

# **A Practical Guide to Test Purchasing In Scotland**

October 2007

**A practical guide for those agencies involved in the conduct  
of test purchasing operations involving children and young  
people and the sale of age restricted products / goods**

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## MINISTERIAL FOREWORD

We all want to see a healthier Scotland with safer and stronger communities where young people have the opportunity to flourish and reach their full potential in life. Over the years Government has brought in a wide range of legislation to place age restrictions on certain goods such as fireworks, knives, solvents, tobacco and alcohol in order to ensure that we properly protect our young people from known dangers.

But we recognise that placing an age restriction on a product does not bring automatic protection and reduce the potential harm of that product. We need to take a range of measures including working with our young people to educate them about the risks and give them clear health messages. We have to alert retailers to the laws and their responsibilities in ensuring that age restricted goods do not get into the hands of underage youngsters. Importantly we require to ensure that age restricted legislation is properly enforced and that compliance levels are high if we are to offer our young people full and effective protection.

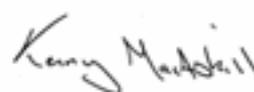
Test purchasing provides the Police and Trading Standards Officers with a useful additional tool to help prevent illegal underage sales. In order to ensure the safety and welfare of the young people taking part and a fair, effective and even handed approach to test purchasing procedures across Scotland, the Society of Chief Officers for Trading Standards in Scotland (SCOTSS) and Association of Chief Police Officers in Scotland (ACPOS) in conjunction with the Crown Office and Prosecution Fiscal Services have worked together in order to produce an operational protocol, drawing on experiences gained from the Scottish test purchasing pilots. **“A Practical Guide To Test Purchasing In Scotland”** is essential reading for local authorities and police forces undertaking test purchasing.

The Scottish Government believe active test purchasing will encourage traders to be more vigilant in exercising their legal obligations and put in place effective procedures to avoid underage sales, giving our young people the protection they deserve. We would therefore encourage all Local Authorities and Police Forces to adopt a test purchasing regime.

We would like to acknowledge the Local Authority Coordinators of Regulatory Services (LACORS) assistance in drawing up the practical guidance. We would also like to extend our thanks to Age Restricted Sales Enforcement Group for overseeing the Scottish test purchasing pilots and the production of “A Practical Guide To Test purchasing in Scotland”.



SHONA ROBISON



KENNY MACASKILL

## **Foreword to the Guide**

This document sets out the guidance to be adopted by those authorities and agencies that intend to report criminal offences based on evidence obtained through the use of children (or young people) to test purchase age - restricted goods.

This guide is based on the Local Authority Coordinators of Regulatory Services (LACORS) guidance for England and Wales, the Practical Guide to Test Purchasing (published April 2006), and its predecessor, the Code of Best Practice on the involvement of children and young people in the enforcement of legislation concerning the sale of age-restricted goods (published 2002). It has been prepared with the assistance of LACORS, and with advice from Crown Office and the Procurator Fiscal Service (COPFS), by the Scottish Executive Enforcement Advisory Group on Age - restricted Sales in consultation with the Society of Chief Officers of Trading Standards in Scotland (SCOTSS), Association of Chief Police Officers in Scotland (ACPOS), business representatives and health interest groups and agencies.

The Scottish Commissioner for Children and Young People was consulted about tobacco and alcohol Test Purchasing.

## Section 1

### 1. Introduction

- 1.1 Local Authorities and Police Forces have responsibility for the enforcement of legislation relating to the sale of age-restricted products such as tobacco, alcohol, knives and fireworks.
- 1.2 The participation of children and young people in test purchasing operations forms a valuable part of the Local Authority and Police strategies designed to assess and maintain compliance with the legislation that deals with age restricted products (see Annex 1).
- 1.3 Test Purchase operations are designed to complement the overall enforcement programme dealing with age - restricted sales and should not be viewed in isolation.
- 1.4 Increased compliance with age-restricted legislation serves to protect the health, safety and welfare of children and young people and restricts anti-social behaviour in the communities in which they live.
- 1.5 The Guide will be maintained on the LACORS website and the COPFS website. The Guide will be regularly reviewed to take account of legal developments and updated practices employed by Local Authorities and Police Forces and in consultation with all other relevant agencies. Local Authorities and Police Forces will be advised of any amendments via email notification.

