

**Section 75 and Schedule 9
The Northern Ireland Act 1998**

**FINAL DECISION
REPORT**

**Alcohol Test Purchasing
Procedures**



**Equality Impact Assessment
Police Service of Northern Ireland
December 2016**

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PSNI

Alcohol Test Purchasing Procedures

An Equality Impact Assessment

FINAL DECISION REPORT

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1: INTRODUCTION

The Test Purchase of Alcohol Scheme has been suspended since 2012.

In its approved Equality Scheme, PSNI gave an undertaking to carry out an Equality Impact Assessment (EQIA) on each policy or group of co-joined policies where screening had indicated that there may be significant implications in relation to one or more of the nine Section 75 grounds. A draft consultation report was duly made available as part of the formal consultation stage of the EQIA.

In keeping with guidance on best practice as issued by the Equality Commission for Northern Ireland, PSNI consulted widely on its draft EQIA report and preliminary recommendations. This period of formal consultation followed from earlier pre-consultation that helped inform the development of the EQIA.

PSNI is committed to consultation which is timely, open and inclusive, and conducted in accordance with the Equality Commission's Guiding Principles. The consultation process in respect of this EQIA lasted for a period of **13 weeks from 30 November 2012 to 1 March 2013**.

The PSNI Equality Scheme consultees were notified of the availability of this draft EQIA report and invited to comment. A public notice was prepared and issued to various media outlets to make the public aware of the EQIA, and information about the EQIA was placed on PSNI's website; comments were welcomed from any individual with an interest in the policy.

All consultation documents were made available in hard copy and alternative formats on request could be accessed on PSNI's website at: www.psnipolice.uk (pathway: 'Updates' / 'Consultation Zone')

Following the consultation period, and including consideration of the findings from the consultation, PSNI made a commitment to reach a decision in terms of the EQIA process and publish this Final Report.

This Final Decision Report is available on PSNI's website. In addition, Equality Scheme consultees and those who responded to the consultation will be notified of the availability of the report.

A system will be established to monitor the impact of any decisions in order to find out the effect on the relevant equality categories.

If you have any queries about this document, and its availability in alternative formats (including Braille, disk, large print and audio cassette, and in minority languages to meet the needs of those whose first language is not English) then please contact:

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2: ALCOHOL TEST PURCHASING

Article 67 of the Criminal Justice (NI) Order 2008 creates a test purchase power to allow police officers to identify licensed premises including supermarkets selling alcohol to under 18s. Specifically, the article allows a person under the age of 18 to enter licensed premises and to seek to purchase alcohol, under the direction of a police officer acting in the course of his or her duty. The provision aims to tackle underage drinking by helping to prevent young people from accessing alcohol from licensed premises.

This provision is now mirrored in various jurisdictions including Scotland, England, Wales and the Republic of Ireland, where the procedure is now commonplace and is used routinely by various police forces, often working in tandem with local authorities. The protocols are now well established and including those designed to protect the young people who volunteer to test purchase. In drawing up its own procedures, the PSNI was fortunate in being able to draw heavily on several international examples of good practice which had already been in place for several years, and there is still regular liaison with other authorities to keep up-to-date with any latest developments in the field.

Locally, related provisions are used routinely by local councils in order to test purchase a variety of age-restricted substances.

In line with other jurisdictions, since 2008 PSNI has moved towards enacting the legislation by introducing test purchasing procedures for alcohol. To protect the integrity of the process and the young people concerned, a confidential 55-page Manual of Guidance has been compiled to address all aspects of the scheme and including child protection. The development of these procedures continues to be informed by best practice elsewhere but to date only four operations have been carried out and the scheme is currently suspended.

In Northern Ireland as elsewhere, under-age drinking continues to lie at the heart of a wide range of social problems, and requires imaginative solutions in order to provide an effective remedy. The overall aim of the PSNI Test Purchasing Procedures Policy is, 'Operating in a proportionate manner that is sensitive and responsive to the rights of all those involved in the test procedure, to reduce the level of under-age alcohol consumption by appropriate clandestine testing of the willingness of licensed premises in Northern Ireland to serve alcohol to those aged under 18 years.'

