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**ACPOS**

**ASSOCIATION OF CHIEF POLICE OFFICERS IN SCOTLAND**

# **Manual of Guidance for Test Purchase of Alcohol in Scotland**

**Version 11.0  
2011**

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## Document Information

Document Title	Manual of Guidance for Test Purchase of Alcohol in Scotland
Version	11.0
ACPOS Business Area	Operational Policing
Publication date	17/02/2011
Author(s)	Licensing Sub Group
GPMS Marking	Not Protectively Marked
Reason for GPMS higher than Not Protectively Marked	N/A
Disclosable under the Freedom of Information (Scotland) Act 2002?	YES
Publishable under Scottish Police Publication Scheme?	YES
If NO, provide reason	N/A
Document Review	OPBA Licensing Sub Group, 22 <sup>nd</sup> September 2011.
Equality Impact Assessment	Author: Dougie Saunders, Fife Constabulary, on behalf of ACPOS OPBA Licensing Sub Group Authorising Senior Officer: ACC Colin Menzies Secretary ACPOS OPBA
Full EIA or Screening Document?	Screening Document
Date of assessment	27 April 2011
ACPOS Publication No.	[OPBA - 0040]

The effectiveness and ongoing relevance of this document will be subject to review by the ACPOS business area(s) detailed above.

The next review of this document is due by 22<sup>nd</sup> September 2011; however, it will be updated according to significant legislative and policy changes and re-released earlier, if required.

## Version Control

Version	Date	Authorisation	Information
11.0	17/02/2011	ACC Colin Menzies Grampian Police	Document approved at the ACPOS OPBA meeting on 17 <sup>th</sup> February 2011. T/ACC T Ewing ACPOS OPBA Licensing Sub Group  Amendments to the following paragraphs: 4.3 Update to guidance on RIPSAs 5.4.1 Reference to HMA – v – Cadder and the Lord Advocate's Guidelines 5.4.2 Reference to a template SPR with inclusion of appendix 15 5.4.3.2(e) Additional points to be addressed at interview. 5.4.3.9 Inclusion of Vicarious Liability and Interested Parties.

## Version Distribution

Version	Date	Information
11.0	17/02/2011	ACPOS Intranet/Internet in line with the GPMS marking of the document. Members of the ACPOS OPBA Licensing Sub Group

## Glossary

<b>ACPOS</b>	Association of Chief Police Officers in Scotland
<b>CCTV</b>	Close Circuit Television
<b>CHIS</b>	Covert Human Intelligence Source
<b>CJ&amp;L(S)A</b>	Criminal Justice & Licensing (Scotland) Act 2010
<b>COSLA</b>	Convention of Scottish Local Authorities
<b>LACORS</b>	Local Authority Coordinators of Regulatory Services
<b>L(S)A</b>	Licensing (Scotland)act 2005
<b>MOG</b>	Manual of Guidance
<b>OPBA</b>	Operational Policing Business Area
<b>RIP(S)A</b>	Regulation of Investigatory Powers (Scotland) Act 2000
<b>SCOTSS</b>	Chief Officers of Trading Standards in Scotland
<b>SID</b>	Scottish Intelligence Database

## 1. Introduction

- 1.1 This document provides Guidance for staff involved in operations, which intend to inform civil and criminal proceedings based on evidence obtained through the use of young persons to test purchase alcohol at licensed premises as provided for under Section 105(2) of the Licensing (Scotland) Act 2005.

These procedures draw heavily on the Practical Guide to Test Purchasing in Scotland, which offer guidance to those agencies involved in the conduct of test purchasing operations involving young people and the sale of age restricted products/goods. This document in turn takes full cognisance of the LACORS guidance for England and Wales and has been prepared in consultation with Crown Office, Scotland's Commissioner for Children & Young People, the Society of Chief Officers of Trading Standards in Scotland (SCOTSS), ACPOS, COSLA and the Scottish Government under the auspices of the Scottish Government Advisory Group on Age Restricted Sales.

## 2. Aims

This document aims to ensure that such operations are carried out safely, fairly and effectively.

## 3. Application

All staff undertaking, supervising or being responsible for the supervision of any staff undertaking or supervising such operations **MUST** be fully conversant with and operate within the terms of this Guidance Document.

## 4. Legal and Other References

### 4.1 The Licensing (Scotland) Act 2005

#### 4.1.1 Sales of Alcohol to a Child or Young Person

Section 102(1) states that "A person who sells alcohol to a child or young person commits an offence".

Section 102(2) states, " It is a defence for a person charged with an offence under subsection (1) (referred to in this section as "the accused") to show that:

- (a) the accused believed the child or young person to be aged 18 or over, and
- (b) either - (i) the accused had taken all reasonable steps to establish the child's or young person's age, or

- (ii) no reasonable person could have suspected from the child's or young person's appearance that the child or young person was aged under 18."

Section 102(3) states, "For the purposes of subsection (2)(b)(i), the accused is to be treated as having taken reasonable steps to establish the child's or young person's age if and only if-

- a) the accused was shown any of the documents mentioned in subsection (4), and
- b) that document would have convinced a reasonable person."

Section 102(4) states, "The documents referred to in subsection (3)(a) are any document bearing to be-

- a) a passport,
- b) a European Union photocard driving licence, or
- c) such other document, or a document of such other description, as may be prescribed."

Section 102(5) states, "A person guilty of an offence under subsection (1) is liable on summary conviction to –

- a) a fine not exceeding level 5 on the standard scale,
- b) imprisonment for a term not exceeding 3 months, or
- c) both."

#### **4.1.2 Allowing The Sale Of Alcohol To A Child Or Young Person.**

Section 103(1) states, "Any responsible person who allows alcohol to be sold to a child or a young person on any relevant premises commits an offence."

Subsection (2) states, "A person guilty of an offence under subsection (1) is liable on summary conviction to –

- a) a fine not exceeding level 5 on the standard scale,
- b) imprisonment for a term not exceeding 3 months, or
- c) both."

#### **4.1.3 Purchase Of Alcohol By A Child Or Young Person**

Section 105(1) states, "A child or young person who buys or attempts to buy alcohol (whether for himself or herself or another person) commits an offence."

Section 105(2) states, "It is not an offence for a child or young person to buy or attempt to buy alcohol if the child or young person is authorised to do so by the chief constable for the purposes of determining whether an offence is being committed."

Section 105(3) states, "A chief constable may authorise a child or young person to buy or attempt to buy alcohol as mentioned in subsection 105(2) only if satisfied that all reasonable steps have been or will be taken to avoid any risk to the welfare of the child or young person."

#### **4.1.4 Unsupervised Sale Of Alcohol By A Child Or Young Person.**

Section 107(1) states. "Any responsible person who allows alcohol to be sold, supplied or served by a child or young person on any relevant premises commits an offence."

Section 107(2) states, "Subsection (1) does not apply to-

- a) Any sale by a child or young person of alcohol for consumption off the premises, or
- b) Any supply or service by a child or young person of alcohol for consumption on the premises along with a meal supplied on relevant premises,

if the condition in subsection (3) is satisfied."

Section 107(3) states, "That condition is that the sale, supply or service is specifically authorised by

- a) a responsible person, or
- b) Any other person of or over 18 years of age who is authorised by a responsible person for the purpose of this section."

#### **4.1.5 Delivery Of Alcohol By Or To A Child Or Young Person**

Section 108(1) states, "This section applies where alcohol is sold on any relevant premises for consumption off the premises."

Section 108(2) states, "Any responsible person who allows the alcohol to be delivered by a child or young person commits an offence."

Section 108(3) states, "Any responsible person who-

- a) Delivers the alcohol, or
- b) Allows it to be delivered

to a child or young person commits an offence."

Section 108(4) provides a exception for a child or young person who works on relevant premises, whilst sub-sections 5 to 7 provide similar defences in respect of the accused believing the child or young person was aged over 18 years, as they apply to section 102 (Sale of alcohol to a child or young person).

#### **4.1.6 Sending A Child Or Young Person To Obtain Alcohol**

Section 109 provides for an offence where a person knowingly sends a child or young person to obtain alcohol sold or to be sold on relevant premises for consumption off the premises.

#### **4.1.7 Responsible Person**

A "Responsible Person" is defined within section 122 of the Licensing (Scotland) Act 2005 as follows :-

- a) In the case of licensed premises in respect of which a premises licence has effect, the premises manager.
- b) In the case of licensed premises in respect of which an occasional licence has effect, the holder of the licence,

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- c) In the case of other relevant premises, the person having management or control of the premises, and
- d) In any of those cases any person aged 18 or over who works on the premises in a capacity (whether paid or unpaid) which –
  - i. authorises the person to sell alcohol, or
  - ii. in relation to any offence under this Part of allowing something to be done, authorises the person to prevent the doing of this thing.

Any premises that is authorised to sell alcohol must have been granted a Premises Licence. The holder of this licence may be an individual, partnership or company. A premises authorised to sell alcohol must have a nominated Premises Manager, who must, in their own right, hold a Personal Licence, (except for clubs).

Alcohol can only be sold on premises where it is authorised "generally or specifically" by the holder of a Personal Licence. This may be the Premises Manager or another Personal Licence Holder. There is no definition for "generally or specifically", but the following may assist your understanding.

If we take the checkout scenario at a large store, the checkout operators do not need a Personal Licence, but the supervisor does. The supervisor authorises the sales assistants over 18 years to sell alcohol as a general authorisation. If the sales assistant is under 18 years they have to be authorised specifically by the supervisor for every alcohol sale.

Persons may be engaged in the sale of alcohol without necessarily being the holder of a Personal Licence, but they must have undertaken statutory training and be able to evidence this. A Personal Licence Holder does not have to be on the premises at all times.

There is no guidance, provided in this legislation, in relation to the circumstances in which such a test purchase operation would be justifiable. However, there is Lord Advocate's Guidance on this matter and given that any police enforcement action must be proportionate, legal and necessary, there should be justification for such action being taken available through either:

- a) Intelligence indicating that alcohol is being sold illegally to persons under 18 years of age from specific licensed premises.
- b) Intelligence indicating that the licensed premises are situated in a locality where persons under 18 years are consuming alcohol.
- c) The premises being within a locality where all premises are being subjected to a test purchase operation, in a non- discriminatory manner, to raise awareness in relation to the illegal sale/purchase of alcohol in licensed premises.

In this regard, supervisory officers must ensure that Officers involved have received instruction on all aspects of Test Purchasing.

The Lord Advocate's Guidance also states that alcohol test purchase activity can only be authorised by the chief constable. This does not negate other

agencies such as Trading Standards being involved, but these can only be joint operations with the police taking the lead role.

## **4.2 Common Law**

In Scotland, the position on exclusion of evidence is governed by the general common law rules on the admissibility of evidence in criminal proceedings, which require there to be an assessment on whether the admission of the evidence would be fair to the accused. In the context of test purchasing, Scots Law recognises that certain evidence of the commission of a crime is inadmissible where it has been obtained by entrapment e.g. a police officer disguising him or herself and inciting the accused to commit the crime. Such an argument is likely to succeed only where it can be said that the accused would not have committed the offence but for the inducement and was not already predisposed or willing to commit crimes of the kind involved.

Section 105 of the Licensing (Scotland) Act 2005 mitigates against the principle of entrapment in that it allows the legal test purchase of alcohol in accordance with this Manual of Guidance.

## **4.3 Regulation Of Investigatory Powers (Scotland) Act 2000 (RIP(S)A)**

RIP(S)A is an Act of the Scottish Parliament to regulate surveillance and the use of covert human intelligence sources (CHIS). The Office of the Surveillance Commissioner has provided guidance and in terms of paragraph 253 they have stated that "When an adult or young person, pursuant to an arrangement with the officer of a public authority, carries out a test purchase at a shop, he may be a CHIS. It does not follow that there must be a CHIS authorisation because designated public authorities are empowered but not obliged to authorise a CHIS. But if covert technical equipment is worn by the test purchaser, or an adult is observing the test purchase, it is usually desirable that authorisation for Directed Surveillance is required and such authorisation must identify the premises involved. In all cases a prior risk assessment is essential in relation to a young person and desirable in relation to an adult."

The Office of the Surveillance Commissioner has reminded ACPOS that a Directed Surveillance authorisation lasts for three months and can be so worded as to apply to a substantial geographical area: it need not be limited to a single property.

Whether RIP(S)A authority is required for alcohol test purchase activity within a Force area is a matter for individual chief constables.

## **5. Procedures**

### **5.1 General Principles**

Officers involved in test purchase operations should be given training on how best to safeguard the young person acting as the test purchaser and to

conduct effective, fair test purchasing operations. Paramount consideration **MUST** be given to the health and welfare of any young person involved and officers should not assume a degree of maturity and experience based on age alone. A risk assessment **MUST** be made prior to any test purchase operation in order to inform the officers about the degree of care and supervision necessary. A sample risk assessment is provided at Appendix 2 and offers the minimum standard expected.

Test purchasing involves the police utilising the services of 16-year-old persons to enter licensed premises and attempt to purchase alcohol under the direct observation of at least one plain-clothes police officer situated within the premises. Should the premises pass the test i.e. should the youth be refused, a nearby accompanying police officer would inform the licence holder, employee or agent, that the premises had been subjected to such a test purchase operation, thank them and encourage them to continue to be vigilant regarding the sale of alcohol to persons under 18 years. It is acknowledged at this time that "remote sales" of alcohol are not applicable for test purchase operations.

All premises visited are requested to display a poster within the premises advertising the fact that they do not sell alcohol to persons under 18 years of age. Details of tests are thereafter recorded on relevant police information systems and designated staff (e.g. Police Licensing Officers) should be provided with details of the premises, along with the date and result of the test, and may retain this information for licensing purposes.

Where a Test Purchase Operation is conducted, resulting in a positive test, i.e. alcohol is supplied to the test purchaser, then the officers supervising the operation are required on ALL occasions, to submit an intelligence log via SID in accordance with Force Procedures.

Should the licence holder and/or the employee fail the test by supplying alcohol to the test purchaser, the police officers will caution and charge them with the relevant offence(s) and submit a police report as directed (Section 5.4). There are two main offences which are likely to be detected during the course of a test purchase operation, which are contained within Sections 102(1) and 103(1) of the Licensing (Scotland) Act 2005, namely,

The sale of alcohol to a child or young person –  
ISCJIS Charge Code: LICE200501020100

Responsible person allowing the sale of alcohol to a child from a relevant premises –  
ISCJIS Charge Code: LICE1200501030100

Officers engaged in a test purchase operation should not approach the seller until the young person has left the premises, unless the seller acts in any way, which the officer believes may be prejudicial to the test purchaser's welfare. In these circumstances, the officer(s) present should identify themselves as police officers, by the production of their police issue warrant card, and instruct the young person to leave the premises to a predetermined place of safety e.g. unmarked police vehicle. They should thereafter explain the situation to the seller.

## **5.2. Specific Procedures - Selection, Authorisation and Review of Young Persons**

### **5.2.1 Principle**

The process for selection of young persons to conduct test purchase operations is of paramount importance to ensure the safety and integrity of the young person and the Force.

### **5.2.2 Conditions**

The conditions regarding the selection of young persons are as follows:

- a) Young persons **MUST** be 16 years of age (however recruiting can commence from 15 ½).
- b) Young persons should preferably not be older than 16 ½ and **DEFINITELY** not older than 17 years of age at the time of the Test Purchase.
- c) Participation **MUST** be entirely voluntary and have the consent of the young person and his/her parent(s) or guardian(s).
- d) The youth's parent/guardian **MUST** fully understand the nature of the task involved and give written consent. A sample briefing note for the youths and parent/guardian is attached (Appendix 3).
- e) Children or relatives of police officers, licence holders or elected members should not be utilised.
- f) All paperwork relating to any test purchaser **MUST** be securely retained in accordance with Force Procedures and the Government Protective Marking Scheme (GPMS).
- g) Any young person who appears to be over-eager to obtain a purchase should not be selected. A sample checklist providing guidance for selection is attached Appendix 4.
- h) Officers **MUST** ensure that there is full consultation with the young person and their parent(s)/guardian(s) on all of the issues involved.

### **5.2.3 Process**

A process map relating to the Selection, Authorisation and Review of test purchasers is attached (Appendix 9) and this should be read in conjunction with the remainder of this section.

Volunteer youths may be identified through established links with Secondary Schools and youth groups etc. It is desirable that a "pool" of suitably selected and trained young people is retained to ensure such a resource is always available.

Volunteers are initially vetted, through necessary system checks and are thereafter deemed either suitable or unsuitable for further process at this time by the officer conducting the checks. Where necessary, this officer will seek guidance from a supervisor.

Where the volunteer is deemed unsuitable, at this stage, there is no requirement for notification to be sent to the individual.

Youths who are subsequently processed as suitable, at this stage, should be further assessed through a police officer making enquiries regarding the youths suitability or otherwise.

Where the volunteer is deemed unsuitable, at this stage, there is likewise no requirement for notification to be sent to the individual.

