appropriateness of using Enforcement Orders to prevent the ongoing sale of age restricted products to those that are under age. These may be sought in respect of the following age restricted products and illegal under age sales:

- Children and Young Persons Act 1933 & 1991
- Firework Safety Regulations 1997 / Act 2003
- National Lottery Act 1993
- Intoxicating Substances (Supply) Act 1985

ANNEX 1 – Current Age Restricted Legislation

Product	Age	Legislation	Penalty
Aerosol Paints	16	Anti-Social Behaviour Act 2003 (S.54)	Level 4 Fine
Air Weapons ¹	17	Firearms Act 1968 (S24)	Level 3 Fine and /or 6 months imprisonment
Alcohol	18	Licensing Act 2003 (S.146 & S.147)	Level 5 Fine
Cigarette Lighter refills	18	Cigarette Lighter Refill (Safety) Regulations 1999 (Reg.2) and Consumer Protection Act 1987	Level 5 Fine and/or 6 months imprisonment
Crossbows ²	17	Crossbows Act 1987 (S.1)	Level 3 Fine and /or 6 months imprisonment
Fireworks (excluding party poppers, caps etc)	18	Fireworks (Safety) Regulations 1997 (Reg.6) Fireworks Act 2003	Level 5 Fine and/or 6 months imprisonment
Knives ³	16	Criminal Justice Act 1988 (S.141A) as amended by Offensive Weapons Act 1996	Level 5 Fine and/or 6 months imprisonment
Liqueur Confectionery	16	Licensing Act 2003 (S.148)	Level 2 Fine
Lottery products	16	National Lottery Act 1993 (S.13) and National Lottery Regulations 1994	Level 5 Fine and/or 2 years Imprisonment
Party Poppers, caps ⁴ etc.	16	Explosives Act (S.31) Health & Safety at Work Act 1974	Level 5 fine if in magistrates court or, unlimited if taken to crown court
Pet Animals ⁵	12	Pet Animals Act 1951 (S.3)	Level 2 Fine and/or 3 months imprisonment
Petroleum	16	Petroleum Consolidation Act 1928	Level 5 fine if in magistrates court or, unlimited if taken to crown court
Solvents	18	Intoxicating Substances (Supply) Act 1985 (S.1)	Level 5 and/or 6 months imprisonment
Tattoos	18	Tattooing of Minors Act 1969 (S.1)	Level 3 Fine
Tobacco ⁶	16	Children and Young Persons Act 1933 (S.7)	Level 4 Fine
Videos, DVD and some computer/video games	12, 15 & 18	Video Recordings Act 1984 (S.11) amended 1993	Level 5 Fine and/or 6 months imprisonment

Criminal Justice Act 1982

Maximum level of Fines applicable

Level 1 = £200

Level 3 = £1000

Level 5 = £5000

Level 2 = £500

Level 4 = £2500

¹ Will be increased to 18 when amended by the Violent Crime Reduction Bill

² Will be increased to 18 when amended by the Violent Crime Reduction Bill

³ Will be increased to 18 when amended by the Violent Crime Reduction Bill

⁴ Dti almost certain to raise age to 18

⁵ Will be increased to 16 when amended by the Animal Welfare Bill – autumn 2006

⁶ Subject to consultation as of spring 2006 **MAY** rise to 18 years

ANNEX 2 – STANDARD RISK ASSESSMENT DOCUMENT – an Example

Risk Assessment for Test Purchase Operations

Risk: **High** – Stop activity until controls in place/ review action required urgently
 Medium - Tolerable risk but monitoring is required to ensure the controls are maintained
 Low – The risk is broadly acceptable

TASK STEP	HAZARD DESCRIPTION	HAZARD CAUSE	HAZARD CONSEQUENCE	CURRENT CONTROLS	FR ¹	SEV ²	RISK	STATUS OF CURRENT CONTROL	RECOMMENDATIONS	LA CONTROLS
Inviting young persons to assist with test purchasing	Personal data collected about young persons being handled insensitively	Information left lying around the office	Confidential information about young persons being divulged	Nominated officer has responsibility for collecting data which is recorded on pro-forma sheet. Sheets kept locked away in cupboard.	L	L	L	Adequate		
Assessment of young persons suitability for test purchasing	Officer will need to make personal contact with child. Opportunity for a potential abuser to single out a young person for 'grooming'.	Direct contact needed with young person to assess suitability	Young person could be abused	Officer will visit young person in presence of parent or guardian. Officer will have current CRB check. Arrangements to visit young person always made with parent/ guardian.	L	H	L	Adequate	Team leader will review assessments and check that parent/guardian were present	