Associated objectives are to:

- Reduce the incidence of under-age drinking;
- Make the purchase of alcohol by minors less likely to occur;
- Heighten awareness of responsibility to age-proof the sale of alcohol by licensed premises;
- Reduce anti-social behaviour among adolescents.

3: CONSIDERATION OF AVAILABLE DATA AND RESEARCH

A considerable amount of information had already been contained within the final screening report of February 2010. By way of summary, the following data sources were used at that time:

- Consultation responses on equality screening for proposals of the draft Criminal Justice (NI) Order 2007 (NIO)
- EQIA on Test Purchase of Alcohol and Consultation on Guideline Principles (NIO)
- Alcohol and Tobacco Test Purchase Policies from other jurisdictions including Scotland
- Belfast City Council Test Purchase Procedures
- LACoRS Guide on Test Purchasing (2002)
- ACPOS Manual of Guidance for Test Purchase of Alcohol in Scotland
- Evaluation of Test Purchasing Pilot for Alcohol Sales to Under 18s (Scottish Centre for Social Research)
- PSNI Draft Service Procedure for Carrying out Test Purchasing of Alcohol Operations
- Secretary of State's Guidance on Test Purchase of Alcohol in Northern Ireland
- Consultation feedback received by PSNI from organisations representing children and young people
- Consultation with other authorities involved in test purchasing for alcohol and tobacco

These sources were supplemented within the EQIA with further contemporary and comparative research across a number of jurisdictions where these test purchasing procedures are routinely adopted.

In summary, the data confirm first, that under-age drinking remains a significant problem in Northern Ireland, and second, that the test purchasing procedures as proposed by PSNI conform with, and often exceed, best practice in the field.

4: CONSIDERATION OF ADVERSE IMPACT

It could be suggested that an adverse impact is likely to be felt by young people if the procedures are not re-introduced, as Northern Ireland will be missing an opportunity to tackle the widespread problem of underage drinking. Research across the UK has established that, as one part of a package of positive action measures, test purchasing procedures can reduce underage drinking.

A review of the available data within the EQIA did not indicate any significant adverse effect by any of the nine Section 75 groups. Those young people who had been involved in the TP operations, and their parents, spoke positively about their experience and both showed a willingness to volunteer in the future should the need arise.

5: MEASURES TO MITIGATE / ALTERNATIVE POLICIES

(Preliminary Recommendations)

In the draft EQIA Report, PSNI maintained that the Manual of Guidance conformed closely with best practice as operated routinely within the UK and Ireland, and by other public authorities in Northern Ireland.

The original NIO EQIA and successive Section 75 screenings have played a valuable developmental role in identifying and remedying potential adverse impacts but at the time of the EQIA it was argued that no further mitigating measures needed to be introduced prior to full implementation.

6: SUMMARY OF CONSULTATION RESPONSES

The consultation yielded extensive responses from three representative groups, and these are summarised below, together with PSNI's response:

- Children's Law Centre
- Northern Ireland Policing Board
- Northern Ireland Association for the Care and Rehabilitation of Offenders

	Children's Law Centre	PSNI Response
1	Article 3 (1) of the UNCRC states that: In all actions concerning children, whether undertaken by public or private social welfare institutions, court of law, administrative authorities bodies, the best interests of the child shall be a primary consideration.	<p>The PSNI adheres to the requirements of the UN CRC and has specifically incorporated a reference to this in our Policy Directive 13/06 Policing with Children & Young People.</p> <p>Procedures are in place to ensure the anonymity and safety of the young people involved in test purchasing. All police officers involved will have received child protection training before involvement in test purchase exercises and will also have undergone additional vetting to ensure their suitability to work with young people. PSNI has sought legal advice and is content that the legislation, policy and procedures are in compliance with human rights obligations. Seven police officers were involved in each operation to ensure the best interests of the young person involved are protected at all times, and post-operation feedback from the two young people who have been engaged has been extremely positive.</p>
2	We believe that the use of test purchasing powers by the PSNI will be in direct conflict with its statutory duty to protect life under section 32 (1) of the Police (NI) Act 2000.	The PSNI adheres to the requirements of the UN CRC and has specifically incorporated a reference to this in our Policy Directive 13/06 Policing with Children & Young People.

