

Age Restricted Products and Services Consultation



Deadline date for responses is 16th September 2011

Introduction

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

Yes, absolutely. There needs to be equal buy-in by young people and their parents as well as by businesses. There is a very important societal issue which needs to be addressed by responsible parents in educating young people, in particular concerning age restricted products and services, about what is right and what is wrong, what is acceptable and what is not, and the inherent dangers of irresponsible abuse of age restricted products by young persons.

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

Yes. Closer working relationships between regulatory bodies and businesses is a healthy approach to take. It is appropriate for regulators to encourage and support responsible compliant businesses. However, I am unclear what constitutes 'reward'?

The role of regulators does need to be appropriately balanced between the enforcer and enforced. Enforcing bodies should be able to take 'firm' and formal action where it is warranted and should not be stifled by overly and unnecessarily prescriptive and bureaucratic regulatory frameworks, policies and procedures.

Young People

Question 3 - Do you agree that these points reflect the responsibilities of young people or are reasonable expectations for them to have in relation to age restricted products and services? (Please use the numbering above if you want to comment on specific points.)

Yes. To support young people parents and peers have a moral duty to educate them about what is right and what is wrong, what is acceptable and what is not, and the inherent dangers of irresponsible abuse of age restricted products by young persons.

In respect of A2, instead of just stating it is a criminal offence to use 'fake' proof of age or purchasing or attempting to purchase alcohol under the legal age it is important to impress on young people the detrimental effects of having a criminal record on future job prospects, CRB disclosure checks, educational/university entry applications, financial loss (fixed penalty notice, fine, costs), social stigma.

Parents

Question 4 - Do you agree that these points reflect the responsibilities of parents or are reasonable expectations for them to have in relation to age restricted products and services? (Please use the numbering above if you want to comment on specific points.)

Yes. Regarding C1 to C4, I would like to see particular emphasis placed on 'responsible parenting' to punctuate parents' responsibilities as opposed to society's responsibility. See answers to Qs 1 & 3.

Businesses

Question 5 - Do you agree that these points reflect the responsibilities of businesses or are reasonable expectations for them to have in relation to age restricted products and services? (Please use the numbering above if you want to comment on specific points.)

Yes.

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

For transparency, where test purchases are conducted by enforcing agencies, to better engage with/by businesses and build confidence, both positive and negative results should be notified to those businesses in a timely manner. Details to tested businesses should include the date the test purchase was carried out, brief circumstances warranting the test purchase e.g. receipt of a complaint, chronology of test purchase actions taken to date for the subject premises, brief circumstances of the test purchase transaction. Notifications to include potential penalties for non-compliance i.e. FPN, conviction, imprisonment, licence review/licence revocation/suspension/removal of DPS/added or amended licence conditions (Licensing Act 2003). Where there are negative test purchases, notification to include brief circumstances as above but to acknowledge the business's effective compliance controls on that particular occasion.

There will be occasions, for operational reasons, that it should be left to the enforcing agency whether to notify subject premises of test purchase actions undertaken so as not to potentially prejudice outcomes of investigations. Case notes/inspection plans could be noted in these circumstances for the reasons why no notification provided.

Employees

Question 7- Do you agree that these points reflect the responsibilities of employees or are reasonable expectations for them to have in relation to age restricted products and services? (Please use the numbering above if you want to comment on specific points.)

Yes. I would add though that employers have an important responsibility when recruiting shop front staff that they are suitable for the role and display sufficient confidence to deal with members of the public when refusing age restricted sales, in particular aggrieved members of the public. Front of house staff are pivotal in ensuring compliance with legislation for age restricted products and services.

Regulators and Enforcers

Question 8 - Do you agree that these points reflect the responsibilities of regulators and enforcers in relation to age restricted products and services? (Please use the numbering above if you want to comment on specific points.)

Yes.

Test Purchasing – Appropriate Use of a Valuable Tool

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

Yes. It would be helpful to structure the code around test purchasing for i.) information gathering and ii.) evidence gathering to clearly distinguish between the two.

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

I do not believe test purchasing should be used for the gathering of information only. Test purchasing can be a very effective tool in gathering good evidence against businesses found to be not complying with legislation.

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

Yes. I do not believe there is a need for guidance on what constitutes 'sufficient' intelligence, both in terms of quality and quantity and a commonsense approach should be taken.

Information gathering test purchasing is useful in testing enforcing agencies' risk based assessment systems as well as businesses compliance controls to improve engagement with responsible retailers without the fear of formal action being taken against them where a non-compliance is found.

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

I do not think it is acceptable for young people conducting test purchases to lie about their age. To ensure the integrity of the test purchasing operation and to be transparent as much possible as well as positively engaging with business operators, test purchase operatives should give their true age, where asked. There is a danger that, where a young person undertaking a test purchase lies about their age that it could provide a defence against criminal liability on the grounds of entrapment/agent provocateur as it could be argued that the young person incited or lured a person to commit a crime that they would not otherwise have committed.

If a young person test operative were allowed to lie about their age then the activity should be specifically authorised.

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

No. Same response as to Q 12, above.

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

Yes. It may be appropriate to consider instigating formal action where there is history of previous non-compliance for the same subject nominal/management or the offence is so serious that it is in the public interest to do so.

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