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Better
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Age Restricted Products and Services: A Code of Practice for Regulatory Delivery



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Introduction to the Code

The Age Restricted Products and Services Framework, developed with businesses, regulatory bodies and other stakeholders and first published in November 2011, sets out an agreed set of shared responsibilities and reasonable expectations for young people, their parents and carers, businesses, employees and regulators with regard to access to age restricted products and services.

The controls put in place by legislative age restrictions on diverse products and services are essential for the protection of young people, particularly the most vulnerable. Local regulation needs to deliver the protection that individual young people need, and in doing so, to contribute to better outcomes for local communities, citizens and businesses. To achieve this, local regulators and enforcers must target those that represent the greatest risks to young people, taking effective action where businesses do not take a responsible approach to compliance.

This Code of Practice for Regulatory Delivery (hereafter 'Code') has been developed in collaboration with business and regulators in support of the Age Restricted Products and Services Framework, and represents a non-statutory approach to improving regulation in this area, having regard to relevant practice and guidance. It was published in January 2013, and updated in April 2014 to reflect the introduction of the statutory Regulators' Code (replacing the Regulators' Compliance Code) and changes to Primary Authority that took effect in October 2013. Its recommendations were not amended.

The Code sets out a way of working that is rooted in the statutory principles of good regulation¹: that regulation should be proportionate, consistent, accountable, transparent and targeted. It applies the provisions of the statutory Regulators' Code, which promotes '*the development of an open and constructive relationship between regulators and those they regulate*'.

In 2010, the Local Authorities Coordinators of Regulatory Services (LACoRS) published updated guidance for practitioners working with children and young people in test purchasing² operations regarding age restricted products. This guidance has played an important role in establishing and sharing good practice in relation to the welfare of test purchasers³ and much of the content of that guidance has been brought forward to this Code. The Local Government Association has welcomed the broader focus of this Code, and the incorporation of the relevant good practice guidance developed by LACoRS.

This Code sets out an approach for those that are responsible for regulatory delivery that underpins the principles set out in the Age Restricted Products and Services Framework. (The responsibilities of regulators and enforcers in respect of compliance and enforcement activities are listed in Annex 2.) The recommendations of this Code are produced in bold print and are supported by the accompanying guidance. Supporting resources for enforcement agencies are available on BRDO's website⁴.

¹ Legislative and Regulatory Reform Act 2006, section 21

² The use of young people to test compliance with legal age restrictions on access to products or services. A test purchase attempt will usually involve an attempt to purchase but the term also covers attempts to enter an agreement to provide a product or service, including online, and attempts to access premises or specific areas of a premises.

³ A young person who is assisting in a test purchase exercise or exercises on behalf of an enforcing authority.

⁴ In addition, the RDNA and GRIP tools, which help regulators to identify, prioritise and meet their development needs, include an age restricted products section. For links to these websites see: <https://www.gov.uk/government/collections/brdo-professional-development-and-culture-change-resources>

This Code sets out a process that follows the steps that an enforcing authority will work through, from prioritising the use of its resources, through its proactive work to support compliance, to targeted checks on compliance where these are warranted, and appropriate responses to non-compliance that is identified, including taking swift and firm action where necessary.

Scope

This Code is applicable to all local regulatory activities undertaken in England and Wales. It covers all products and services for which statutory age restrictions are in place, and all relevant compliance and enforcement activities, whether in relation to premises, or to the online supply of these products and services. Annex 3 contains a summary of the age restrictions in place at the time of first publication of this Code in January 2013.

This Code is primarily aimed at local authorities and others with responsibilities under the Regulators' Code. However other enforcement agencies will find it of value. Those responsible for regulatory delivery are referred to throughout the document as 'enforcing authorities'.

This Code also acknowledges that local authorities play a significant role in regulatory delivery through their responsibilities in relation to local licensing.

A) Prioritisation

1. An enforcing authority should understand and communicate the contribution that its regulatory activities in respect of age restricted products and services make to the outcomes that it is committed to delivering.

Guidance:

- 1.1 A local authority's expressed outcomes are likely to include protecting young people from harm, keeping communities safe, and supporting vibrant business communities, all of which will be of relevance here.
- 1.2 Enforcing authorities could consider using a tool such as BRDO's Outcomes and Impacts Toolkit⁵ to help them to demonstrate the impact of their regulatory activities in this area.
- 1.3 A local authority's annual determinations of the extent to which it will carry out a programme of enforcement activity in relation to tobacco products⁶ and spray paints⁷ provide it with an opportunity to articulate its outcomes, and the contribution that its enforcement activities will make to delivering those outcomes in respect of those products.
- 1.4 An annual service plan or business plan provides a mechanism for communicating the contribution that regulatory activities in this area make to the enforcing authority's outcomes, as do published service standards⁸ and the authority's enforcement policy.
- 1.5 A licensing authority's preparation and publication of its Licensing Policy⁹ and its Statement of Principles¹⁰ under the Gambling Act provide it with an opportunity to articulate its outcomes in respect of the protection of children from harm, and the contribution that its enforcement activities will make to delivering those outcomes.

2. An enforcing authority should ensure that its regulatory resources are allocated on the basis of an assessment of the priority risks in its area.

Guidance:

- 2.1 An evidence-based approach will enable an enforcing authority to make informed decisions on what needs to be done and why, so that it can allocate the required resources. At this stage, the enforcing authority is not considering the targeting of individual businesses, but is making strategic decisions about its response to the most significant risks to its local community, including its local businesses. In considering relevant evidence, a local authority might ask itself, for example:
 - What are the problems in our local area? What sources of information and data are available to us in addition to public complaints?
 - Is there a high level of alcohol consumption by young people, and by under 15s in particular? This may be evidenced by high levels of anti-social behaviour or by high levels of alcohol-related hospital admissions for young people.

⁵ Outcomes and Impacts Toolkit Summary, Local Better Regulation Office, 2010

⁶ Children and Young Persons (Protection from Tobacco) Act 1991, section 5

⁷ Anti-Social Behaviour Act 2003, s.54A

⁸ Regulators' Code, section 6

⁹ Licensing Act 2003, section 5

¹⁰ Gambling Act 2006, section 349

- Are smoking levels higher in some communities or groups than others? Youth smoking survey data, smoking prevalence data and visual sights of groups of young people smoking may indicate areas where youth smoking rates are high.
 - Is graffiti in a particular area incurring costs for the local authority and local businesses? Are young people producing the graffiti?
 - Is there a problem with street gangs in the area? Are there high levels of knife crime? Are there high levels of hospital admissions as a result of knife crime?
 - Are online retailers based in your area a priority?
- 2.2 Enforcing authorities should consider how they can best work with local communities to understand and tackle priority issues within those communities.
- 2.3 Not all age restricted products and services present the same level of potential harm. An enforcing authority's assessment will need to take into account the potential harm associated with non-compliance, as well as the likelihood of non-compliance.
- 3. An enforcing authority should work collaboratively with partner organisations that have shared outcomes, to tackle the risks identified. In particular:**
- a) A local authority will want to consider its contribution to public health initiatives that focus on protecting young people from the harm associated with age restricted products such as alcohol and tobacco.**
 - b) Where enforcing authorities work with others who are involved in educating young people, they should promote awareness and use of the Age Restricted Products and Services Framework.**
 - c) Where a local authority and the police share enforcement responsibilities, they should co-ordinate their approach.**
 - d) Where a local authority and a national regulator (such as the Gambling Commission) share enforcement responsibilities, the local authority and the national regulator should co-ordinate their approach and should share information that will improve the targeting of resources and minimise any potential for duplication of effort.**

Guidance:

- 3.1 Tackling the problems associated with age restricted products and services requires a holistic approach, and involves collaborative working between a range of organisations. Some approaches will be best led by the enforcement agency, particularly where the focus is on the role that business plays, whilst some approaches will be led by other agencies, often with support from the enforcing authority.