		<p>The PSNI procedures have been developed in line with the LACORS guidance and the Secretary of State for Northern Ireland's (now Department of Justice) guidance on test purchasing. The PSNI has sought legal advice and is content that the legislation, policy and procedures are in compliance with those obligations. The procedures are the most robust of all those reviewed internationally and typically involve a minimum of seven police officers in each operation, more than any equivalent service elsewhere.</p>
3	<p>In our opinion the procedure also violates the child's right to be protected from exploitation prejudicial to the child's welfare under Article 36 of the UNCRC. It also has the potential to lead to violations of Article 37 (a) of the UNCRC which places an obligation on the State to ensure no child shall be subjected to torture or other cruel inhuman or degrading treatment or punishment.</p>	<p>PSNI does not consider that the policy involves taking advantage of children or harming their welfare or development. Measures are in place to prevent any harm occurring to a child as a result of participation in test purchasing.</p> <p>In addition, consent is an overriding principle in test purchasing and PSNI will ensure voluntary participation. Informed written consent is required from the young person and their parent/guardian/carer. Feedback from the two young people involved in the test procedures to date has been extremely positive; both welcomed the experience and would have no hesitation in recommending it to other young people.</p>
4	<p>We agree with the PSNI that imaginative solutions are required – but such solutions must involve the development of policies which fully integrate all the principles of the UNCRC and which have the best interest of the child as the primary consideration, rather than relying on a policy which has the potential to put children at risk and which breaches their rights.</p>	<p>PSNI have been and are engaged in a range of different initiatives to address alcohol consumption by young people such as “You, Your Child and Alcohol”, “Operation Snapper” and “Addressing Young People’s Drinking – the Northern Ireland Action Plan” which PSNI is involved in delivering with other partner agencies.</p> <p>In addition, the PSNI believe that test purchasing is an important tool and a proportionate response which will assist in reducing underage drinking and alcohol sales to minors. It is a key element in an integrated approach to preventing the sale of alcohol to those who are under age and in the best interests of young people generally.</p>
5	<p>The fact that other jurisdictions operate Alcohol Test Purchase Procedures does not justify their use in NI and does not mean that such procedures are safe and</p>	<p>This comment is noted but we do not believe that the particular circumstances which prevail in NI should be used to stymie progress towards addressing underage drinking.</p>

	<p>comply with children's rights. The requirement vis a vis the development of policy for this jurisdiction, which is encapsulated in the PSNI's s75 Equality Duty, is the taking of policy for this jurisdictionally specific circumstances, including the fact that we are a society in transition from conflict, so the policy is fit for purpose for this jurisdiction and should not differently adversely impact on any one of the nine vulnerable groups.</p>	<p>PSNI believe the use of Test purchasing powers is a proportionate means of achieving a legitimate aim. In addition the measures and safeguards enshrined in the operational delivery of test purchasing powers we believe take account of the unique circumstances of NI.</p>
6	<p>We would challenge the suggestion made in relation to the period June – December 2009 that 'A response was received from the CLC who was supportive of the screening exercise and the decision to carry out an EQIA one year after the Scheme was introduced. A response was also received from NICCY who endorsed the decision of the PSNI to conduct a full EQIA on test purchasing in the future. In light of these responses it was decided to go ahead with pilot responses'.</p>	<p>Comment noted.</p>
7	<p>We consider this to be a totally inaccurate summary of the response we made to the screening exercise conducted at that time.</p>	<p>Relates to previous point.</p>
8	<p>We have also raised concerns re training which we believe must be received by all the various members of the PSNI staff prior to being involved in the operation of any of the PSNI Alcohol Test Purchase operations. Reference is made to all officers involved undertaking child protection training before involvement in test purchase exercises and also to all those involved having received appropriate and extensive training we would welcome confirmation to whether this training has taken place.</p>	<p>The PSNI can confirm that all officers involved will have received child protection training before involvement in test purchase exercises and in addition they will have undergone additional vetting to ensure their suitability to work with young people.</p> <p>Under no circumstances will the PSNI use officers that have not gone through these processes.</p>
9	<p>We note that the Guidance Manual in relation to test purchase procedures is a confidential</p>	<p>Access to the Guidance Manual is restricted to only those police officers who have been Management Vetted (MV) for this service</p>