## Section 2

### 2. Overview

- 2.1 Many Local Authorities and Police Forces 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 PASS<sup>1</sup> 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. It is expected that all enforcement activities should be reasonable and proportionate given the circumstances of each individual case and that such activities should only be undertaken in order to secure compliance with the legislation and not for any other purpose.

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<sup>1</sup> "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 Disclosure Scotland

- 3.1.1** Local Authorities and Police Forces that wish to carry out test purchase operations involving children and young people should have regard to current practice and the principles of risk assessment. Test purchase operations should always be carried out in accordance with the Local Authority's and Police Force's own procedures in respect of health and safety.
- 3.1.2** This will be of particular relevance where operations are planned at premises licensed to sell alcoholic liquor.
- 3.1.3** An example of a 'standard' risk assessment that authorities may wish to undertake may be found in the separate but linked document "**A Practical Guide to Test Purchasing in Scotland - Example Forms.**" It is a matter for each agency to determine how such an assessment is made.
- 3.1.4** It is anticipated that for routine test purchase operations the child or young person should be accompanied (albeit covertly) at all times by a police or local authority officer.
- 3.1.5** In the interests of maintaining the welfare of the volunteer as the paramount consideration at all times at least one covert officer should be in the premises with the volunteer wherever possible (please note the limited exception to this in section 3.5 below.) This may also be useful in terms of securing corroborative evidence for the commission of any offence.
- 3.1.6** Nothing in this Guide precludes the use of more than one child or young person in a test purchase operation if, in the opinion of the Local Authority or Police Force, this increases the security of the children and young persons within premises and presents a more realistic setting for the operation to take place. However consideration should be given in these circumstances to the possibility of two children or young people being called to court to give evidence.
- 3.1.7** All officers undertaking work with children and young persons must complete a Disclosure Scotland enhanced check. Local Authority Social Services or Human Resource staff should be able to assist with this process.
- 3.1.8** All officers involved in test purchase operations should be given training in how best to safeguard the child or young person acting as the test purchaser and to conduct effective, fair test purchasing operations.

#### 3.2 Selection of Children and Young People

- 3.2.1** Enforcement agencies must ensure that the child or young person and, where appropriate, their parent(s)/carer(s) understand fully the nature of the test purchase operation and the possible outcomes where any illegal sale is made.
- 3.2.2** Participation may be paid or unpaid but must have the consent of the child or young person and, where appropriate, his/her parent(s) or carer(s) – see note on employment in section 3.6.

- 3.2.3** Where appropriate, the parent/carer of the child or young person must fully understand the nature of the task involved and give their written consent. An example of standard documentation is to be found in “Test Purchasing - Standard Forms” document. In particular, the parent/carer and the test purchaser must be made aware that the child or young person may be required to give evidence in court. Their evidence is likely to be essential to prove the case, and while efforts will be made to avoid having to cite the test purchaser (for example through agreement of evidence), this will not always be possible. The protections offered to child witnesses under the Vulnerable Witnesses (Scotland) Act 2004 will be available to all test purchasers who are under 16 at the time when the case comes to court.
- 3.2.4** 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 child or young person appears to be over-eager to take part and to obtain a purchase, or if the officer has any other concerns about their involvement, they should be rejected for the purposes of that operation.
- 3.2.5** Whilst the actual age of the child or young person selected is a matter for each Local Authority or Police Force to determine within the context of the particular operation, the child or young person must be younger than the age stated for the purchase of the particular product.
- 3.2.6** It is recommended that volunteers should be at least 18 months younger than the legal minimum age for the purchase of the product in question. Therefore, where the legal age of purchase is 16 years for example for petroleum, lottery tickets, etc., it is recommended that the child volunteer should be 14 ½ years or younger. Similarly, where the legal purchase age of the product is 18 years for example alcohol, butane gas refills, fireworks and ‘18’ classified videos, the young volunteer should be no older than 16½ years.
- 3.2.7** The child or young person must not look older than their age. It is acknowledged that child development is not an exact science; however, the child or young person should be representative of their age group.
- 3.2.8** Consideration should be given to the clothing and make up (if appropriate) worn by the test purchaser as this may affect the determination of the age of the purchaser.
- 3.2.9** Where possible the assessment for suitability for test purchasing of the child or young person should be undertaken by a guidance teacher or similarly experienced person with personal knowledge of the young person. This assessment should be in conjunction with an experienced enforcement officer.
- 3.2.10** Where the test purchase operation is for the purpose of obtaining evidence for potential legal proceedings, then proof of the age of the young person must be obtained at the outset. This may be in the form of the birth certificate produced by their parent or guardian, from information stored on their school database, or by evidence of photographic ID such as a Passport, Driving Licence or PASS accredited Proof of Age Card.