3.2 Forums for co-ordinating activity might include:

- Crime and Disorder Reduction Partnerships;
- Local Alcohol Action Areas
- Responsible Authorities Working Groups;
- Health and Wellbeing Boards;
- Community Alcohol Partnerships¹¹ and other retail and community initiatives
- Local Enterprise Partnerships;
- Business Improvement Districts;
- Town Centre Partnerships; and
- regional tobacco control groups.

3.3 Growing evidence¹² shows that age restricted products are often sourced by young people by routes other than traditional retail supplies. Community engagement and educational activities are sometimes more appropriate responses to issues such as proxy purchases by parents, friends and relatives, and illicit supplies, which can impact in areas where conventional enforcement activities are not appropriate.

¹¹ Further information available at www.communityalcoholpartnerships.co.uk

¹² See source material at Annex 1, Research and Project Evaluation

B) Working with businesses and communities

- 4. Enforcing authorities should ensure that their compliance and enforcement approach to age restricted products and services legislation, including their approach to targeting their compliance and enforcement activities in this area, is transparent^{13&14}.**

Guidance:

- 4.1 The enforcing authority's service standards and enforcement policy should be published¹⁵ and should be easily accessible to those that it regulates. For example, links to the policy should be made available on the enforcing authority's website.
- 4.2 The scope of the enforcing authority's enforcement policy should be clear, so that those regulated in relation to age restricted products and services legislation are able to easily identify that the policy is relevant to them.
- 4.3 Where an enforcing authority targets some or all of its compliance and enforcement activities on the basis of a nationally produced risk methodology, then it should make this known to those that it regulates, for example by including a link to published details of the scheme in its compliance and enforcement policy, or elsewhere on its website.
- 4.4 Where an enforcing authority targets some or all of these activities on the basis of its own risk methodology, then it should involve those it regulates and other interested parties in designing this risk methodology, should publish details of it, and should review it regularly, taking into account any feedback provided by those it regulates and other interested parties¹⁶.

- 5. An enforcing authority should select compliance and enforcement activities that offer the greatest opportunity to deliver improved outcomes for young people, local communities and businesses.**

Guidance:

- 5.1 An enforcing authority will usually have a wide range of options available to it, including: raising awareness of the legislation and compliance issues with business; providing advice and guidance to business; working through primary authorities; conducting checks on compliance; and dealing appropriately with compliance breaches, including taking swift and firm action where necessary.
- 5.2 In choosing the most appropriate option, the enforcing authority will need to think about the outcomes that it is trying to achieve, the public interest, and where its intervention, or an intervention by others, is likely to have the greatest impact¹⁷.

- 6. An enforcing authority should ensure that clear information and guidance on relevant legislation are readily available to those that it regulates.**

¹³ Legislative and Regulatory Reform Act 2006, section 21, requires relevant regulatory functions to be carried out in a way which is transparent.

¹⁴ The Better Regulation Delivery Office has produced an example of approaches to developing service standards and an enforcement policy as part of its Regulators' Code Section 6: Local Authority Toolkit.

¹⁵ Regulators' Code, section 6 (applicable to local authorities and to the Gambling Commission).

¹⁶ Regulators' Code, sections 3 and 6

¹⁷ See material at Annex 1, Research and Project Evaluation, including NHS Scotland's study of the impact of measures used to enforce underage alcohol sales regulations.

Guidance:

- 6.1 Enforcing authorities will need to ensure¹⁸, in particular, that:
- They provide appropriate means for businesses to seek and access compliance advice.
 - Legal requirements are promptly communicated or made available to those regulated.
 - General information, advice and guidance are provided in clear, concise and accessible language, using a range of appropriate formats and media.
 - Compliance advice clearly distinguishes between statutory requirements and other advice or guidance. This section is of particular relevance in relation to age restricted products and services legislation, where much of the advice and guidance offered relates not to interpreting statutory requirements but to the controls that a business puts in place in order to meet those requirements.
- 6.2 An enforcing authority may choose to signpost to nationally available information, guidance and training provision.
- 6.3 In responding to requests for advice, an enforcing authority's primary concern should be to provide the advice and guidance necessary to help ensure compliance, and enforcing authorities should consider how they can create an environment in which businesses have confidence in this approach and feel able to seek advice without fear of directly triggering enforcement action.
- 7. An enforcing authority should prioritise the support that it offers to businesses to those that are least likely to have robust compliance arrangements in place, particularly those businesses in priority risk areas¹⁹ (see section 2).**

Guidance:

- 7.1 Risk assessment should precede and inform all aspects of an enforcing authority's approaches to its regulatory activities²⁰, including its advice and guidance activities.
- 7.2 In prioritising the support that it offers, the enforcing authority will want to consider the particular needs of pre-start up and new businesses.
- 7.3 In prioritising the support that it offers, the enforcing authority will want to consider its responsibilities in respect of businesses based in its area that trade across council boundaries, for example by offering Primary Authority or, where this is not appropriate, acting as a Home Authority.

¹⁸ Regulators' Code, section 5

¹⁹ Products, sectors or geographic areas

²⁰ Regulators' Code, section 3

- 7.4 Businesses that are in a Primary Authority partnership covering the Age Restricted Products or Age Restricted Services category/ies²¹ are able to receive authoritative advice in this area from their primary authority. This means that any locally identified need for proactive advice and guidance should be referred to the primary authority.
- 7.5 Enforcing authorities may find that they can communicate most effectively with local businesses by utilising existing mechanisms, where these exist, for example:
- through trade associations;
 - through existing local schemes such as Pubwatch, Business Crime Reduction partnerships, Local Enterprise Partnerships, Purple Flag, Business Improvement Districts, and Community Alcohol Partnerships; and
 - through local and trade press.
- 8. An enforcing authority should ensure that the information and guidance that it provides to businesses, their staff, and others, supports a clear and consistent message that valid proof of age must always be required where young people seek to access age restricted products and services through face to face transactions. This information and guidance should be clear in relation to acceptable forms of proof of age.**

Guidance:

- 8.1 Enforcing authorities will be aware of the risks for young people in relying on a passport or driving licence as proof of age and should consider the advantages of promoting PASS²² cards as the preferred form of proof of age for businesses and young people in relation to face to face transactions. However, the enforcing authority should acknowledge that there are other acceptable forms of proof of age, as detailed in current Home Office guidance and Gambling Commission guidance.
- 9. A local authority acting as a licensing authority must have regard to the statutory principles of good regulation²³ when considering the attachment of conditions to licences.**

²¹ The application of Primary Authority to age restricted products and services is determined by the Regulatory Enforcement and Sanctions Act 2008 and secondary legislation made under that Act.

