

Better Regulation of Age Restricted Products:

A RETAIL VIEW

Prepared by business representatives in response to a call from the Local Better Regulation Office for an independent and evidence-based review of the regulation and enforcement of age restricted products.

This report makes recommendations to assist the government in reducing access to age restricted products and cutting costs by:

- **Making the law simpler and fairer through deregulation**
- **Recognising and supporting business compliance**
- **Promoting consistent, fair and effective enforcement**

25th August 2010

Foreword

To the Board, LBRO

In response to your request that businesses that sell age-restricted products should provide more detailed views on the law and enforcement practices governing those products, I am pleased to enclose the report of the review group.

The report sets out a number of unanimous recommendations in relation to the relevant legislation and the manner of its enforcement. These are summarised on pages 5 and 6.

The review group considers that the recommendations collectively have the potential to simplify and improve the law, to introduce greater consistency and proportionality and thereby to ease the burdens on business and enforcers. They would also bring law and practice in the field of age-restricted sales into line with better regulation principles and modern enforcement practice. We see resultant financial benefits for both the public and private sectors.

Whilst all the recommendations are important, I commend in particular the development of a single piece of legislation to replace the plethora of existing laws and regulations (which has obvious potential cost and deregulatory benefits) and the creation of a statutory enforcement code between all the relevant parties, including the police, and which has at its core a risk based approach to enforcement rather than one centred on prosecution (which offers the prospect of delivering cost savings to enforcers and to business)

On behalf of the review group I urge that LBRO takes forward our recommendations with the relevant enforcement bodies and departments of state. I confirm the readiness of review group members to assist in this endeavour. I believe that if the retail sector is embraced by policy formers, regulators and enforcement agencies in partnership as part of the front line in addressing problem areas, rather than being treated as the cause of those problems, a more efficient and effective regime can be achieved.

I take this opportunity to thank: first the members of the review group who have given so freely of their time, expertise and experience, secondly those representatives of government departments, agencies and enforcers who met with us to share their perspectives, and thirdly those employees of LBRO who have provided technical input.

Geoffrey Budd MBE
Chair

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Executive Summary and Recommendations

In late 2009 the Local Better Regulation Office¹ set up a Business Reference Panel made up of representatives of most of the UK trade associations with an interest in the regulations enforced by local authorities. At the first meeting of the Panel members were asked to identify the issues falling within the LBRO remit that were of most concern to them. The top issue raised by a number of the trade associations was enforcement of legislation surrounding age-restricted products.

In response to this concern LBRO invited the trade associations involved to carry out a review and prepare an independent, evidence-based report for LBRO setting out their concerns and potential solutions.

The review group is representative of most sectors of retail selling age-restricted products from newsagents, hardware, pet shops, cookshops and convenience stores through to the pubs, major supermarkets and on line retailers. The list of review group members is at Annex A.

The review group took evidence from a wide range of bodies including the Home Office, Department for Culture, Media and Sport, Department of Health, Department for Business, Innovation and Skills, Trading Standards Institute, Local Authorities Coordinating Body on Regulatory Services (now Local Government Regulation) and Camelot. The review group also considered documentation and surveyed the experiences of members of the organisations involved. The results of the survey are given at Annex E.

This report summarises the review group's findings, recommends a number of ways in which they could be resolved and indicates to LBRO how they might be taken forward.

Summary

There are 13 separate categories of age-restricted products sold by the retailers involved in this review. These include alcohol, tobacco, aerosol spray paint, knives and fireworks. The sale of these products is governed by 18 separate pieces of legislation that span the responsibilities of six government departments. This legislation has developed piecemeal over time and as a consequence there are a number of different rules that apply, particularly in terms of offences and defences. The complexity of the legal requirements increases the training and vigilance required by businesses that sell more than one product category which our survey found many retail businesses do. This has obvious cost implications for businesses and enforcers.

From a legal perspective, the law does not provide defences for employees that can be relied upon to secure fairness. The available defences lack a satisfactory 'reasonableness' test, which would provide fairness for those staff that make an isolated, honest mistake. In addition there is no consistent deterrent for prospective under-age purchasers of these products as the focus of penalties is very much on the seller – only alcohol has a penalty for the buyer attempting to buy under the required age. Similarly, other than for alcohol and Intoxicating substances, often referred to as solvents, there are no direct offences for those buying on behalf of young people ('proxy purchasers').

. 1. lbro.org.uk

Businesses are investing significantly in compliance through training, point of sale systems, display material and monitoring by ‘mystery shopping’ in support of their due diligence controls. Our survey indicated at a conservative estimate that the amount invested by businesses in the retail and pub trade on compliance is in the region of £20 million each year². The efforts made by businesses, large and small, to comply with age-restrictions should be recognised and built in to enforcement approaches, to save public money and also to engender trust between businesses and enforcement bodies.

Enforcement practice makes extensive use of a technique known as ‘test purchasing’, where a young person (often under the permitted age) is sent into a retail outlet under the supervision of enforcement personnel to attempt to buy age-restricted products. Retailers’ faith in the technique has been undermined, primarily through the widely held perception that it is not used in a fair way and is seen as entrapping businesses into offences that would not ordinarily have occurred.

The Enforcement Concordat and the statutory Regulators Compliance Code in England set out principles of good enforcement namely that enforcement activity should be transparent, accountable, proportionate, consistent and targeted.³ The retail sector considers that it has not been given adequate opportunity to contribute to the scope and content of guidance on test purchasing to implement these principles in relation to age-restricted products.

A number of principles should underpin the use of test purchasing. It should be intelligence-led, and should not, save in the most exceptional circumstances, use lying or other deceptive practices. Furthermore the principles should include clear and transparent selection criteria for youngsters and prompt feedback to businesses should be provided as a matter of course irrespective of the result of the test purchase. In short the review group would like to see more adherence to the Hampton principles as enshrined in the Regulators Compliance Code by those charged with enforcing under-age sales legislation.

Businesses are widely engaged in community-based, partnership approaches to tackle the antisocial behaviour issues posed by the under-age use of these products. There is evidence that suggests integration of enforcement activities into these approaches leads to better results. Businesses are staffed by people from their local communities and can therefore play a key role in supporting achievement of policy objectives provided that there is dialogue and mutual trust.

Recommendations

To make the law simpler and fairer through deregulation:

1. The current piecemeal legislation should be consolidated into a single piece of legislation to provide simplicity and greater consistency across the product categories with standardisation of offences and defences. This would provide a framework by which any new controls can be easily implemented in a consistent way to ensure future coherent

² Calculation based on cost data submitted to the review group survey, further details at Annex E. This gave a simple average of £5.81 invested per employee. This figure multiplied by the number of employees in the pub and retail trade, estimated at 3.5 million, gives a crude estimate of the total cost of compliance as £20 million. See also footnote 5 & 6.

³ <http://www.berr.gov.uk/policies/better-regulation/improving-regulatory-delivery/implementing-principles-of-better-regulation/the-regulators-compliance-code>

development of the law. The legislation should include a binding code of practice (see recommendation 10)

2. A simple general due diligence defence should be available for retail employees across all product categories to provide fairness where a genuine and reasonable mistake in judging age has been made.
3. In order to provide a better deterrent all persons aged 14+ should be liable to a risk of sanction for deliberately attempting to obtain products to which they are not legally entitled.
4. Offences of buying on behalf of a young person, and conversely for a young person asking an adult to purchase on their behalf, should apply to age-restricted products having no justifiable use by the young person.

Recognising and supporting business compliance:

5. The compliance efforts of businesses should be fully taken into account when determining enforcement priorities and approaches.
6. Local licensing conditions should not be used to gold plate legal requirements by making “voluntary practice” mandatory as this undermines trust and deters voluntary initiative.
7. Enforcers should be encouraged to be more active in seeking opportunities to work with business and the communities in which they operate to tackle the wider agenda surrounding age-restricted products.
8. The Primary Authority system should be extended to cover all age-restricted product legislation including alcohol. Inspection plans should take retailer 'self testing' and other compliance activity fully into account.
9. Enforcers should be encouraged to develop partnerships with sectoral trade associations to provide a better communication channel to support compliance by their members including the dissemination of 'assured guidance' on which businesses should be entitled to rely.

Consistent, fair and effective enforcement:

10. LBRO should coordinate development of a binding code of practice dealing with all aspects of the use, conduct, prompt notification and follow up of test purchasing exercises with input from local authorities, police, business, government departments and consumers. The code should reflect the principles of good enforcement as set out in the Regulators Compliance Code and the Legislative and Regulatory Reform Act 2006.
11. To support business compliance efforts, businesses should always receive prompt notification of the results of any test purchasing carried out in their premises.
12. Test purchasing where lying or use of other deceptive practices is contemplated should only take place in the most exceptional circumstances and require specific independent authorisation. No independent authorisation is currently required.

1. Making the law simpler and fairer through deregulation

Overview

There are 13 separate product categories that are sold by the retailers involved in this review. These are listed in full at Annex B, and include alcohol, tobacco, aerosol spray paint, knives and fireworks.⁴

Sale of these products is covered by 18 separate pieces of legislation that span the responsibilities of six government departments. This legislation has developed piecemeal over time: for example the controls relating to fireworks stem from the Explosives Act 1875 and tobacco products from the Children and Young Persons Act 1933. As a consequence there are a number of different rules that apply.