### **3.3 Welfare of Children and Young People involved in Test Purchase operations**

- 3.3.1** 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:

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

**3.3.3** 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:

- i) If at any time during the operation the child or young person indicates that he/she does not wish to continue, or he/she show signs of distress, the operation must be halted immediately
- ii) If whilst in the care of the officer the child or young person is injured or suffers loss or damage to his/her property, the incident must, where appropriate, be reported to the parent/guardian and the appropriate Local Authority senior officer or senior police officer without delay
- iii) The decision of the officer responsible for the volunteer’s welfare should be final with regard to any matter relating to the use of the volunteer.

### **3.4 Briefing of the child or young person**

**3.4.1** 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 child or young person must be trained prior to any operation taking place:

- i) They must be told as far as is reasonably possible exactly what to say and what not to say;
- ii) For routine test purchase operations, the child or young person must be told to answer any questions that the seller may ask about their age truthfully. They should always give their correct age if asked. In addition, if asked whether there is anyone with them, the child or young person must be told to identify the official present.
- iii) It is not recommended that the child or 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 child or young person to the seller, which is not desirable. The child or young person should be instructed not to carry such documents and to state that “I don’t have it with me“ or some other similar phrase.
- iv) Dependant on the type of test purchase operation, the child or young person may be asked to confirm that they do not have any money or target product on their person before a purchase is attempted.

This should be confirmed by asking him/her to turn out their pockets in front of two officers. The officers should then give the test purchaser a specific amount of money to be used for the test transaction. The money may be marked in some way so that it can be retrieved as evidence.

- v) If the child's or young person's initial request is refused, he/she must be told not to attempt to persuade or coerce the seller to make a sale.
- vi) The child or young person should be instructed that if their initial request for the product is refused, he/she should leave the premises and return to a predetermined location.

### **3.5 Additional Operational considerations**

- 3.5.1** The anonymity of the child or young person is an important consideration during test purchases. They should not be asked to make test purchases in an area where they are likely to be recognised, such as near their home, school, club, place of work etc.
- 3.5.2** Colour photographs may be used in legal proceedings showing the appearance of the child or young person. Such photographs should be taken to clearly illustrate the height of the child or young person, perhaps against a height chart. Photos should be taken on the day of the proposed transaction and as near to the transaction/activity time as possible, given operational considerations. Officers may wish to consider requesting a copy of the retailer's CCTV tape with the relevant purchase on it in addition to any other evidence, although depending on the legislation being enforced the retailer may refuse such a request.
- 3.5.3** The child or young person should be supervised at all times. A minimum of two officers should accompany the child or young person during the exercise although this may not be such a strict requirement for young people older than 16. One officer, ideally of the same sex as the child or young person, should be responsible for the young person's safety and welfare for the duration of the exercise.
- 3.5.4** Wherever practical one officer should enter the premises before the young person. The officer should locate him/herself in a position where he/she can clearly observe and hear the attempted purchase, and if possible where the test purchaser can see them. The test purchase volunteer should not appear to be with the officer.
- 3.5.5** In certain circumstances it may be impractical for operational purposes for an officer to be in the premises at the same time as the young person (e.g. where a trader only sells when no adults are present). In these circumstances the test transaction may only go ahead if after a strict full assessment of the situation no significant additional risk to the young person is identified. (It is envisaged that these additional risks are likely in premises such as nightclubs and busy bars but they may not be present in corner shops or leisure facilities for example).
- 3.5.6** An officer should not approach a seller until the child or young person has left the premises, unless the seller acts in any way that the officer believes may be prejudicial to the volunteer's welfare. In these circumstances the officer should declare himself or herself, ask the child or young person to leave the premises to a predetermined safe place and then explain the situation to the seller.
- 3.5.7** Officers should consider the age and maturity of the child or young person during the test purchase exercise and ensure that any hazards or risks are assessed and

minimised in that context. For example where a child has to cross a busy road then the officer should escort him/her to within a safe distance of the premises.

