



## **Introduction**

The regulation of age restricted products and services is an important and emotive issue. In June 2011, LBRO consulted on a broad set of principles outlining responsibilities and reasonable expectations with respect to age restricted products and services, with the intention that it would underpin a proposed code of practice on test purchasing for regulators and enforcers.

Feedback was received from a wide range of interested parties, and this document sets out LBRO's response to the comments made. All the responses that can be made public will be available online. LBRO will take account of them in the development of the code in early 2012.

Many respondents raised issues or offered ideas which were not within the scope of the consultation exercise – predominantly around legislative simplification, penalties and product placement. We received many helpful suggestions on these topics. These issues will be shared with the relevant government departments and LBRO will work collaboratively with them regarding changes in these areas.

Overall, it is apparent that the proposed principles broadly reflect the responsibilities and reasonable expectations of the key parties involved in this challenging area, and that they provide the context for the forthcoming code of practice.

However, opinion is more varied when specific elements of enforcement – such as the use of particular tactics – are examined. Each topic has been analysed in detail and a summary of responses has been made for each question in turn.

## Process and Respondents

On 23 June 2011, LBRO published a consultation on age restricted products and services.

Prior to this, LBRO conducted a series of seminars and discussion groups on the topic of age restricted sales enforcement. Over 200 representatives from business, local authority and other key stakeholder groups participated in these events. For the initial public consultation, LBRO opted to invite comments on a set of principles in order to engage and collaborate with a wider audience than can reasonably be reached through seminars, discussion panels and working groups.

Working with key stakeholders, we will develop a code of practice on test purchasing for regulators and enforcers for consultation in early 2012.

The consultation closed on 16 September 2011. We thank everyone who took the time and trouble to comment. The 86 written responses break down as follows:

Local authorities	23
Regulatory services / groups	12
Public sector partnerships	11
Businesses	10
Business organisations	8
Police authorities	7
Professional bodies	5
Private citizens	3
Health organisations	3
Research organisations	2
Miscellaneous	2

## **Key Findings and Consequent Actions**

Our consultation was concerned with determining the suitability of the draft principles framework to guide all those with a role to play in preventing access to restricted products and services by young people. Some questions requested views on issues to be addressed in the forthcoming code of practice.

We have addressed the responses as follows:

The principles framework is broadly appropriate for stakeholder groups, but we have added a set of reasonable expectations for enforcement authorities.

We will refer comments and suggestions outside of LBRO's remit to the relevant government department, such as those concerning the education of young people and parents.

We will work with trade associations and the professional bodies to ensure businesses, particularly SMEs, have information about where they can access quality and affordable training resources.

The forthcoming code of practice will set out a process for businesses to receive notifications which will take full account of concerns about safeguarding the welfare of test purchasers.

We will work to ensure that enforcement agencies have continued support and guidance on the Regulators' Compliance Code, the principles of better regulation and other statutory responsibilities.

## Questions and Answers

**Question 1: Do you agree with our analysis that the most significant contributions to meeting the objectives of regulation in this area can be made by young people and their parents, and by businesses?**

The response was mixed. Some respondents agreed that the home environment was very important in determining how young people develop an understanding of the risks and harms associated with the use of age restricted products and services. Those with a specific interest in alcohol noted that research has demonstrated that most young people access alcohol through family and older friends, rather than the retail trade.

Some respondents stated that regulators themselves were responsible for delivering regulatory outcomes. Others expressed concern that the statement did not fully recognise the contribution of local authorities.

**Question 2: Do you agree with the proposition that the role of regulators is to encourage, support and reward responsible approaches to compliance, and to take firm action where businesses do not act responsibly?**

Responses to this question detailed how regulators prioritize education, support and encouragement and enforcement action. Most respondents agreed that the role of regulators is to employ some combination of these approaches in an effort to achieve compliance.

A very small number of respondents disagreed, saying that the role of the regulator is only to enforce the law.

**Question 3: Do you agree that these points reflect the responsibilities of young people or are reasonable expectations for them to have in relation to age restricted products and services?**

There was broad agreement on the principles setting out responsibilities and expectations of young people. However, a minority of respondents expressed a view that young people may not be mature enough to effectively bear those responsibilities.

A number of respondents expressed a view that young people are not effectively deterred from attempting to access products and services they are too young to have, as they do not perceive any serious repercussion should they be caught.

Others pointed out that the Personal, Social and Health Education module typically used to educate young people on the dangers associated with age restricted products and services is not mandatory, and suggested that such education be fully embedded into the national curriculum. While not within the scope of this consultation exercise, these views will be shared with the relevant government departments.