Across all the legislation, there are penalties for the sale of products to children and young people. These include Fixed Penalty Notices, Formal Cautions or prosecutions resulting in a criminal record for individual sales staff and the business, and licence reviews.

The complexity and lack of consistency in the law is amply demonstrated by referring to Annex C which sets out the age limits, offences, defences and penalties that currently apply.

Overall the review group found the law in this area to be overly complex, inconsistent and in need of consolidation into a single piece of law governing all aspects of the sale of age-restricted products.

Does complexity matter?

Given the range in minimum age requirements, from 12 to 18, across so many product categories, retailers face a major challenge to train staff to understand and apply the rules.

The average rate of annual turnover of customer-facing retail staff is typically 30%-50%. In the pub trade staff turnover is even higher at around 60%. All staff have to be properly trained and supervised. Currently there are in the order of 600,000 staff employed in pubs and bars⁵. BRC survey information indicated that 2.9 million people are employed in the UK's 293,000 retail outlets⁶.

From the level of investment identified in the survey of £5.81 per employee, and taking into account the levels of staff turnover, a conservative estimate of the total cost of compliance for the retail and pub trade is £20 million annually⁷. Simplifying the requirements will assist retailers in achieving effective training and compliance and thereby significantly reduce costs.

Businesses invest heavily in training staff and further details are given in chapter 2.

⁴ These are the products sold by 50 per cent or more of the 42 businesses surveyed as part of the review, covering nearly 600,000 employees. For further details see Annex E.

⁵ Beer and Pub Association http://www.beerandpub.com/pub_home.aspx.

⁶ BRC Retail Stats and Info www.brc.org.uk

⁷ See footnote 2 and Annex E

A fairer defence for the sales person

The review group was unanimously of the view that the current offence and defence provisions are unreasonably harsh in respect of individual employees. Current provisions effectively criminalise people for no reason other than their making an error in judgement as to the age of the intending purchaser. The following is a typical example from a middle aged mother and part time supermarket checkout operator:

'It happened on a Friday night - I was sat at my till and was working until 9.00 as I do on a Friday. I was quite busy but coping. A girl came to my till with a 4 pack of lager. I looked at her, she said hello and smiled, I scanned the lager and asked her for £2.99, she handed me a £5 note and I gave her change and she said thank you and left. Two minutes later I was called off my checkout by the store manager and introduced to two police officers. I was told that I had sold alcohol to someone underage acting as a 'test purchaser' - I then thought must have been that girl - I was shocked I thought she was at least 21. I was cautioned and asked for comments - all I could say was that I was very sorry - I knew I'd let myself and everybody else down. I've always worked hard and never been in trouble with the law before - I cried for days. I can't explain how it happened - I've been trained - we all know about it - its raised all the time and I always ask for ID and refuse sales when I need to'.

The only defence available under the Licensing Act 2003 for example, is that the seller requested ID and that it was in all the circumstances reasonable for them to have relied on it or that nobody could reasonably have suspected from the individual's appearance that he/she was aged under 18.

To ensure fairness for retail workers a standard due diligence defence should be provided across all product categories to protect an individual where they have made a mistake in judging the age of the purchaser that a reasonable person could have made in all the circumstances of the sale.

A due diligence defence would also be able to test whether in respect of 'test purchasing', correct procedures had been followed. Test purchasing is discussed further in chapter 3.

Deterrents for the buyer

Whilst there are penalties for the *sale* of age-restricted products across all product categories, this is not replicated for the *purchase* of these products. Only alcohol has a penalty for the buyer when under the required age, which is currently up to £1000 (level 3). Therefore there is no consistent deterrent for prospective under-age purchases of these products, and the focus of penalties is very much on the seller.

The existence of a deterrent for the purchaser would in our view act to reduce the likelihood of some young people attempting purchases and also make others less confident and thus easier to identify. There is also a precedent for this under the Gambling Act 2005 penalising those aged 16+ for gambling. In the opinion of the review group all persons aged 14+ should be liable to a risk of sanction for deliberately attempting to obtain any products to which they are not legally entitled.

The review group would not favour criminalising children but the introduction of a sanction at the age threshold of 14 could help to redress the imbalance in liabilities between sellers and purchasers, introducing a greater sense of equity and consistency. The review group notes that there are no specific sanctions for lying or using fake identification.

In addition, the review group noted that apart from alcohol and solvents there are no direct offences for those buying on behalf of someone who is underage, (also known as 'proxy purchasers') which might assist in reducing demand for products for which a young person has no justified use (for instance tobacco, fireworks or butane lighter refills).

Recommendations

Making the law simpler and fairer through deregulation

1. The current piecemeal legislation should be consolidated into a single piece of legislation to provide simplicity and greater consistency across the product categories with standardisation of offences and defences. This would provide a framework by which any new controls can be easily implemented in a consistent way to ensure future coherent development of the law. The legislation should include a binding code of practice (see recommendation 10)
2. A simple general due diligence defence should be available for retail employees across all product categories to provide fairness where a genuine and reasonable mistake in judging age has been made.
3. In order to provide a better deterrent all persons aged 14+ should be liable to a risk of sanction for deliberately attempting to obtain products to which they are not legally entitled.
4. Offences of buying on behalf of a young person, and conversely for a young person asking an adult to purchase on their behalf, should apply to age-restricted products having no justifiable use by the young person.

2. Recognising and supporting business compliance

Business investment in compliance

It is clear to the review group that responsible retailers treat the issue of underage sales very seriously and invest significant time and resources to support the decisions that have to be made by their employees at point of sale millions of times each day throughout the UK.⁸

The total level and nature of investment in staff training, point of sale systems, display material and monitoring through 'mystery shopping' for example, varies according to the size and type of business.

The British Beer and Pub Association members alone have spent £8.1 million on promotion and training on 'Challenge 21' since 2008.

The members of the Retail of Alcohol Standards Group invested over £3 million in the introduction of 'Challenge 25' in 2009.

The total annual cost of compliance was nearly £4 million for the 33 businesses providing detailed cost data to the review; these businesses ranged in size from 270,000 employees to single proprietors.

Businesses can and do meet their compliance needs in many different and innovative ways. Some examples of business activities to ensure compliance are given below:

Large national petrol and convenience retailer

One example retailer has 503 company owned stores, just under half of which are company operated by 3,300 employees. All sell petrol and tobacco and a large proportion also sell alcohol and national lottery products. The annual cost of training staff and testing internal systems is estimated to be just over £500,000, with nearly £1 million stand alone investment in developing training materials. The process to ensure compliance is as follows:

- Training, made up of many different methods, for example e-learning, 1-2-1 with manager, paper based material or interactive 'guess the ages'
- Refusal book entries
- Challenges made entries
- Point of sale material, badges
- Till prompt for staff
- Challenge 25 'mystery shopper', sometimes targeted. This costs in the region of £32,000 per year.
- Senior manager 'congratulations' letter when a store passes an official test purchase.

Small pub company and licensing consultancy

Another example is a company which has 65 staff and operates in Lincolnshire and East of England. They estimate that they spend approximately £6,000 per year on staff training and external test purchasing to test their Challenge 21 policy. All employees undertake the BIIAB National Certificate for Personal Licence holders as a minimum which the company pays for.

⁸ This report provides an overview of what drives businesses to comply: 'Drivers of compliance and non-compliance with competition law', Office of Fair Trading, May 2010

Public Houses in the UK turn away between 800,000 and one million people appearing to be under the age of 21 and unable to produce required ID as part of the Challenge 21 initiative each month⁹.

Thirty of the businesses surveyed by the review provided information about the number of times per week that they requested ID before a sale and the number of times they refused a sale per week. In total these 30 businesses requested ID an estimated 341,665 times per week. On average from these 30 businesses, one in eight requests for ID resulted in a refusal.

A British Beer and Pub Association survey showed awareness of Challenge 21 among 18 to 24 year olds stood at 91% in 2008¹⁰.

Owner-operator - Tile shop - BHF-BSSA group member

A third example is a sole proprietor who runs a shop selling tiles, fitting products and accessories and runs a fitting service. Age-restricted products include bladed items and intoxicating substances. BHF-BSSA group is his only source of in depth information. The business operates to the BHF-BSSA group Knife Pack scheme and also displays a poster about solvents - which the proprietor spotted in a trade catalogue then made his own version to save cost. It does not operate electronic point of sale tills but records any sales refusal.

Supporting businesses compliance

In terms of anti social behaviour associated with under-age purchasers, nearly half of the businesses surveyed by the review had encountered verbal abuse as a result of requesting proof of age and refusing sales. A third had encountered criminal damage and just under a third had encountered physical violence.

An example of the sort of incident that can be triggered by either a challenge to produce proof of age or a refusal of sale in a typical convenience store is as follows:

This incident involved a full time Sri Lankan team member working in a central London store. At approximately 10.00pm the team member politely challenged a young man attempting to buy a bottle of wine to produce identification in line with company policy. CCTV shows the young man immediately picking up the bottle by the neck and striking the team member violently on the head with it. The team member suffered a cerebral haemorrhage and spent ten days in intensive care and a long hospital stay before being able to return to work six months later. Whilst CCTV shows the incident the young man was not known to the Police and has not been traced.

A further example occurred at a convenience store in Essex:

During the afternoon a team member challenged a young man to produce proof of age identification. He took exception to this and produced a firearm from under his jacket. The young man then spent a number of minutes brandishing the weapon and terrorising various members of staff before leaving the premises. A panic alarm button was pressed. The Police arrived after a period of thirty minutes. The young man was captured on CCTV but not known to the Police and has not been traced.