### **3.6 Employment issues**

**3.6.1** A child or young person engaged in a test purchase exercise on behalf of a Local Authority or Police Force on the basis set out above would not be deemed to be “employed” by virtue of Section 28(1) of the Children and Young Persons (Scotland) Act 1937. However, any restrictions on hours of working or other conditions imposed by any relevant legislation or child employment bylaws should be considered during the planning stage of an exercise. The actual duration will depend on the age of the child or young person, his/her wishes and parental/carer’s consent.

**3.6.2** The Local Authority or Police Force may provide reasonable expenses or gratuities to a child or young person engaged in assisting with test purchase operations. These may include travel expenses, subsistence, vouchers or a cash payment.

### **3.7 Working with other agencies**

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

**3.7.2** 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 and considerations**

#### **4.1 Evidence from Children and Young people**

**4.1.1** It is likely that the test purchaser’s evidence will be required to prove the case. However if the exercise is likely to result in prosecution efforts will be made, in line with Crown Office policy in relation to child and vulnerable adult witnesses, to avoid the test purchaser having to give evidence at any trial, for example by exploring other sources of evidence and/or seeking agreement of evidence.

**4.1.2** After each test purchase attempt where a sale is made, a witness statement will be taken from the child or young person and the reason for doing so fully explained. Where the test purchaser is under 16 their parent or guardian should be present when the statement is being taken. As well as being an essential part of the evidence presented in any report to the Procurator Fiscal, these statements may also prove valuable in any subsequent re-visits or for evaluation purposes. Officers who accompany the volunteer whilst he/she attempts to make a purchase will provide the evidence of any sale.

## **4.2 Human Rights/Exclusion of Evidence**

**4.2.1** Prior to the Human Rights Act 1998 (HRA) and the Regulation of Investigatory Powers (Scotland) 2000 (RIPSA) coming into force the use of undercover officers by the police and other enforcement agencies, for test purchasing or other functions, was not regulated by statute.

**4.2.2** In Scotland, the position on exclusion of evidence is governed by the general common law rules on the admissibility of evidence in criminal proceedings which require there to be an assessment on whether the admission of the evidence will be fair to the accused. In the context of test purchasing, Scots law recognises that certain evidence of the commission of a crime is inadmissible where it has been obtained by entrapment e.g. a police officer disguising him or herself and inciting the accused to commit a crime. Such an argument is likely to succeed only where it can be said that the accused would not have committed the offence but for the inducement and was not already predisposed or willing to commit crimes of the kind involved.

## **4.3 Appeal Cases**

**4.3.1** Appeal cases in which children have been used to make test purchases include:

- *Texeira 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

**4.3.2** The above cases were decided in England. Therefore they are not binding in Scotland but some may be considered persuasive. Future amendments to this Scottish Guide will include Scottish cases of relevance for practitioners.

## **4.4 Test Purchasing and Regulation of Investigatory Powers (Scotland) Act 2000**

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

**4.4.2** A young person will be acting as a CHIS or 'source' under section 1(7) of RIPSA if he/she:

- i) 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);
- ii) covertly uses such a relationship to obtain information or to provide access to any information to another person;

- iii) covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.

**4.4.3** Even where a young volunteer is not deemed to be a CHIS, it may still be considered good practice to follow the requirements of the Regulation of Investigatory Powers (Juveniles) (Scotland) Order 2002 (SSI 2002/206) to ensure that:

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

In the vast majority of test purchase exercises, it is likely that there will be minimal risk to the young volunteer involved.

**4.4.5** The position in relation to the undercover officer who accompanies the child or young person also requires consideration as he or she may in some circumstances be regarded as conducting surveillance activities of a kind that might amount to unlawful conduct in breach of Article 8 of the European Convention on Human Rights. If this is the case then RIPSAs authorisation should be sought for such activities. While this is unlikely to be the case in most test purchasing operations the responsible authority (the police or local authority Trading Standards Officers) should review this matter on a case-by-case basis. Care should be taken not to use the same test purchasers on repeat visits to premises and to avoid test purchase transactions taking place on premises other than those to which the public have access.