Youths who are deemed suitable, at this stage, are subjected to a home visit by a police officer and further assessed in terms of their age, appearance, level of maturity and general character. The consent of the youth and parent or guardian MUST be obtained at this stage and an agreement form completed. (A sample agreement form is provided at Appendix 1). Should the youths be deemed suitable, at this stage, subject to background checks, they will be nominated for authorisation. (A sample checklist for selection is attached at Appendix 4). At this time, a copy of the birth certificate MUST be supplied by the youth or a parent/guardian.

Should the youth, at this stage be deemed unsuitable, they will be so advised by the attending officer.

A chief constable may authorise a young person in terms of Section 105 of the Licensing (Scotland) Act 2005 to conduct Test Purchase Operations. The chief constable may authorise a child or young person to buy or attempt to buy alcohol only if satisfied that all reasonable steps have been or will be taken to avoid any risk to the welfare of the young person (Section 105(3)). A sample format for such authorisation is attached (Appendix 6).

All relevant documentation relating to the Test Purchaser should be weeded and destroyed in line with local Force Procedures and document management systems. In the absence of a Force procedure the following is proposed. Retain "Test Purchaser's files" for Current Year plus 1 – then Review. The review criteria for further retention would be where:

- (a) A case involving the test purchaser has been reported to the Procurator Fiscal or the Licensing Board remains pending;
- (b) Any appeal has been lodged in respect of a Licensing Board finding further to a test purchase,
- (c) Any complaint has been made by a licence holder regarding a test purchase, and
- (d) The test purchaser (or parent/carer) has made a complaint.

Once granted, authorisations MUST be retained in a lock fast place under the supervision of the individual responsible for retaining the other personal information relating to the young person.

A review of the young person's suitability MUST be carried out not more than 3 months from the date of the operation. A sample review checklist is attached at Appendix 5.

Where, following review, a test purchaser is deemed to be unsuitable, the relevant authorisation MUST be immediately withdrawn and the individual informed accordingly. No such notification should be provided to the relevant parent or guardian.

Where, following review, a test purchaser is deemed still to be suitable, the existing authorisation remains valid and is continued until the next review, or until otherwise withdrawn.

## 5.3 Specific Procedures - Briefing, Deployment and Debriefing

### 5.3.1 Principle

The Key Principle regarding the briefing, deployment and debriefing of test purchasers is to ensure the safety of the young person and the integrity of the police service.

### 5.3.2 Conditions

The conditions regarding the briefing, deployment and debriefing of test purchasers are as follows:

- a) The identity of the young person **MUST** not be divulged to any other party except upon the direction of the Procurator Fiscal.
- b) The anonymity of the young person is an important consideration during test purchasing. Young persons should not be asked to conduct tests in any area where they are likely to be recognised, such as near their home, school or place of employment.
- c) The young person **MUST** be supervised at all times and at least one of the officers **MUST** remain within eyesight of the young person at all times.
- d) If at any time during the operation, the young person indicates that he/she does not wish to continue or he/she show signs of distress, the operation with that young person **MUST** stop.
- e) If, whilst in the course of the testing, any young person is injured or suffers loss or damage to his/her property, the incident **MUST** be reported to the parent/guardian and the duty police inspector, responsible for that area, without delay.

### 5.3.3 Process

A process map relating to the briefing, deployment and debriefing methodology is attached (Appendix 10) and this should be read in conjunction with the remainder of this section. Process maps relating to the specific procedures to be applied in relation to different ways that premises can be operated under a premise licence, such as off sales, public houses/hotels, nightclubs and members clubs are also attached (Appendices 12, 13 and 14.)

Prior to carrying out any test purchase operation, a pre-visit of the target premises should be carried out as part of the risk assessment process in relation to off sales premises but **MUST** be carried out at premises where alcohol is sold for consumption on the premises. Generic risk assessments for off sales, public houses/hotels, nightclub premises operating under mandatory and late night conditions and members clubs are also attached (Appendices 2(A), 2(B), 2(C) and 2 (D)).

Prior to utilising a young person for the purpose of carrying out test purchase operations, one of the supervising officers **MUST** have satisfied themselves as follows:

- a) The young person is 16 years of age and is currently authorised by the chief constable
- b) A review of the young person's suitability has been carried out not more than 3 months from the date of the operation. Sample 'initial' and 'review' checklist are attached at Appendices 4 & 5.
- c) The person is not being utilised in any area where they are likely to be recognised, such as near their home, school or place of employment
- d) All reasonable contingencies have been made to avoid any unnecessary risk to the welfare of the young persons and a risk assessment has been carried out

When the test purchaser is uplifted, consideration should be given to the clothing and make up (if appropriate) worn as this may affect the determination of the age of the young person and ultimately the strength of any defence offered under Section 102 (2a and 2b) of the Licensing (Scotland) Act 2005.

Prior to conducting any test purchase operation, one of the supervising officers **MUST** have fully briefed the youth regarding the following and completed a briefing checklist. (Appendix 7 provides a sample briefing checklist):

- a) The young person is informed that they are authorised to purchase alcohol for these operations only.
- b) The young person should ensure that the (test) purchase is conducted in the same manner as a member of the public would have done in the normal course of events.
- c) The young person is made fully aware of the purpose of the exercise and given appropriate guidance regarding exactly what to say and what not to say.
- d) The young person is told to answer all questions, which may be asked by the seller, truthfully. In particular he/she must give their correct age if challenged. If asked whether there is anyone with them, the young person should identify the officer present.
- e) If the young person's initial request is refused, he/she must not attempt to persuade or coerce the seller to make a sale.
- f) If the young person's initial request is refused, he/she should leave the premises and return to a predetermined location.
- g) The young person **MUST** be photographed prior to deployment. Such photographs should be taken to clearly illustrate the height of the young person, perhaps against a height chart and should be taken as near to the transaction time as possible. When a test purchase operation results in an offence being detected, this photograph **MUST** be lodged as a production.

- h) The young person should not possess any documentation, which would reveal their identity to a vendor and, in any event, **MUST** not produce such identification if asked to produce it by the seller. The young person should rather be instructed to state that 'I don't have it with me' or some similar phrase.

A minimum of three officers should accompany the youth during test purchasing operations. In addition, at least one of the "supervising" officers should be of the same sex as the young person.

Prior to deployment, one of the supervising officers **MUST** inform both the relevant control room and, if appropriate, the Close Circuit Television Unit (CCTV) of the location of the target premises and the intention to Test Purchase.

On approaching target premises, the officers will carry out a dynamic risk assessment and complete the relevant form (Appendix 2(E)) provides a sample risk assessment). If, for any reason, the officers suspect the environment to be unsafe at this time, then the test purchase will not be attempted and other target premises will be selected.

If the environment appears to be safe at this time, the young person should be handed a specific amount of money to be used for the test. The supervising officers should record the details of the issuing bank, serial number and denomination for identification purposes.

Prior to deploying a young person in a test purchase operation, a further risk assessment of the premises **MUST** be carried out, with the dynamics of the situation constantly being reviewed. At least one officer should enter the premises before the test purchaser. If the environment is not safe at this time, the operation **MUST** be cancelled. At least one officer should locate him/herself in a position where he/she can clearly observe and hear the attempted purchase. However, the test purchaser should not appear to be with the officer. When necessary during the supervision of test purchase operations at on sales premises, an officer may purchase, but should not consume, alcoholic liquor.

If the environment within the target premises is deemed safe, at this time, the test purchaser will attempt to purchase alcohol.

The seller should not be approached, by any officer, until the young person has left the premises, unless the seller acts in any way, which the officer believes may be prejudicial to the young person's welfare. In these circumstances, the officer should identify themselves as a police officer by producing police issue warrant card, instruct the young person to leave the premises to a predetermined location and then explain the situation to the trader.

Following a test purchase operation, whether or not a purchase is made, the test purchaser will return to the police vehicle where they will remain under the supervision of a chaperone.

Following all operations involving test purchasers, a debrief should be undertaken, with any comments from the young person being recorded. (A sample debriefing form is contained in Appendix 7). All persons involved

**MUST** be given the opportunity to contribute to enable the continuation and evolution of best practice. Part of this debriefing will involve the officer supervising the test purchase operations informing the Test Purchaser that they are no longer authorised to purchase alcohol until eligible through age or taking part in a subsequent test purchase operation. Furthermore, the young person will be advised that should they do so they will be committing an offence and will be asked to sign a form indicating that they have been so advised.

Following any purchase made by a test purchaser during an operation, a full witness statement **MUST** be noted from the young person. Due to operational exigencies, it may be necessary to note this statement out with the presence of the parent or guardian. However, the parent or guardian **MUST** be so advised as soon as possible thereafter.

A full record of each deployment **MUST** be maintained by the Police and all paperwork, including authorisation, consent form, risk assessment and briefing/ debriefing form **MUST** be returned to the supervisor or local staff member designated with responsibility for the safe keeping of that test purchasers individual file.

Young Persons taking part in test purchasing may receive expenses or gratuities of up to £5.00 per hour for their services. These may include travel expenses, subsistence, vouchers or cash payment. They may also receive additional payment in relation to reasonable expenses incurred as a result of taking part in the tests. This should occur only in exceptional cases, as the tests should be arranged so as to be convenient to the testers and the supervising officers. Where any payment has to be made, the expenditure should be authorised in accordance with local Force Guidance.

## **5.4 Specific Procedures – Recovery of Evidence and Reporting Procedures**

### **5.4.1 Principle**

The Key Principle regarding the recovery of evidence and reporting procedures is to ensure that a sufficiency of evidence is recovered and presented timeously to the relevant Procurator Fiscal and Clerk of Local Licensing Board to allow consideration of criminal and civil proceedings. When interviewing suspects police officers should be mindful of the decision in the case HMA v Cadder and the Lord Advocate's Guidelines on access to a solicitor by a suspect. These guidelines apply to all cases where individuals are interviewed as suspects in police stations whether; during detention under Section 14 of the Criminal Procedure (Scotland) Act 1995; during voluntary attendance for interview or under common law between arrest and charge. Limited questioning at the locus or outwith a police station is permissible to the extent that it is required to determine if a crime has been committed, who may have committed it and if there are reasonable grounds to suspect that the individual is the offender, and whether the offender is entitled (or intending) to rely on any statutory defence or wishes to put forward any exculpatory information i.e. a defence to the sale of alcohol to a child or young person under section 102(2) of the Licensing (Scotland)

Act 2005. In the vast majority of test purchase cases the interaction with suspects or potential accused will take place in licensed premises and not a police station therefore access to a solicitor will not apply, but Forces should be guided by their own chief constable and force guidance on this matter.

#### 5.4.2 Conditions

The conditions regarding the briefing, deployment and debriefing of test purchasers are as follows:

- a) On failing any test purchasing operation all relevant persons MUST be the subject of a police report to the relevant Procurator Fiscal (Charge details are contained in section 5.1.5 of this MOG). A template report indicating the information required to assist the Procurators Fiscal in their decision-making is attached (Appendix 15). A report will also be submitted to the person or department responsible for licensing enforcement / administration within the Force, in order that an application for review of premises licence can be prepared on behalf of the chief constable, for the relevant Local Licensing Board. A SID log will be submitted as per paragraph 5.1.4 of this MOG.
- b) Only money issued by one of the supervising officers can be used by a test purchaser when attempting to purchase alcohol.
- c) Following any test purchase operation resulting in a purchase, the premises should be subjected to a second test within two weeks of the initial failure.

#### 5.4.3 Process

Process maps relating to the recovery of evidence and reporting procedures are attached (Appendix 11A and 11B) and these should be read in conjunction with the remainder of this section.

When an initial test at particular premises is carried out and no sale is made, an officer should inform the vendor that they have been subjected to a test purchase operation, thanked and their future vigilance encouraged.

When an initial test at particular premises is carried out and a purchase is obtained, the following procedures should be carried out:

- a) The alcohol will be recovered by either the test purchaser (off sales) or one of the officers supervising the operation (on sales).
- b) The test purchaser will return to the police vehicle where they will remain under the supervision of a chaperone.
- c) Two of the police officers present should enter the premises, identify the suspect vendor and recover the note used to purchase the alcohol with any change from the transaction being returned. However, there is no requirement to lodge this note as a production. The serial numbers of notes used by the test purchaser should be noted prior to use and again if the note is recovered from the cash register. There exists the potential for the note used to be given away, by way of change to another customer prior to police attempting to recover it. This should not cause any concern but would be worthy of inclusion with the police report to the PF. The

change given to the test purchaser should be returned to the vendor and money to the value of the original note requested. At this time, any available physical evidence such as CCTV etc would also be recovered from within or without the premises. Labels and productions are to be processed in accordance with local procedures.

- d) Following any test purchase operation resulting in a purchase being made the vendor will be charged with a contravention of Section 102 of the Licensing (Scotland) Act 2005 whilst the person (s) responsible for authorising the sale directly or indirectly (normally the Designated Premises Manager – see paragraph 4.1.7 herein for definition of "responsible person") will be charged with a contravention of Section 103 of the Licensing (Scotland) Act 2005.
- e) Investigation to establish whether there are additional offences committed by other members of staff in relation to Section 103 of the Licensing (Scotland) Act 2005 and the recovery of supporting evidence should follow. This investigation must address the following points
  - i. The details of all staff members present.
  - ii. The nature of the business
  - iii. The vendor's position within the business and their responsibilities, including whether the vendor was a personal licence holder.
  - iv. As the sale of alcohol must be authorised (either generally or specifically) by a personal licence holder, where the vendor is not a personal licence holder, who authorised this sale of alcohol?
  - v. The identity of all personal licence holders present and their responsibilities
  - vi. The identity of the designated premises manager and was the premises manager on the premises at the time of the sale?
  - vii. Details of any training provided to the vendor and how it is recorded
  - viii. Any explanation or defence

Following any initial (first) test purchase operation resulting in a purchase being made, the premises should be subjected to a second test within two weeks of the initial failure.

When a follow up test at particular premises is carried out and no sale is made, an officer should inform the vendor that they have been subjected to a test purchase operation, thanked and their future vigilance encouraged.

Following this test, a report will be submitted for the consideration of the Procurator Fiscal, with a copy submitted to the person or department responsible for licensing enforcement / administration with the Force, in order that an application for review of premises licence can be prepared on behalf of the chief constable, for the relevant Local Licensing Board. This report should contain the details regarding both test purchase operations at those

premises in addition to the date and result of any other test purchase operations recorded by the Licensing Officer in respect of those premises. A SID log will be submitted as per paragraph 5.1.4 of this MOG.

When a follow up test at particular premises is carried out and a purchase is obtained, the procedures in paragraph 5.4.3.2 should be carried out.

Following this further test, a report will be submitted for the consideration of the Procurator Fiscal outlining both failures, with a copy being submitted to the person or department responsible for licensing enforcement / administration within the Force, in order that an application for review of premises licence can be prepared on behalf of the chief constable, for the relevant Local Licensing Board. This report should contain the details regarding both test purchase operations at those premises in addition to the date and result of any other test purchase operations recorded by the Licensing Officer in respect of those premises.. A SID log will be submitted as per paragraph 5.1.4 of this MOG.

Where any report regarding a test purchase of alcohol operation is being provided to the Procurator Fiscal the reporting officer should include as much information as possible in connection with the reason(s) for the test purchase and any mitigating factors such as the alcohol being sold by a licence holder, young person, or antisocial behaviour associated with the premises, as these will allow the Procurator Fiscal to assess how to progress with the prosecution case.

The Criminal Justice and Licensing (Scotland) Act 2010 has introduced vicarious liability to the Licensing (Scotland) Act 2005. Section 195 of the CJ(S)Act 2010 inserts Section 141B into the L(S)A 2005. When fully in force, Section 141B will provide that where a person acting as employee or agent of the holder of the premises licence or an 'interested party' commits an offence the holder of the premises licence or the interested party is also guilty of the offence and liable to be proceeded against. Vicarious liability in relation to premises licence holders came into effect on 13<sup>th</sup> December 2010. No date has yet been set for commencement of vicarious liability for 'interested parties'. An 'interested party' is defined as a person, other than a premises or personal licence holder, who has an interest in the premises as an owner or tenant or has management and control over the premises or business carried on in the premises. Further guidance on vicarious liability and interested parties can be provided by contacting the person or department responsible for licensing enforcement / administration within the Force.

## **5.5 Inspection Process**

### **5.5.1 Principle**

The Key Principle regarding the Inspection Process is to ensure that all test purchase operations are being conducted fairly, safely and effectively.

### **5.5.2 Conditions**

The conditions regarding the Inspection Process are as follows:

- a) An inspection should be carried out in accordance with local Force protocol.
- b) The inspection should be conducted in line with the sample inspection template (Appendix 8)
- c) Inspections should be carried out on a quarterly basis or as otherwise directed by Force protocol.

## 6. Related Documents

This document is related closely to Practical Guide to Test Purchasing in Scotland, which offers guidance to those agencies involved in the conduct of test purchasing operations involving young people and the sale of age restricted products/goods.