²² The national Proof of Age Standards Scheme, which accredits card issuers to issue proof of age cards bearing the 'PASS hologram'. Information on the Proof of Age Standards Scheme is available at www.pass-scheme.org.uk.

²³ The principles set out in section 21 of the Legislative and Regulatory Reform Act 2006, that regulation should be exercised in a way that is transparent, accountable, proportionate and consistent, and is targeted only at cases where it is needed.

Guidance:

- 9.1 Statutory guidance on the Licensing Act 2003²⁴ highlights the importance of tailoring licensing conditions to particular premises and ensuring that conditions are appropriate to promote the statutory licensing objectives (ie preventing crime and public nuisance, public safety, and protecting children from harm) and proportionate and do not duplicate other statutory requirements. The guidance rules out standardised conditions which ignore the size, type, location and characteristics and activities taking place at a particular premises, and requires all operational restrictions to be considered and imposed on a case by case basis.
- 9.2 Statutory guidance on the Gambling Act 2005²⁵ requires that conditions imposed by the licensing authority should be proportionate to the circumstances which they are seeking to address, and sets out particular factors to be considered in determining proportionate conditions.
- 9.3 In considering the need for consistency, the licensing authority should not be seeking consistency between all venues in its own area but should ensure that it considers how it can be consistent with advice or guidance that the business has received and relied on in managing its compliance with the licensing objectives.
- 9.4 Licensing authorities should not impose licensing conditions concerning acceptable forms of proof of age that exclude PASS accredited proof of age cards.

²⁴ Amended Guidance Issued Under Section 182 of the Licensing Act 2003, Home Office, 2012, paragraphs 1.16 and 10.10

²⁵ Guidance to Licensing Authorities, 4th Edition, Gambling Commission 2012

C) Conduct of checks on compliance

This Code recognises that checks on compliance in relation to age restricted products and services vary in both their nature and their purpose, and may include inspections of records, processes and procedures, or test purchases. Checks may be undertaken as part of a programme of proactive checks (see 10 below), as part of the response to a local issue (see 11 below), or in response to specific complaints or intelligence about an individual business (see 12 below).

Targeting: Proactive checks on compliance

10. Where an enforcing authority chooses to allocate resources to proactive checks on business compliance with legal age restrictions, these should be targeted on the basis of a robust model, scheme or framework for risk assessing the businesses²⁶.

Guidance:

10.1 Risk assessment of businesses may be on the basis of a nationally produced risk methodology²⁷ or on the basis of the enforcing authority's own model. The risk assessment should take account of all relevant, available information and intelligence to make an informed assessment of both the level of hazard, and the likelihood of compliance.

10.2 In relation to the level of hazard consideration should be given to:

- the potential harm associated with the products or services supplied by the business; and
- the number of young people that might access age restricted products and services through the business. For example, consideration should be given to whether the business trades online and, if so, whether it represents a greater risk.

10.3 In relation to the likelihood of compliance²⁸, ie. the enforcing authority's confidence that the business will manage the hazard appropriately, consideration should be given to the following, where available:

- past compliance records, particularly recent information;
- the existence of systems for managing compliance within the regulated entity;
- evidence of recognised external accreditation, retailer self-testing, or third party tests; and
- management competence and willingness to comply.

²⁶ Regulators' Code, section 3

²⁷ For example, the Revised National Trading Standards Board Risk Assessment Scheme, National Trading Standards Board, 2012.

²⁸ A Common Approach to Risk Assessment, Local Better Regulation Office, 2011

- 10.4 External sources of information and intelligence should be considered where available, for example:
- The secure area of the Primary Authority Register²⁹ is used by primary authorities to share details of business compliance systems and may be used to publish details of retailer self-testing or the results of national inspection strategies³⁰ coordinated by the primary authority to seek a picture of compliance across the business' operations.
 - The Gambling Commission^{31&32} encourages operators to share the results of third party test purchasing with both themselves and with local authorities. Where such information sharing takes place and the operator can satisfy regulators that they are managing the business risk of underage access themselves this would usually reduce the propensity of the Commission and local authorities to conduct their own compliance checks.
 - Operators of schemes³³ that may place relevant requirements on businesses, eg. in relation to age verification policies.
- 10.5 Where a proactive risk-assessed visit to a business is carried out, the opportunity should be taken to check the operation of the controls that the business has in place to manage its compliance with age restrictions. For example, checks could be carried out on training records or the operation of electronic till prompts.
- 10.6 Local authorities will need to consider how they will comply with the requirements of the Primary Authority scheme in relation to following published inspection plans³⁴. Statutory guidance on the scheme³⁵ specifies that local authorities should meet their duty to follow an inspection plan both at the stage of planning and programming regulatory interventions at the business or businesses to which the inspection plan applies, and when conducting proactive, planned or programmed activity at the business or businesses.

Targeting: Reactive checks on compliance

This part of the Code distinguishes between responding to complaints and information that are not premises-specific (section 11) and complaints or intelligence that relate to a specific business (section 12).

11. An enforcing authority should ensure that its response to complaints or intelligence about issues in a particular geographic location, or a specific sector, is proportionate.

²⁹ The secure area of the [Primary Authority Register](#) can be accessed only by registered users. Registration enquiries should be addressed to pa@brdo.bis.gsi.gov.uk.

³⁰ A primary authority may use an inspection plan to put in place a national inspection strategy in relation to a partner business. Guidance on inspection plans is available on the [Primary Authority Register](#).

³¹ Guidance to Licensing Authorities, 4th Edition, Gambling Commission 2012

³² Approach to test purchasing – England and Wales only, Gambling Commission, 2011

³³ For example, Best Bar None or the Safer Socialising Award

³⁴ Primary Authority Handbook, Module 1, Better Regulation Delivery Office, 2013

³⁵ Primary Authority Statutory Guidance, BRDO, 2013.