**4.4.6** In the light of the ECHR, HRA and RIPSAs, together with the general common law rules on the admissibility of evidence in criminal proceedings in Scotland, those involved in the planning and conducting of test purchasing exercises will need to have regard to:

- i) The avoidance of inciting, instigating, persuading, pressurising or wheedling a person into committing an offence that, otherwise, would not have been committed - and the particular need for a child/young person test purchaser to behave as 'an ordinary member of the public' in such circumstances;
- ii) 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;
- iii) 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 should be authorised under RIPSAs;
- iv) Other specific issues, arising from particular legislative provisions.

## **4.5 Enterprise Act 2002**

- 4.5.1** Local Authorities may wish to consider the appropriateness of using Enterprise Act 2002 (Part 8) Enforcement Orders to prevent the ongoing sale of age restricted products to those who are under age. These may be sought in respect of those age related prohibitions specified in the Enterprise Act 2002 (Part 8 Domestic Infringements) Order 2003 (SI 2003/1593).

<b>Annex</b>		
<b>PRODUCT</b>	<b>AGE</b>	<b>LEGISLATION</b>
Videos	12, 15, 18	Video Recordings Act 1984 – It is an offence to supply to a person who has not attained the age specified in the rating certificate.
Cigarettes	18	<p>Children and Young Persons (Scotland) Act 1937 as amended – It is an offence to sell any tobacco or cigarette papers to a person under the age of 18. This Act also covers the sale of cigarettes from vending machines.</p> <p>Children and Young Persons (Protection from Tobacco) Act 1991 as amended – It is an offence to fail to display the statutory notice stating ‘IT IS ILLEGAL TO SELL TOBACCO PRODUCTS TO ANYONE UNDER THE AGE OF 18’ at premises where cigarettes are sold by retail.</p> <p>The amendments to these Acts are contained in the Smoking, Health and Social Care (Scotland) Act 2005 (Variation of Age Limit for Sale of Tobacco and Consequential Modifications) Order 2007 and are effective from the 1<sup>st</sup> of October.</p>
National Lottery	16	National Lottery etc Act 1993 - National Lottery Regulations 1994 – It is an offence for a National Lottery ticket to be sold by or to a person who has not attained the age of 16.
Offensive Weapons	18	Criminal Justice Act 1988 (as amended by the Offensive Weapons Act 1996 and the Police, Public Order and Criminal Justice (Scotland) Act 2006) – It is an offence to sell knives, razor blades and other bladed articles to any person under the age of 18. (Exemptions include folding pocketknives if the cutting edge is less than 7.62 centimetres long and razor blades that are permanently enclosed in a cartridge or housing). It is not an offence to sell a knife or a knife blade to someone if a) the person is over 16 and b) the knife or blade is for domestic use.
Fireworks	16	Explosives Act 1875 - It is an offence to sell gunpowder to any person ‘apparently’ under 16. Caps, cracker snaps, novelty matches, party poppers, serpents and throwdowns - are specifically excluded from the definition in the 1997 Regulations BUT may not automatically qualify under the 1875 Act. Note also that the restriction is still to those ‘apparently’ under 16.
	18	Consumer Protection Act 1987 Fireworks (Safety) Regulations 1997 – It is an offence to supply any firework to any person under the age of 18.
Spray Paints	16	Section 122 of the Antisocial Behaviour etc (Scotland) Act 2004 introduced a ban on the sale of spray paint to under 16s in Scotland.
Petroleum	16	Petroleum (Consolidation) Act 1928 - It is an offence to sell or dispense petrol to a person under the age of 16.
Cigarette Lighter Refills	18	Consumer Protection Act 1987 Cigarette Lighter Refill (Safety) Regulations 1999 – It is an offence to supply a cigarette lighter refill canister containing butane or a substance with butane as a constituent part to any person under the age of 18