## 7. Appendices

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**NOT PROTECTIVELY MARKED**

- Appendix 13 Process Map for Test Purchase Operations (Premises with Public House/Hotel Licence)
- Appendix 14 Process Map for Test Purchase Operations (Premises Operating As Nightclubs and Members Clubs)
- Appendix 15 Standard Police Report (SPR) Template

## Appendix 1      **Agreement with Parent/Guardian, Youth and Scottish Police Force for Test Purchase Operations**

The purpose of this agreement is to ensure that the parent/guardian and youth are aware of what police officers intend to do and what safeguards will be used.

1. The youth will be instructed in what to say and do and will be told to tell the truth at all times.
2. A minimum of three officers will be present during any test purchase operation. At least one of the officers must be within the licensed premises and one must remain within eyesight of the youth at all times.
3. The youth will not be asked to carry out tests in any area where he/she is likely to be recognised.
4. During the tests, the youth's safety is paramount and an officer will intervene if the youth's welfare is believed to be at risk.
5. Scottish Police Forces will not reveal the youth's identity, to any other person, other than to the Procurator Fiscal and/or Local Licensing Board when instructed or required to do so. Obviously, in relation to any successful test purchase operations, any young person will be identified in the relevant police report and may be required to appear as a witness in any subsequent court or Licensing Board proceedings when they would be afforded full support in relation to their welfare and safety. In addition, it is anticipated that officers who accompany the test purchaser will provide the evidence of any sale in the majority of cases.
6. Any youth taking part in test purchasing may receive expenses or gratuities of up to £5.00 per hour for their services. These may include travel expenses, subsistence, vouchers or cash payment. They may also receive payment in relation to additional reasonable expenses incurred as a result of taking part in the tests. This should occur only in exceptional cases, as the tests should be arranged so as to be convenient to the testers and the supervising officers.

I have read, understood the above and consent to:

Name : \_\_\_\_\_ D.O.B: \_\_\_\_\_

taking part in Test Purchase of Alcohol Operations

Signed: \_\_\_\_\_ (Parent/Guardian)

Signed: \_\_\_\_\_ (Officer)

Signed: \_\_\_\_\_ (Test Purchaser)

Date: \_\_\_\_\_

## Appendix 2 (A) Test Purchase of Alcohol Operations

### GENERIC RISK ASSESSMENT - OFF SALES PREMISES

Likelihood of Occurrence	Severity of Harm	Risk Rating	Action Required
5 Certain, imminent	5 Death	16 to 25	High Risk and may require the provision of considerable resources involving special equipment, training, high levels of supervision and consideration of the most effective methods of eliminating or controlling hazards
4 Very likely	4 Major Injury, disabling disease		
3 Likely	3 Lost time injury (over 3 days)	5 to 15	Medium Risk and will require an appropriate level of resources
2 Unlikely	2 First Aid injury	1 to 4	Low risk but actions should still be taken to try to reduce these risks further if possible, within reasonable limits.
1 Very unlikely	1 No injury		

DESCRIPTION OF WORKACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)		CURRENT RESIDUAL RISK
Personal data collected about young persons used for test purchasing being handled insensitively	Information could be left lying around the office leading to the test purchaser being compromised leading to the possibility of injury by assault	3	1	3	Nominated officer has responsibility for collecting data which is recorded on proforma sheets kept locked away in cupboard.	1	1	1
As part of assessment process officer will have to make personal	Young person could be selected without knowledge or consent of	2	2	4	Officer will visit young person in presence of parent/guardian.	1	1	1

NOT PROTECTIVELY MARKED

DESCRIPTION OF WORKACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK  (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)			CURRENT RESIDUAL RISK
contact with young person to check suitability for test purchasing	parent/guardian and also therefore be unsuitable for test purchasing leading to them being put in potential danger of injury by assault				Officer will complete necessary checks and will have parent/guardian sign consent form. Arrangements for visit will always be made with parent/guardian. Supervising officer will review assessments and check that parent/ guardian were present and gave consent.				
Arranging Test Purchasing session with young person	Arrangements could be made with young person without consent/ knowledge of parent/guardian who would therefore not be aware of their whereabouts leading to the potential of complaint should young person be subject to injury	2	3	6	Arrangements always made known to parent/guardian .	1	1	1	
Collection of young person for test purchasing session	Collection of young person could be done without consent/ knowledge of parent/guardian who would therefore not be aware of their whereabouts leading to the potential of complaint should young person be subject to a minor or major injury	2	3	6	If parent/guardian is not aware then the test purchasing session will be cancelled.	1	1	1	
Young person deployed in test	Young person could suffer from stress and fatigue from working long hours with	2	3	6	Maximum hours worked including uplift and drop off will be four hours	2	1	2	

NOT PROTECTIVELY MARKED

DESCRIPTION OF WORKACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK  (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)			CURRENT RESIDUAL RISK
purchasing (stress and fatigue)	the potential of injury				per operation. Hours and times worked will be monitored by supervisor. List of test purchasers will continue to be renewed on young persons becoming 17yrs and no longer suitable.				
Officer and young person alone	Young person could be left alone with only one officer leading to the risk of allegation of improper conduct.	2	3	6	Where ever possible at least two officers, one of whom is the same sex, will be with the young person at all times. Where this is not possible all appropriate measures will be taken to minimise the likelihood of close contact between adults and juveniles.	1	1	1	
Young person deployed in test purchasing in or near to premises (Hostile environment)	Young person could become isolated in an environment that becomes hostile leading to the potential of assault	2	3	6	Young person always instructed that if anything goes wrong to leave the premises/vicinity of premises immediately. Should there be a large number of persons at or near to the premises the test purchasing session will be cancelled. Minimum of one officer always in premises in close proximity to young person and able to intervene if necessary. Minimum of one officer always in close proximity (at least within clear	1	2	2	

NOT PROTECTIVELY MARKED

DESCRIPTION OF WORKACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK  (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)		CURRENT RESIDUAL RISK
					line of sight of the premises) and observing young person enter/leaving premises and able to intervene if necessary. Force control room aware and able to respond promptly to calls for assistance.			
Premises contain a number of customers who will be present when the test purchase is made.	Young person could become engaged within a hostile environment due to the number of persons present and their reaction to the test purchase.	2	3	6	Additional police or adult support should be provided, or if unavailable the test purchase aborted.	1	2	2
Young person deployed in test purchasing in or near premises (unsupervised)	Young person could be left unsupervised with the potential to become exposed to danger or possibly minor/major injury by assault	2	3	6	Rendezvous point outside shop agreed with young person by supervisory officer. Should there be a large number of persons at or near the premises the test purchasing session will be cancelled.  As there is a requirement for two officers to enter premises if a positive test purchase occurs then a minimum of three officers must be deployed per operation with a minimum of one officer entering premises prior to young person with	1	1	1

NOT PROTECTIVELY MARKED

DESCRIPTION OF WORKACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK  (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)		CURRENT RESIDUAL RISK
					remaining officers waiting nearby closely observing.			
Young person attempts test purchase (refusal)	During test purchase, purchase refused and staff member becomes abusive or threatening to young person with the potential of injury by assault	2	3	6	Young person instructed not to question refusal to be served and instructed to leave premises immediately. Minimum of one officer will be within premises in close proximity of young person and able to intervene if necessary. Minimum of one officer will also be nearby and be able to assist if necessary. Force Control Room aware of operation and able to respond promptly to call for assistance.	1	1	1
Young person attempts test purchase (recognised)	During test purchase member of staff or member of public recognises young person compromising their safety with the future potential of injury by assault	2	3	6	Young person will not work in area where they live, attend school or regularly visit. If a re-test is required a different test purchaser will be used.	1	1	1
Matters arising while young person in care of supervisory officers (illness)	During test purchase operation young person develops a sudden illness with potential of injury	2	3	6	Details of allergies, health conditions and current medication obtained from parent/guardian.  Contact number for parent/guardian	1	2	2

NOT PROTECTIVELY MARKED

DESCRIPTION OF WORKACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK  (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)		CURRENT RESIDUAL RISK
					held during visit. Test purchase suspended if young person becomes ill.			
Court Action	Young person required to appear in court if not guilty plea entered with the potential for the young person to suffer minor or major stress and anxiety	3	3	9	Young person and parent/guardian fully apprised of future court appearance. Young person fully supported throughout and if anxious about attending court representation will be made to the Procurator Fiscal. Details of all young persons attending court maintained to ensure that young persons does not carry out any future test of same premises thereby increasing the possibility of being recognised and put at a higher risk. If young person or parent/ guardian not happy about facing court they will be removed from the test purchasing list.	2	1	2
Young person attempts to purchase alcohol legally when 18 years of age	During transaction, young person is recognised as having been a test purchaser compromising their safety with the future potential of injury by assault	2	3	6	Young person is re-contacted by an officer near to their 18 <sup>th</sup> birthday and reminded of risks/availability of support.	1	1	1

## Appendix 2(B) Test Purchase of Alcohol Operations

GENERIC RISK ASSESSMENT – On Sales Premises (previously referred to as PUBLIC HOUSE / HOTELS)

Likelihood of Occurrence	Severity of Harm	Risk Rating	Action Required
5 Certain, imminent	5 Death	16 to 25	High Risk and may require the provision of considerable resources involving special equipment, training, high levels of supervision and consideration of the most effective methods of eliminating or controlling hazards
4 Very likely	4 Major Injury, disabling disease		
3 Likely	3 Lost time injury (over 3 days)	5 to 15	Medium Risk and will require an appropriate level of resources
2 Unlikely	2 First Aid injury	1 to 4	Low risk but actions should still be taken to try to reduce these risks further if possible, within reasonable limits.
1 Very unlikely	1 No injury		

DESCRIPTION OF WORK ACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)		CURRENT RESIDUAL RISK
Personal data collected about young persons used for test purchasing being handled insensitively	Information could be left lying around the office leading to the test purchaser being compromised leading to the possibility of injury by assault.	3	1	3	Nominated officer has responsibility for collecting data which is recorded on proforma sheets kept locked away in cupboard.	1	1	1
As part of assessment process officer will have to make personal contact with young person to check suitability for test purchasing	Young person could be selected without knowledge or consent of parent/guardian and also therefore be unsuitable for test purchasing leading to	2	2	4	Officer will visit young person in presence of parent/guardian. Officer will complete necessary checks. Officer will have	1	1	1

NOT PROTECTIVELY MARKED

DESCRIPTION OF WORK ACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)		CURRENT RESIDUAL RISK
	them being put in potential danger of injury by assault.				parent/guardian sign consent form. Arrangements to visit young person will always be made with parent/guardian. Supervising officer will review assessments and check that parent/guardian were present and gave consent.			
Arranging Test Purchasing session with young person	Arrangements could be made with young person without consent/ knowledge of parent/guardian who would therefore not be aware of their whereabouts leading to the potential of complaint should young person be subject to a minor or major injury.	2	3	6	Arrangements always made known to parent/guardian	1	1	1
Collection of young person for test purchasing session	Collection of young person could be done without consent/ knowledge of parent/guardian who would therefore not be aware of their whereabouts leading to the potential of complaint should young person be subject to a minor or major injury.	2	3	6	If parent/guardian not aware then the test purchasing session will be cancelled.	1	1	1
Young person deployed in test purchasing (stress and fatigue)	Young person could suffer from stress and fatigue from working long hours with the potential of injury.	2	3	6	Maximum hours worked including uplift and drop off will be four hours per operation. Hours and times worked will be monitored by supervisor. List of test purchasers	2	1	2

NOT PROTECTIVELY MARKED

DESCRIPTION OF WORK ACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK  (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)		CURRENT RESIDUAL RISK
					will continue to be renewed on young persons becoming 17yrs and no longer suitable.			
Officer and young person alone	Young person could be left alone with only one officer leading to the risk of allegation of improper conduct.	2	3	6	Where ever possible at least two officers, one of whom is the same sex, will be with the young person at all times. Where this is not possible all appropriate measures will be taken to minimise the likelihood of close contact between adults and juveniles.	1	1	1
Young person deployed in test purchasing in or near to premises (Hostile environment)	Young person could become isolated in an environment that becomes hostile leading to the potential of injury by assault.	2	3	6	To provide support a minimum of two test purchasers will be used for these types of premises. If one becomes ill the operation will be terminated. Young persons always instructed that if anything goes wrong to leave the premises/vicinity of premises immediately. Should there be a larger number of persons at or near to the premises than would normally be expected the test purchasing session will be cancelled. Minimum of two officers always in premises in close proximity to young persons and able to intervene if necessary.	1	2	2

NOT PROTECTIVELY MARKED

DESCRIPTION OF WORK ACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK  (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)		CURRENT RESIDUAL RISK
					Minimum of one further officer always situated nearby observing young persons enter/leaving premises and able to intervene if necessary. This third officer will be available to provide support to the youth either inside or outside the premises. Force control room aware and able to respond promptly to calls for assistance.			
Young Person deployed in test purchasing in or near premises (unsupervised)	Young person could be left unsupervised with the potential to become exposed to danger or possibly minor or major injury by assault.	2	3	6	To provide support a minimum of two test purchasers will be used for these types of premises.  Rendezvous point outside premises agreed with young persons by supervisory officer. Should there be a larger number of persons at or near the premises than would normally be expected the test purchasing session will be cancelled. As there is a requirement for two officers to be within the premises if a positive test purchase occurs then a minimum of three officers must be deployed per operation with a minimum of two officers entering with, or prior to the	1	1	1

DESCRIPTION OF WORK ACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK  (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)		CURRENT RESIDUAL RISK
					young persons with remaining officer waiting nearby.			
Young person attempts test purchase (refusal)	During test purchase, purchase refused and staff member becomes abusive or threatening to young person with the potential of injury by assault.	2	3	6	To provide support a minimum of two test purchasers will be used for these types of premises. Young persons instructed not to question refusal to be served and instructed to leave premises immediately. Minimum of 2 officers will be within premises in close proximity of young persons and able to intervene if necessary. Minimum of a further one officer will also be situated nearby within eyesight of the premises and be able to assist if necessary.  Force Control Room aware of operation and able to respond promptly to call for assistance.	1	1	1
Young person attempts test purchase (recognised)	During test purchase member of staff or member of public recognises young person compromising their safety with the future potential of injury by assault.	2	3	6	To provide support a minimum of two test purchasers will be used for these types of premises. Young persons will not work in area where they live, attend school or regularly visit. If a re-test is required different test purchasers will be used.	1	1	1

NOT PROTECTIVELY MARKED

DESCRIPTION OF WORK ACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK  (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)		CURRENT RESIDUAL RISK
Matters arising while young person in care of supervisory officers (illness)	During test purchase operation young person develops a sudden illness with potential of injury.	2	3	6	<p>Details of allergies, health conditions and current medication obtained from parent/guardian.</p> <p>Contact number for parent/guardian held during visit.</p> <p>Test purchase suspended if young person becomes ill.</p>	1	2	2
Court Action	Young person required to appear at court if not guilty plea entered with the potential for the young person to suffer minor or major stress and anxiety.	3	3	9	<p>Young person and parent/guardian fully apprised of future court appearance. Young person fully supported throughout and if anxious about attending court representation will be made to the Procurator Fiscal.</p> <p>Details of all young persons attending court maintained to ensure that young persons does not carry out any future test of same premises thereby increasing the possibility of being recognised and put at a higher risk. If young person or parent/ guardian not happy about facing court they will be removed from the test</p>	2	1	2

NOT PROTECTIVELY MARKED

DESCRIPTION OF WORK ACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)		CURRENT RESIDUAL RISK
					purchasing list.			
Young person attempts to purchase alcohol legally when 18 years of age	During transaction, young person is recognised as having been a test purchaser compromising their safety with the future potential of injury by assault	2	3	6	Young person is re-contacted by an officer near to their 18 <sup>th</sup> birthday and reminded of risks/availability of support.	1	1	1

## Appendix 2 (C) Test Purchase of Alcohol Operations

GENERIC RISK ASSESSMENT – On Sales Premises (previously referred to as NIGHTCLUBS)

Likelihood of Occurrence	Severity of Harm	Risk Rating	Action Required
5 Certain, imminent	5 Death	16 to 25	High Risk and may require the provision of considerable resources involving special equipment, training, high levels of supervision and consideration of the most effective methods of eliminating or controlling hazards
4 Very likely	4 Major Injury, disabling disease		
3 Likely	3 Lost time injury (over 3 days)	5 to 15	Medium Risk and will require an appropriate level of resources
2 Unlikely	2 First Aid injury	1 to 4	Low risk but actions should still be taken to try to reduce these risks further if possible, within reasonable limits.
1 Very unlikely	1 No injury		

DESCRIPTION OF WORK ACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)		CURRENT RESIDUAL RISK
Personal data collected about young persons used for test purchasing being handled insensitively.	Information could be left lying around the office leading to the test purchaser being compromised leading to the possibility of injury by assault.	3	1	3	Nominated officer has responsibility for collecting data, which is recorded on proforma sheets kept locked away in cupboard.	1	1	1
As part of assessment process officer will have to make personal	Young person could be selected without knowledge or consent of	2	2	4	Officer will visit young person in presence of parent/guardian.	1	1	1