⁹ British Beer and Pub Association - http://www.beerandpub.com/pub_home.aspx

¹⁰ BBPA Research - http://www.beerandpub.com/newsList_detail.aspx?newsId=253

Businesses were asked in the review survey if they or their staff had ever refused a sale and then reported the young person to the police or local authority. 70% had not and the comments illustrate the issue from the business perspective, namely that they feel nothing is done with the information:

If fake or tampered ID is taken from an individual then our company rewards the employee with £10. A copy of the fake or tampered ID is then forwarded to the local police and licensing authority. Normally all that happens is that if we are lucky the individual is traced and a PCSO visits them at home. This does not however happen to everyone. (Pub company and licensing consultancy)

... Where young persons are refused having shown fake ID, the information is reported to the police; some [are] not interested, whilst others appear to take action. (Convenience store).

Nothing seems to happen unless there is a confrontational situation. (Convenience retailer)

In the view of the review group strong support in dealing with such behavior will make it less likely that sales will take place.

Partnership approaches

It is clear that despite the focus on retailers and test purchasing by enforcement bodies, the wider issues posed by age-restricted products remain, whether in terms of anti-social behaviour or ill-health in our communities. There is evidence however that where enforcement of age-restricted sales is integrated within wider community-focused, partnership approaches, there is greater success in tackling these bigger, societal issues.¹¹

Just under half of the businesses surveyed as part of the review had worked collaboratively with enforcement bodies to resolve societal issues arising from age-restricted products. The majority of the examples given were continuing initiatives. The examples are provided in full in Annex E. At local level there is clearly considerable multi agency work involving the business community to tackle societal problems with the engagement of businesses through for example Crime and Disorder Reduction Partnerships and Community Alcohol Partnerships. Businesses also provided ideas of approaches that could be adopted by local authorities and the Police, other than test purchasing: Some examples are given below:

More work needs to be done with the young people themselves. ... Perhaps the effects of alcohol should be brought into the National Curriculum at the age of 10 – educate them to realise the harms and effects of alcohol. The authorities should visit schools to reinforce the learning in this area. (Wholesale and retailer)

Collaboration with retail towards joint goals. ... Tackling underage access to alcohol through specific local knowledge (i.e. proxy purchasing looked at together with retail, possibly using retail CCTV with officers “working” in the store at vulnerable times to identify and deal with known proxy purchasers). Foster an environment where retail can trust enforcement and enforcement can trust retail. (Retail supermarket)

¹¹ See ‘Protecting Young People from Alcohol Related Harm’, Research by Design, April 2009 - <http://www.lbro.org.uk/docs/protecting-young-people-from-alcohol-related-harm.pdf>

I feel that my staff would respond better to a short training visit once a year from an approved body. Willingness to take part in such a scheme would indicate to the authorities the responsible retailers and help eliminate them from those less reputable businesses allowing the Police to focus on those. (General hardware retailer)

The review group took the view that the reach and visibility of these activities could be higher.

It is the opinion of the review group that enforcers need to recognise the role that businesses can play in community focused partnership approaches including the provision of:

- a communication route to young people and adults
- intelligence as to youth congregation and on specific individuals and practices, for example through reporting refused sales or suspicions of proxy purchasing.

Recognising compliance

The role of Primary Authority

The Primary Authority scheme was introduced as part of the Regulatory Enforcement and Sanctions Act 2008.¹² Its inspection plan system provides a potential route to ensuring that the compliance efforts made by a business are reflected in a more targeted approach by local authority enforcers.

Partnership working requires mutual trust and understanding. Trust requires relationships which is why the review group considers the Primary Authority relationship to be so important. If a business has confidence in its contact with local authorities it will be more willing to share its internal compliance data and systems. Three of the large, multi-site retailers on the review group have Primary Authority relationships in other areas of regulation which they currently cannot extend for example to sales of alcohol.

Given the investment made by businesses in compliance, the review group took the view that the Primary Authority scheme should be extended to cover all age-restricted products, including alcohol. This offers the recognition of business efforts to prevent under-age sales in inspection plans and enforcement activity. There is little to be gained from 'test purchasing' at public expense in a business that already funds its own scheme of a similar nature and act upon the results. This offers scope for efficiency savings and the ability to release public funds to target less responsible businesses.

It is noted that the Primary Authority scheme as currently constituted does not apply to activity undertaken by the police.

The role of Trade Associations

Trade associations are keen to play their part on behalf of their members to make it easier for them to comply with the law. For example, the BHF-BSSA group has developed and disseminated to its members a knife sales support pack based on the Home Office six point

¹² Details of the Primary Authority scheme can be found at <http://www.lbro.org.uk/lbro-projects-primary-authority.html>

knife code. The Wine and Spirit Trade Association both directly, and through providing secretariat support for the Retail of Alcohol Standards group, has been heavily involved in developing and supporting Community Alcohol Partnerships.¹³ The British Beer and Pub Association works with the EU Directorate General for Health and Consumers to develop a European Alcohol strategy and recently reaffirmed the commitment to enforcement of age limits for selling and serving drinks under the Challenge 21 scheme. The National Federation of Retail Newsagents produces guidance packs and point of sale materials for its members and provides a free helpline. The British Retail Consortium initiated development of the Proof of Age Standards Scheme (PASS) a national guarantee scheme for proof-of-age cards.¹⁴

Considerable resource efficiencies are possible if enforcement bodies were to engage more actively with businesses through their trade bodies. The review group is of the opinion that extension of the Primary Authority to trade associations acting on behalf of their members offers a valuable way to provide more proactive compliance support to a large number of smaller businesses. The development of guidance between regulators and trade associations with the assurance that acting in line with it by member businesses will be accepted by all local authorities would help to support their compliance in a cost effective manner.

The review group found a number of instances where voluntary initiatives had been seized upon by Local Licensing Authorities and turned into legal requirements by their inclusion in operating schedules as mandatory licensing conditions. Examples included requirements to participate in a Pub watch scheme or to apply a Challenge 25 scheme. Such 'gold plating' of legal requirements can undermine the trust and willingness to help on which the success of voluntary initiatives depends.

Recommendations

Recognising and supporting business compliance:

5. The compliance efforts of businesses should be fully taken into account when determining enforcement priorities and approaches.
6. Local licensing conditions should not be used to gold plate legal requirements by making "voluntary practice" mandatory as this undermines trust and deters voluntary initiative.
7. Enforcers should be encouraged to be more active in seeking opportunities to work with business and the communities in which they operate to tackle the wider agenda surrounding age-restricted products.
8. The Primary Authority system should be extended to cover all age-restricted product legislation including alcohol. Inspection plans should take retailer 'self testing' and other compliance activity fully into account.
9. Enforcers should be encouraged to develop partnerships with sectoral trade associations to provide a better communication channel to support compliance by their members including the dissemination of 'assured guidance' on which businesses should be entitled to rely.

¹³ <http://www.wsta.co.uk/Community-Alcohol-Partnerships.html>

¹⁴ <http://www.brc.org.uk/pass/default.asp>

3. Consistent, fair and effective enforcement

Test purchasing

An enforcement technique known as 'test purchasing' appears to have become almost universally applied by local authorities to enforce the law on age-restricted products.

Test purchasing is where young people, often under the legal age are sent in to premises by enforcers in order to attempt to purchase age-restricted products.

Ninety four percent of all formal enforcement challenges for underage sales were reported to be as a result of test purchases by the businesses surveyed, indicating that the vast majority of formal challenges they received resulted from use of this enforcement technique.¹⁵ Whilst based on a small number of businesses, this indicates that test purchasing is a large driver of formal challenges, and this is certainly the experience of the review group members.

Test purchasing is a controversial technique due to the widely held perception that the technique is sometimes used in an unfair way and is used to secure prosecutions rather than promoting compliance. Whilst the businesses surveyed by the review were evenly split in their opinion of test purchasing, those that did consider it to be a valid tool often heavily qualified their opinion. A cross-section of views is given below. The full set of views can be found at Annex E.

It is a valid inspection tool if it is understood that human error does not equal poor company due diligence. It would be advantageous if companies were informed of all test purchase successes as well as failures. (Food retailer)

I do not believe Test Purchasing gives an accurate reflection of any specific business, due to it being a manufactured purchase. (Convenience retailer)

I don't believe any retailer encourages sales to under age people. Sending in a person made to look 18+ undermines all the hard work we put into signs and checks. (DIY hardware retailer)

I would only consider it valid if there had been an incident or complaint about goods being sold to underage users. (General hardware retailer)

Yes if carried out correctly and not set out to 'entrap' the operator. (Brewer and Pub operator)

A theme that emerges from the comments about test purchasing is the perception that those involved are setting out to 'entrap' sales staff into committing offences that would ordinarily not have occurred.

The Trading Standards Institute advised the review group that they considered retailers had made huge advances in recent years in bringing test purchase failure rates down from 30-40 percent to only 6-7 percent, but a need was claimed to 'keep the plates spinning'.¹⁶ It is also

¹⁵ Average proportion of challenges being in respect of matters other than test purchases was 6 per cent, n=11. For further details see Annex E.

¹⁶ The Trading Standards Institute met the review group, 19 May 2010

apparent from the low failure rate claimed that activity is not rigorously intelligence led and targeted.