Alcohol	18	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 the assistance of children for this purpose if they are authorised to do so under section 105 of the Licensing (Scotland) Act 2005 otherwise the test purchasers will themselves be committing an offence.
Crossbows	18	Crossbows Act 1987; It is an offence for a person to sell, or let or hire a crossbow or part of a crossbow to a person under 18. (Or for a person under 18 to buy a crossbow) therefore for test purchasing purposes it is illegal for authorities to seek the assistance of children for this purpose as the test purchasers will themselves be committing an offence. (The age restriction of crossbows changed from age 17 to 18 as of Autumn 2007).
Air Weapons	18	Custodial Sentences and Weapons Act 2007. It is an offence for a person to sell, or let or hire an air weapon to a person under the age of 18. The Violent Crime Reduction Act 2006 raised the age for owning an air weapon from 17 to 18 years. The provisions came into force from 1 October 2007.

**A Practical Guide to Test Purchasing  
In Scotland**

**Example forms for use by those engaged in age  
restricted sales test purchasing**

October 2007

**Example forms for those agencies involved in the conduct of test  
purchasing operations involving child or young persons and the  
sale of age restricted products / goods**

## **Test Purchasing Example Forms**

- 3-4 Overall Consent & Risk Assessment Form**
- 5 Nightly Consent form**
- 6 Pre-visit Premises Risk Assessment**
- 7 Checklist for Child or Young Person Volunteers**
- 8 Specimen certificate for participation**

## Test Purchasing

### Overall Consent and Risk Assessment Form

<i>Child or young person's Name</i>	
<i>Date of Birth</i>	
<i>Child or young person's Home Address</i>	
<i>Child or young person's Home Tel No.</i>	
<i>School</i>	

### Part A - Consent Form Details

**Note: The purpose of this agreement is to ensure that the parent/guardian and child or young person are aware of what the Officers intend to do. Detailed below are some of the safeguards involved**

1. The child or young person will be fully trained in what to say and do. The child or young persons parent/guardian may attend the training session(s). The child or young person will be told to tell the truth at all times.
2. At least one (same sex) officer will supervise the child or young person at all times.
3. The child or young person will not be asked to make test purchases in any areas where he/she is likely to be recognised.
4. In any exercise, the child or young person's welfare is paramount. The nature of the child or young person's involvement in the exercise will not be revealed whilst the child or young person is on the premises, unless the officer is of the opinion that the child or young person's welfare is at risk. The officer will intervene at any time where the child or young person's welfare is at risk.
5. The child or young person's identity will not be revealed in any subsequent publicity.
6. Appropriate refreshments and travelling expenses will be provided.
7. This exercise may result in legal proceedings.
8. All efforts will be made to avoid that the child or young person will not be required to attend court as a witness. However, in exceptional circumstances, this may still occur.
9. The parent/guardian will provide a witness statement to confirm the child or young person's date of birth, if required.

- 10.** A parental consent form will be required on each occasion where the child or young person is involved.
- 11.** In the interest of the child or young person's well being each officer involved in the exercise has had a Disclosure Scotland check carried out.

*Part B - Risk Assessment*

Under *The Health and Safety (Young Persons) Regulations 1997*, where a child or young person is younger than the minimum school leaving age (MSLA) the following information should be made available to a parent of the child or young person. This following is the 'relevant and comprehensible' information required under the Regulations.

A Risk Assessment taking into account the child or young person's-

- Inexperience
- Lack of awareness
- Immaturity

**Significant hazards to which the child or young person may be exposed during the course of the test-purchasing programme of visits are:**

Risk of discomfort at being involved in an adult working environment; risk of verbal abuse from shopkeeper; risk of child or young person being involved in Court proceedings; risk of being recognised with any resultant repercussions.

**The control measures in place to minimise the risks associated with the above hazards are:**

The child or young person will be trained carefully and has had every facet of the operation explained. The child or young person will be supervised at all times during the operation. A 'same sex' officer will accompany the child or young person during the operation, their only role being the safety and welfare of the child or young person. An officer will intervene in any circumstances where the shopkeeper becomes abusive. If the child or young person, at ANY time, feels that they do not wish to continue, then they will be immediately returned to their home/school. The child or young person will never give any details that will identify him/her. The child or young person will always test purchase outwith their own area and never under circumstances where there is a risk of them being recognised. The child or young person will be fully briefed on what to say, and will ALWAYS tell the truth, other than to requests to reveal their identity. Each officer involved in the exercise has had a Disclosure Scotland check carried out.