Guidance:

- 11.1 Complaints from local communities often focus on issues in a particular locality eg. drinking in the local park or fireworks being thrown in an area, but information about the source of the age restricted products is not always available. The credibility, quality and quantity of information about potential sources of age restricted products will need to be considered.
- 11.2 Further information on a local issue may be gathered through community and business engagement, or through the use of observation of the locality³⁶.
- 11.3 Businesses may be able to provide the enforcing authority with insight into the nature and extent of any issue, or into any difficulties that they are experiencing, for example, with proxy purchasing, shoplifting, or abusive / threatening behaviour from young people. The enforcing authority may choose to engage with businesses in a locality or sector on an individual basis or through established mechanisms such as through a local Pubwatch scheme or Community Alcohol Partnership.
- 11.4 When considering its response to such complaints or intelligence the enforcing authority should consider whether the businesses in the locality or sector have been advised of the legal requirements, and may choose to provide or reinforce advice and guidance, as appropriate, or to carry out inspections or other overt checks on the businesses' controls and records³⁷.

12. An enforcing authority should ensure that its response to complaints or intelligence about a specific business is proportionate.

Guidance:

- 12.1 The credibility, quality and quantity of information about possible breaches of age restricted products and services legislation by a specific business will need to be considered.
- 12.2 In determining whether action is required, and what action might be taken, the enforcing authority should review its knowledge of the business's approach to compliance, its history of compliance, and any mechanism that is available to the enforcing authority to deal with any problems.
- 12.3 Where the business is in a Primary Authority partnership in relation to Age Restricted Products or Age Restricted Services, has an active Home Authority relationship, or is regulated by another local or national regulator in respect of age restricted sales, the enforcing authority should consult with that organisation before deciding on the appropriate course of action. For example, where a complaint is received about a business that operates in the gambling sector, the enforcing authority should consult with the Gambling Commission and should establish whether the business has shared compliance data or agreed an action plan with the Gambling Commission.
- 12.4 Before considering covert test purchasing, the enforcing authority may consider whether it is appropriate to first discuss the complaint(s) or intelligence received with the business.

³⁶ Section 13 of this Code of Practice refers to statutory requirements for authorisation under the Regulation of Investigatory Powers Act 2000, which should be considered here.

³⁷ It is unlikely that authorisations under RIPA for covert methods will be considered proportionate without demonstration that overt methods have been attempted and failed.

Test purchasing

This part of the Code addresses the use of test purchasing by young people³⁸ as a tactic for conducting spot checks on compliance.

- 13. Where an enforcing authority is considering conducting a test purchase exercise, consisting of one or more test purchase attempts, it should consider the statutory requirements for authorisation under the Regulation of Investigatory Powers Act 2000, as amended. It is unlikely that authorisations under RIPA for covert methods will be considered proportionate without demonstration that overt methods have been attempted and failed.**

Guidance:

- 13.1 Authorisation is required for 'directed surveillance' and the use of 'covert human intelligence sources' (CHIS). Guidance published by the Office of Surveillance Commissioners includes the following:

'When a young person, pursuant to an arrangement with an officer of a public authority, carries out a test purchase at a shop, he is unlikely to be construed as a CHIS on a single transaction but this would change if the juvenile revisits the same establishment in a way that encourages familiarity. If covert recording equipment is worn by the test purchaser, or an adult is observing the test purchase, it will be desirable to obtain an authorisation for directed surveillance because the ECHR has construed the manner in which a business is run as private information and such authorisation must identify the premises involved. In all cases a prior risk assessment is essential in relation to a young person.'

'When conducting covert test purchase operations at more than one establishment, it is not necessary to construct an authorisation for each premise to be visited but the intelligence must be sufficient to prevent 'fishing trips'. Premises may be combined within a single authorisation provided that each is identified at the outset. Necessity, proportionality and collateral intrusion must be carefully addressed in relation to each of the premises. It is unlikely that authorisations will be considered proportionate without demonstration that overt methods have been attempted and failed.'

Decisions to deviate from the guidance will have to be justified to the Office of Surveillance Commissioners.

- 13.2 There are specific provisions in relation to working with covert human intelligence sources who are under eighteen in the Regulation of Investigatory Powers (Juveniles) Order 2000, which enforcing authorities should be aware of.

³⁸ In the context of this code, 'young people' includes any child, young person or young adult.

- 13.3 Statutory codes of practice in relation to authorisations for directed surveillance³⁹ and the use of CHIS⁴⁰ are produced by the Home Office and are available on its website, along with guidance⁴¹ on the recent changes to the authorisation requirements implemented under the Protection of Freedoms Act 2012.
- 13.4 A request for authorisation of test purchasing would usually set out the tactics to be used, the reasons for using these tactics, and the factors considered in determining their necessity and proportionality. In considering necessity and proportionality, the following pointers may be useful:
- Is there evidence that the business will only sell to young people that it recognises, that means that repeated test purchasing by the same young person is envisaged?
 - Does the context in which the test purchase will take place mean that the test purchaser might be endangered by answering questions about his or her age honestly?
 - Has the business failed to follow previous advice eg. by continuing to ask a prospective purchaser his or her age, rather than asking for valid proof of age?
- 14. Where a decision is made, in accordance with the preceding provisions of this Code, to conduct a test purchase exercise:**
- a) A test purchaser should be selected, with regard to:**
- his or her age and appearance (see Section 23);
 - his or her suitability for the type of premises to be visited eg. ‘on’ licence or ‘off’ licence premises;
 - his or her suitability for the tactics to be deployed, understanding that his or her welfare⁴² is paramount; and
 - the likelihood that he or she will be recognised in the locations to be visited (eg. proximity to their home or school).
- b) The test purchaser may be allowed or instructed to dress as a young person normally would for visiting the particular type of establishment where the test purchase(s) are to be attempted, and to wear such jewellery and make-up as he or she would normally wear for visiting that type of establishment⁴³.**
- c) The test purchaser may be allowed or instructed to present proof of age if they are asked for this by the business being tested. This proof of age should be genuine and should relate to the test purchaser. Where there are concerns about revealing the identity of the test purchaser, the proof of age should not include any identifying details such as name or address.**

³⁹ Covert Surveillance and Property Interference Revised Code of Practice, Home Office, 2010. Note the Home Office consultation on changes to this Code of Practice which closed on 27 March 2014.

⁴⁰ Covert Human Intelligence Sources Code of Practice, Home Office, 2010. Note the Home Office consultation on changes to this Code of Practice which closed on 27 March 2014.

⁴¹ Protection of Freedoms Act 2012 – changes to provisions under the Regulation of Investigatory Powers Act 2000. Home Office Guidance to local authorities in England and Wales on the judicial approval process for RIPA and the crime threshold for directed surveillance, Home Office, 2012

⁴² See section 19 of this Code.

⁴³ Note that statutory defence provisions in section 146 of the Licensing Act 2003 make reference to an individual's appearance: ‘...*nobody could reasonably have suspected from the individual's appearance that he was aged under 18...*’ Enforcing authorities will need to have regard to these provisions in determining whether the appearance of a test purchaser is suitable.