NOT PROTECTIVELY MARKED

DESCRIPTION OF WORK ACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)			CURRENT RESIDUAL RISK
contact with young person to check suitability for test purchasing.	parent/guardian and also therefore be unsuitable for test purchasing leading to them being put in potential danger of injury by assault.				Officer will complete necessary checks. Officer will have parent/guardian sign consent form. Arrangements to visit young person will always be made with parent/guardian. Supervising officer will review assessments and check that parent/guardian were present and gave consent.				
Arranging Test Purchasing session with young person.	Arrangements could be made with young person without consent/ knowledge of parent/guardian who would therefore not be aware of their whereabouts leading to the potential of complaint should young person be subject to a minor or major injury.	2	3	6	Arrangements always made known to parent/guardian.	1	1	1	
Collection of young person for test purchasing session.	Collection of young person could be done without consent/ knowledge of parent/guardian who would therefore not be aware of their whereabouts leading to the potential of complaint should young person be subject to a minor or major injury.	2	3	6	If parent/guardian not aware then the test purchasing session will be cancelled.	1	1	1	
Young person deployed in test purchasing.	Young person could suffer from stress and fatigue from working long hours with	2	3	6	Maximum hours worked including uplift and drop off will be four hours per operation. Hours and times	2	1	2	

NOT PROTECTIVELY MARKED

DESCRIPTION OF WORK ACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)		CURRENT RESIDUAL RISK
(stress and fatigue)	the potential of injury.				worked will be monitored by supervisor. List of test purchasers will continue to be renewed on young persons becoming 17yrs and no longer suitable.			
Officer and young person alone.	Young person could be left alone with only one officer leading to the risk of allegation of improper conduct.	2	3	6	Where ever possible at least two officers, one of whom is the same sex, will be with the young person at all times. Where this is not possible all appropriate measures will be taken to minimise the likelihood of close contact between adults and juveniles.	1	1	1
Young person deployed in test purchasing in or near to premises. (Hostile environment)	Young person could become isolated in an environment that becomes hostile leading to the potential of injury by assault.	2	3	6	To provide further support a minimum of two test purchasers will be used. If one becomes ill the operation will be terminated. Young persons always instructed that if anything goes wrong to leave the premises/vicinity of premises immediately. Should there be a larger number of persons at or near to the premises than would normally be expected the test purchasing session will be cancelled. Minimum of 2 officers always in premises in close	1	2	2

NOT PROTECTIVELY MARKED

DESCRIPTION OF WORK ACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK  (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)		CURRENT RESIDUAL RISK
					proximity to young person(s) and able to intervene if necessary. Minimum of two further officers always in close proximity observing young persons enter/leaving premises and able to intervene if necessary. If young person(s) successful in gaining entry minimum of one further officer will also enter premises. Force control room aware and able to respond promptly to calls for assistance.			
Young Person deployed in test purchasing in or near premises. (unsupervised)	Young person could be left unsupervised with the potential to become exposed to danger or possibly minor or major injury by assault.	2	3	6	To provide support a minimum of two test purchasers will be used. Rendezvous point outside premises agreed with young persons by supervisory officer. Should there be a larger number of persons at or near the premises than would normally be expected the test purchasing session will be cancelled. As there is a requirement for three officers to be within the premises if a positive test purchase occurs then a minimum of four officers must be deployed per operation with a minimum of three officers entering prior to the test	1	1	1

NOT PROTECTIVELY MARKED

DESCRIPTION OF WORK ACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)		CURRENT RESIDUAL RISK
					purchase with the remaining officer waiting nearby closely observing.			
Premises contain a number of persons who will be present when the test purchase is made.	Young person could become engaged within a hostile environment due to the number of persons present and their reaction to the test purchase.	2	3	6	Additional police or adult support should be provided, or if unavailable the test purchase aborted.	1	2	2
Young person attempts to gain entry to premises. (refusal)	During attempt to test purchase, young person is refused entry to premises and staff member (door staff / bouncer) becomes abusive or threatening to young person with the potential of injury by assault.	3	3	9	To provide support a minimum of two test purchasers will be used. Young persons instructed not to question refusal to be granted entry and instructed to leave premises immediately. Minimum of two officers will be within close proximity of young persons and able to intervene if necessary. Minimum of a further one officer will be within premises and be able to assist if necessary. Force Control Room aware of operation and able to respond promptly to call for assistance.	2	2	4
Young person attempts to gain entry to premises. (recognised)	During test purchase member of staff (door staff / bouncer) or member of public recognises young person	2	3	6	To provide support a minimum of two test purchasers will be used. Young persons will not work in area	1	1	1

NOT PROTECTIVELY MARKED

DESCRIPTION OF WORK ACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK  (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)			CURRENT RESIDUAL RISK
	compromising their safety with the future potential of injury by assault.				where they live, attend school or regularly visit. If a re-test is required different test purchasers will be used.				
Young person attempts test purchase. (refusal)	During test purchase, purchase refused and staff member becomes abusive or threatening to young person with the potential of injury by assault.	2	3	6	To provide support a minimum of two test purchasers will be used for these types of premises. Young persons instructed not to question refusal to be served and instructed to leave premises immediately. Minimum of three officers will be within premises in close proximity of young persons and able to intervene if necessary. Minimum of a further one officer will also be outside and be able to assist if necessary. Force Control Room aware of operation and able to respond promptly to call for assistance.	1	1	1	
Young person attempts test purchase. (recognised)	During test purchase member of staff or member of public recognises young person compromising their safety with the future potential of injury by assault.	2	3	6	To provide support a minimum of two test purchasers will be used for these types of premises. Young persons will not work in area where they live, attend school or regularly visit. If a re-test is required different	1	1	1	

NOT PROTECTIVELY MARKED

DESCRIPTION OF WORK ACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK  (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)		CURRENT RESIDUAL RISK
					test purchasers will be used.			
Matters arising while young person in care of supervisory officers. (illness)	During test purchase operation young person develops a sudden illness with potential of injury.	2	3	6	Details of allergies, health conditions and current medication obtained from parent/guardian. Contact number for parent/guardian held during visit.  Test purchase suspended if young person becomes ill.	1	2	2
Court Action	Young person required to appear in court if not guilty plea entered with the potential for the young person to suffer minor or major stress and anxiety.	3	3	9	Young person and parent/guardian fully apprised of future court appearance. Young person fully supported throughout and if anxious about attending court representation will be made to the Procurator Fiscal.  Details of all young persons attending court maintained to ensure that young persons does not carry out any future test of same premises thereby increasing the possibility of being recognised and put at a higher risk. If young person or parent/ guardian not happy about facing court they will be removed from the test	2	1	2

NOT PROTECTIVELY MARKED

DESCRIPTION OF WORK ACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)		CURRENT RESIDUAL RISK
					purchasing list.			
Young person attempts to purchase alcohol legally when 18 years of age	During transaction, young person is recognised as having been a test purchaser compromising their safety with the future potential of injury by assault.	2	3	6	Young person is re-contacted by an officer near to their 18 <sup>th</sup> birthday and reminded of risks/availability of support.	1	1	1

## Appendix 2 (D) Test Purchase of Alcohol Operations

GENERIC RISK ASSESSMENT – On Sales Premises (Operating as MEMBERS CLUBS)

Likelihood of Occurrence	Severity of Harm	Risk Rating	Action Required
5 Certain, imminent	5 Death	16 to 25	High Risk and may require the provision of considerable resources involving special equipment, training, high levels of supervision and consideration of the most effective methods of eliminating or controlling hazards
4 Very likely	4 Major Injury, disabling disease		
3 Likely	3 Lost time injury (over 3 days)	5 to 15	Medium Risk and will require an appropriate level of resources
2 Unlikely	2 First Aid injury	1 to 4	Low risk but actions should still be taken to try to reduce these risks further if possible, within reasonable limits.
1 Very unlikely	1 No injury		

DESCRIPTION OF WORK ACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)		CURRENT RESIDUAL RISK
Personal data collected about young persons used for test purchasing being handled insensitively.	Information could be left lying around the office leading to the test purchaser being compromised leading to the possibility of injury by assault.	3	1	3	Nominated officer has responsibility for collecting data, which is recorded on proforma sheets kept locked away in cupboard.	1	1	1
As part of assessment process officer will have to make personal contact with young person to check	Young person could be selected without knowledge or consent of parent/guardian and also therefore be	2	2	4	Officer will visit young person in presence of parent/guardian. Officer will complete necessary	1	1	1

NOT PROTECTIVELY MARKED

DESCRIPTION OF WORK ACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)			CURRENT RESIDUAL RISK
suitability for test purchasing.	unsuitable for test purchasing leading to them being put in potential danger of injury by assault.				checks. Officer will have parent/guardian sign consent form. Arrangements to visit young person will always be made with parent/guardian. Supervising officer will review assessments and check that parent/guardian were present and gave consent.				
Arranging Test Purchasing session with young person.	Arrangements could be made with young person without consent/ knowledge of parent/guardian who would therefore not be aware of their whereabouts leading to the potential of complaint should young person be subject to a minor or major injury.	2	3	6	Arrangements always made known to parent/guardian.	1	1	1	
Collection of young person for test purchasing session.	Collection of young person could be done without consent/ knowledge of parent/guardian who would therefore not be aware of their whereabouts leading to the potential of complaint should young person be subject to a minor or major injury.	2	3	6	If parent/guardian not aware then the test purchasing session will be cancelled.	1	1	1	
Young person deployed in test purchasing. (stress and fatigue)	Young person could suffer from stress and fatigue from working long hours with the potential of injury.	2	3	6	Maximum hours worked including uplift and drop off will be four hours per operation. Hours and times worked will be monitored by	2	1	2	

NOT PROTECTIVELY MARKED

DESCRIPTION OF WORK ACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)		CURRENT RESIDUAL RISK
					supervisor. List of test purchasers will continue to be renewed on young persons becoming 17yrs and no longer suitable.			
Officer and young person alone.	Young person could be left alone with only one officer leading to the risk of allegation of improper conduct.	2	3	6	Where ever possible at least two officers, one of whom is the same sex, will be with the young person at all times. Where this is not possible all appropriate measures will be taken to minimise the likelihood of close contact between adults and juveniles.	1	1	1
Young person deployed in test purchasing in or near to premises. (Hostile environment)	Young person could become isolated in an environment that becomes hostile leading to the potential of injury by assault.	2	3	6	To provide further support a minimum of two test purchasers will be used. If one becomes ill the operation will be terminated. Young persons always instructed that if anything goes wrong to leave the premises/vicinity of premises immediately. Should there be a larger number of persons at or near to the premises than would normally be expected the test purchasing session will be cancelled. Minimum of 2 officers always in premises in close proximity to young person(s) and	1	2	2

NOT PROTECTIVELY MARKED

DESCRIPTION OF WORK ACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK  (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)		CURRENT RESIDUAL RISK
					able to intervene if necessary. Minimum of two further officers always in close proximity observing young persons enter/leaving premises and able to intervene if necessary. If young person(s) successful in gaining entry minimum of one further officer will also enter premises. Force control room aware and able to respond promptly to calls for assistance.			
Young Person deployed in test purchasing in or near premises. (unsupervised)	Young person could be left unsupervised with the potential to become exposed to danger or possibly minor or major injury by assault.	2	3	6	To provide support a minimum of two test purchasers will be used. Rendezvous point outside premises agreed with young persons by supervisory officer. Should there be a larger number of persons at or near the premises than would normally be expected the test purchasing session will be cancelled. As there is a requirement for three officers to be within the premises if a positive test purchase occurs then a minimum of four officers must be deployed per operation with a minimum of three officers entering prior to the test purchase with the remaining officer	1	1	1

NOT PROTECTIVELY MARKED

DESCRIPTION OF WORK ACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK  (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)		CURRENT RESIDUAL RISK
					waiting nearby closely observing.			
Premises contain a number of persons who will be present when the test purchase is made.	Young person could become engaged within a hostile environment due to the number of persons present and their reaction to the test purchase.	2	3	6	Additional police or adult support should be provided, or if unavailable the test purchase aborted.	1	2	2
Young person attempts to gain entry to premises. (refusal)	During attempt to test purchase, young person is refused entry to premises and staff member (door staff / bouncer) becomes abusive or threatening to young person with the potential of injury by assault.	3	3	9	To provide support a minimum of two test purchasers will be used. Young persons instructed not to question refusal to be granted entry and instructed to leave premises immediately. Minimum of two officers will be within close proximity of young persons and able to intervene if necessary. Minimum of a further one officer will be within premises and be able to assist if necessary. Force Control Room aware of operation and able to respond promptly to call for assistance.	2	2	4
Young person attempts to gain entry to premises and is required to sign in as a guest of a member or	During attempt to enter young person is required to sign in and is challenged when doing so.	3	3	9	To provide support a minimum of two test purchasers will be used. Young persons instructed not to question refusal to be granted entry	2	2	4

NOT PROTECTIVELY MARKED

DESCRIPTION OF WORK ACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK  (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)			CURRENT RESIDUAL RISK
affiliated club.					and instructed to leave premises immediately. Minimum of two officers will be within close proximity of young persons and able to intervene if necessary. Minimum of a further one officer will be within premises and be able to assist if necessary. Force Control Room aware of operation and able to respond promptly to call for assistance.  Should the young person(s) be able to sign in without challenge or are not required to sign in they should proceed with the test purchase.				
Young person attempts to gain entry to premises. (recognised)	During test purchase member of staff (door staff / bouncer) or member of public recognises young person compromising their safety with the future potential of injury by assault.	2	3	6	To provide support a minimum of two test purchasers will be used. Young persons will not work in area where they live, attend school or regularly visit. If a re-test is required different test purchasers will be used.	1	1	1	
Young person attempts test purchase. (refusal)	During test purchase, purchase refused and staff member becomes abusive or threatening to young person with the potential of injury by assault.	2	3	6	To provide support a minimum of two test purchasers will be used for these types of premises. Young persons instructed not to question	1	1	1	

NOT PROTECTIVELY MARKED

DESCRIPTION OF WORK ACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK  (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)			CURRENT RESIDUAL RISK
					refusal to be served and instructed to leave premises immediately. Minimum of three officers will be within premises in close proximity of young persons and able to intervene if necessary. Minimum of a further one officer will also be outside and be able to assist if necessary. Force Control Room aware of operation and able to respond promptly to call for assistance.				
Young person attempts test purchase. (recognised)	During test purchase member of staff or member of public recognises young person compromising their safety with the future potential of injury by assault.	2	3	6	To provide support a minimum of two test purchasers will be used for these types of premises. Young persons will not work in area where they live, attend school or regularly visit. If a re-test is required different test purchasers will be used.	1	1	1	
Matters arising while young person in care of supervisory officers. (illness)	During test purchase operation young person develops a sudden illness with potential of injury.	2	3	6	Details of allergies, health conditions and current medication obtained from parent/guardian. Contact number for parent/guardian held during visit.  Test purchase suspended if young person becomes ill.	1	2	2	

NOT PROTECTIVELY MARKED

DESCRIPTION OF WORK ACTIVITY	HAZARD	RATINGS LIKELIHOOD OF OCCURRENCE X SEVERITY OF HARM = RISK  (L x S = R)			CONTROL MEASURES USED TO REDUCE PROBABILITIES AND RISKS	REDUCED RATINGS (L x S = R)		CURRENT RESIDUAL RISK
Court Action	Young person required to appear in court if not guilty plea entered with the potential for the young person to suffer minor or major stress and anxiety.	3	3	9	<p>Young person and parent/guardian fully apprised of future court appearance. Young person fully supported throughout and if anxious about attending court representation will be made to the Procurator Fiscal.</p> <p>Details of all young persons attending court maintained to ensure that young persons does not carry out any future test of same premises thereby increasing the possibility of being recognised and put at a higher risk. If young person or parent/ guardian not happy about facing court they will be removed from the test purchasing list.</p>	2	1	2
Young person attempts to purchase alcohol legally when 18 years of age	During transaction, young person is recognised as having been a test purchaser compromising their safety with the future potential of injury by assault.	2	3	6	Young person is re-contacted by an officer near to their 18 <sup>th</sup> birthday and reminded of risks/availability of support.	1	1	1



## Appendix 2(E) Dynamic Risk Assessment "Alcohol Test Purchase"

SIDE 1

TEST PURCHASING AT LICENSED PREMISES  
Risk Assessment Form (pre-visit)

This is the risk assessment for:

**NAME OF PREMISES:**

**ADDRESS:**

**TYPE OF PREMISES:**

On Sales	Off Sales	Both

I \_\_\_\_\_, have carried out a risk assessment of these premises as per the generic risk assessment template contained in the ACPOS Manual Of Guidance relating to Test Purchase of Alcohol Operations.

### **Environmental Scan**

(A description of the premises and surrounding area; parking availability; location of alcohol; location of till; magazine rack; CCTV; Number of staff members; any other relevant information)

### **Risk Assessment**

Any significant risks, which must be considered and any suggested control measures for consideration.