The review group believes that a refusal rate of over ninety percent is a very considerable achievement and that to seek to go beyond that may not be realistic, practical or cost effective.

Promoting consistency in test purchasing

Another theme emerging from the survey is lack of consistency in use of test purchasing between local authorities, a view unanimously shared by the review group members. There is also concern within many businesses that test purchasers are sometimes encouraged to lie about their age, which undermines the fairness of the technique. Some comments illustrating these points are below.

The problem with test purchases is that each authority follows different guidelines and rules so test purchasing is very inconsistent. (Wholesale and retailer)

Not where the test purchaser is told to lie. (Hardware retailer)

Promoting consistency and fairness in test purchasing is a key issue for the review group on the basis that 'compliance by consent' has been the general framework in which trading law operates in the UK. The way in which test purchasing is currently used to secure prosecutions rather than to verify compliance is seriously undermining the relationship of trust between local authority regulators, trading standards in particular, and business. The wider consequences of this are significant in that it means that retailers may become less likely to seek advice and guidance and more difficult to reach when new measures and campaigns require their assistance to implement.

It was clear from discussions between the review group and policy leads from various government departments that the latter did not see it as their responsibility to oversee or influence the application of the rules and they believed this to be a matter for local authorities and the Police rather than something they could influence.

During constructive discussions between the review group and Local Government Regulation (formerly LACORS) and with the Trading Standards Institute it became apparent that these bodies do not have the authority to remedy the situation.

The review group is convinced of the need for a binding code, to which businesses have contributed, to ensure that test purchasing is properly controlled. The review group acknowledges that since their discussion, Local Government Regulation has recognised the value of inclusion of the retail sector in production of a revised test purchasing code of practice.

In our view development of such a code should be coordinated by LBRO and be a joint enterprise between business, Local Authorities (LGR), government, Police and consumers. Such a code should embody the principles of good regulation set out in the Regulators Compliance Code and Legislative and Regulatory Reform Act 2006 and should recognise the following principles.

Principles for test purchasing

- *Intelligence-led:*
Test purchasing must be informed by tangible information on genuine underage sales relating to specific retail premises.
- *Following prudent inquiries:*
Inquiries should be made of the business or via its Primary Authority to ascertain the due diligence procedures in place and to alert the business to potential concerns. The key point is that before any test purchasing takes place, the business in question should be approached by enforcement bodies to share or confirm intelligence.
- *Use of lying and deceptive practices only in extreme circumstances:*
The group considered that use of lying or false ID during a test purchase should be restricted to very limited circumstances where genuine intelligence clearly suggested deliberate underage sales are taking place (legal experts advising the group considered that courts were likely to rule that prosecutions based on such procedures would be halted as 'an abuse of process', or that such evidence should be excluded on the basis that it was unfair). The review group considered that it would be appropriate for such activity to require independent testing of the evidence justifying its use and specific authorisation. No independent testing or authorisation is currently required.
- *Selection of individuals:*
To ensure fairness the binding code of practice should cover all aspects of the selection of individuals; height, appearance, demeanor, dress, make up etc.
- *Feedback:*
Businesses were asked in the review group's survey if they had ever been told that a test purchase had been carried out and that their premises had successfully refused a sale; nearly two thirds stated that they had not. Several businesses commented that it would be useful if companies were informed of all test purchases – successes as well as failures.
The review group shares the view that test purchasing results should be promptly notified to the business as knowledge where staff have successfully refused a test purchase will help with staff training, reward and recognition and help to raise awareness. Furthermore, the review group believes that full feedback to businesses of the results of all test purchasing activities will help to build mutual trust and understanding between businesses and enforcement bodies. The review group points to the practice adopted by Camelot, where premises are routinely notified of test purchase successes as well as failures.¹⁷

Funding of test purchasing

Several government departments have provided funding for test purchasing campaigns which have included activity on tobacco, alcohol and knives in recent years.¹⁸ Whilst it may be appropriate to use non intelligence led 'test purchasing' for market testing purposes, the review group, given the concerns raised above, questions the merit of these campaigns if they are not supported by a consistent methodology or integrated into wider, community-based approaches to tackle anti-social behavior. Such funding may encourage non intelligence-led, numbers based test purchasing activity.

¹⁷ Camelot met the review group on 16 June 2010.

¹⁸ For example the Home Office Alcohol Misuse Enforcement Campaign (AMEC) funded test purchasing activity by local authorities.

Recommendations

10. LBRO should coordinate development of a binding code of practice dealing with all aspects of the use, conduct, prompt notification and follow up of test purchasing exercises with input from local authorities, Police, business, government departments and consumers. The code should reflect the principles of good enforcement as set out in the Regulators Compliance Code and the Legislative and Regulatory Reform Act 2006.
11. To support business compliance efforts, businesses should always receive prompt notification of the results of any test purchasing carried out in their premises.
12. Test purchasing where lying or use of other deceptive practices is contemplated should only take place in the most exceptional circumstances and require specific independent authorisation.

Annex A

Members of the Review Group

Chair

Mr G. D. Budd MBE (former Company Secretary of DSG international and long standing Chair of the CBI Consumer Affairs Panel)

Representative bodies

Association of Convenience Stores (ACS),
British Retail Consortium (BRC),
BHF-BSSA GROUP Incorporating the British Hardware Federation and the Cookshops & Housewares Association
National Federation of Retail Newsagents (NFRN),
British Beer and Pub Association (BBPA).
Wine and Spirit Trade Association (WSTA),
Retail of Alcohol Standards Group (RASG),
TSI Society of Outside Local Authority Members (SOLAM),
The Petcare Association,

Individual businesses

ASDA
B&Q
Home Retail Group
Total
Tesco
The Co-operative Group
Halfords
Wilkinsons

The membership of the group represents in the region of 250,000 retail outlets.

The review has also been supported (on a without cost basis) by:

Gosschalks Solicitors
Margetts and Ritchie Solicitors
Pinsentmasons LLP

Annex B

Summary of product categories, legislation and government department

	PRODUCT	STATUTE/SI	WHITEHALL DEPARTMENT
1.	Aerosol Spray Paint	Anti-social Behaviour Act 2003	Home Office
2.	Air Weapons and Imitation Firearms	Firearms Act 1968 Violent Crime Reduction Act 2006	Home Office
3.	Alcohol	Licensing Act 2003	Home Office
4.	Butane Lighter Refills	Cigarette Lighter Refill (Safety) Regulations 1999 Consumer Protection Act 1987	Department for Business, Innovation and Skills
5.	Crossbow	Crossbows Act 1987 Violent Crime Reduction Act 2006	Home Office
6.	Caps, Cracker Snaps, Party Poppers etc.	Explosives Act 1875	Department for Business, Innovation and Skills
7.	Films and Video Games	Video Recordings Act 1984	Department for Culture Media and Sport
8.	Fireworks	Fireworks (Safety) Regulations 1997	Department for Business, Innovation and Skills
9.	Liqueur Confectionary	Licensing Act 2003	Home Office
10.	National Lottery	National Lottery etc Act 1993 National Lottery Regulations 1994	Department for Culture Media and Sport
11.	Petrol	Petroleum Consolidation Act 1928 Health and Safety at Work Act 1974	Department for Work and Pensions
12.	Pets	Animal Welfare Act 2006	Department for Environment, Food and Rural Affairs
13.	Publications (considered harmful to children)	Children and Young Persons (Harmful Publications) Act 1955	Home Office
14.	Sale of Knives and Articles with a Blade or Point	Offensive Weapons Act 1996 Criminal Justice Act 1988	Home Office
15.	Solvents	Intoxicating Substances (Supply) Act 1985	Home Office
16.	Tobacco Products	Children and Young Persons Act 1933 (as amended) Children and Young Persons (Protection from Tobacco) Act 1991	Department of Health

Annex C

Current Legal and Quasi legal requirements

PRODUCT	STATUTE/SI	AGE	OFFENCE	DEFENCE	PENALTY	ENFORCING AUTHORITY	POWERS
Aerosol Spray Paint	Anti-social Behaviour Act 2003	16	Selling an aerosol paint container (defined as being a device containing paint stored under pressure and designed to emit release of the paint as a spray) to a person under the age of 16.	(1) The seller took all reasonable steps to determine the purchaser's age and reasonably believed that the purchaser was not under the age of 16. (2) Where another person effected the sale, the seller took all reasonable steps to avoid the commission of the offence.	On summary conviction to a fine not exceeding level 4 on the standard scale (£2,500).	Trading Standards	Trading Standards has the power to instigate, to prosecute and to take other measures intended to reduce the incidence of offences.
Air Weapons and Imitation Firearms	Firearms Act 1968 Violent Crime Reduction Act 2006	18	(1) Selling (or letting on hire) an air weapon to a person under the age of 18. (2) Selling an imitation firearm to a person under the age of 18.	The person charged with the offence believed the other person to be 18 or over and had reasonable grounds for the belief.	(1) Up to 6 months imprisonment and/or a fine not exceeding level 5 on the standard scale (£5,000). (2) 51 weeks imprisonment or a fine of level 5 on the standard scale (£5,000).	Trading Standards	Trading Standards has the power to investigate, to prosecute and to pursue other measures intended to reduce the incidence of

PRODUCT	STATUTE/SI	AGE	OFFENCE	DEFENCE	PENALTY	ENFORCING AUTHORITY	POWERS
							offences.
Alcohol	Licensing Act 2003	18	Selling alcohol to a person under the age of 18.	<p>Believing that the individual was aged 18 or over</p> <p>and</p> <p>(i) either all reasonable steps had been taken to establish the individual's age; or</p> <p>(ii) nobody could reasonably have suspected from the individual's appearance that he was aged under 18.</p> <p>('Reasonable steps' include asking the individual for evidence of their age where the evidence produced would have convinced a reasonable person.)</p>	A fine not exceeding level 5 on the standard scale (£5,000).	Trading Standards	Breach may lead to licence review which could result in the licence being amended or revoked.