- d) **The test purchaser should be instructed on any particular tactics to be used; should understand the reasons for using the tactics and how they may be used; and his or her consent to use such tactics should be obtained.**
 - e) **Enforcing authorities will need to be aware that the use of a test purchaser aged under 18 should be authorised by the appropriate person in relation to test purchases under the Licensing Act 2003⁴⁴ or the Gambling Act 2005⁴⁵.**
- 15. Where an enforcing authority conducts a test purchase attempt in relation to compliance with age restricted products and services legislation, whether or not in response to a complaint or other intelligence, the business should be notified in writing of the outcome of the test purchase attempt. Written notifications of test purchases should include the following:**
- a) **The fact that a test took place, and an indication of the time period within which the test took place. (This does not require disclosure of the exact time or date though the enforcing authority may feel that it is helpful to provide this detail where they do not have specific concerns about the welfare of the test purchaser.)**
 - b) **Any reason for the test eg. as part of a survey, or in response to complaints about sales of age restricted products by businesses in the area or the particular business.**
 - c) **The premises address.**
 - d) **The category of product and relevant legislation.**
 - e) **The outcome of the test.**
 - f) **Where relevant, a note that there was a failure to request valid proof of age⁴⁶.**
 - g) **The name of the seller, where known.**

Guidance:

- 15.1 The publication of generic details of exercises eg. locality, number of premises visited, failure rate, product, age of volunteers etc. by the enforcing authority may be of value but is not a replacement for individual notification.
 - 15.2 Template letters that enforcing authorities may choose to use will be made available on BRDO's website.
- 16. Written notifications pursuant to section 15 above should be sent to the following person(s):**
- a) **To the owner of the business, whether identified from the Companies Act 2006 notice displayed on the premises, or otherwise.**

⁴⁴ A young person under 18 years who buys or attempts to buy alcohol may commit an offence (Licensing Act 2003, section 149(1)) unless this is at the request of 'a constable or a weights and measures inspector who is acting in the course of his duties' (section 149(2)).

⁴⁵ A young person under 18 years who gambles may commit an offence (Gambling Act 2005) unless this is 'at the request of a constable, enforcement officer or authorised person acting in the performance of his functions' (section 64).

⁴⁶ Where the enforcing authority feels that advice on improving compliance is needed, they should refer this to the primary authority where relevant.

b) In the case of alcohol, to the Premises Licence Holder, with a copy also being sent to the legal owner of the alcohol, if a different person.

Guidance:

- 16.1 The code does not require written notifications to be sent to employees or members of staff, unless there is a particular reason to notify them.
- 16.2 Where the business is in a Primary Authority partnership in relation to Age Restricted Products or Age Restricted Services, regard should be had to any recommendations or advice of the primary authority in respect of communication, for example in an inspection plan in relation to Age Restricted Products or Age Restricted Services.

17. Where a test purchaser accesses the age restricted product or service ('failed test'), written notifications should be made promptly after the test purchase has taken place, and should be seen as supplementary to any verbal notification that may be given at the time of the test purchase.

Guidance:

- 17.1 A timescale of up to 5 working days would be considered to be 'prompt' for the purposes of this section.
- 17.2 An enforcing authority might consider delaying notification under this section in specific circumstances, for example, where the enforcing authority has credible evidence of deliberate disregard of the law and foresees that it is likely to consider enforcement action. In this circumstance, it might be reasonable for the enforcing authority to delay written notification beyond 5 working days, whilst it carries out further test purchases in a short space of time, in order to gather further evidence.
- 17.3 It would not usually be appropriate for the enforcing authority to delay notification under this section in order to protect the identity of the test purchaser or officers involved in the test purchase operation, unless further test purchases are planned at the premises using those same individuals, within a short space of time (as outlined above).
- 17.4 Any decision to delay notification should be taken on a case by case basis and the reasons for the decision should be recorded.

18. Where a test purchaser is denied access to the age restricted product or service ('passed test'), written notifications should be made within a reasonable period of time.

Guidance:

- 18.1 A timescale of up to 10 working days would be considered to be 'reasonable' for the purposes of this section.
- 18.2 An enforcing authority might consider delaying notification under this section in specific circumstances. For example:
 - where there are valid concerns about identification of the test purchaser or accompanying officers by a particular business; or
 - where the enforcing authority has credible evidence of continuing disregard of the law and wishes to follow up the test purchase with further test purchases in a short space of time.

- 18.3 It would not usually be appropriate for the enforcing authority to delay notification under this section in respect of a business that has demonstrated a responsible approach to compliance, for example through working within a Primary Authority partnership that covers age restricted sales compliance.
- 18.4 Any decision to delay notification should be taken on a case by case basis and the reasons for the decision should be recorded.

Welfare of young people

- 19. An enforcing authority that recruits and engages young people as test purchasers must ensure that, in the conduct of its operations, the welfare of children is always paramount⁴⁷. In particular the enforcing authority should:**
- a) Consider the need to protect the identity of each test purchaser at all times.**
 - b) Carry out a risk assessment⁴⁸ in respect of each test purchasing operation, in accordance with the health and safety procedures of the enforcing authority.**
 - c) Consider whether officers undertaking work with young persons should complete a criminal records check in accordance with the enforcing authority's policy⁴⁹.**
 - d) Design working arrangements with a view to optimising protection for the test purchaser. In particular, it is recommended that:**
 - **officers visit young people under the age of 18 (test purchasers or prospective test purchasers) only in the presence of a parent, guardian, teacher or other responsible adult;**
 - **arrangements for engaging a young person under the age of 18 for a test purchase operation are always made with a parent or guardian;**
 - **a test purchaser under the age of 18 should always be collected from and returned by officers to a place of safety that has been agreed in advance with a parent or guardian, and a parent, guardian, teacher or other responsible adult should usually be present when the test purchaser is collected and returned, unless it has been agreed in advance that this is not necessary;**
 - **consideration is given to whether an officer should be present in the premises during the test purchase attempt and, where this is not possible or appropriate, what other arrangements may be made to allow the test purchaser to easily contact an officer;**
 - **consideration is given to whether one of the officers accompanying the young person should be of the same gender as the young person;**

⁴⁷ Statutory guidance issued under s.16 of the Children Act 2004 and s.7 of the Local Authorities Social Services Act 1970 underlines the need to ensure that the welfare of children is **paramount** in the discharge of all of local authority functions.

⁴⁸ The term 'risk assessment' is used throughout this Code to refer to the assessment of the risk posed by a business. However, in this section of the Code it is used to refer to an assessment of the risks that an enforcement activity presents to the health and safety of participants in the activity.