	<p>document for operational reasons and so is not reproduced in the EQIA. It is the view of the CLC that these continue to raise significant concerns.</p>	<p>function and have been trained in an awareness of child protection issues. In addition, the Manual includes details as to how test purchase operations are undertaken, managed and handled and also covers police investigation techniques. It could also place the police and the child volunteer's welfare and safety at risk and as a result it is not suitable for public disclosure.</p> <p>The PSNI can confirm that the guidance included in the manual adopts best practice internationally and includes measures to protect the young person that go beyond any of those employed in other jurisdictions.</p>
10	<p>We would welcome significantly more detail as to how PSNI ensures that children and their parents/guardians/carers not only have a full understanding of the nature of the task involved but also the potential implications of the child taking part in the test purchase.</p>	<p>Young people who wish to be potential participants will make a voluntary written application after seeing details of the Scheme on the PSNI Website.</p> <p>Following this, both the young person and their parents/guardians/carers will receive a home visit from a plainclothes police officer. The purpose of this home visit is to ensure that the young person and their parent/guardian/carer are provided with a detailed overview of the Test Purchase of Alcohol Scheme. This includes being fully informed of what the police officers intend to do and what is involved, including the safeguards that are to be employed to ensure the welfare and safety of the young person participating. Following this, both the young person and their parent/guardian/carer must provide full written consent.</p> <p>If selected, a same gender chaperone will be assigned to have overall responsibility for the welfare and safety of the young person during their time with the PSNI. The young person will also be given a further briefing prior to commencing a test purchase operation. In addition, a young person can stop the test purchase operation at any time. Finally, there are extensive procedures in place to ensure the safety and protection of the young person involved in test purchase operations including their parents/guardians/carers.</p>
11	<p>We would also draw PSNI attention to the proposals for the new Mental Capacity (Health, Welfare and</p>	<p>The PSNI will not involve anyone under the age of 16 in any operations.</p>

	Finance Bill) which limits the statutory presumption of capacity to those aged 16 and over.	
12	<p>We would make the comment that volunteers will be sought to participate in test purchasing through Community Schools Involvement Officers and YDO's. (Vulnerable persons will not be considered). We would welcome further details in relation to whether literacy problems, special needs, language difficulties or mental health conditions are checked.</p> <p>We would also be grateful if PSNI could outline when assessing the potential vulnerability whether social services will be contacted. In addition, we would like to know if the parent/guardian/carer will have similar checks.</p>	<p>The PSNI can confirm that stated children with special needs or in receipt of disability living allowance will not be involved. This includes any information provided by a police officer or any other statutory authority.</p> <p>Any special or exceptional circumstances will be taken into account regarding suitability including family circumstances and where there are any concerns raised then the young person would not be considered.</p>
13	We have raised concerns around the holding and sharing of information such as names and addresses of young people taking part.	PSNI have extensive and detailed procedures and systems in place to ensure that sensitive personal data is stored appropriately.
14	We note that the Guidelines on Test Purchasing of Intoxicating Liquor produced by the Minister for Justice and Law Reform in Ireland in October 2010 are referred to in the EQIA and it is stated that 'In particular the guide emphasises Human Rights considerations, attaching to Article 3 of the UN Convention on the Rights of the Child. This provides that the best interests of the child shall be a primary consideration in all actions concerning children, and administrative measures shall be appropriate to ensure each child has such protection and care as is necessary for their wellbeing – Reflecting the terms of the Convention, the guide establishes that the highest possible level of protection for the test purchaser is required'.	Comment noted. This observation has been acknowledged and responded to substantially in responses to matters raised in points 1-3.
15	We would submit that in the absence of the full Guidelines produced in Ireland, they	Comment noted.