PRODUCT	STATUTE/SI	AGE	OFFENCE	DEFENCE	PENALTY	ENFORCING AUTHORITY	POWERS
Butane Lighter Refills	Cigarette Lighter Refill (Safety) Regulations 1999	18	Selling a cigarette lighter refill canister containing butane (or a substance with butane as a constituent part) to a person under 18.	Taking all reasonable steps and exercising all due diligence to avoid the commission of the offence.	Up to 6 months imprisonment and/or a fine not exceeding level 5 on the standard scale (£5,000).	Trading Standards	Trading Standards has the power to investigate complaints, to prosecute and to take other measures intended to reduce the incidence of offences.
Crossbow	Crossbows Act 1987 Violent Crime Reduction Act 2005	18	Selling or letting on hire a crossbow to a person under the age of 18.	Believing the individual to be 18 or older and having reasonable grounds for the belief. (Note that the Act does not apply to crossbows with a draw weight of less than 1.4 kilograms.)	Up to 6 months imprisonment and/or a fine not exceeding level 5 on the standard scale (£5,000).	Trading Standards	The Police have powers to search persons or vehicles for a crossbow where there exists a reasonable suspicion of possession.
Caps, Cracker Snaps, Party	Explosives Act 1875	16	Selling to any person apparently under the age	Due diligence defence.	A fine not exceeding level 5 on the standard scale	Trading Standards	Trading Standards has the

PRODUCT	STATUTE/SI	AGE	OFFENCE	DEFENCE	PENALTY	ENFORCING AUTHORITY	POWERS
Poppers etc.			of 16.		(£5,000).		power to investigate, to prosecute and to pursue other measures intended to reduce the incidence of offences.
Films and Video Games	Video Recordings Act 2010	12, 15 and 18	To supply a video work to a person who has not reached the age specified in the classification certificate.	<p>(1) Neither knowing or having reasonable grounds to believe that the classification certificate contained the age restriction; or</p> <p>(2) Neither knowing nor having reasonable grounds to believe that the person concerned had not attained that age; or</p> <p>(3) Belief on reasonable grounds that the supply was, or would if it took place be, an exempted supply under the Act.</p>	Up to 6 months imprisonment and/or a fine not exceeding level 5 on the standard scale (£5,000).	Trading Standards	Powers of entry, search and seizure are available to investigate where there are reasonable grounds for suspecting an offence.

PRODUCT	STATUTE/SI	AGE	OFFENCE	DEFENCE	PENALTY	ENFORCING AUTHORITY	POWERS
Fireworks	Fireworks (Safety) Regulations 1997	18	Supplying any firework or any assembly to any person under the age of 18. Note that the regulations do not prohibit the supply of any cap, cracker snap, novelty match, party popper, serpent or throw down (see above for details).	Taking all reasonable steps and exercising all due diligence to avoid committing the offence.	Up to 6 months imprisonment or a fine not exceeding level 5 on the standard scale (£5,000) or both (s.12 Consumer Protection Act 1987)	Trading Standards	TSOs have powers of search, seizure, detention, test purchase and powers to require the production of documents.
Liqueur Confectionary	Licensing Act 2003	16	Supplying liqueur confectionary to a person under the age of 16.	Believing that the individual was aged 16 or over and either all reasonable steps had been taken to establish the individual's age or nobody could reasonably have suspected from the individual's appearance that he was under 16.	A fine not exceeding level 2 on the standard scale (£500).	Trading Standards	TSOs have powers to make test purchases, to investigate and to prosecute.
National Lottery	National Lottery etc Act 1993 National	16	Selling LOTTO tickets and instant win cards to a person under the age of 16.	N/A - liability is strict (see: <i>Harrow London Borough Council v Shah</i>)	Up to 2 years imprisonment or a fine not exceeding the statutory minimum (£5,000) or	Trading standards and Camelot	The organisation which operates the National

PRODUCT	STATUTE/SI	AGE	OFFENCE	DEFENCE	PENALTY	ENFORCING AUTHORITY	POWERS
	Lottery Regulations 1994				both.		Lottery, Camelot, runs a test purchasing programme whereby they send test purchasers aged between 16-18, but who have the appearance of being younger than 16, to buy National Lottery products. If on three separate occasions tickets are sold to test purchasers then the agreement to sell tickets is terminated.
Petrol	Petroleum Consolidation	16	Selling petrol to a person under the age of 16 will be in breach of the	N/A	Up to 6 months imprisonment or a fine not exceeding	Trading Standards	Ultimately the local licensing

PRODUCT	STATUTE/SI	AGE	OFFENCE	DEFENCE	PENALTY	ENFORCING AUTHORITY	POWERS
	Act 1928 Health and Safety at Work Act 1974		conditions of holding a licence.		level 5 on the standard scale (£5,000) or both.		authority has the ability to revoke the petroleum licence.
Pets	Animal Welfare Act 2006	16	Selling an animal to a person whom the seller has reasonable cause to believe to be under the age of 16 years	Reasonable belief that the purchaser was not under 16.	Imprisonment for a term not exceeding 51 weeks and/or a fine not exceeding level 4 on the standard scale (£2,500).	Local Authority	TSOs have the power to enter premises, to inspect and to prosecute offences.
Publications (considered harmful to children)	Children and Young Persons (Harmful Publications) Act 1955	Children or young persons	Selling any book, magazine, or other like work, which is of a kind likely to fall into the hands of children or young persons and consists wholly or mainly of stories told in pictures being stories portraying the commission of crimes acts of violence or cruelty incidents of a repulsive or horrible nature in such a way that the work as a whole would tend to corrupt a child or young person into whose hands it might fall.	Proof that the contents of the publication had not been examined and there was no reasonable cause to suspect that it was one to which the Act applied.	4 Months imprisonment (will rise to 51 weeks - date unspecified) or to a fine not exceeding level 3 on the standard scale (£1,000) or both.	Trading Standards	Powers of search and seizure are available.

PRODUCT	STATUTE/SI	AGE	OFFENCE	DEFENCE	PENALTY	ENFORCING AUTHORITY	POWERS
Sale of Knives and Articles with a Blade or Point	Offensive Weapons Act 1996 Criminal Justice Act 1988	18	Selling a knife (or knife blade, razor blade, axe or other bladed or sharply pointed article made or adapted to cause injury) to a person under 18.	Proof that all reasonable precautions and all due diligence to avoid the commission of the offence was taken.	Up to 6 months imprisonment and/or a fine not exceeding level 5 on the standard scale (£5,000).	Trading standards	Powers of entry, search and seizure are available.
Solvents	Intoxicating Substances (Supply) Act 1985	18	Supply of an intoxicating substance to someone under 18, knowing or believing him/her to be under 18, in circumstances where there is reasonable cause to believe that the substance will be inhaled to cause intoxication.		Up to 6 months imprisonment or a fine not exceeding level 5 on the standard scale (£5,000) or both.	Trading standards	Powers of entry and investigation apply.
Tobacco Products	Children and Young Persons Act 1933 (as amended) Children and Young Persons (Protection from Tobacco) Act 1991	18	Selling cigarettes, tobacco products or cigarette papers to a person under 18, whether or not for the purchaser's own use.	Proof that the seller took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.	Summary conviction to a fine not exceeding level 4 on the standard scale (£2,500).	Trading standards	Local authorities have a duty to consider the need for annual enforcement action to check whether under age sales are made. This may include

PRODUCT	STATUTE/SI	AGE	OFFENCE	DEFENCE	PENALTY	ENFORCING AUTHORITY	POWERS
							investigating complaints, bringing prosecutions and taking other measures designed to prevent unlawful sales.

Annex D

Contributors to the review

The following organizations met with the full review group:

Camelot

Local Government Regulation (formerly the Local Authorities Coordinators of Regulatory Services)

The Local Better Regulation Office

The Department for Business Innovation and Skills

The Department of Culture Media and Sport

The Home Office

The Department of Health

The Trading Standards Institute

Laithwaites Wine (WSTA member)

Berry Bros. & Rudd (WSTA member)

The review group expresses its thanks to the individuals concerned for giving so generously of their time and experience.

Annex E

Evidence from review group questionnaire

42 businesses each completed a questionnaire.

Between them, the businesses questioned had 583,581 employees. The sizes of the business which responded are shown below:

Size breakdown of the respondents	Count
Micro (1-9 employees)	12
Small (10-49 employees)	10
Medium (50-249)	5
Large (250+)	15

12 of the 42 businesses trade across one or more UK regions, with 26 businesses operating in less than 10 local authority areas.

Geographical coverage	Count
All UK Regions	7
One or more UK regions	5
Ten to twenty-five local authorities	4
Less than ten local authorities	26

The business sectors covered:

Sectors	Count
Non-specialist retail (e.g. supermarkets, convenience stores)	8
Specialist retail	
Hardware/homeware/garden	25
Wine merchant	1
Brewery/pub	8

Note the skew towards hardware retailers

It should be noted when reading the results that the respondents to this survey are not intended to be a representative sample of the wider business population. Results are an indication of the types of views held by a range of businesses.