⁴⁹ Guidance on criminal record checks is available on the Disclosure and Barring Service website at: <https://www.gov.uk/government/organisations/disclosure-and-barring-service>

- **consideration should be given to conducting test purchase attempts in such a way as to minimise the likelihood that the test purchaser will be called to give evidence; and that**
- **an exercise or operation should be halted if at any point a young person shows signs of distress or indicates a reluctance to continue.**

Guidance:

- 19.1 To facilitate the protection of a test purchaser's identity, the enforcing authority may find it helpful to assign a unique identity code to each test purchaser. This code can then be used to refer to the test purchaser in all documentation associated with a test purchase. The enforcing authority may then consider marking records which link this code to the identity of the test purchaser as sensitive material.
- 19.2 A template health and safety risk assessment that may be used by enforcing authorities will be made available on BRDO's website.
- 20. Young people may be 'recruited' to participate in test purchase operations from any appropriate source. An explanation should be provided to the young people at the recruitment stage of the purpose and nature of test purchase operations, and the possible outcomes where an illegal sale is made.**

Guidance:

- 20.1 Appropriate sources for recruitment of test purchasers may include:
- through work with local schools, colleagues or youth groups;
 - from relatives of staff of the enforcing authority or partner organisations;
 - from existing employees of the enforcing authority or its partners; or
 - volunteer police cadets.
- 21. Where the enforcing authority employs young people as test purchasers it will need to have particular regard to the statutory requirements^{50&51} in respect of employing workers of the relevant age.**
- 22. The provision of any form of payment, reward or gratuity to a test purchaser should not include any element that is dependent upon the outcome of the test purchase.**
- 23. Where a young person expresses an interest in assisting the enforcing authority, consideration should be given to his or her suitability for participation in test purchase exercises.**

Guidance:

- 23.1 An assessment of suitability should give consideration to the following factors:
- **How old is the young person?** To be considered suitable for test purchase operations that aim to establish whether illegal sales are being made, the young person should be younger than the legal age limit for the product that is to be test purchased.

⁵⁰ Working Time Regulations 1998; Children and Young Persons Act 1933 (employment of 'children', and local authority powers to make byelaws relating to the employment of children); Education Act 1996 (defines 'child' and 'compulsory school age'); Education and Skills Act 2008

⁵¹ Guidance on the Employment of Children, Department for Education, 2009

- **Does the young person's appearance fairly reflect their age?** To be considered suitable for test purchase operations that aim to establish whether illegal sales are being made, the young person's appearance should lead a reasonable person to suspect that they are below the legal age limit for the product to be test purchased⁵².
- **What appears to be motivating the prospective test purchaser to participate?** A young person who appears to be overly keen to 'catch out' a business should not be considered suitable as a test purchaser.

24. Where a young person is assessed as suitable, a comprehensive explanation should be provided to him or her as a prospective test purchaser of the matters listed below and his or her written agreement should be obtained. Where the prospective test purchaser is below 18 this explanation should also be given to his or her parent or guardian and the agreement of his or her parent or guardian to the young person's participation should be obtained.

- a) **The purpose of test purchase operations.**
- b) **The practical arrangements for conduct of operations.**
- c) **The arrangements that are in place to ensure the welfare of test purchasers.**
- d) **The conditions attached to participation eg. whether the test purchaser will receive payment or reward of any kind.**
- e) **The possible outcomes where an illegal sale is made.**

Guidance:

24.1 A template test purchaser agreement form that may be used by enforcing authorities will be made available on BRDO's website.

25. Evidence of the date of birth of the young person should be seen by an officer of the enforcing authority, prior to recruiting a young person as a test purchaser.

Guidance:

25.1 Acceptable evidence of the prospective test purchaser's date of birth might include:

- the young person's photo card driving licence;
- the young person's passport;
- a PASS accredited proof of age card; or
- a copy of the young person's birth certificate, endorsed by the young person's parent or carer.

25.2 In most circumstances, the officer will want to keep a copy of the proof of identity seen.

26. Prior to each exercise or operation, the test purchaser's consent to participation should be obtained and, where the test purchaser is below 18, consent to his or her participation in the exercise or operation should also be obtained from his or her parent or guardian.

⁵² Note that the statutory defence provisions in section 146 of the Licensing Act 2003 make reference to an individual's appearance: '*...nobody could reasonably have suspected from the individual's appearance that he was aged under 18...*' Enforcing authorities will need to have regard to these provisions in determining whether the appearance of a test purchaser is suitable.

Guidance:

- 26.1 The tactics that have been authorised for an exercise or operation should be explained to the young person and the potential implications for the young person should be clear to him or her before consent is sought from the young person and his or her parent or guardian. In particular, the young person should understand that, if a situation arises where he or she is called to give evidence in Court, he or she may be questioned in relation to the use of the particular tactics.
- 26.2 The enforcing authority should determine its requirements for consent. For example, it may choose to require written consent or to accept verbal consent as long as this is recorded by an officer.
- 27. Prior to each exercise or operation in which they have agreed to participate, test purchasers should be given detailed instructions, appropriate to the nature of the exercise and the type of establishment to be visited.**

Guidance:

- 27.1 The enforcing authority may find it helpful to provide the test purchaser with written instructions as to how they should conduct the proposed test purchases, and to obtain a signature on these instructions as an indication of understanding.
- 27.2 Instructions would normally include:
- to dress as a young person normally would for visiting the particular type of establishment where the test purchase(s) are to be attempted, and to wear such jewellery and make-up as he or she would normally wear for visiting that type of establishment⁵³;
 - the practical arrangements for his or her welfare during the exercise or operation;
 - not to volunteer information about his or her age or identity to the seller;
 - not to enter into conversation with the seller where a sale is refused or to make any attempt to persuade the seller to make a sale;
 - to leave the premises immediately if he or she feels uncomfortable with the situation that he or she is in;
 - how to respond where the seller asks any questions about his or her age; and
 - how to respond if he or she is asked to produce his or her proof of age.

⁵³ Note that the statutory defence provisions in section 146 of the Licensing Act 2003 make reference to an individual's appearance: '*...nobody could reasonable have suspected from the individual's appearance that he was aged under 18...*' Enforcing authorities will need to have regard to these provisions in determining whether the appearance of a test purchaser is suitable.

D) Responses to non-compliance

28. The enforcing authority should ensure that it communicates effectively with the business in relation to any non-compliance, and with any individual who may be responsible for the non-compliance.

Guidance:

- 28.1 The enforcing authority will need to ensure that it communicates with the most appropriate person within the business. Where the business has a primary authority or home authority, early contact with it will usually be helpful in identifying the most effective route of communication, whether this is to obtain information from the business, or to ensure that compliance issues are addressed promptly.
- 28.2 Statutory guidance on the Licensing Act 2003⁵⁴ identifies it as good practice for responsible authorities to give licence holders *'early warning of their concerns about 'problems identified at the premises concerned and of the need for improvement'*. This would involve discussions with a representative of the business who has the authority to address issues. Where the business is a multi-site operator, discussions at premises level, for example with the designated premises supervisor or other staff, may be needed but would not replace discussions with the licence holder.
- 28.3 In responding to a non-compliance, an enforcing authority's primary focus will usually be on securing future compliance. In most circumstances, this requires constructive dialogue with the business in order for both parties to understand the causes of the non-compliance and any changes that are needed. It is recognised that, where the enforcing authority is at the same time considering enforcement action and is investigating a potential criminal offence, the requirements of the investigation may inhibit this constructive dialogue. The enforcing authority will need to consider how it manages this dual role to best deliver its regulatory outcomes.
- 28.4 Where an investigation is initiated, the enforcing authority should ensure that the business is aware of the investigation and knows when it can expect updates on the progress of the investigation. The outcome of the investigation should be notified promptly to the business, whether that is a decision to take no further action, a warning letter, the initiation of enforcement action, or some other outcome.
- 28.5 The enforcing authority should ensure that it is transparent about any future implications of enforcement action that it takes. In particular, it should be clear to the business how accepting a simple caution or receiving a warning notice might influence future enforcement action. For example, where the enforcing authority might use the simple caution or warning notice as evidence of persistent selling.