	fundamentally misunderstand and misinterpret the principle of the best interests of the child if they, and as a consequence the PSNI, consider that the best interests of the child can be ensured within test purchasing schemes.	
16	We would also ask why the PSNI would potentially open itself to litigation if a child is injured during a test purchase operation.	Comment noted.
17	We note that four test purchase pilot operations were carried out on test purchase powers between December 2009 and April 2010, despite CLC's submission that this would be in breach of the PSNI's s75 statutory obligations and the PSNI's approved equality scheme as well as the advice of the Equality Commission.	The PSNI would disagree with the comment that we were in breach of Section 75 obligations.
18	It is completely unacceptable that the PSNI has not sourced additional data for the purpose of carrying out this EQIA.	<p>The PSNI has now sourced additional data from local District Councils in Northern Ireland and Police Forces in England & Wales who carry out test purchase operations. 19 responses were received and they have all confirmed that no Human Rights or safety concerns have ever been raised by any of the young person's taking part in test purchase operations or from their parents/guardians or carers.</p> <p>In addition, no concerns have ever been received on child protection issues.</p>
19	We would refer to the PSNI's Equality, Diversity and Good Relations Strategy and how PSNI has undertaken an audit of inequalities and how no data from this strategy has been used to inform the present EQIA.	The full implementation of this policy may work towards addressing some of the inequalities identified in our Equality, Diversity and Good Relations Strategy. It is widely acknowledged that the ready availability of alcohol to children is a key underpinning factor in their coming into conflict with the law.
20	We would comment upon The Equality Commission Practical Guidance on EQIA's and how no reference is made to the nine equality categories referred to in the EQIA. Our view is this is a breach of the PSNI's Equality, Diversity and Good Relations Strategy.	<p>PSNI note this comment, however we believe that an EQIA as a piece of research into the possible adverse effects is a proportional response.</p> <p>Furthermore there is no evidence that of the s. 75 groups of relevance in this context have particular issues in relation to the consumption of alcohol.</p>

21	<p>We would request that PSNI do not operationalise this policy until they collect disaggregated child specific data in relation to the current EQIA and properly carry out an EQIA.</p> <p>We would also challenge how PSNI can conclude there is no significant adverse effect on any of the nine section 75 groups due to the lack of data within the EQIA.</p>	<p>The lack of data reflects the limited use of test purchasing operations. The PSNI cannot get further data without properly operationalizing the policy. However engagement with a wide range of public authorities in the UK has confirmed that the deployment of test purchasing operations did not result in reports of an increased risk to children or young people.</p>
22	<p>We consider there is also the potential for the differential adverse impact on other grounds i.e. religious belief, political opinion and gender. They point out that children and young people from Catholic, republican backgrounds and have a historic and ongoing alienation from the police. Our view is that young people from Catholic, republican backgrounds will be less likely to volunteer.</p>	<p>This comment is noted and the policy will be subject to ongoing scrutiny. If disproportionate issues are identified, steps will be taken to address this.</p>
23	<p>We appreciate that the PSNI consulted with Youth@clc in relation to test purchase powers in 2009, but request that PSNI provide details of how we have or intend to consult directly with young people as part of this EQIA. We would also request details of the system which will be used to analyse responses to the consultation process, including the degree of weight which will be attributed to both individual and organisational responses.</p>	<p>The PSNI can confirm that we did carry out direct consultation with children and young people during the previous screening exercise on the test purchase powers in 2009. This included the two young people who had been used and from whom positive feedback was obtained on their experience of the operation.</p> <p>However, with regard to this EQIA (which was published at the same time as the EQIA for Speedy Justice), we would refer to the public notice that was issued and stated the following: - "The consultation period is now open and will run until March 1st 2013. PSNI is keen to hear what people have to say in respect of these EQIA's. If anyone wishes to comment, they should send their remarks or requests for meetings not later than 4.00pm on March 1st 2013".</p> <p>The PSNI can confirm that we did not receive any requests for meetings.</p> <p>All responses to consultations are given full and appropriate consideration.</p>
	<p>Northern Ireland Policing Board</p>	<p>PSNI Response</p>
24	<p>The Corporate Policy, Planning and Performance Committee of the Northern Ireland Policing Board</p>	<p>Comments noted. All these issues have been addressed and are included in the operational procedures.</p>