**Question 4: Do you agree that these points reflect the responsibilities of parents or are reasonable expectations for them to have in relation to age restricted products and services?**

There was broad agreement. However, a very small minority expressed a view that it was not always realistic to expect parents to uphold these responsibilities. While not wishing to idealize the role that parents play, it is important that this set of principles sets a high standard of expectation to work towards.

Several respondents highlighted ignorance among some parents of both the law (particularly around children and alcohol) and the dangers associated with unsupervised access to and use of age restricted products and services.

This confusion about the detailed requirements of the law regarding children and alcohol is also apparent from the responses to this consultation, and LBRO will share these findings with the relevant bodies within government with the goal of increasing public awareness of the law.

**Question 5: Do you agree that these points reflect the responsibilities of businesses or are reasonable expectations for them to have in relation to age restricted products and services?**

In commenting on the principles relating to retailers and other suppliers, some respondents pointed out that the responsibilities seemed to favour large businesses. In order to ensure that small businesses are dealt with fairly in both the principles and the forthcoming code of practice, we have taken on board these comments and made some changes to the language used in this section.

LBRO received many comments on the reasonable expectation (F4) which proposed that businesses effectively managing their own compliance should be given an opportunity to address any issues themselves initially. Some interpreted the language used to be biased towards large businesses that tend to employ extensive bespoke compliance systems, while others responded that any failure resulting in an illegal sale indicated that compliance procedures were inadequate. Taking these views into account, this principle has been redrafted to focus on the need for proportionate responses to both the business and the nature of the failure, while working with the grain of any embedded compliance systems where possible.

Several respondents also raised the issue of staff training and the possibility of a national training standard for business and for retail employees. It is recognized that quality training for business and their employees is important towards reducing young people's access to age restricted products and services. LBRO will work with trade associations and the professional bodies to ensure businesses, particularly SMEs, have information about where they can access quality and affordable training resources.

**Question 6: What requirements should the code of practice make in respect to notifications following a test purchase?**

A large majority of respondents supported the practice of notifying businesses of the result of a test purchase, whether or not a sale is made, to help the business understand how its own controls are working. A small number stated that they did not feel the role of regulators was to provide positive feedback on complying with the law.

Nearly all respondents stressed the need to protect the identity of the test purchaser.

The code of practice will set out a process for businesses to receive notifications which will take full account of the need to protect the test purchaser's identity.

**Question 7: Do you agree that these points reflect the responsibilities of employees or are reasonable expectations for them to have in relation to age restricted products and services?**

Many comments on the principles applied to business also have relevance to retail employees, and we have revised the principles in both sections to ensure they are complementary.

Some respondents emphasized that retail employees do face real dangers at times, when refusals result in verbal abuse or a physical attack on the employee. Also, not all of those responsible for sales of age restricted products and services in a retail environment are staff, particularly in small family businesses, and this is reflected in the revised language.

**Question 8: Do you agree that these points reflect the responsibilities of regulators and enforcers in relation to age restricted products and services?**

We received many comments from regulators and enforcers on the principles relevant to their role. Several respondents noted that this was the only stakeholder group without a set of ‘reasonable expectations’ to follow responsibilities.

In this area, local authority regulatory services are already bound by the Regulators’ Compliance Code, the principles of better regulation and other statutory responsibilities not detailed in this principles document. LBRO will work to ensure that enforcement agencies have continued support and guidance on these responsibilities.

Taking on board the strength of opinion on ‘reasonable expectations’, we have included a section on reasonable expectations for regulators to reflect the comments made.

**Question 9: Do you agree that it would be helpful to structure the code around the different considerations that apply in these two scenarios? What would be the key characteristics of each approach in terms of planning, conduct and outcomes?**

**Question 10: If test purchasing is being used only to gather information how should businesses be engaged as part of the process?**

**Question 11: Where test purchasing is used as an evidence gathering tool, should its use always be intelligence-led? If so, is there a need for guidance on what constitutes ‘sufficient’ intelligence, both in terms of quality and quantity?**

While a minority of respondents found the clear delineation of two forms of test purchasing relevant and helpful, the majority did not see the value of drawing distinctions between the different modes. The forthcoming code of practice will not distinguish between two modes of test purchasing, but will provide support and guidance about prioritization, assessing risk and utilizing evidence-based interventions appropriately.