⁵⁴ Amended Guidance Issued under Section 182 of the Licensing Act 2003, Home Office, 2012, paragraph 11.10

29. The enforcing authority should ensure that it responds to non-compliance in a manner that complies with that authority's published policy⁵⁵ and with the principles set out in the Macrory Review⁵⁶, namely, that their approach should:

- **aim to change the behaviour of the offender and to secure ongoing compliance;**
- **aim to eliminate any financial gain or benefit from non-compliance;**
- **be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;**
- **be proportionate to the nature of the offence and the harm caused; and**
- **aim to restore the harm caused by regulatory non-compliance, where appropriate.**

Guidance:

- 29.1 In considering a response to non-compliance that is proportionate, the enforcing authority will wish to consider all factors that it has identified as causing or contributing to the breach, and will want to make an assessment as to the business's attitude to compliance. This will help it to decide whether it can work with the business to support the achievement of ongoing compliance (see 29.2 below), or whether it is appropriate to deal firmly with the business (see 29.3 below).
- 29.2 An enforcing authority's approach to supporting the business to achieve ongoing compliance might include:
- providing advice or guidance to the business;
 - working in partnership to address issues identified in local implementation of a business's controls at a particular premises;
 - accepting a commitment from the business to take specified steps to secure ongoing compliance (agreeing an 'action plan'); and
 - agreeing a course of remedial action with a primary authority or home authority for the business, or with the Premises Licence Holder, where appropriate.
- 29.3 An enforcing authority should take firm enforcement action where it is needed, having regard to the public interest, the available evidence and the circumstances of each case. For example, factors to consider may include the following:
- Where there is evidence of criminal activity for which there is a reasonable prospect of conviction and it would be in the public interest to proceed with enforcement action, for example, because the regulatory issue in question is one which represents a particularly high priority.

⁵⁵ Regulators' Code, section 6

⁵⁶ Regulatory Justice: Making Sanctions Effective, Better Regulation Executive, 2006

- Where there is evidence of persistent selling^{57&58}.
- Where there is evidence of failure to demonstrate due diligence or taking reasonable steps to establish the age of the individual.
- Where the non-compliance involved aggravating factors. Eg. 'hide it up your sleeve'; 'I can't sell it to you now but come round the back later'; 'just wait until other customers have left the shop'. The Government's Tobacco Control Plan 'Healthy Lives, Healthy People' sets out the Government's view that: '*... enforcement action should only be needed in cases where the law is deliberately flouted, but where it happens, we support local authorities in taking strong action*'⁵⁹.
- Where advice and/ or support to the business has not been effective in improving compliance.

29.4 The enforcing authority should consider how it will ensure that its responses to non-compliance are proportionate where responsibility for the non-compliance rests with an employee or employees, or other individual(s) who work in the business.

29.5 Licensing authorities are required to act in accordance with the statutory principles of good regulation⁶⁰ and are required to have regard to the statutory guidance issued under section 182 of the Licensing Act 2003 and section 25 of the Gambling Act 2005.

⁵⁷ Licensing Act 2003, section 147A

⁵⁸ Children and Young Persons Act 1933, sections 12A to 12D

⁵⁹ Note that the Tobacco Control Action Plan for Wales does not include this statement.

⁶⁰ The principles set out in section 21 of the Legislative and Regulatory Reform Act 2006, that regulation should be exercised in a way that is transparent, accountable, proportionate and consistent, and is targeted only at cases where it is needed.

Annex 1. Summary of resources

Policy and Guidance

HM Government

- *Regulators' Code, 2014*
- *The Government's Alcohol Strategy, 2012*
- *Healthy Lives, Healthy People: A Tobacco Control Plan for England, 2011*

Welsh Government

- *Working Together to Reduce Harm The Substance Misuse Strategy for Wales 2008-2018*
- *Tobacco Control Action Plan for Wales, 2012*
- *You, Your child and Alcohol - Guidance on the Consumption of Alcohol by Children and Young People*

Home Office

- *Amended Guidance Issued Under Section 182 of the Licensing Act 2003, Home Office, 2012*
- *False ID Guidance, Home Office, 2012*

Department of Health

- *Local Government Leading for Public Health, Department of Health, 2011*
- *Guidance on the implementation of the Sunbeds (Regulation) Act 2010, Department of Health, 2011*
- *Guidance on the Consumption of Alcohol by Children and Young People - A Report by the Chief Medical Officer, Department of Health, 2009*

Department for Business, Innovation and Skills

- *Regulators' Code Section 6: Local Authority Toolkit, Better Regulation Delivery Office, 2014*
- *Age Restricted Products and Services Framework, Local Better Regulation Office, 2011*
- *Priority Regulatory Outcomes, Local Better Regulation Office, 2011*
- *Outcomes and Impacts Toolkit Summary, Local Better Regulation Office, 2010*
- *Regulatory Justice: Making Sanctions Effective, Better Regulation Executive, 2006*

Department for Education

- *Guidance on the Employment of Children, Department for Education, 2009*

Gambling Commission

- *Guidance to Licensing Authorities, 4th Edition , Gambling Commission 2012*
- *Licence Conditions and Codes of Practice (Consolidated Version), Gambling Commission, 2011*
- *Code of practice for equal chance gaming in clubs and premises with an alcohol licence, Gambling Commission, March 2012*
- *Code of practice for gaming machines in clubs and premises with an alcohol licence, Gambling Commission, March 2012*
- *Approach to test purchasing – England and Wales only, Gambling Commission, 2011*

