



BRDO consultation on Age Restricted Products Code of Practice Response of the association of Convenience Stores

ACS (the Association of Convenience Stores) welcomes the opportunity to respond to this consultation. ACS represents 33,500 local shops across all UK regions, which employ more than 250,000 staff in their retail outlets.

ACS welcomes the work of the BRDO in producing the Age Restricted Sales and Services Principles and Draft Code of Practice. The vast majority of convenience stores sell age restricted products and therefore stand to benefit from the additional reassurance and clarity that this Code could create around the responsibilities of both retailers and enforcement authorities.

Question 1

Do you agree or disagree that sections 1-4 clearly outline what factors enforcing authorities should consider when determining priorities and targeting resources?

ACS supports the approach adopted in sections 1-4 of the draft Code, and we agree that priorities should be determined based on local need. Age restricted sales pose many challenges for retailers, enforcement authorities and communities, and this clear guidance advocating an evidence based and inclusive assessment of local needs is a significant step towards addressing some of these challenges.

Question 2

If you disagree, please tell us where sections 1-4 are unclear, or how they could be improved.

While we support the general approach taken in these sections, we believe there is scope to widen section 3 to include co-operation between enforcement authorities and local retail initiatives relevant to under-age sales. Enforcement authorities should work collaboratively with public health and education organisations, we believe 'partner organisations with shared outcomes' should also include retail and community initiatives, often run on a voluntary basis, such as Community Alcohol Partnerships (CAP), which are designed to tackle local issues such as under-age drinking.

CAP schemes bring together retailers, enforcement authorities and community groups to help tackle local problems around under-age drinking. Given the existing collaborative approach and community links, we believe that CAP and similar local initiatives could have an important role to play in helping enforcement authorities understand and prioritise the issues around age restricted sales in their area, and therefore that it would be beneficial for this to be included in the guidance under section 3.

Under section 4, we also believe that in order to help foster a constructive relationship between all relevant parties, enforcement authorities should be able to demonstrate the process they have adopted in order to ensure their approach is aimed at delivering improved protections. Section 4.1 clearly highlights the wide range of options available to enforcement authorities, including educational tools, however many authorities choose to rely more heavily on test purchasing and enforcement action.

Publication, where possible, of a clear, balanced process which sets out all measures used by the authority, would help to alleviate negative perceptions and encourage a more transparent and positive relationship between stakeholders.

Question 3

Please provide any other comments that you would like to make about sections 1-4.

Question 4

Would the development of a national risk assessment model be of value?

The development of a national risk assessment model would be beneficial to retailers, as it would support and strengthen the Principles and Code of Practice, and provide additional reassurance and consistency for retailers, especially those who operate across UK regions. However, one key issue would be the coverage of any risk assessment model. While the current draft Code of Practice is applicable only to England and Wales, a consistent approach to risk assessment across all regions, if practicable, would provide the most benefit and reassurance to retailers.

Question 5

Do you agree or disagree that sections 5-11 clearly outline how enforcing authorities should work with businesses and communities to support the prevention of underage sales?

We fully support the focus on ensuring a transparent and productive relationship between enforcement authorities and businesses, as outlined in sections 5-11.

Question 6

If you disagree, please tell us where sections 5-11 are unclear, or how they could be improved.

While fully supporting the approach taken in these sections, we wish to highlight the need for enforcement authorities to ensure they are able to communicate and provide support to all relevant businesses. We agree that, as outlined in section 8.3, trade associations and local schemes and initiatives are an important route of communication to businesses; however we have also found that often those in most need of support and assistance may not be part of these groups or aware of the resources available to them.

In order to help ensure all businesses receive the necessary support and communication from enforcement authorities, we believe the guidance should also include reference to the use of relevant trade press, as well as highlighting the need for direct communication to all businesses if necessary.

We are, of course, happy to provide assistance where possible in ensuring enforcement authorities can communicate with their local business communities.

Question 7

Please provide any other comments that you would like to make about sections 5-11.

Question 8

Do you agree or disagree that sections 12-14 clearly outline what factors enforcing authorities should consider when targeting proactive and responsive checks on compliance?

We support the focus in these sections on the need for robust risk assessment and proportionality when allocating resources and carrying out test purchases, however feel that these sections of the Code do not indicate as strongly as Section A the need for a risk- and evidence-based approach from enforcement authorities.

Question 9

If you disagree, please tell us where sections 12-14 are unclear, or how they could be improved.

Where there is a recognised problem or complaints about under-age sales, we recognise that compliance checks can form an important part of an enforcement authorities approach, however, we do not believe there is a need for the Code to include guidance on conducting 'proactive' compliance checks without direct reference to the above, as this could be seen as tacit encouragement of random testing by authorities.

We do support the points made in section 12 on the risk assessment criteria when deciding if a test purchase is required, and would support this being incorporated into section 13 to create comprehensive guidance for both determining and conducting test purchase operations. We also feel that, in addition section 13.5, where a decision is made to conduct compliance checks, the authority should be able to demonstrate the application of the risk assessment criteria and reasons why that business was prioritised for such activity, if challenged.

Question 10

Please provide any other comments that you would like to make about sections 12-14.

Question 11

Do you think that there are any specific circumstances in which the use of 'false' or 'fake' id by a test purchaser should be available as a tactic?