### **Floor Plan of Shop**

**Appendix 2(E) Dynamic Risk Assessment "Alcohol Test Purchase"**

SIDE 2

Name and Address of Premises: \_\_\_\_\_

Date of Operation: \_\_\_\_\_

Officer carrying out risk assessment: \_\_\_\_\_

Activity Producing Hazard	Control Measures in place according to Generic Risk Assessment (Yes/No)	
	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Personal data collected about young persons used for test purchasing being handled insensitively	<input type="checkbox"/>	<input type="checkbox"/>
As part of assessment process officer will have to make personal contact with the young person to check suitability for test purchasing	<input type="checkbox"/>	<input type="checkbox"/>
Arranging Test Purchasing session with young person	<input type="checkbox"/>	<input type="checkbox"/>
Collection of young person for test purchasing session	<input type="checkbox"/>	<input type="checkbox"/>
Young person deployed in test purchasing (stress and fatigue)	<input type="checkbox"/>	<input type="checkbox"/>
Officer and young person alone	<input type="checkbox"/>	<input type="checkbox"/>
Young person deployed in test purchasing in or near to premises (Hostile environment)	<input type="checkbox"/>	<input type="checkbox"/>
Are the risks considered acceptable and can the test purchase go ahead?	<input type="checkbox"/>	<input type="checkbox"/>
Young person deployed in test purchasing in or near premises (unsupervised)	<input type="checkbox"/>	<input type="checkbox"/>
Young person attempts test purchase (refused entry/challenged)	<input type="checkbox"/>	<input type="checkbox"/>
Young person attempts test purchase (recognised)	<input type="checkbox"/>	<input type="checkbox"/>
Matters arising while young person in care of supervisory officers (illness)	<input type="checkbox"/>	<input type="checkbox"/>
Court Action	<input type="checkbox"/>	<input type="checkbox"/>
Comments of inadequate control measures and/or other risks identified. Action being taken to minimise		

### **Appendix 3            Test Purchasing – Information for Testers, Parents or Guardians**

Throughout Scotland, there are numerous public places where groups of youths congregate for the purpose of consuming alcohol. This often results in anti-social behaviour, acts of vandalism and has obvious implications on the quality of life for the communities. Undoubtedly, many of the problems associated with youths can be directly attributed to the consumption of excessive amounts of alcohol.

Previously, Police Forces relied heavily on Section 61 of the Crime and Punishment Act, 1997, which provided officers with the power to confiscate alcohol, from underage drinkers, in public places in an effort to provide short-term solutions to local problems. However, these youths are obviously obtaining the alcohol and, in many cases, persons under the age of 18 years are purchasing alcohol in contravention of the Licensing (Scotland) Act, 2005 at off sales premises.

Prior to section 105 of the Licensing (Scotland) Act 2005 being introduced, the police required specific intelligence in order to undertake surveillance operations, in relation to off sales premises. In addition, even when such intelligence is available, such operations are manpower intensive and promise no guarantee of success.

#### **Test Purchasing**

Test purchasing involves the police utilising the services of 16-year-old young persons, from out with the locality, to enter licensed premises and attempt to purchase alcohol. Should the licence holder and/or the employee fail the test by supplying alcohol to the test purchaser, police officers will later charge them with the relevant offence(s) and submit a police report as directed.

The young person will be supervised at all times. At least three police officers will supervise the youth and at least one of them should be of the same sex as the young person. In addition, at least one of the officers will be in plain clothes and will be within the premises prior to the test to observe the attempted transaction and to ensure the safety of the test purchaser.

In relation to any successful test purchase operations, the young person will be identified in the relevant police report and may be required to appear as a witness in any subsequent court proceedings. However, any young person will be afforded the full support of the Procurator Fiscal in relation to their welfare and safety. In addition, it is anticipated that officers who accompany the test purchaser will provide the evidence of any sale in the majority of cases.

**Appendix 4 Checklist for Young Persons**

**Test Purchase of Alcohol - Checklist for Young Person Involvement**

Name \_\_\_\_\_ Date of Birth \_\_\_\_\_

Address \_\_\_\_\_

Home phone no. \_\_\_\_\_ Mobile no. \_\_\_\_\_

Date of home visit (if applicable) \_\_\_\_\_

**Checklist**

(√)

Computer checks completed on PNC/SCRO/STORM/CRIME RECORDING SYSTEM/SID	
Home visit to meet parent/guardian.	
Personal details verified.	
School Check with guidance teacher.	
Photograph enclosed in personal folder.	
Copy of birth certificate enclosed in personal folder.	
Young person awareness training completed.	
Recommended to chief constable for authorisation. If No state reason:	Yes/No
Date of Authorisation (where applicable)	
Review Date (3 months post date of authorisation)	

Police Officer Signature \_\_\_\_\_

Date \_\_\_\_\_

## Appendix 5 Review Checklist for Young Person Involvement

Test Purchase of Alcohol - Review Checklist for Young Person Involvement

Name \_\_\_\_\_ Date of Birth \_\_\_\_\_

Address \_\_\_\_\_

Home phone no. \_\_\_\_\_ Mobile no. \_\_\_\_\_

### Checklist

(√)

Computer checks completed on PNC/SCRO/STORM/CRIME RECORDING SYSTEM/SID	
Personal details verified.	
Photograph still enclosed in personal folder.	
Copy of birth certificate still enclosed in personal folder.	
Authorisation continued. If No state reason.	
Date of next review (3 months from date authorisation continued).	

Police Officer Signature \_\_\_\_\_

Date \_\_\_\_\_

**Appendix 6 Purchaser Authorisation**

(SIDE 1)

**Test Purchase of Alcohol**  
**Purchaser Authorisation**

In terms of section 105 of the Licensing Scotland Act 2005, I (*Insert name of Chief Constable*), the Chief Constable of (*Insert name of Force*) am satisfied that all reasonable steps have been or will be taken to avoid any risk to their welfare and hereby authorise \_\_\_\_\_ to conduct Test Purchase Operations within the environs of (*Insert name of Force area*) for the purposes of determining whether an offence is being committed, in relation to the illegal sale of alcohol to persons under 18 years of age, within premises licensed under the Licensing (Scotland) Act 2005. This authorisation is effective from (*Insert date*) until the date of their 17<sup>th</sup> birthday or until otherwise withdrawn but is only valid when utilised under the direct supervision of police officers from (*Insert name of Force*) who at that time are conducting such Test Purchase Operations.

(*Insert Name of Chief Constable*)

Chief Constable

(*Insert Force*)

APPENDIX 6 (SIDE 2)



Test Purchaser Date of Birth \_\_\_\_\_

**WARNING**

It is an offence to possess this card without authority. If found it should be handed in at any Police Station or to any Police Officer.

**Appendix 7 Briefing/Debriefing Checklist for Young Person**

Name of Test Purchaser \_\_\_\_\_

Name of Officer Briefing \_\_\_\_\_

Date of Operation \_\_\_\_\_

**Briefing Checklist (√)**

Can Test Purchaser be safely utilised in area of operation?	
Specific guidance given regarding what to do and say	
Informed to answer all questions truthfully	
Test Purchaser must not persuade or coerce the seller to make a sale	
Has a pre-operational photograph been taken of the test purchaser, against a scale of height, prior to deployment?	
Operation Aborted (If yes, Provide reason below)	

Police Officer Signature \_\_\_\_\_

Test Purchaser Signature \_\_\_\_\_

Time/Date \_\_\_\_\_

-----  
**Debriefing Checklist (√)**

Test Purchaser advised that their Authorisation is withdrawn and should they otherwise purchase alcohol they would be committing an offence	
Payment given to Test Purchaser against signature	

Learning points gleaned from operation:

Test Purchaser can/cannot be utilised for future operation:

Police Officer Signature \_\_\_\_\_

Test Purchaser Signature \_\_\_\_\_

Time/Date \_\_\_\_\_

## Appendix 8 Test Purchase of Alcohol - Internal Inspection Process

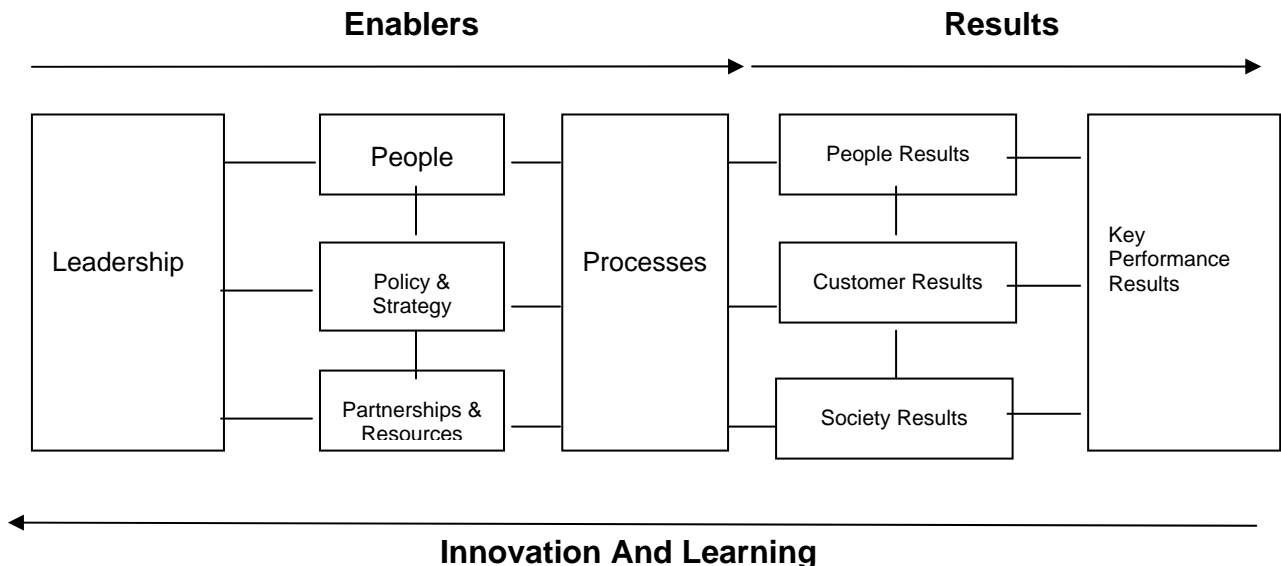
### Inspection Methodology

The Scottish Police Service is committed to continuous improvement. A comprehensive set of Standard Operating Procedures has been developed to provide a framework for all test purchase of alcohol operations. However, there is a need to establish a framework for internal inspection to ensure that these procedures are being complied with. Furthermore, these procedures must be examined and the findings were recorded in a manner, which would stand external scrutiny as well as ensuring that their effectiveness is regularly and objectively assessed.

### The EFQM Excellence Model

The framework being utilised is the European Foundation for Quality Management (EFQM) Excellence Model. This is a model developed by the top organisations in Europe in the late 1980s by the people involved in the day to day running of their organisations. The EFQM Model has 9 criteria. Five of these are 'Enablers' and four are 'Results'. The 'Enabler' criteria cover what the organisation does and the 'Results' criteria cover what an organisation achieves. Quite simply, 'Results' are caused by 'Enablers' and 'Enablers' are improved using feedback from 'Results'.

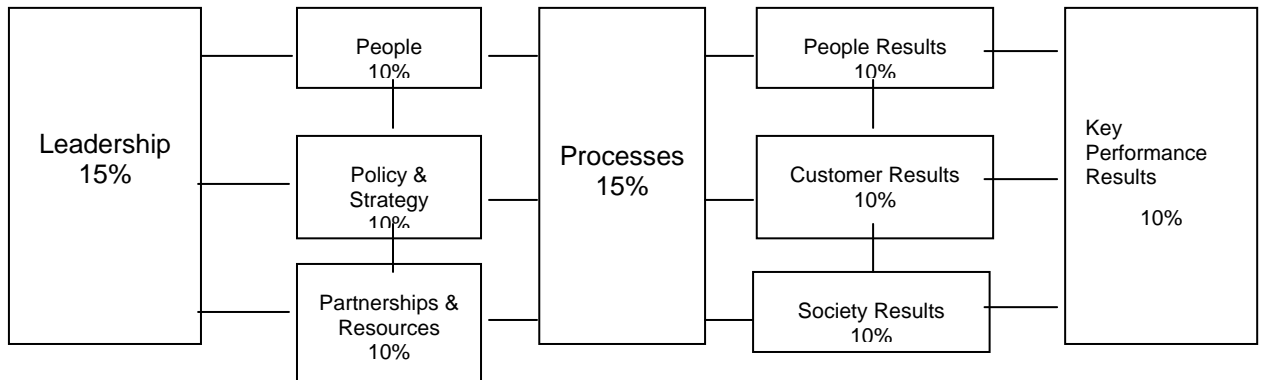
The model is presented in diagrammatic form below. The arrows emphasise the dynamic nature of the model. They show innovation and learning helping to improve enablers that in turn lead to improved results.



The model is based on the belief that all 9 are linked in such a way that we can achieve **customer results, people results and society results** through good **leadership**. The leadership must drive **policy and strategy, people management, partnerships and resources**, and **processes**, which, will ultimately lead to excellence in **key performance results**.

### Scoring Matrix

The scoring matrix applied is used to allocate a percentage score to each criterion part. The scoring summary sheet (page 6) is then used to combine the percentage scores awarded to the criterion parts to give an overall score on a scale of 0 – 1000 points. As can be seen from the following diagram, all of the criteria are allocated equal weight apart from Leadership and Processes. These criteria are deemed of increased significance to this project and have therefore been weighted accordingly.



### Inspection Frequency/Timetable

Inspections should be conducted on a quarterly basis by an individual nominated by the Divisional Commander who should be satisfied that test purchase of alcohol operations are being conducted safely, fairly and effectively.

NOT PROTECTIVELY MARKED

INTERNAL INSPECTION TEMPLATE



REPORT NO: \_\_\_\_\_

DATE: \_\_\_\_\_

DIVISION: \_\_\_\_\_

INSPECTING OFFICER: \_\_\_\_\_

**SCORING SUMMARY SHEET**

<b>CRITERIA</b>	<b>0%</b>	<b>25%</b>	<b>50%</b>	<b>75%</b>	<b>100%</b>
<ul style="list-style-type: none"> <li>• Leadership</li> <li>• Policy &amp; Strategy</li> <li>• People</li> <li>• Partnerships &amp; Resources</li> <li>• Processes</li> <li>• Customer Results</li> <li>• People Results</li> <li>• Society Results</li> <li>• Key Performance Results</li> </ul>	No evidence or anecdotal	Some evidence	Evidence in ½ of relevant areas	Clear evidence	Comprehensive evidence

**INSPECTION TEMPLATE**

**1. LEADERSHIP**

<b>Questions</b>	<b>Method of Inspection</b>	<b>Evidence</b>
<p>How does the Division demonstrate their involvement in ensuring that a local management system is developed, implemented and continuously improved to govern test purchase of alcohol operations? This may include:</p> <p>ensuring a system for managing local processes, to carry out operations in compliance with the Standard Operating Procedures is developed and implemented</p> <p>establishing clear ownership of processes</p> <p>ensuring a process for stimulating, identifying and implementing improvements to the Standard Operating Procedures is developed and implemented</p>	<p>Interview with officer responsible for coordinating local test purchase of alcohol operations; Interview with officer directly responsible for supervising staff carrying out such operations; Interview with officer carrying out test purchase of alcohol operations; Scrutiny of Divisional Plans/Operational Orders.</p>	

**Comment:**

**Actions:**

**INSPECTION TEMPLATE**

**2. POLICY AND STRATEGY**

<b>Questions</b>	<b>Method of Inspection</b>	<b>Evidence</b>
<p>How does the Division demonstrate that policy and strategy, in relation to test purchase of alcohol operations, are communicated and deployed through a framework of key processes? This may include:</p> <p>identifying, designing and communicating the framework of key processes needed to deliver policy and strategy</p> <p>aligning, prioritising, agreeing, cascading and communicating plans, objectives and targets as well as following up achievements</p> <p>establishing reporting mechanisms to track progress</p>	<p>Interview with officer responsible for coordinating local test purchase of alcohol operations; Interview with officer directly responsible for supervising staff carrying out such operations; Interview with officer carrying out test purchase of alcohol operations; Scrutiny of Divisional Plans/Operational Orders.</p>	

**Comment:**

**Actions:**

**INSPECTION TEMPLATE**

**3. PEOPLE**

Questions	Method of Inspection	Evidence
<p>How does the Division demonstrate that people resources utilised in test purchase operations are involved, planned, managed and improved? This may include:</p> <p>identifying, designing and communicating the framework of key processes needed to deliver policy and strategy</p> <p>aligning, prioritising, agreeing, cascading and communicating plans, objectives and targets as well as following up achievements</p> <p>establishing reporting mechanisms to track progress</p> <p>identifying and ensuring opportunities to share best practice and knowledge</p> <p>ensuring that Test Purchasers are recruited as necessary and in accordance with SOP</p>	<p>Interview with officer responsible for coordinating local test purchase of alcohol operations; Interview with officer directly responsible for supervising staff carrying out such operations; Interview with officer carrying out test purchase of alcohol operations; Scrutiny of Divisional Plans/Operational Orders; Scrutiny of Divisional Plans/Operational Orders; Scrutiny of operational files relating to test purchasers and test purchase operations.</p>	