¹ Frequency

² Severity

Arranging test purchasing session with young person	Officer will speak direct to young person and arrange a time and date of collection from home		Parent/guardian of young person not aware of their whereabouts.	Arrangements always made with parent/guardian	L	M	L	Adequate	
Collection of young person for test purchasing session.	Young person becomes the responsibility of TS Staff		Parent/guardian of young person not aware of their whereabouts.	Parent/guardian must always witness the young person being collected.	L	H	L	Adequate	If parent/guardian not available, test-purchasing session cancelled. Officer will take contact number of parent/guardian and give estimate of time that young person to be returned and check that proposed time is acceptable to both young person and parent/guardian.
Officer and young person alone	Officers may be left alone with young person while transporting, waiting to do purchase or after attempted purchase		Risk of allegation of abuse to young person	There are always 2 officers with the young person at all times. At least one (but normally both) officers are CRB checked	L	H	M	Adequate	One of the officers must normally be of the same sex as the young person. 3 officers required for test purchase sessions. CRB checks administered by Projects Team Leader – checks renewed every 3 years. Any allegations made by young person to be immediately reported to Team Leader.
During visit, young person left alone outside retail premises	Young person left unsupervised		Young person could be exposed to danger	2 officers always to be used – one enters retail premises prior to young person and the other waiting just outside after escorting young person to just outside.	L	H	M	Adequate	Young person always accompanied when crossing roads. Rendezvous point outside shop agreed with young person by officer waiting outside.

Young person attempts test purchase.	During test purchase, purchase refused and retailer becomes abusive or threatening to young person	Retailer angry with young person	Young person could be exposed to danger	One officer always in retail premises in close proximity to young person and able to intervene if necessary	L	H	M	Adequate	Young person always instructed that if anything goes wrong, to leave premises immediately. Officer 2 will always be waiting just outside. Young person will not work in area where they live, attend school or regularly visit.	
Matters arising while young person in care of TSS	Sudden illness	Inadequate knowledge of young person's personal details	Personal injury	Details of allergies, health conditions and current medication obtained from parent/guardian	L	H	M	Adequate	Contact number for parent/guardian held during visits	
Court action	Young person required to appear in Court	Not guilty plea entered	Stress and anxiety caused to young person	Young person fully supported throughout and not forced to attend Court if unhappy	L	H	M	Adequate	If young person is unable to face Court, removed from test purchasing list	

ANNEX 3

AGREEMENT WITH PARENT/CARER, YOUNG PERSON AND THE LOCAL AUTHORITY FOR TEST PURCHASING

The purpose of this agreement is to ensure that the parent/carer and young person are aware of what the local authority officers intend to do and what safeguards will be used.

- i. The young person will be fully trained in what to say and do. The young persons parent/carer may attend the training session(s). The young person will be told to tell the truth about their age unless previously agreed that the operation is deemed "exceptional " .
- ii. At least one officer will supervise the young person at all times.
- iii. The young person will not be asked to make test purchases in any areas where he/she is likely to be recognised.
- iv. In any exercise, the young person's welfare is paramount. The nature of the young person's involvement in the exercise will not be revealed whilst they are on the premises, unless the officer is of the opinion that their welfare is at risk.

The officer will intervene at any time where the young person's welfare is at risk.
- v. The young person's identity will not be revealed by the local authority in any subsequent publicity.
- vi. Payment may be made where the young person is employed by the Local Authority, otherwise no payments will be made for this assistance, but appropriate refreshments and travelling expenses will be provided.
- vii. This exercise may result in legal action.
- viii. The local authority will endeavour to ensure that the young person will not be required to attend court as a witness. However, in exceptional circumstances, this may still occur.
- ix. The parent/carer will provide a witness statement to confirm the date of birth of the young person, if required.

I have read and understood the above

Signed: (Parent/Carer)

Signed: (Officer in charge of exercise)

Signed: (Young Person)

Date:

Contact details of senior local authority officer

Name: **Position:**

Telephone number(s):

ANNEX 4

**PROVISION OF ASSISTANCE BY YOUNG PERSON TO THE
LOCAL AUTHORITY: PARENTAL & YOUNG PERSON CONSENT FORM**

Name of young person :	
Date of birth:	Male/Female:
Address of young person :	
Nature of exercise:	
Date and time of collection of young person and address (if different from above):	
Date and time of return of young person and address (if different from above):	
Daytime contact point for young person during above dates:	
Alternative daytime contact point for young person during above dates:	
Areas in which test purchasing exercise will take place:	

Areas to be avoided (e.g. areas where the young person is likely to be recognised):
Any special dietary/medical needs etc.:

I (name of parent/carer) am the parent/carer of the above-mentioned young person and I agree that he/she will be available to assist the local authority as detailed above. I have discussed the details of this operation with (officer's name)

Signed: (Parent/Carer)

Signed: (Officer in charge of operation)

Signed: (Young person)

Date:

ANNEX 5 - LETTER FROM HOME OFFICE COVERT INVESTIGATION POLICY TEAM



Home Office

Covert Investigation Policy Team
Crime Reduction and Community Safety Group
50 Queen Anne's Gate, London SW1H 9AT
Switchboard 0870 000 1585 Fax 020 7273 3250 Direct Line 020 7273 2181
E-mail simon.watkin@homeoffice.gsi.gov.uk

Mr Derek Allen
Chief Executive
LACORS
10 Albert Embankment
London
SE1 7SP

Our Ref

Your Ref

Date 14 December 2004

Dear Mr Allen,

ALCOHOL MISUSE ENFORCEMENT CAMPAIGN II: REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) AND RETAIL TEST PURCHASING

With the second Alcohol Misuse Enforcement Campaign starting on 17 December, I am writing to you in your capacity as Chief Executive of LACORS to offer guidance on an issue that arose from this summer's campaign. It relates to the authorisation and tasking of minors undertaking retail test purchasing and the legal basis for their conduct and that of their handlers.