What age restricted products do you sell?

Of the age restricted products you sell, which ones do young people attempt to buy most frequently?

	No. selling the product, N=42	Where they sell product, no. indicating that children and young people attempt to buy most frequently, N=40	% of businesses selling this product indicating that children and young people attempt to buy frequently, N=40
Alcohol	17	16	94%
Tobacco	14	10	71%
Aerosol Spray paint	22	15	68%
Knives	28	15	54%
Caps	2	1	50%
Fireworks	7	3	43%
Solvents	27	8	30%
Butane lighter refills	27	4	15%
National Lottery	7	1	14%
Petrol	7	1	14%
Videos	9	1	11%
Party poppers	11	1	9%
Air Weapons and imitation firearms	3	0	0%
Cracker snaps	6	0	0%
Pets	1	0	0%

Table ordered by biggest problem with children and young people attempting to purchase product. Alcohol, tobacco, aerosol spray paint and knives came out as the biggest problem for the 42 businesses surveyed.

How many times is proof of age requested and how many sales are refused each week for each type of age restricted products you sell?

30 of the businesses surveyed provided information about the number of times per week that they requested ID before a sale and number of times they refused a sale per week. In total these 30 businesses requested ID an estimated 341,665 times per week. On average from these 30 businesses, one in eight requests for ID resulted in a refusal.

Total numbers of ID checks and refusals (N=30)	No. of times proof of age per week (total)	No. of refusals per week (total)	No. of ID checks for every one refusal
Aerosol Spray paint	66.5	12.5	5.3
Air Weapons and imitation firearms	-	-	-
Alcohol	334635	40424.5	8.3
Knives	60	11	5.4
Tobacco	1350	791	1.7
Butane lighter refills	13	0.6	22.4
Caps	1	0.3	4
Cracker snaps	-	-	-
Party poppers	3	0.3	12
Videos	-	-	-
Fireworks	4	2.3	1.8
National Lottery	400	427	0.9
Petrol	320	80	4
Pets	-	-	-
Solvents	54	9	6
Total	341668.5	42847.8	8.0

Have you encountered any of the following as a result of requesting proof of age and refusing sales?

N=37	Count	% of those answering the question
Physical violence – yes	10	27%
Verbal abuse – yes	17	46%
Criminal damage – yes	12	32%

Do you consider 'test purchasing' to be a valid inspection / sampling tool?

N= 38	Count	% of those answering the question
Yes	21	55%
No	17	45%

This is heavily qualified in the comments – see separate comments sheet.

Have you been asked to work collaboratively with enforcement bodies – such as the police or trading standards - and local community to address societal issues arising from age restricted products?

N=38	Count	% of those answering the question
Yes	17	45%
No	21	55%

See comments sheet for examples.

If yes, is this ongoing? Please choose one answer

N=16	Count	% of those answering the question
Ongoing	12	75%
Regularly	2	13%
Occasionally	1	6%
Rarely	1	6%

How many times has your business been formally challenged by enforcement in respect of alleged underage sales in the last five years?

No. formal challenges (n=38)	
Total	1387
Average	37
Max	762
Min	0
Median	1

NOTE: no. of challenges is likely a function of the number of premises. We don't have number of premises but below shows the breakdown of challenges for different size (based on employees) of business.

No. formal challenges (last five years)	Micro business (n=12)	Small business (n=10)	Medium business (n=4)	Large business (n=12)
Average	0	1	3	114
Median	0	1	2	26
Min	0	0	0	1
Max	2	3	10	762

How many of these challenges were in respect of matters other than 'test purchases' in the last five years?

% of total challenges not resulting from test purchasing in last 5 years (n=11)	%
Max	25
Min	0
Median	3
Average	6

Note that during the analysis we excluded businesses that had 5 or less challenges in total over the last five years as an average of 1 challenge per year could reasonably stem from test purchasing. This excluded 9 business responses. With the inclusion of all 20 businesses the average rises to 13%.

Does your business follow a Challenge 21 or Challenge 25 policy?

N=36	Count	% of those answering the question
Think 21/Challenge 21 – yes	18	50%
Challenge 25 – yes	10	28%
Neither	13	36%

*Note that some businesses operate both Challenge 21 and Challenge 25 depending on the product.

Have you or your staff ever refused to sell to an under-age person and then reported the young person to the police or trading standards or other authority?

N=37	Count	% of those answering the question
Yes	11	30%
No	26	70%

See comments sheet for examples.

Have you been told by trading standards or the police that a test purchase has been carried out and that your premises has refused sale in the last two years?

N=33	Count	% of those answering the question
Yes	12	35%
No	21	62%

Cost information for age restricted sales review report supplied by review members

33 individual businesses provided data about how much they spend to ensure compliance via the review group questionnaire, or submitted cost data separately.

The size and sector breakdown of the businesses supplying cost information was as below:

Size breakdown of the respondents	Count
Micro (1-9 employees)	7
Small (10-49 employees)	7
Medium (50-249)	5
Large (250+)	14

Sectors	Count
Non-specialist retail (e.g. supermarkets, convenience stores)	9
Specialist retail Hardware/homeware/garden	17
Wine merchant	1
Brewery/pub retail	6

Set-up costs (one-off costs)

The total amount spent by each business as a one-off, to develop training materials and processes ranged from £1,000,000 to nothing except staff time and again this range is reflective of the differing size of businesses supplying data.

Total set-up costs	£ 2,476,364
Average set-up costs	£ 82,545
Max	£ 1,000,000
Min	£ -
Median (middle value, like an average)	£ 900
Number supplying data	33

Annual Costs

The total amount spent by each business each year to train and keep staff up to date, to monitor compliance and on point of sale processes ranged from £910,000 to only the cost of staff time (all 33 provided this information). However, the businesses ranged in size from 270,000 employees to 1 (32 of 33 provided this information) so the amount spent on training and ensuring compliance will differ according to the business size.

Total annual costs	£ 3,819,965
Average annual costs	£ 115,658
Max	£ 910,000
Min	£ -
Median (middle value, like an average)	£ 2,000
Number supplying data	33

Cost per employee will provide a more accurate way of comparing costs and estimating what the total cost might be for all businesses covered by the review group. A simple average cost per employee is £5.81, taking the total amount spent per year (excluding the one-off costs) and dividing that by the total number of employees. When looking more closely, the cost per employee each year in each business ranged from £716.13 to only the cost of employee time and the cost per employee is not necessarily correlated to the size of the business – most of the large businesses have lower costs per employee. The median, or middle value from this range is £6.89.

Using the simple average cost of compliance per employee of £5.81 and given that the number of employees in the retail and pub sectors is estimated at 3.5 million (from BRC and BBPA figures), a crude estimate of the cost of compliance to the retail sector is £20.3 million. Note that the businesses responding to this survey were not intended to be a representative sample of the UK business population,

The table below sets out the total spent per year on ‘mystery shoppers’, in-house or external test purchasing commissioned by businesses themselves to test their compliance systems.

Mystery shopper

Total mystery shopper	£ 1,207,646
Average mystery shopper	£ 50,319
Max	£ 500,000
Min	£ -
Median (middle value, like an average)	£ 125
Number supplying data	26

Comments on Costs

Information supplied by BBPA on Cost of Challenge 21 campaign

- BBPA direct costs and time distributing posters, preparing for conferences etc in the reporting period: estimated £26,000 (Euro 35,360)
- Industry costs and time allocated to Challenge 21 in reporting period (managed and tenanted pubs): estimated £6 million (Euro 8.1million)

Information supplied by WSTA on Challenge 25

- RASG Retailers have invested over £3million in the roll-out of Challenge 25.
- C25 was launched in Jan 2009 and roll-out was complete in Sept 2009. The cost given is the initial one and doesn't include the cost of refreshing signage pa.15 retailers/ symbol groups of varying sizes.

A sample of comments provided by small businesses in relation to their costs

Ongoing Training Costs

Type of business	Size of business	Ongoing Training Costs
Hardware	Micro	Only time used to train
Ironmonger	Small	None as we have done instore training with the information pack provided.
DIY and Timber Merchants	Micro	2,300 lines prompted on EPOS system as age restricted sale
DIY Ironmongers	Micro	We read the data that I've sent off for, discuss it, decide our plan of action in between serving customers, I couldn't calculate a cost other than a lot of time.
Department Store	Small	Minimal costs as use all information from trade press etc
DIY Hardware Cookshop	Small	A new EPOS system was purchased to help with underage purchases. The total cost over the last 4 years is over £80,000 - purchase coast, training, updating epos and staff training.
Hardware & Garden & DIY Retailer	Small	EPOS adaptation to include alerts to age restricted items. Employer time. Costs are estimated. These were included in general training in house and in staff manuals

Costs to ensure ongoing compliance (mystery shopper, point of sale materials etc)

Type of business	Size of business	Ongoing Training Costs
Hardware	Micro	Only time used to train
Hardware & Garden & DIY Retailer	Small	Not specifically costed. Free POS and information obtained from BHF-BSSA Group and incorporated in training for new staff and at staff meeting.