*I consent to my child or young person being involved in tobacco test purchasing and I am satisfied that an appropriate risk assessment has been made and that appropriate training will be given.*

**Signed:** \_\_\_\_\_ **(Parent/Guardian)**

**Signed:** \_\_\_\_\_ **(Officer in charge of exercise)**

**Signed:** \_\_\_\_\_ **(Child or young person)** **Date:** \_\_\_\_\_

Contact details of Senior officer

**Name** \_\_\_\_\_ **Position** \_\_\_\_\_

**Telephone number(s)** \_\_\_\_\_

## Provision of assistance by child or young person for test purchasing

**Nightly consent form**

<b>Name of child or young person:</b>	
<b>Date of birth:</b>	
<b>Address of child or young person:</b>	
<b>Nature of exercise:</b>	
<b>Date and time of collection of child or young person and address (if different from above):</b>	
<i>Date and time of return of child or young person and address (if different from above) :</i>	
<b>Daytime contact point for child or young person during above dates:</b>	
<b>Alternative daytime contact point for child or young person during above dates:</b>	
<b>Areas in which test purchasing exercise will take place:</b>	
<b>Areas to be avoided (e.g. areas where the child or young person is likely to be recognised):</b>	
<b>Any special dietary/medical needs etc:</b>	

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

**Signed: ..... (Parent/Guardian)**

**Signed: ..... (Officer in charge of Operation)**

**Signed: ..... (Child or young person)**

**Date:** .....

**Pre- test purchase visit risk assessment sheet**

Premises:	Date:
Address:	Time:
	Date of Intended Visit:

<b>Type of Premises (please circle)</b>	<b>Do the premises have (please circle)</b>
Mobile	Surveillance camera
Vending	Tobacco notice
Fixed independent (non buying)	Proof of age materials
Fixed buying (e.g . Spar, Alldays)	
Takeaway/Chip Shop	
Supermarkets	
Petrol Station	
Other (please state) .....	

**Identified liaison meeting point:**

**Target product price:**

Diagram of the premises, showing entrance, exits, counter, target product, reference points etc.



### **Checklist for child or young person volunteers test purchasing age restricted products**

1. If at ANY time you no longer wish to be involved, even if that occurs while out doing the test purchasing, then it will stop and you will be returned to your school or home.
2. There will be an officer accompanying you (called your 'buddy') whose only role will be to ensure your wellbeing
3. You will never test purchase in your own area and must say if you feel there is a chance you may be recognised if test purchasing in a certain shop.
4. At all times during the test purchase operation your identity will not be revealed other than among the officers involved.
5. You should dress as you normally would at the time of day when the test purchasing is taking place. Clothes, hair and make-up should not be used to make you appear older or younger than your current age.

6. As far as possible you will be told what to say to the shopkeeper. You should always tell the truth to the shopkeeper, including if he asks you whether you are involved in test purchasing. If the shopkeeper asks whether anyone is with you, you may identify the officer(s) in the shop. You must never answer questions that will reveal your name or address. Simply tell the shopkeeper you have to go and leave the premises.
7. Upon entering the shop you should not have money other than that given to you by the officers and you should not have any products already on your person. You will be asked to hand over any money or other products before the test purchasing (to the buddy). For the purposes of any court case you will be asked to turn your pockets out before and after each test purchase.
8. You will be photographed on the day of the test purchasing.
9. You will be provided with any meals drinks and snacks.

Thank you for volunteering for test purchasing. The Trading Standards Service welcomes your assistance.

Contact numbers during test purchasing –
--



*This Certifies that:  
John Smith*

.....

while attending XXXXXXXXXX

Volunteered and assisted XXXXXXXXXXXXXXXXXXXX as a covert test purchaser of XXXXXXXX. This activity was conducted as part of ongoing enforcement in relation to age restricted products in order to protect the health of children and young people and the effects of anti social behaviour on the wider community.

XXXXXX performed his/her duties under this project both professionally and efficiently.

*Signed*

.....

*(on behalf of XXXXXXXXXXXXXXXX)*

*Date: XXXXXXXXX*