No. We do not support the use of false or fake ID during compliance checks. If enforcement authorities or retailers become aware of particular types of false ID in circulation within their area, this should be communicated to all relevant parties and used in educational and training materials, but not as part of test purchases in stores.

Question 12

If so, please provide evidence to support this view.

Question 13

Are there any other factors that should be listed in the guidance to section 17 to support enforcing authorities in determining whether the use of this tactic is proportionate and necessary?

We do not advocate the use of lying by young people during a test purchase exercise, however, if this is deemed necessary due to any of the circumstances outlined in this section, we agree that the procedures outlined provide useful guidance, especially in terms of safeguards for the young people concerned.

Question 14

If so, please list these factors.

Question 15

Do you agree or disagree that sections 15-18 clearly outline what factors enforcing authorities should consider when selecting appropriate test purchasing tactics?

We agree with the majority of these sections which provide detailed guidance on the factors which should be considered when determining test purchasing tactics, however, as with Question 9, we do not support the inclusion of guidance which could be seen to support 'proactive' test purchasing, such as section 15.2.

Question 16

If you disagree, please tell us where sections 15-18 are unclear, or how they could be improved.

Section 15.2 lists information gathering options as potential reasons for carrying out test purchase activity, including 'to establish baseline data'. We believe that the inclusion of this in the guidance could be perceived as encouraging or recommending proactive compliance testing, and therefore should be removed.

We believe that other options are more suitable should enforcement authorities need to gather general information in their area, including direct engagement with retailers and community organisations.

Question 17

Please provide any other comments that you would like to make about sections 15-18.

Question 18

Would the development of template letters for written notifications of test purchase attempts be of value?

Template letters could provide additional clarity for retailers and help simplify the process for enforcement authorities, however if they are to be created the design should have input from relevant business and enforcement organisations to ensure the template is straight forward, and easy to understand for all parties.

As with Question 4, we would also support any template letters being applicable to all regional authorities across the UK, where possible.

Question 19

Are the proposed timescales for written notifications in the event of a 'failed' test purchase reasonable?

We have concerns over the potential timescales for notification of failed test purchases. The guidance does not clarify whether the period of 'up to 5 working days' refers to the dispatch or delivery of a notification to the business owner.

Question 20

If not, why not?

We welcome the commitment to notify the business owner of all instances of test purchasing in premises, because a key concern expressed by companies operating a number of stores is that notification of failed test purchases is often only sent to the premises, rather than the business owner. However, especially where a store is part of a multiple chain, it is vital that both the business owner and the premises are notified of a failed test purchase so that immediate action can be taken at both levels to address the issue.

The delivery of notification only to a busy head office could result in unreasonable delays in notification to the actual premises concerned. In cases where an authority chooses to delay notification due to plans for further enforcement activity, this could result in a second failed test purchase occurring, with the resulting consequences, without a premises having first been notified that problems had been identified in their store.

We would therefore recommend that enforcement authorities are not permitted to withhold notification if the purpose of doing so may be perceived as an attempt to secure further regulatory breaches and potentially higher enforcement penalties.

We would therefore also wish to see the guidance recommend that both the premises and business owner are notified in the event of a failed test purchase, and that the letter sent to the business owner be sent via a form of recorded delivery.

Question 21

Are the proposed timescales for written notifications in the event of a 'passed' test reasonable?

With the exception of needing to clarify whether the 'up to ten working days' period relates to dispatch or receipt of the notification, we agree that the timescales for notification of passed tests are reasonable.

Question 22

If not, why not?

Question 23

Do you agree or disagree that sections 19-23 clearly outline how written notifications should be used following test purchases and inspections?

We agree these sections clearly outline how written notifications should be used. We welcome the addition of notifications for 'passed tests' as this will provide vital information to businesses which the vast majority are not currently provided with.

Question 24

If you disagree, please tell us where sections 19-23 are unclear, or how they could be improved.

Question 25

Please provide any other comments that you would like to make about sections 19-23.

Question 26

Do you agree or disagree that sections 24-32 clearly outline enforcing authorities' responsibilities with regard to the welfare of young people who carry out test purchasing operations.

We agree these sections are clear.

Question 27

If you disagree, please tell us where sections 24-32 are unclear, or how they could be improved.

Question 28

Do you agree or disagree that sections 24-32 clearly outline what support and instruction enforcing authorities should provide to young people who carry our test purchasing operations?

We agree these sections are clear.

Question 29

If you disagree, please tell us where sections 24-32 are unclear, or how they could be improved.

Question 30

Please provide any other comments that you would like to make about sections 19-23.

Question 31

Do you agree or disagree that sections 33-34 clearly outline what factors enforcing authorities should consider in ensuring that responses to complaints, intelligence and breaches are appropriate?

These sections are clear. Both businesses and enforcement authorities have a responsibility to work together to ensure compliance and tackle the many issues that can arise from under-age sales. We particularly welcome the recognition that the decision on whether to take enforcement action should consider any mitigating factors and how any action taken can best support the achievement of ongoing compliance.

Question 32

If you disagree, please tell us where sections 33-34 are unclear, or how they could be improved.

Question 33

Please provide any other comments that you would like to make about sections 33-34.