Total Annual Costs of compliance

Type of business	Size of business	Ongoing Training Costs
Hardware	Micro	Time used. A book purchased to record training & refusals.
Ironmonger	Small	None as we have done instore training with the information pack provided.
DIY Hardware	Micro	Plus BHF-BSSA Group Information
Retail	Micro	Plus BHF-BSSA Group Pack
Department Store	Small	Brought up in full staff meetings regularly. No direct costs.
DIY Hardware Cookshop	Small	A new EPOS system was purchased to help with underage purchases. The total cost over the last 4 years is over £80,000 - purchase coast, training, updating epos and staff training.
Hardware & Garden & DIY Retailer	Small	EPOS adaptation to include alerts to age restricted items. Employer time. Costs are estimated. These were included in general training in house and in staff manuals

Comments and opinions

How many times is proof of age requested and how many sales are refused each week for each type of age restricted products you sell?

Type of Business	Size of business	Comment
Retail	Large	Company policy is not to have a refusals book to record refusals. Such records are focused on protection not prevention and are often used to challenge the Company or individual unfairly.
Brewing & Retailing	Large	Very few
Convenience Store with petrol filling station	Large	There are huge differences between stores, depending on their demographics, location, store type (convenience, transient, workplace etc).

Do you consider 'test purchasing' to be a valid inspection / sampling tool?

Type of business	Size of business	Comment
Food Retailer	Large	It is a valid inspection tool if it is understood that human error does not equal poor company due diligence. It would be advantageous if companies were informed of all test purchase successes as well as failures.
Retailer	Large	This has to, however, be used in a measured and controlled way i.e. risk based/intelligence led approach. Too often we face so called projects or funding to be used up or lost. In other instances supermarkets are easy targets allowing for numerous attempts in one day - just to number crunch. Routine test purchasing should be left to the retailer that has proven systems and a suitable test purchase programme.
DIY retailer	Large	It is useful if a third party company are doing this across the estate but not as a one off. The only justification an LA could have is if there is a local problem with a particular store.
Regional Brewery & Tenanted Pub Operator	Medium	In certain circumstances this is a valid tool, However, it tends to highlight complacency rather than an issue with underage sales as the majority of failures are in rural pubs with drive to trade which sell food rather than alcohol. I believe that there is no issues with attempted purchase by persons below age and they are simply caught out. It is our challenge in those sites to drive out complacency.
Wholesale & retail	Large	The problem with test purchases is that each authority follows different guidelines and rules

Type of business	Size of business	Comment
		so test purchasing is very inconsistent. Some authorities use fake ID, some don't. Some test a 25 policy with volunteers over aged of 18, some only test the law with volunteers under 18. It is very difficult when we operate across so many authorities. Authorities also have inconsistent enforcement policies. Some review licences after one failed test purchase, where others will not review until 2/3 failures. Currently the system feels like a postcode lottery. Test purchasing can be a good sampling tool as long as it is intelligence led, and sales assistants are not misled by entrapment. In reality mistakes can happen and the defence of due diligence does not provide the protection that is fair and appropriate when a mistake occurs thus leading to penalties being applied which were originally designed for serious and deliberate offenders.
Pubs and Brewing	Large	Yes if carried out correctly and not set out to 'entrap' the operator.
Brewing and retailing	Large	I do have concerns about two strikes and you are out. Better liaison with the Police and Councils rather than direct action is always the preferred route. Sting operations can be construed as entrapment. The Police know where the issues lie and these sites should be targeted rather than trying to catch out good pubs.
Pub company and Licensing Consultancy	Medium	Test purchasing normally is carried out when the premises are quiet and therefore members of staff are alert to the test. Venues also contact each other when they suspect TP operations are taking place. Most venues operate a strict Challenge 21 policy so will pass a TP. Proxy purchases however are a problem which are hard to identify.
LICENSED RETAILERS operating some 500 pubs and bars	Large	Provided proper <u>fair</u> rules are followed
Brewer, wholesaler & retailer (managed, tenanted & leased houses)	Large	However we feel Trading Standards are known to abuse their power and use unreasonable tactics.
Brewery and Pub Retailer	Large	It has been done many times in licensed premises that we manage and whilst there are occasions when we have been caught out, it is an excellent training aid, as long as we are not 'strung up' for a first offence. The object of the exercise should be to catch out known offenders rather than try and trip up operators with sound regular practices and quality due diligence.
Convenience Retail	Large	I do not believe Test Purchasing gives an accurate reflection of any specific business, due to it being a manufactured purchase
Convenience Store with petrol	Large	Test Purchases should only be conducted to highlight the issue, but resolved with head

Type of business	Size of business	Comment
filling station		office involvement. Human error is inevitable, and can be dealt with via company disciplinary procedure. TS / Police penalties should only apply for repeat failures (by same SA). Criminalising Sales Assistants does not resolve under age drinking and smoking.
Convenience retail	Large	We use test purchasing our selves both in-house and with a 3 rd party external contractor.
Retail (Supermarket/convenience sector)	Large	Depends on the circumstances. If there is objective evidence that a retailer is selling to children, taking no steps to avoid this, and has ignored any approaches from enforcement, then it seems a justifiable use of this method. If however it is done to provide statistics for their own sake, or used to provide a reason for Licence Review in the absence of any other information then it does not appear to be a cost effective or proportionate use of resource.
Multiple supermarket, catalogue and internet retailer	Large	Test purchasing should be used only in one of two ways: <ul style="list-style-type: none"> • Intelligence-led evidence gathering where there is already an intention to take enforcement action. • Surveys where there is no intention to take enforcement action (even this is debatable)
Hardware,Houseware,Cookware	Micro	Shopkeepers should be responsible business owners
Retail Hardware & Garden	Micro	We were test purchased over 3 years ago & it was dealt with in a very underhand manner. Lasting over 20 minutes.
Hardware	Micro	Not where the test purchaser is told to lie.
Ironmongers	Small	It has its place if it isn't done in such a way to entrap people. i.e. sending in a 17 1/2 year old who looks 22 for a product with an age restriction purchase of 18!
DIY Hardware	Micro	I don't believe any retailer encourages sales to under age. Sending in a person made to look 18+ undermines all the hard work we put into signs + checks.
Hardware	Micro	The onus should be on the purchaser - not the supplier - suppliers would have a duty to report incidents and persons.
Hardware and garden	Small	We did have a test purchase of a teenage girl coming in with a 35 - 40 years old man. Looked like father and daughter. She picked up a hand axe, so because her "dad" was with her we sold it. The next minute 2 police officers and trading standards came in and "traumatised" an elderly member of staff.
Furniture & hardware retail	Micro	[My council] is well known for its test purchasing inspections.
Cookshop	Micro	Although slightly irrelevant since I am the only person here
DIY and builders merchant	Small	But not entrapment. Penalties too harsh.
DIY Ironmongers	Micro	It's more a sample tool- since before Christmas and the later part of 2009 young people

Type of business	Size of business	Comment
		have not been asking for age restricted items. I've refused 1 sale for a gas lighter which a grandmother wanted to buy for her 13 year old grandson.
China/Glass/Kitchenware & Hardware	Micro	We have only had 2 refusals in 12 months both for knives.
Retail Cookshop / Kitchenware	Small	Support and training to get businesses on side with trading standards would be more positive. Stop the "us" and "them" problem.
Department Store	Small	Underhand
Hardware cookshop	Small	[My council] regularly test our branches - at least once or twice each quarter.
Hardware & Garden & DIY Retailer	Small	Results of testing should not automatically be prosecution. Should help education and advice to businesses which fail to comply.
General Hardware, Tools Garden And Household Retailer	Small	I would only consider it valid if there had been an incident or complaint about goods being sold to underage users.
Household Goods	Medium	It would be better to ask the shop in question to show you their procedures.

If you do not consider 'test purchasing' to be a valid enforcement tool what other approaches do you feel could be adopted by Local Authorities and the Police to reduce sales of age restricted products to and for the consumption of young people

Type of business	Size of business	Comment
Food Retailer	Large	More active confronting of common “youth” congregation points.
Retailer	Large	Further to the above, [business] spends £0.5M pa testing our systems using external test purchasers. The sensible approach would be for [business] to work with PA/HA and have earned recognition - meaning that an inspection plan could be agreed with PA and Local Authorities could concentrate their resources on the ill informed or ill intended and leave responsible businesses to 'police' their own systems. This would replace routine inspections but not complaint test purchases.
DIY retailer	Large	In 7 years at [business] I have not had one complaint from a TSO or member of the public, that a store is selling age restricted items to children. The first step in any enforcement strategy must be to negotiate first with the retailer/offender. There are many ways a store can become key to relieving a geographical area of problems. Test purchasing is a very negative way to deal with these issues and only alienates our staff. Enforcement of any kind is costly to all parties concerned and should be a last resort after negotiations and working together solutions have failed to yield results.
Wholesale & retail	Large	More work needs to be done with the young people themselves. Children are breaking the law by attempting to buy age restricted products when underage, but the authorities rarely prosecute them, or take action against their parents – they focus any blame on the retailer. Approaches need to be put into place to deal with proxy sales as many adults will still purchase age restricted products and pass them on to the children. This is a criminal offence. Perhaps the effects of alcohol should be brought into the National Curriculum at the age of 10 – educate them to realise the harms and effects of alcohol. The Authorities should visit schools to reinforce the learning in this area.
Pub company and Licensing Consultancy	Medium	Education such as the BII Award in Alcohol Awareness qualification, the BII Schools Project. The police have powers to prosecute and issue FPNDs to under 18's for attempting to purchase or purchasing alcohol but never take action. If the under 18's were targeted rather than the responsible retailers then the under 18's will start to realise that purchasing or attempting to purchase is an offence and would cost them money. If an under 18 commits an offence and breaks the law then why do they not get prosecuted?