National Institute for Health and Clinical Excellence

- *Public Health Briefings for Local Government, NICE, 2012*

Retail of Alcohol Standards Group

- *Implementation Guide to Community Alcohol Partnerships, 2010*

Research and Project Evaluation

- *Protecting Young People from Alcohol Related Harm*, Research by Design Ltd and the Local Better Regulation Office, 2009
- *Building Safe, Active Communities: Strong foundations by local people*, Third report by Baroness Newlove, 2012
- *CLeaR Thinking – Excellence in local tobacco control*, Action on Smoking and Health, 2012
- *An Evaluation of the Kent Community Alcohol Partnership*, University of Kent, 2009
- *L CAP Young Peoples Alcohol Report Stage 2*, Ludlow Community Alcohol Partnership, 2011
- *Tackling Knife Crime Together – A Review of Local Anti-Knife Crime Projects*, Kinsella B., 2010
- *Tackling Illicit Tobacco for Better Health: Final Evaluation Report*, UK Centre for Tobacco Control Studies, 2012
- *Study of Sunbed Use in 11-17 year olds in England Final Summary Report*, Cancer Research UK, 2010
- *Study of Sunbed Use in 11-17 year olds in England Part B: The ‘Six Cities’ Study*, Cancer Research UK, 2009
- *The Alcohol Awareness Certificate: an Evaluation of Students’ Self-Perceived Awareness and Modified Behaviour Post Course*, BIIAB and University College Birmingham, 2010
- *Young People, Alcohol and Influences*, Joseph Rowntree Foundation, 2011
- *An evaluation of the implementation of, and compliance with, the objectives of the Licensing (Scotland) Act 2005: Sub-study of Test Purchasing and other measures to enforce underage alcohol sales regulations*, NHS Health Scotland, 2012
- *Smoking, Drinking and Drug Use among 13 and 15 Year Olds in England in 2012*, Health and Social Care Information Centre, 2013
- *Statistics on Smoking: England 2013*, Health and Social Care Information Centre, 2013
- *Smoking in Wales: current facts*, Wales Centre for Health, 2007
- *Smoking, Drinking and Drug Use among 13 and 15 Year olds in Scotland in 2010, SALSUS National Report*, Ipsos MORI, 2011
- *Market research report: behaviour and attitudes of 14 to 17 year olds in the North West towards alcohol*, Trading Standards North West and Ci Research, 2009 and 2011
- *Kick Ash Cambridgeshire Pilot Year Report*, NHS Cambridgeshire & Cambridgeshire County Council, 2010
- *Kick Ash Cambridgeshire 2010/11 Evaluation Report*, NHS Cambridgeshire & Cambridgeshire County Council, 2011
- *Reducing Crime and Disorder in the Night Time Economy*, Southampton Safer City Partnership (Home Office Tilley Award Overall Winner 2011)
- *Essential Elements of Tobacco Control*, East of England Trading Standards Association, 2009

Other Resources:

- Local data sources eg. analysis of local crime data, community consultation responses, information from partner organisations
- Local Tobacco Control Profiles, Public Health Observatories (England)
- Local Safeguarding Children Policies
- The Drinkaware Trust website brings together a range of resources in relation to young people and alcohol at www.drinkaware.co.uk/children-and-alcohol/professionals/research
- *Revised National Trading Standards Board Risk Assessment Scheme*, National Trading Standards Board, 2012
- *TSI Fair Trading Award, Age Restricted Sales module: 'Do you PASS?'*
- *BIIAB Level 1 Award in Responsible Alcohol Retailing*
- *Challenge 21*, British Beer and Pub Association
- *Challenge 25*, Scottish Beer and Pub Association
- *Tobacco Retailer Sanctions*, LACORS, 2009

Annex 2. Extract from the Age Restricted Products and Services Framework

Responsibilities of Regulators and Enforcers:

- To be clear about the outcomes that they are working towards, and how their activities will contribute to those outcomes
- To ensure that their compliance and enforcement approach to age restricted products and services legislation is transparent
- To work collaboratively with partner organisations and other regulators and enforcers that have overlapping areas of responsibility, to ensure that the overall approach is consistent and focussed on delivering outcomes
- To take an evidence based approach to determining priority risks to local communities and young people
- To prioritise resource allocation on activities that deliver improved protections for local communities and young people, including working in partnership with businesses and local communities to tackle issues of access to age restricted products and services
- To take a risk-based approach to targeting checks on the compliance of individual businesses, and to ensure that their risk assessment model⁶¹ is transparent
- To be clear and consistent in their message that valid proof of age should always be required where young people seek to access age restricted products or services
- To be clear in their message that PASS⁶² cards are the preferred form of proof of age, and to acknowledge that there are other acceptable forms of proof of age as detailed in current Home Office guidance
- To respond to complaints, intelligence and breaches in a proportionate manner that recognises the business' compliance arrangements and works with them, including through Primary Authority
- When using particular tactics, to seek the appropriate authorisations or approvals as required by legislation or as set out in a code of practice or procedure
- To communicate to businesses in writing, in a timely manner, the outcome of all checks on compliance by test purchase or inspection
- To share good practice and innovation with other regulators and enforcers
- To have regard to the welfare of test purchasers when carrying out test purchases

Reasonable Expectations:

- That businesses will take a responsible approach to complying with legal requirements in relation to age restricted products and services
- That they will receive co-operation from other public sector organisations that share a responsibility for protecting young people, local communities and animals from the harm associated with age restricted products and services

⁶¹ The term 'risk assessment model' is used here to indicate a systematic use of set criteria to determine a score for a business, which is translated into a rating of the risk that is posed by the business.

⁶² The national Proof of Age Standards Scheme, which accredits card issuers to issue proof of age cards bearing the 'PASS hologram'.

Annex 3. Summary of statutory age restrictions⁶³

	Product / Service	Statute / SI
1.	Aerosol spray paint	Anti-social Behaviour Act 2003
2.	Air weapons and imitation firearms	Firearms Act 1968 Violent Crime Reduction Act 2006
3.	Alcohol	Licensing Act 2003
4.	Butane lighter refills	Cigarette Lighter Refill (Safety) Regulations 1999
5.	Cinema films	Licensing Act 2003
6.	Crossbows	Crossbows Act 1987 Violent Crime Reduction Act 2006
7.	Caps, cracker snaps, party poppers etc.	Explosives Act 1875
8.	Fireworks	Fireworks (Safety) Regulations 1997
9.	Gambling	Gambling Act 2005
10.	Liqueur confectionery	Licensing Act 2003
11.	National lottery	National Lottery etc Act 1993 National Lottery Regulations 1994
12.	Petrol	Petroleum Consolidation Act 1928
13.	Pets	Animal Welfare Act 2006
14.	Publications (considered harmful to children)	Children and Young Persons (Harmful Publications) Act 1955
15.	Sale of knives and articles with a blade or point	Offensive Weapons Act 1996 Criminal Justice Act 1988
16.	Scrap metal purchasing from persons under the age of 16	Scrap Metal Dealers Act 1964
17.	Solvents	Intoxicating Substances (Supply) Act 1985
18.	Sunbeds	Sunbeds (Regulation) Act 2010 Sunbeds (Regulation) Act 2010 (Wales) Regulations 2011 (additional provisions applicable in Wales only)

⁶³ This summary is of age restrictions in place at the time of first publication of this Code in January 2013.

	Product / Service	Statute / SI
19.	Tattooing	Tattooing of Minors Act 1969
20.	Tobacco products	Children and Young Persons Act 1933 (as amended) Children and Young Persons (Protection from Tobacco) Act 1991 Children and Young Persons (Sale of Tobacco etc.) Order 2007
21.	Video works and video games	Video Recordings Act 1984

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