**Comment:**

**Actions:**

**INSPECTION TEMPLATE**

**4. PARTNERSHIPS AND RESOURCES**

<b>Questions</b>	<b>Method of Inspection</b>	<b>Evidence</b>
<p>How does the Division demonstrate their involvement in ensuring that they plan and manage external partnerships and internal resources to support policy and strategy and the effective operation of processes? This may include:</p> <p>using financial mechanisms and parameters to ensure an efficient and effective resourcing structure</p> <p>collecting, structuring and managing information and knowledge in support of policy and strategy</p> <p>providing appropriate access to relevant information and knowledge</p> <p>assuring and improving information validity, integrity and security</p>	<p>Interview with officer responsible for coordinating local test purchase of alcohol operations; Interview with officer directly responsible for supervising staff carrying out such operations; Scrutiny of operational files relating to test purchasers and test purchase operations.</p>	

**Comment:**

**Actions:**

**INSPECTION TEMPLATE**

**5. PROCESSES**

<b>Questions</b>	<b>Method of Inspection</b>	<b>Evidence</b>
<p>How does the Division demonstrate their involvement in ensuring that processes are improved and customer relationships are managed and enhanced? This may include:</p> <p>identifying and prioritising opportunities for improvement</p> <p>using performance and information from learning activities to set priorities and targets for improvement and improved methods of operation</p> <p>proactive involvement with test purchasers in order to discuss and address their needs, expectations and concerns</p>	<p>Interview with officer responsible for coordinating local test purchase of alcohol operations; Interview with officer directly responsible for supervising staff carrying out such operations; Interview with test purchaser; Scrutiny of operational files relating to test purchasers and test purchase operations.</p>	

**Comment:**

**Actions:**

**INSPECTION TEMPLATE**

**6. CUSTOMER RESULTS**

<b>Questions</b>	<b>Method of Inspection</b>	<b>Evidence</b>
<p>How does the Division demonstrate their involvement in measuring and achieving outstanding results with respect to their customers? This may include:</p> <p>perception measures (i.e. scrutiny of debrief forms)</p> <p>internal measures to monitor, understand and improve the performance of the Division in terms of operational implementation of the tactic</p>	<p>Interview with officer responsible for coordinating local test purchase of alcohol operations; Interview with officer directly responsible for supervising staff carrying out such operations; Interview with test purchaser; Interview with supervisor of licensed premises, within the Division, where a test purchase had been attempted and sale refused; Scrutiny of operational files relating to test purchasers and test purchase operations.</p>	

**Comment:**

**Actions:**

**INSPECTION TEMPLATE**

**7. PEOPLE RESULTS**

<b>Questions</b>	<b>Method of Inspection</b>	<b>Evidence</b>
<p>How does the Division demonstrate their involvement in measuring and achieving outstanding results with respect to their people? This may include:</p> <ul style="list-style-type: none"> <li>perception measures (i.e. feedback process)</li> <li>internal measures to monitor, understand and improve the performance of the people involved and responsible for implementation of the tactic</li> </ul>	<p>Interview with officer responsible for coordinating local test purchase of alcohol operations; Interview with officer directly responsible for supervising staff carrying out such operations; Interview with test purchaser; Interview with officer carrying out test purchase of alcohol operations; Scrutiny of operational files relating to test purchasers and test purchase operations.</p>	

**Comment:**

**Actions:**

**INSPECTION TEMPLATE**

**8. SOCIETY RESULTS**

<b>Questions</b>	<b>Method of Inspection</b>	<b>Evidence</b>
<p>How does the Division demonstrate their involvement in measuring and achieving outstanding results with respect to society? This may include: perception measures (i.e. feedback from community groups regarding perceived impact of tactic)</p>	<p>Interview with officer responsible for coordinating local test purchase of alcohol operations; Interview with officer directly responsible for supervising staff carrying out such operations; Attendance at a meeting of Community Group within Division.</p>	

**Comment:**

**Actions:**

**INSPECTION TEMPLATE**

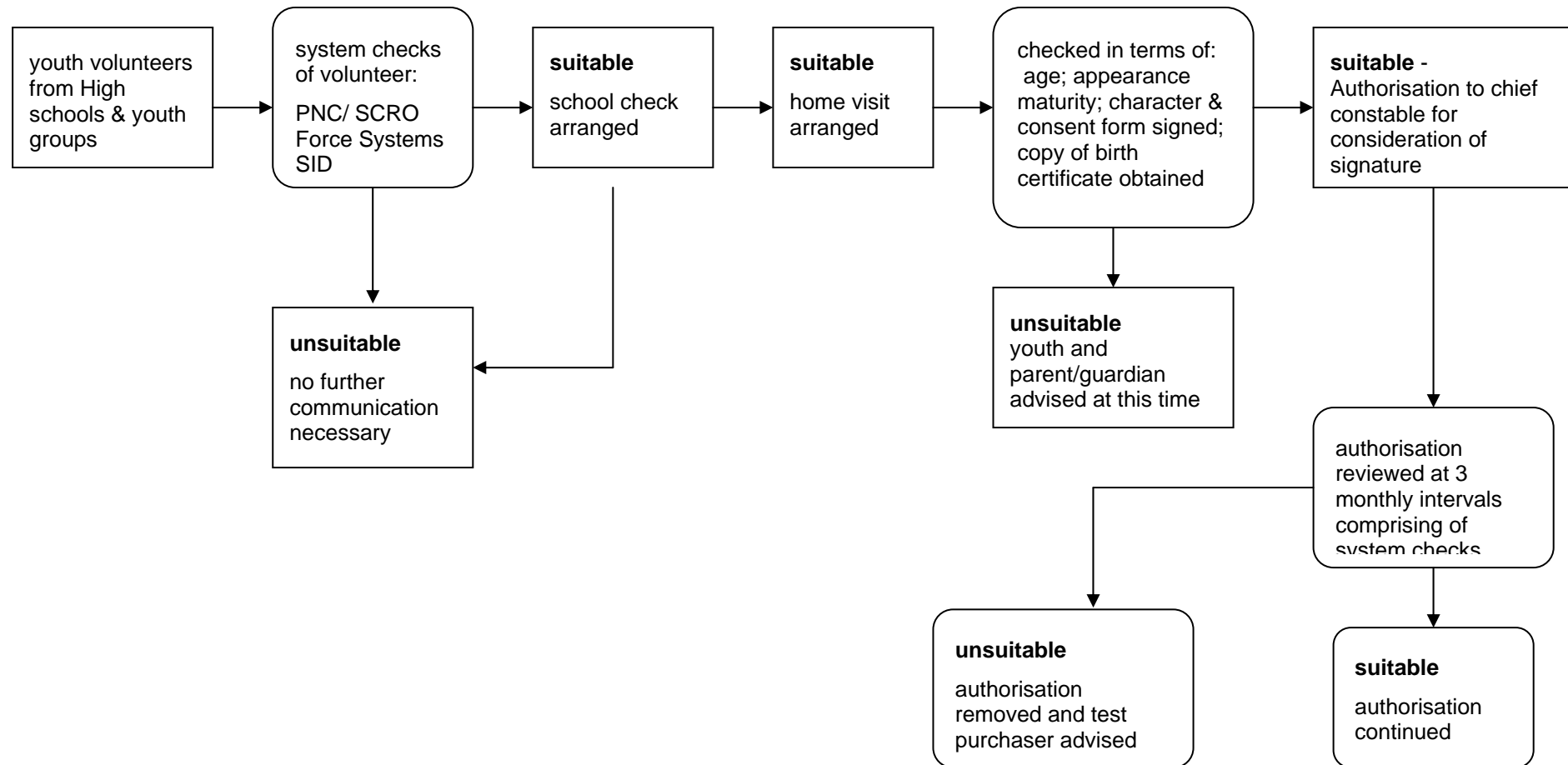
**9. KEY PERFORMANCE RESULTS**

<b>Questions</b>	<b>Method of Inspection</b>	<b>Evidence</b>
<p>How does the Division demonstrate their involvement in measuring and achieving outstanding results with respect to the key elements of test purchasing of alcohol policy and strategy? This may include:</p> <p>key performance outcomes (i.e. compliance with codes of practice (SOP))</p> <p>key performance indicators</p>	<p>Interview with officer responsible for coordinating local test purchase of alcohol operations; Interview with officer directly responsible for supervising staff carrying out such operations; Interview with test purchaser; Scrutiny of operational plans and files relating to test purchasers and test purchase operations.</p>	

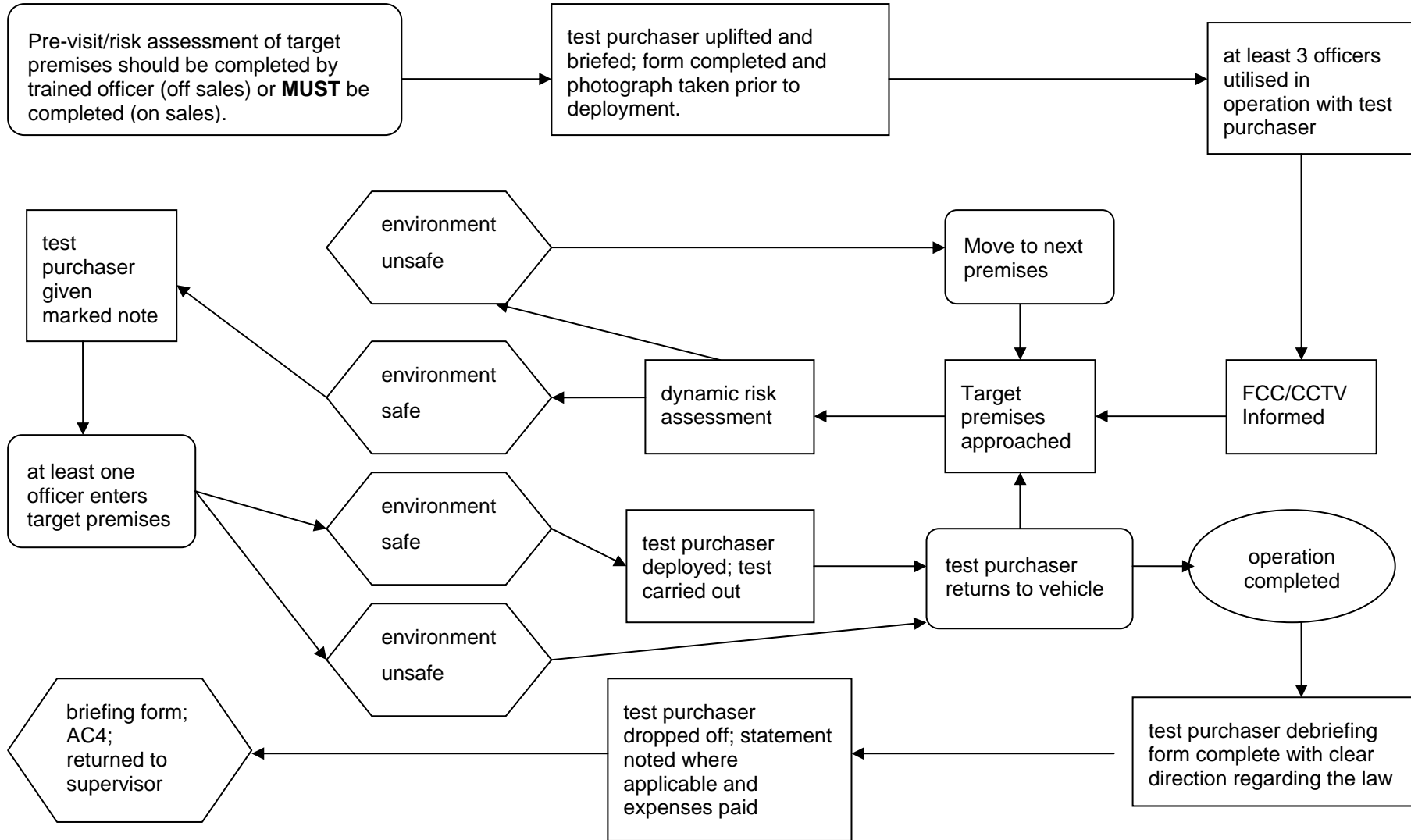
**Comment:**

**Actions:**

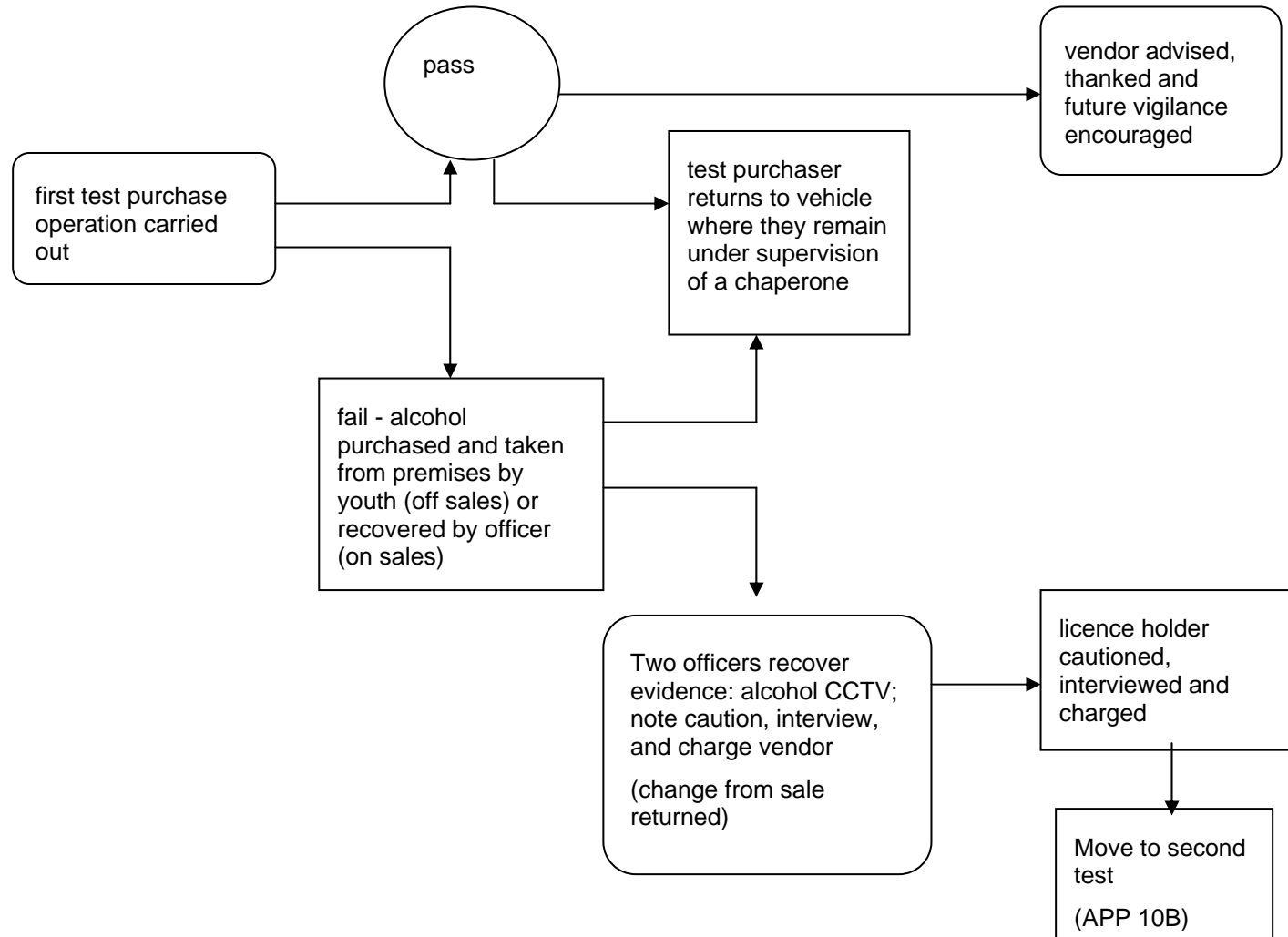
### Appendix 9 Process Map for Selection, Authorisation and Review of Test Purchasers