**Question 12: In what circumstances do you think it would be acceptable for young people conducting test purchases to lie about their age? Should this practice be specifically authorised?**

**Question 13: Do you think that the use of ‘false’ id by young people conducting test purchases is ever a legitimate practice? Should this practice be specifically authorised?**

It is apparent from the responses that a majority of respondents recognize the need for guidance on the use of allowing test purchasers to give a false age during a test purchase. Many local authorities have found existing guidance helpful; however, it is evident that this guidance is not always followed. There was also considerable support in the responses for *authorization* of this tactic.

The largest group, making up 50 per cent of responses on the subject, felt that the ability to create a scenario where the young test purchaser could give a false age could be useful in certain controlled circumstances. A significant number of local authority respondents indicated that they used this technique in particular circumstances and welcome the existence of a guidance framework to govern it.

In these cases, many suggested that *authorization* for such a tactic would be desirable, but there was less agreement as to which role or office would be most appropriate.

Just over 20 per cent, however, said that false ages should not be used in any circumstances. Respondents in this group frequently cited the responsibility of enforcers to consider the welfare of underage test purchasers and to set a good example for young people by insisting on honesty.

In contrast to the use of false ages as a tactic, the use of false identification had very little support among respondents and was largely thought to be useful for targeting business education only.

Several respondents pointed out a need for additional support for retailers and employees to be able to identify false identification. The Home Office is expected to publish guidance on false identification in early 2012, and the forthcoming code of practice will reference this document.

**Question 14: Do you feel that there are circumstances in which a single sale or test purchase provides sufficient evidence to warrant enforcement action? If so, what are these circumstances?**

Most respondents agreed that, except in the most egregious or wilful cases of failure, a single sale is better dealt with through other regulatory interventions. The principles support a firm response where appropriate and proportionate, and this was generally supported by both regulators and business.

## List of Written Responses Received

Action on Smoking and Health (ASH)  
Action on Smoking and Health (ASH) Wales  
ASDA  
Association of British Bookmakers  
Association of Chief Trading Standards Officers  
Association of Convenience Stores  
Balance Northeast  
Brighton and Hove City Council  
British Beer and Pub Association  
British Independent Retailers Association  
British Retail Consortium  
Caerphilly County Borough Council  
Cambridgeshire County Council  
Camelot Group  
Cancer Research UK  
Care for the Family  
Central Bedfordshire Council  
Cheshire and Merseyside Public Health Network  
Cheshire and Merseyside Tobacco Alliance  
Cumbria County Council Trading Standards  
Cumbria Tobacco Alliance  
Derby City Council  
Devon Trading Standards  
East of England Trading Standards Association  
East Riding of Yorkshire Council  
Fresh – Smoke Free North East  
Gloucestershire County Council  
Hampshire Constabulary  
Hampshire County Council  
Heart of Mersey  
Home Retail Group  
Imperial Tobacco Group PLC  
James Chilton  
Joseph Rowntree Foundation  
Knowsley Metropolitan Borough Council  
Lancashire Constabulary  
Lancashire County Council  
Leeds City Council  
Local Government Group  
London Borough of Enfield  
London Borough of Havering and NHS Outer North East London Partnership  
London Borough Islington  
London Trading Standards Association  
Manchester City Council  
Middlesbrough Council  
Moto Hospitality Limited  
MRH Retail  
National Casino Industry Forum  
Newcastle City Council  
Norfolk Constabulary  
Northamptonshire County Council  
North East Trading Standards Association

Plymouth Trading Standards  
Proof of Age Standards Scheme (PASS)  
Rhondda Cynon Taf County Borough Council  
Rob Fullilove  
Safe Durham Partnership  
Safer Stockton Partnership  
Salford Trading Standards  
Slough Borough Council  
Smokefree Southwest  
Solihull Metropolitan Borough Council  
Somerset County Council  
South West of England Regional Co-ordination of Trading Standards (SWERCOTS)  
Staffordshire Police  
Thames Valley Police  
The Bingo Association  
The Cooperative Group Ltd  
Tobacco Free Lancashire  
Trading Standards East Midlands  
Trading Standards Institute  
Trading Standards North East Branch  
Trading Standards North West  
Trading Standards South East  
Under Age Sales Ltd  
Union of Shop, Distributive and Allied Workers (USDAW)  
Wales Heads of Trading Standards  
West Mercia Police  
West Yorkshire Trading Standards Service  
Wigan Council  
William Hill PLC  
William Read  
Wiltshire Police  
Wine and Spirits Trade Association  
Wm Morrison Supermarkets PLC  
Wolverhampton City Council