Type of business	Size of business	Comment
Convenience Retail	Large	Support of store by authorities by challenging groups, and being more visible, more emphasis on proxy purchase, more emphasis on parents responsibilities. Changing the law on cigs to match legal age to smoke to legal age to purchase
Convenience Store with petrol filling station	Large	CAP Projects, Education Projects, Youth Clubs to engage youngsters in a positive way. TSI Training – adopted by all Councils – available for retailer, or head office to deliver. Each Council to stipulate regional/local statistics for local awareness.
Convenience retail	Large	The compliance of the company could be audited by their ‘Due Diligence’ procedures and records. If they can demonstrate they are taking all reasonable precautions, and have records to prove it, that should be enough.
Retail (Supermarket/convenience sector)	Large	Collaboration with retail towards joint goals. Community Alcohol Partnerships. Tackling underage access to alcohol through specific local knowledge (i.e. proxy purchasing looked at together with retail, possibly using retail CCTV with officers “working” in the store at vulnerable times to identify and deal with known proxy purchasers). Foster an environment where retail can trust enforcement and enforcement can trust retail.
Multiple supermarket, catalogue and internet retailer	Large	Reduction of demand by young persons for products they are not allowed to be sold – education. Advice and assistance to traders who are uncertain of the law and/or what they should do to comply
Retail houseware	Micro	Shop visits to premises by Local Authorities
Retail Hardware & Garden	Micro	More information given to businesses involved by both local authorities and police plus more liason. More involvement with the general public and the need to involve the parents of young people.
DIY Hardware	Micro	Local authorities working alongside shops instead of trying to catch them out would be better use of time and money. Produce signs and advise visit shops openly to check on refusal books, signs, etc.
Hardware and garden	Small	Send kids in without an adult.
DIY and builders merchant	Small	Yes - inspection + written warning.
DIY Ironmongers	Micro	Test purchasing was fair play when they used children that looked about their age, but today most children look a lot older and the girls when made up look even older still. One of my assistants has a 16 year old boy and could pass for a 21 year old easily.
Retail Cookshop / Kitchenware	Small	It is useful if training has failed and illegal sales are known to be, or possibly occurring in a retail shop.

Type of business	Size of business	Comment
Department Store	Small	More school visits. Videos of dangers
General Hardware, Tools Garden And Household Retailer	Small	I feel that my staff would respond better to a short training visit once a year from an approved body. Willingness to take part in such a scheme would indicate to the authorities the responsible retailers and help eliminate them from those less reputable businesses allowing the police to focus on those.

Have you been asked to work collaboratively with enforcement bodies – such as the police or trading standards - and local community to address societal issues arising from age restricted products?

If yes please give details

Type of business	Size of business	Comment
Retailer	Large	restrict licensing hours, sales in town centres at certain times, enforce proxy sales etc, remove certain products - high abv cider from sale
Regional Brewery & Tenanted Pub Operator	Medium	Local Police Initiatives, pub watch, Best Bar None, Local authority initiatives and individual sites with problems
Wholesale & retail	Large	Varies from area to area. We voluntarily collaborated with Lancashire Trading Standards and the Police to produce a training DVD. We run licensing forums and training sessions where we <i>invite</i> authorities to come and speak to store managers and staff. In two stores we do not sell alcohol to anyone under 21 even with ID, following requests from local Police. One store does not sell fuel to anyone in a canister, unless they have their driving licence with them – again at the request of the local Police. We are regular attendees at local Licensing Forums and PACT meetings in the Northern area.
Pub company and Licensing Consultancy	Medium	We are currently working with Trading Standards in Lincolnshire to produce a policy that may be suitable for adoption county wide. We have produced a policy which Lincolnshire Police have agreed as a policy that may be used country wide. With the new Mandatory Code regarding age verification coming into effect in October we are now re drafting the policy to fit the changes.
LICENSED RETAILERS operating some 500 pubs	Large	Too many to list but we are involved with; Pubwatch, Licensing Forums, Police initiatives [with BBPA], Home Authority with Trading Standards

Type of business	Size of business	Comment
and bars		
Brewer, wholesaler & retailer (managed, tenanted & leased houses)	Large	Part of Cornwall Licensing Strategy Partnership which includes Trading Standards
Brewery and Pub Retailer	Large	We were approached by Wiltshire Constabulary in Devizes about two years ago with a view to working closely with their officers in the towns where we have managed pubs. Most of our pubs are rural but all of our Managers are encouraged to play an active role in their local Pub Watch schemes.
Convenience Retail	Large	Allowed Police surgery's instore (approx 25 stores), Sponsored Police bikes
Convenience Store with petrol filling station	Large	Residents claimed store was selling to local youngsters whom then drank alcohol on village green causing damage and anti-social behaviour. Police test purchased site. Sales refused. Residents still complained, and, in all fairness the problem was evident on a Friday evening on the village green, but no evidence that the alcohol was supplied by site. Transpired that alcohol was handed over to youngsters via proxy purchase – but that person was ID each time at store. Said customer well known to Police and was picked up on evidence supplied by store (challenges made book) to Police.
Convenience retail	Large	We have a lot of contact with local policing initiatives though out South Wales and England. We have attended a lot of local 'Crime Reduction Partnership' events.
Retail (Supermarket/convenience sector)	Large	Various Community Alcohol Partnerships – especially St Neots, Kent and Shropshire - see WSTA website for more details. Some joint working in relation to proxy sales in various locations. Some point projects in relation to selling to under 21s in various locations
Multiple supermarket, catalogue and internet retailer	Large	alcohol reduction partnerships
DIY Hardware	Micro	We (MD + director) attended a meeting at west berks council office. To gain our responsible retailer award. July 2007
Retail Cookshop / Kitchenware	Small	Promotional knives to be used for the purpose made (eg, in the kitchen) and not for violence. Posters / leaflets given etc.
General Hardware, Tools Garden And Household Retailer	Small	The British Hardware Federation

Type of business	Size of business	Comment
Hardware/cookshop	Small	We keep in close contact with the local boroughs
Household Goods	Medium	LBRO

Have you or your staff ever refused to sell to an under-age person and then reported the young person to the police or trading standards or other authority?

If yes, can you describe the circumstances and what happened as a result of your actions?

Type of business	Size of business	Comment
Retailer	Large	Previously police/TSO's have been uninterested
Regional Brewery & Tenanted Pub Operator	Medium	Very difficult to get enough information to do this
Wholesale & retail	Large	In one area of Lancashire the police responded immediately and arrived at the store to deal with the young people who were causing the problem. In other areas of the North we have had to write to local MPs which then resulted in action being taken by all parties involved.
Pub company and Licensing Consultancy	Medium	If fake or tampered ID is taken from an individual then our company rewards the employee with £10. A copy of the fake or tampered ID is then forwarded to the local police and licensing authority. Normally all that happens is that if we are lucky the individual is traced and a PCSO visits them at home. This does not however happen to everyone.
Convenience Retail	Large	This has happened a number of times in different stores, in most cases the police are either too slow to respond, or do not follow up
Convenience Store with petrol filling station	Large	Regularly. Often in the evenings or late night, stores refuse to serve, and when customer becomes aggressive is reported to the Police. Rarely will police attend. If Sales Assistants are in any physical danger – will press the emergency 'panic button'. Where young persons are refused having shown fake ID, the information is reported to the police; some not interested, whilst others appear to take action
Convenience retail	Large	Only on six occasions. Out of 117 stores 79 responded to this survey question. 73 out of the 79 responded with a No.

Type of business	Size of business	Comment
		<ul style="list-style-type: none"> - Yes, reported it to police because the person became violent. - My staff have great knowledge of the 25 Year ID Rule! But also the majority of my staff live locally so they have a good understanding which individuals are banned from our store/or other local licensed premises so when they enter our premises my member of staff will always ask for ID, if no ID is produced they will refuse the sale but if fake ID is produced my staff confiscate it and ring our local police station to report the ID/Person to our local PCSO. Usually the Local police will then come to our store to check the CCTV system take a statement from our staff, thank us and then no further action is ever taken. - Reported to police, after these persons were refused then trying to get people to buy for them. - Has happened several times. - We have told the police both about attempted underage and proxy sales likewise we have been told of people who may possibly make proxy sales by the police anyone who we suspect of a proxy sale is refused. Nothing seems to happen unless there is a confrontational situation . Yes. We do notify our local community officer of anyone we know is trying to purchase alcohol for themselves or anybody we suspect buying to supply under age youths. The Police often ask for camera evidence regarding people purchasing which we are happy to show as it proves we are doing our part correctly. - Yes for producing false ID. Girl was prosecuted
Convenience retail	Large	Reported as result of proposed joint working – don't know outcome. Some alcohol specific banning letters have been issued to proxy purchasers
Retail (Supermarket/convenience sector)	Large	We will have done this but we have no data
Cookshop	Small	Lots of students at catering college have to buy knives. We refuse-never report. Parents then visit to purchase knives on their children's behalf
Retail Cookshop /	Small	Advised police of "unsuitable" attempted purchaser

Type of business	Size of business	Comment
Kitchenware		
Department Store	Small	(They) took it no further

Annex F

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