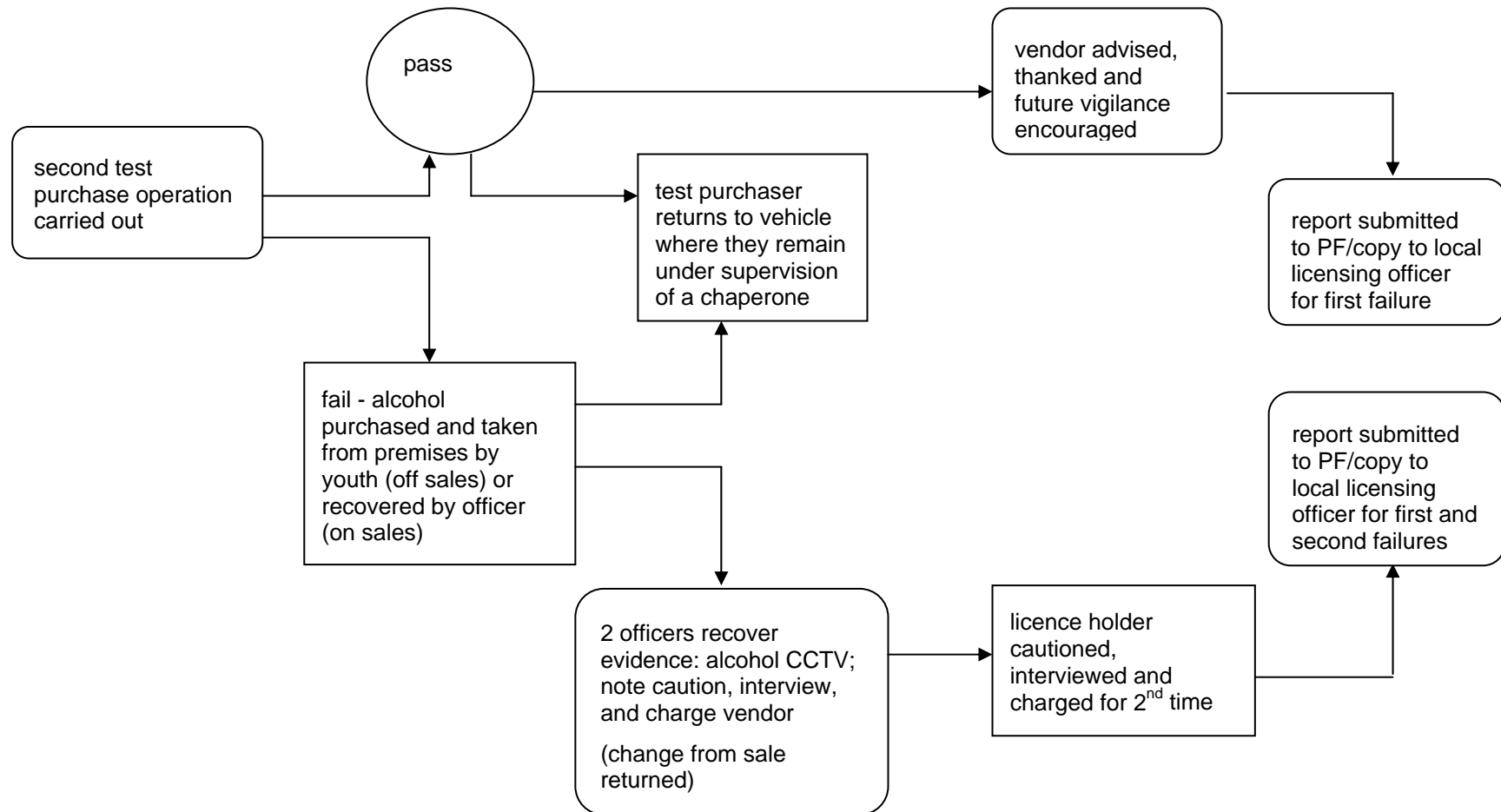
### Appendix 10 Process Map for Briefing, Deployment and Debriefing of Test Purchasers



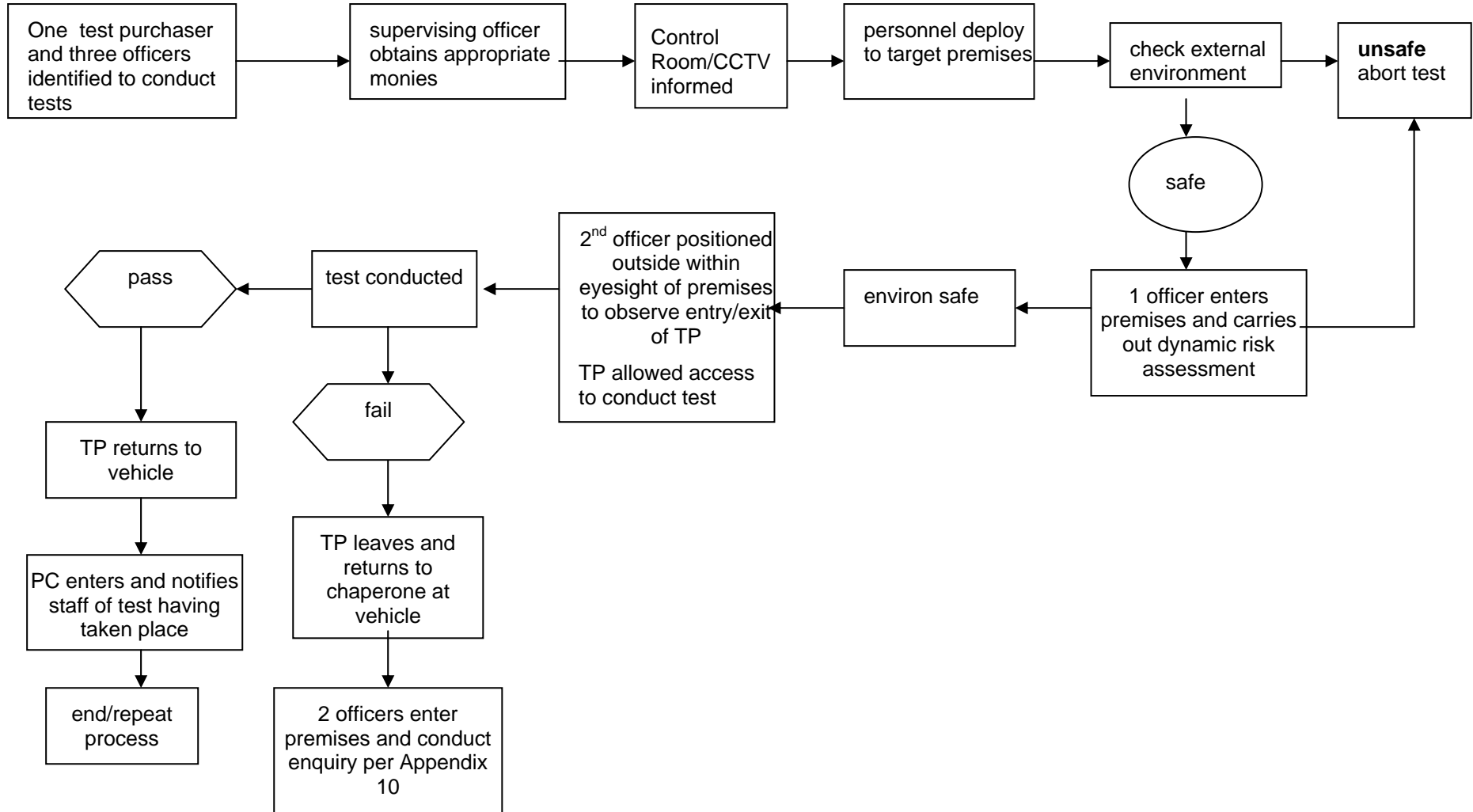
### Appendix 11 (A) Process Map for Recovery of Evidence and Reporting Procedures for Test Purchase Operations First Test



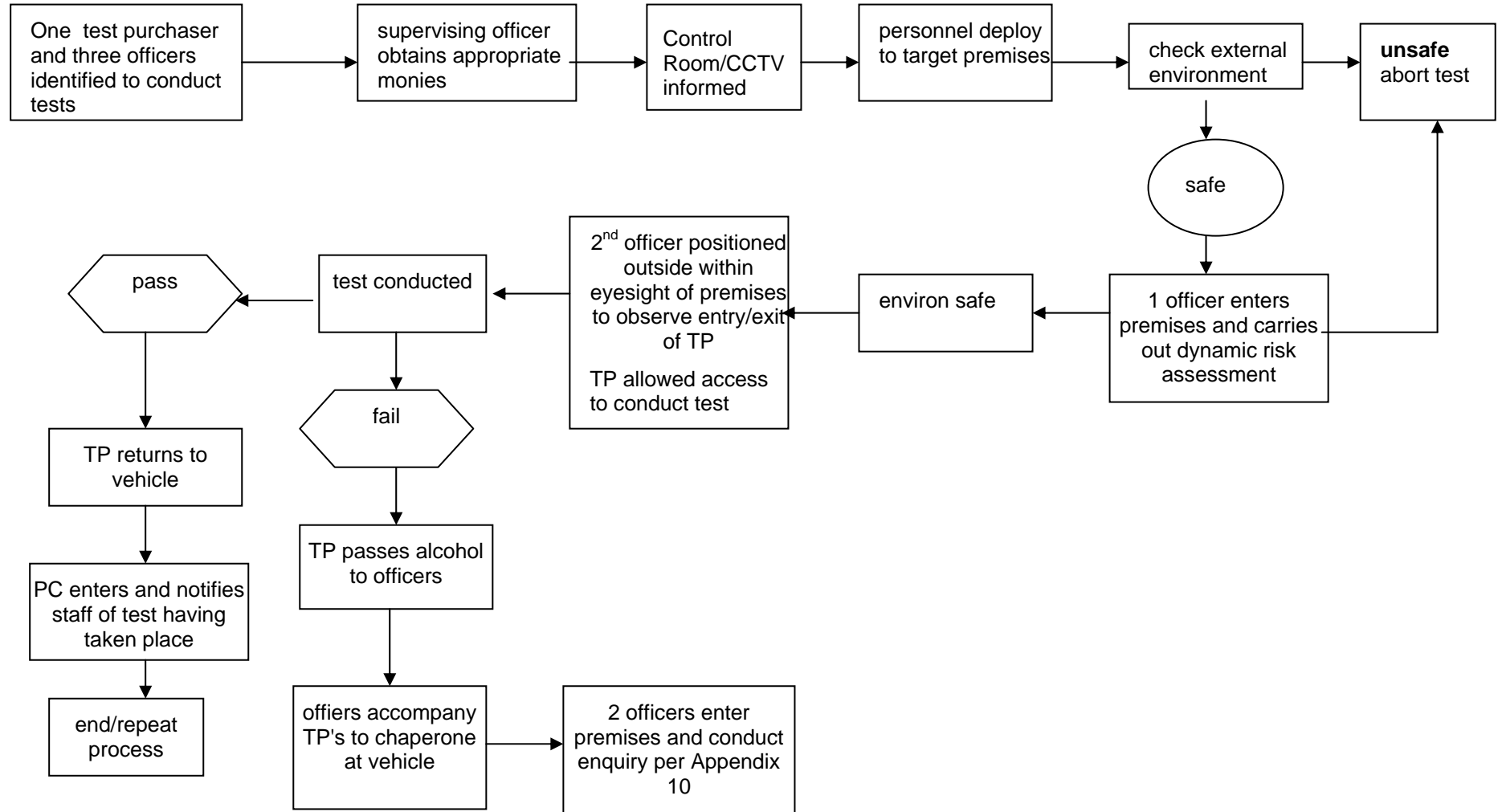
### Appendix 11 (B) Process Map For Recovery of Evidence and Reporting Procedures for Test Purchase Second Test



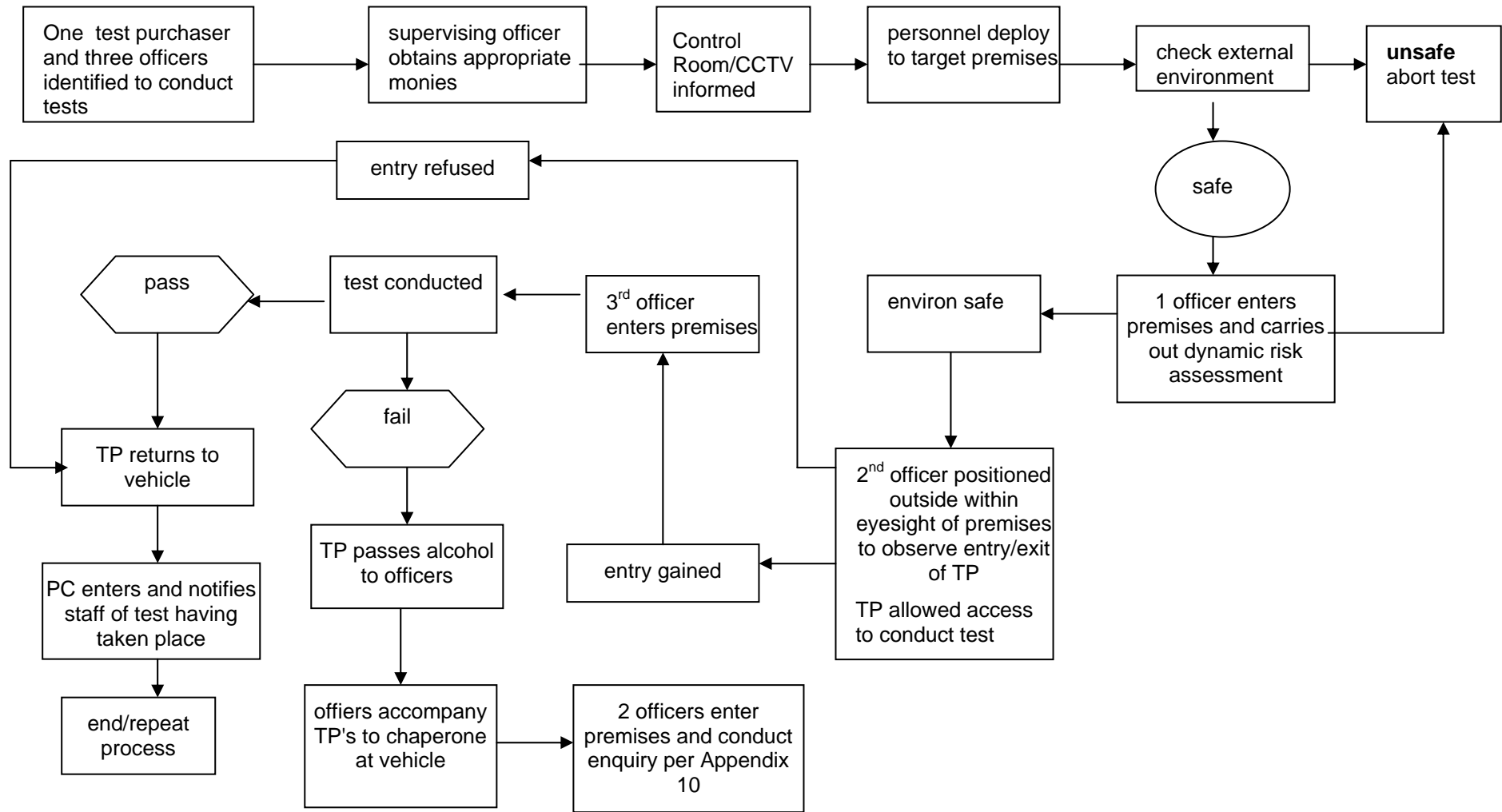
### Appendix 12 Process Map for Test Purchase Operations (Premises with Off Sales Licence)



**Appendix 13 Process Map for Test Purchase Operations (Premises with Public House/Hotel Licence)**



### Appendix 14 Process Map for Test Purchase Operations (Premises Operating as Nightclubs and Members Clubs)



**Appendix 15 Standard Prosecution Report (SPR) Template**

**Force**

**Police Report**

Division: West	CR No: PF0123456789
Station: Any Town	DOFO: 20/12/2010
	PF No: AT01234567

**Accused**

William Alexander

20/03/50  
Part-time Shop Assistant  
2 High Street  
Another Town  
Fife  
KY7 5LL

Driver No:	
SCRO: S123456/10L	
Status:	Reported for Summons
Previous Convictions:	No

**Additional Information**

Sex Offenders Register:	No
OLR Recommendation:	No
Work Order:	N/A
Means to Pay:	Not provided
Details:	Accused is in full time employment.
Additional Needs:	N/A

**James Smythe**

01/10/55  
Shopkeeper  
15 Main Road  
Eastfield  
Fife  
KY4 4DS

Driver No:

SCRO: S111111/10L

Status: Reported for Summons

Previous Convictions: No

**Additional Information**

Sex Offenders Register: No

OLR Recommendation: No

Work Order: N/A

Means to Pay: Not provided

Details: Accused is in full time employment.

Additional Needs: N/A

**Brenda Baxter**

19/05/45

Shop Assistant

27 Main Road

Westfield

Fife

KY6 4TT

Driver No:

SCRO: S654321/10L

Status: Reported for Summons

Previous Convictions: No

**Additional Information**

Sex Offenders Register: No

OLR Recommendation: No

Work Order: N/A

Means to Pay: Not provided

Details: Accused is employed on a part time basis

Additional Needs: N/A

**Charges**

Charge 1

PPF0244841012 – LICE200501020100

On 20/12/2010 at Riverside Stores 11 Riverside, Anytown, The City you William Alexander did sell alcohol to Sheila Hurt, b.10.02.1994, C/O Anytown Police Station, a child or young person under the age of eighteen years:

CONTRARY to the Licensing (Scotland) Act 2005 Section 102(1)

Charge 2

PPF0244841012 – LICE200501030100

On 20/12/2010 at Riverside Stores 11 Riverside, Anytown, The City you James Smythe being a responsible person as specified in section 122(3) of the after mentioned Act, did allow alcohol to be sold at relevant premises namely at Riverside Stores 11 Riverside, Anytown, The City to Sheila Hurt, b.10.02.1994, C/O Anytown Police Station, a child or young person under the age of eighteen years:

CONTRARY to the Licensing (Scotland) Act 2005 Section 103(1)

Charge 3

PPF0244841012 – LICE200500520100

On 20/12/2010 at Riverside Stores 11 Riverside, Anytown, The City being relevant premises, you James Smythe, being the premises licence holder, did without reasonable excuse, fail to secure that the premises licence, or a certified copy of it was kept at the premises in respect of which it is issued, in the custody or under the control , of the licence holder or the premises manager.