Various operational policies and procedures have been adopted by police service basic command units (BCUs) and trading standards departments undertaking test purchases for the purpose of determining whether or not the provisions of section 169 of the Licensing Act 1964 are being complied with.

Some BCUs and trading standards departments have authorised children undertaking test purchases as covert human intelligence sources under section 29 of RIPA. Some have done that and also authorised directed surveillance under section 28 of RIPA to cover the conduct of an accompanying officer. Anecdotally, one BCU is said to have authorised as directed surveillance the conduct of an officer standing outside retail premises whilst the child test purchaser and an adult handler, also both subject of RIPA authorities, were inside. Equally some BCUs and trading standards departments have undertaken test purchases without RIPA authorisation or not undertaken test purchasing because of a perceived requirement for RIPA authorisation.

The Code of Practice providing guidance on the authorisation of the use or conduct of covert human intelligence sources, made under section 71 of RIPA, includes the following advice:

4.29 In some instances, the tasking given to a person will not require the source to establish a personal or other relationship for a covert purpose. ... Alternatively, a trading standards officer may be involved in the test purchase of items which have been labelled misleadingly or are unfit for consumption. In such cases, it is for the relevant public authority to determine where, and in what circumstances, such activity may require authorisation [*emphasis added*]

The reference to a trading standards officer can equally be read as a reference to a police officer or to a test purchaser aged under 18 years acting at the request of a constable under section 149(2) of the Licensing Act 2003. Equally the under age test purchase may be made in accordance with the provisions of the Licensing Act 1964 as amended by section 31 of the Criminal Justice and Police Act 2001.

Ultimately only the courts can interpret legislation with any authority. However it is the view of the Home Office that, in the majority of instances, alcohol test purchasing by persons under 18 years of age is not conduct to which Part II of RIPA need be applied. Any use of persons aged under 18 to make test purchases must nonetheless be subject to risk assessment and must take account of the safety and welfare of the child.

I am aware of the practice adopted by a number of agencies whereby a letter was sent to all local licensees in advance of AMEC I notifying them that test purchasing exercises would take place. To that extent the conduct of test purchasing is an overt exercise and due notice has been given to licensees so that they may address their behaviour (should they be contravening licensing legislation).

In each instance of alcohol test purchasing by a person under 18 years of age, on a one-off basis in retail premises accessible to the public, it is reasonable to assume that:

- (a) surveillance is not likely to be conducted in such a way as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation) within the meaning of section 26(2) RIPA, and
- (b) The test purchaser is not a covert human intelligence source because he/she does not establish or maintain a personal or other relationship with a person for the covert purpose of facilitating the obtaining of information within the meaning of section 26(8) RIPA. The one-time act of making a purchase in a shop open to the public, where there may even be no verbal exchange, cannot reasonably constitute establishing a relationship, personal or otherwise – other than a momentarily fleeting one in which no information is obtained which could reasonably constitute an interference with the privacy of the retailer.

Those assumptions are equally valid in circumstances where it is appropriate to evidence systematic breach of licensing legislation at any given licensed premises by using a number of different test purchasers each making a one-off purchase.

The Home Office does not believe that the use of a covert surveillance or evidence gathering device by either the child test purchaser or an observing officer alters the position stated above.

There are, however, some important qualifications to this advice. Firstly, different considerations would apply where the test purchaser had made previous visits to the premises, or is to make repeated visits, and had established or is to establish a relationship with the retailer prior to the attempted test purchase. Secondly, different considerations would apply if the attempted test purchase is made other than from retail premises open to the public, for example from a person's home including parts of their home adjacent to retail premises.

It is important that those individuals involved in the planning and conduct of test purchasing exercises avoid inciting, instigating, persuading or pressurising a person into committing an offence that, otherwise, would not have been committed.

Finally the use being made of the powers in RIPA is being explored as part of an ACPO-Home Office review being led by Trevor Pearce, Acting Director General of the National Crime Squad. This review of RIPA is looking at the practices and procedures in place for the conduct of covert surveillance and the use of covert human intelligence sources with a view to identifying where further guidance is needed in the application of RIPA powers. However with AMEC II starting now, I have felt it important to offer this advice to you and your colleagues now.

I have written in similar terms to the Chief Constable of Staffordshire, John Giffard, as ACPO portfolio holder in relation to alcohol issues, to the President of ACPO, Chris Fox, and to the President of the Superintendents' Association, Rick Naylor.

Yours sincerely

SIMON WATKIN