	<p>have highlighted a number of important principles that underpin PSNI's policy for using the test purchase power such as: a parent, guardian or carer must provide written consent before PSNI will permit a young person to participate in the scheme; the anonymity of the young person and their family is a fundamental consideration within the scheme; and a young person cannot be involved in any area where he or she is likely to be recognised.</p>	
25	<p>However, stakeholders continue to have concerns about PSNI's use of the power. As a result, the Committee shares the concerns of these stakeholders and expects the PSNI to provide a comprehensive briefing to it in advance of any decision to introduce the scheme which specifically considers the rights of young people.</p>	<p>The PSNI can confirm that a full briefing was given to the Performance Committee on 15th January 2015.</p>
	<p>Northern Ireland Association for the Care and Rehabilitation of Offenders</p>	<p>PSNI Response</p>
26	<p>We have previously expressed reservations about this scheme, concerned that this particular form of gathering evidence places children and young people at risk. We do, however welcome the additional measures you have set out in the consultation document which appear to have gone some way to addressing these concerns.</p>	<p>Comment noted and welcomed</p>
27	<p>Nevertheless we would caution that if the scheme is to be targeted at premises known or thought to be selling alcohol illegally, it must be clear in purpose and not risk becoming a substitute for other methods of police intelligence gathering processes.</p>	<p>PSNI agree. Other legislation is in place to deal with different scenarios. Test purchasing is another tool which will assist in reducing underage drinking and alcohol sales to minors.</p>

7: CONCLUSIONS

The three responses together provide a detailed examination of the form and content of the EQIA, and the underlying policy. The time and effort which has been taken to deal with these complex issues by consultees is much appreciated.

In addition to this, on two occasions the Police Service met with a number of interested parties (NI Children's Commissioner; Children's Law Centre; Include Youth; the relevant Trade Associations; NI Retail Consortium and the Northern Ireland Policing Board to look at a number of issues that were raised. Whilst the Trade Associations fully support the Test Purchase of Alcohol Scheme, those organizations representing children and young people continued to highlight their fears. However, at the second meeting, whilst still expressing their concerns, they also acknowledged the measures that we had put in place in order to protect the welfare and safety of the young people. We also provided the Performance Committee of the Northern Ireland Policing Board with a comprehensive briefing on the Scheme which was well received by its Members.

We genuinely value the suggestions made which have allowed for further improvements to the policy guidelines, as detailed above.

Police and partners look to a range of tactics to counter the risk created by underage drinking by young people. Many of these have proven to be very effective and are likely to continue to be so in the future. Within this context, the use of test purchasing is not identified as being necessary in the majority of cases. Whilst we are content that we can conduct the operations safely, they are very resource intensive and do not necessarily deliver any better results than the other tactics outlined.

As outlined in Part 1, the Test Purchase of Alcohol Scheme has been suspended since 2012.

As a result, following the EQIA, it was decided that a Paper should be submitted to the Service Executive Board (SEB) in order to seek a decision in relation to the re-introduction of the Scheme.

This was subsequently considered by SEB Members at their meeting on 19 October 2016. Members discussed the benefits of re-introducing this scheme and the effect it may have on underage alcohol consumption.

Members discussed the impact of using young person in any such operations and the perception of this within some communities. Head of Legal Services stated that it would be highly unlikely that these young persons could be called to evidence in court to aid a prosecution.

ACC District Policing stated that there were a number of different strategies to

deal with how underage children obtain alcohol. The resources and procedures to carry out any such Test Purchasing operation were discussed and on balance not considered proportionate.

Members decided that approval was not given to re-commence the Test Purchase of Alcohol Scheme.