CONTRARY to the Licensing (Scotland) Act 2005 Section 52(1) and (3)

Charge 4

PPF0244841012 – LICE200500520200

On 20/12/2010 at Riverside Stores 11 Riverside, Anytown, The City, being relevant premises, you James Smythe, being the premises licence holder, did without reasonable excuse, fail to secure that the summary of the premises licence, or a certified copy of the summary, was prominently displayed on said premises so as to be capable of being read by anyone frequenting the premises.

CONTRARY to the Licensing (Scotland) Act 2005 Section 52(2) and (3)

Charge 5

PPF0244841012 – LICE200501100400

On 20/12/2010 at Riverside Stores 11 Riverside, Anytown, The City, being relevant premises, you James Smythe, being a premises licence holder and the premises manager, did fail to display a notice in the manner prescribed, in that a notice outlining the offence for a person under 18 years of age to buy or attempt to

buy alcohol; the offence for any other person to buy or attempt to buy alcohol for a person under the age of 18, and the requirement to provide evidence showing the person to be 18 or over, was not displayed at all times, at each place on the premises where the sales of alcohol are made and in a position where it is readily visible to any person seeking to buy alcohol.

CONTRARY to the Licensing (Scotland) Act 2005 Section 110(4)

Charge 6

PPF024484111 – LICE200501020100

On 27/12/2010 at Riverside Stores 11 Riverside, Anytown, The City you Brenda Baxter did sell alcohol to Mark Walsh, b.12.04.1994, C/O Anytown Police Station, a child or young person under the age of eighteen years:

CONTRARY to the Licensing (Scotland) Act 2005 Section 102(1)

Charge 7

PPF024484111 – LICE200501030100

On 27/12/2010 at Riverside Stores 11 Riverside, Anytown, The City you James Smythe, being a responsible person as specified in section 122(3) of the after mentioned Act, did allow alcohol to be sold on relevant premises namely at Riverside Stores 11 Riverside, Anytown, The City to, Mark Walsh, b.12.04.1994, C/O Anytown Police Station, a child or young person under the age of eighteen years:

CONTRARY to the Licensing (Scotland) Act 2005 Section 103(1)

**Summary**

**Antecedent**

REPORT FOR SUMMONS

Accused Alexander resides at the address stated on the front of this report and is employed as a shop assistant and works part time at locus. He has not undertaken any training in respect of the Licensing (Scotland) Act 2005.

Accused Alexander has no previous convictions.

Accused Baxter resides at the address stated on the front of this report and is employed as a shop assistant and works full time at locus. Whilst not the holder of a Personal Licence, as a staff member selling alcohol she has undertaken the mandatory training as prescribed by paragraph 6 of schedule 3 of the Licensing (Scotland) Act 2005.

Accused Baxter has no previous convictions.

Accused Smythe resides at the address stated on the front of this report and is the proprietor of the shop premises at locus (Riverside Stores). In addition to being the holder of Premises Licence No. FLB 123 he is also the holder of a Personal Licence No. FI 1266, both issued by Fife Licensing Board. Wilson is also the

Designated Premises Manager, with day-to-day responsibility for the management of the premises.

Accused Smythe has no previous convictions.

**Reason for Custody**

N/A

**Reason for Warrant**

N/A

**Description of Locus**

Riverside, Anytown extends in a general east/west direction.

Locus is within shop premises, Riverside Stores, situated at 11 Riverside, Anytown, consisting of a convenience store/newsagents licensed to sell products such as alcohol in addition to other age restricted products and groceries, newspapers etc.

There is CCTV in operation within the premises, which was seized as a production in this case.

There is a valid Premises Licence for these premises, licence number FLB 123, issued by Fife Licensing board on 1<sup>st</sup> September 2009 under the terms of the Licensing (Scotland) Act 2005.

There are no other licensed premises within two miles of these premises.

**Description of Events**

During the last three months of 2010 police received reports of anti-social behaviour relating to under-age youths observed drinking alcohol in the area near to locus. Further to this officers were advised that youths were believed to be obtaining their alcohol from the premises of Riverside Stores.

In light of this information these premises were identified as appropriate for a test purchase operation relating to the sale of alcohol.

**Charges 1, 2, 3, 4, & 5**

Witness Sheila Hurt, born 10<sup>th</sup> February 1994, is a volunteer who has made known to the police her willingness to take part in the test purchase of alcohol (as provided under Section 105(2) of the Licensing (Scotland) Act 2005. Witness Hurt has been assessed as meeting the criteria for test purchasers in accordance with the ACPOS Manual of Guidance for Test Purchase of Alcohol in Scotland.

Verification of her age is provided by:

PRODUCTION COPY OF BIRTH CERTIFICATE OF (TEST PURCHASER)  
WITNESS SHEILA HURT, BORN 10/02/1994

In accordance with the above guidance a:

PRODUCTION PHOTOGRAPH OF (TEST PURCHASER) WITNESS  
SHEILA HURT, BORN 10/02/1994

was taken prior to her deployment.

### Charges 6 & 7

Witness Mark Walsh, born 12<sup>th</sup> April 1994, is a volunteer who has made known to the police his willingness to take part in the test purchase of alcohol (as provided under Section 105(2) of the Licensing (Scotland) Act 2005. Witness Walsh has been assessed as meeting the criteria for test purchasers in accordance with the ACPOS Manual of Guidance for Test Purchase of Alcohol in Scotland.

Verification of his age is provided by:

PRODUCTION COPY OF BIRTH CERTIFICATE OF (TEST PURCHASER)  
WITNESS MARK WALSH, BORN 12/04/1994

In accordance with the above guidance a:

PRODUCTION PHOTOGRAPH OF (TEST PURCHASER) WITNESS MARK  
WALSH, BORN 12/04/1994

was taken prior to his deployment.

Both test purchasers, witnesses Hurt and Walsh, were independently provided with guidance and direction from Police supervising their actions during the test purchases carried out. In addition the relevant risk assessments and procedures were complied with in accordance with ACPOS guidance.

Witness Hurt was provided with £5 note serial number CD358282 for use in the test purchase operation.

### Charges 1, 2, 3, 4 & 5

About 1435 hours on Monday 20<sup>th</sup> December 2010, PC One (not in uniform) entered locus whilst witness Hurt followed a short distance behind. The police officer remained within locus to ensure the safety of the test purchaser, taking up a position where he could clearly observe any transaction taking place.

PC Two (also not in uniform) remained within an unmarked police vehicle parked a short distance away.

About 1440 hours witness Hurt selected a bottle of cider from an open display area within the premises and proceeded towards the till area. Accused William Alexander accepted the bottle of cider from witness Hurt without asking any questions in relation to her age or asking for identification. Witness Hurt offered accused Alexander the £5 note provided by the police for the test purchase operation and received the appropriate change.

Witness Hurt immediately handed to PC One:

PRODUCTION BOTTLE OF "WHITE LIGHTENING" CIDER

The alcohol was subsequently labelled and submitted for evidential purposes in the prescribed manner.

Witness Hurt then returned to the unmarked police vehicle occupied by PC Two and provided a statement concerning the test purchase operation.

PC Two then entered the premises and along with PC One approached accused Alexander and, after identifying themselves, informed him that the premises had

been subject of a test purchase operation and had failed due to the sale of alcohol to a child or young person under 18 years of age. The £5 note given to witness Hurt was retrieved from the till and returned to PC One. *(If this £5 note cannot be retrieved because the shop assistant has already provided it in change to another customer, comment should be made on this within the report.)*

Shortly thereafter accused Alexander was interviewed under caution and charged with the offence relating to the sale of alcohol. (See texts of Admissions, Caution and Charge/Reply).

It was noted at this time that a summary of the premises licence was not prominently displayed on the premises so as to be capable of being read by someone frequenting the premises. Nor was there a copy of the statutory notice outlining the offences for the sale of alcohol to a person under 18 years of age, displayed in a position where it was readily visible to any person seeking to buy alcohol.

Accused Smythe was not at locus at the time of the offence so PC's One and Two returned later on 20<sup>th</sup> December and carried out an interview under caution and charged him with the offences relating to the sale of alcohol, and also related to the premises licence and statutory notice offences. (See texts of Admissions, Caution and Charge/Reply).

PC One obtained from accused Smythe:

PRODUCTION:           MAXWELL DVD+ R

consisting of CCTV footage relating to the test purchase sale on 20<sup>th</sup> December 2010.

and

PRODUCTION:           REFUSED SALES RECORD BOOK

#### Charges 6 & 7

On Monday 27<sup>th</sup> December 2010, once the relevant risk assessments and procedures had been carried out in accordance with ACPOS guidance, witness Baxter was provided with £5 note serial number CD452781 for use in the test purchase operation.

About 1725 hours same date, PC Three (not in uniform) entered the premises of Riverside Stores whilst PC Four (also not in uniform) and witness Walsh remained within an unmarked police vehicle nearby.

About 1730 hours witness Walsh entered the premises and remained within sight of PC One. Witness Walsh approached the sales counter and requested a bottle of WKD vodka from the sales assistant. The sales assistant, accused Brenda Baxter, did not ask witness Walsh his age, or ask for identification, but provided him with the bottle of alcohol requested.

Witness Walsh offered accused Baxter the £5 note provided by the police for the test purchase operation and received the appropriate change.

Witness Walsh immediately handed to PC Three:

PRODUCTION           BOTTLE OF "WKD" VODKA

The alcohol was subsequently labelled and submitted for evidential purposes in the prescribed manner.

Witness Walsh then returned to the unmarked police vehicle occupied by PC Four and provided a statement concerning the test purchase operation.

PC Four then entered the premises and along with PC Three approached accused Baxter and, after identifying themselves, informed her that the premises had been subject of a test purchase operation and had failed due to the sale of alcohol to a child or young person under 18 years of age. The £5 note given to witness Walsh was retrieved from the till and returned to PC Three. *(If this £5 note cannot be retrieved because the shop assistant has already provided it in change to another customer, comment should be made on this within the report.)*

Shortly thereafter accused Baxter was interviewed under caution and charged with the offence relating to the sale of alcohol. (See texts of Admissions, Caution and Charge/Reply).

Accused Smythe was present at locus during the time of the offence. PC Three informed him that the premises had been subject of a test purchase operation and had failed due to the sale of alcohol to a child or young person under 18 years of age.

Shortly thereafter accused Smythe was interviewed under caution and charged with the offence relating to the sale of alcohol. (See texts of Admissions, Caution and Charge/Reply). The officers were able to confirm that the summary of premises licence was displayed on the premises at this time, as was the statutory notice under section 110 of the Act. Accused Smythe was also able to provide, for examination by the officers, the full premises licence.

PC Three obtained from accused Smythe:

PRODUCTION:           MAXWELL DVD+ R

consisting of CCTV footage relating to the test purchase sale on 27<sup>th</sup> December 2010.

and

PRODUCTION:           STAFF TRAINING RECORDS FOR BRENDA BAXTER

There were no additional entries within the refusals register since 20<sup>th</sup> December 2010.

There is currently no intended forensic involvement in this case.

### **Medical Evidence**

N/A

### **Text Of Admissions**

*(When interviewing suspects police officers should be mindful of the decision in the case HMA v Cadder and the Lord Advocate's Guidelines on access to a solicitor by a suspect. These guidelines apply to all cases where individuals are interviewed as suspects in police stations whether; during detention under Section 14 of the Criminal Procedure (Scotland) Act 1995; during voluntary attendance for interview or under common law between arrest and charge. Limited questioning at*

*the locus or outwith a police station is permissible to the extent that it is required to determine if a crime has been committed, who may have committed it and if there are reasonable grounds to suspect that the individual is the offender, and whether the offender is entitled (or intending) to rely on any statutory defence or wishes to put forward any exculpatory information i.e. a defence to the sale of alcohol to a child or young person under section 102(2) of the Licensing (Scotland) Act 2005. In the vast majority of test purchase cases the interaction with suspects or potential accused will take place in licensed premises and not a police station therefore access to a solicitor will not apply, but Forces should be guided by their own chief constable and Force Guidance on this matter.*

*Those matters required to be addressed during interview that have been agreed by the Crown Office, and addressed within the ACPOS Manual of Guidance for Test Purchase of Alcohol in Scotland, are highlighted in brackets below.)*

#### Charge 1

About 1450 hours on Monday 20<sup>th</sup> December 2010, PC One, in the presence of PC Two, interviewed accused Alexander under caution. Details of the interview were recorded in PC One's notebook.

The salient points of the interview were as follows:

*(The details of all staff members present.)*

The only staff member in the shop when the sale was made was the accused William Alexander.

*(The nature of the business)*

The premise operates as independent off-sales and general merchants.

*(The vendors position within the business and their responsibilities, including whether the vendor was a personal licence holder.)*

Accused Alexander, who made the sale, is employed on a part-time basis, working mostly afternoons. He is at times left in charge of the premises and is thus responsible for all sales made. He is not the holder of a Personal Licence under the Licensing (Scotland) Act 2005.

*(As the sale of alcohol must be authorised (either generally or specifically) by a personal licence holder, where the vendor is not a personal licence holder, who authorised this sale of alcohol?)*

Accused Alexander was not aware that the sale of alcohol required to be authorised.

*(The identity of all personal licence holders present and their responsibilities)*

There were no Personal Licence Holders present at the time of sale.

*(The identity of the designated premises manager and was the premises manager on the premises at the time of the sale?)*

Accused Alexander was unaware of the identity of the Premises Manager, or the responsibilities of that designated individual in terms of the Licensing (Scotland) Act 2005. He was able to advise that James Smythe was his employer and apparent owner of the business.

*(Details of any training provided to the vendor and how it is recorded)*

Accused Alexander had received no training in respect of his responsibilities under the Licensing (Scotland) Act 2005.

*(Any explanation or defence)*

The only defence offered by accused Alexander was that he thought witness Hurt was over 18 years of age. Despite this assumption by the accused he was unable to demonstrate that he had taken reasonable steps to establish the child's age or that no reasonable person could have suspected from the child's or young person's appearance that the child or young person was aged under 18, as required under section 102(2) of the Licensing (Scotland) Act 2005.

About 1500 hours same date, the interview was terminated.

Charges 2, 3, 4 & 5

About 1905 hours on Monday 20<sup>th</sup> December 2010, PC One, in the presence of PC Two, interviewed accused Smythe under caution. Details of the interview were recorded in PC One's notebook.

The salient points of the interview were as follows:

*(The details of all staff members present.)*

Accused Smythe had been advised by his employee accused Alexander that the premises had failed a test purchase earlier that day. He advised that William Alexander was the only employee working at that time.

*(The nature of the business)*

He advised that he had owned the business since 1998 and had held an alcohol licence since this time. He was aware of the changes brought about by the Licensing (Scotland) Act 2005, the fact that the Premises Licence was in his name, that he also held a Personal Licence and was the Designated Premises Manager. As Premises Licence Holder he was asked to produce a copy of the Premises Licence. He was unable to do so stating that it was in his private dwelling and not on the premises. He was advised that he was committing an offence by not having the premises licence or a certified copy at the premises. He was asked to indicate where the summary of premises licence was displayed. He indicated that it was not displayed within the premises. Again, he was advised that by not displaying a summary, or certified copy of the summary of premises licence on his premises, he was committing an offence. It was noted at this time that the statutory notice required by section 110 of the Licensing (Scotland) Act 2005, was not displayed within the premises, despite the fact that there was a notice behind the till stating that the premise operated a "Challenge 25" policy. Accused Smythe was advised of this contravention of the legislation.

*(The vendors position within the business and their responsibilities, including whether the vendor was a personal licence holder.)*

He confirmed that William Alexander is employed on a part-time basis, working mostly afternoons and when left alone in the premises he is responsible for the sale of age-restricted products, including alcohol. He provided a DVD containing the CCTV footage of the test purchase sale.

*(As the sale of alcohol must be authorised (either generally or specifically) by a personal licence holder, where the vendor is not a personal licence holder, who authorised this sale of alcohol?)*

He confirmed that he understood that as the Premises Manager he was responsible for authorising the sale of alcohol. He was unaware of the terminology of the Licensing (Scotland) Act 2005 in respect of authorising the sale generally or specifically, however assumed that in his absence all staff could sell alcohol. He was able to produce a "refusals sales record book", which the officers took possession of.

*(The identity of all personal licence holders present and their responsibilities)*

He confirmed that he is the only Personal Licence Holder.

*(The identity of the designated premises manager and was the premises manager on the premises at the time of the sale?)*

He was aware that he was the Designated Premises Manager recorded on the Premises Licence. He was not present at the time of the sale by Alexander.

*(Details of any training provided to the vendor and how it is recorded)*

He explained that it was his understanding that there was no requirement to train part-time staff and as such William Alexander had received no training. He had provided training in respect of his two full time members of staff, which included Brenda Baxter. In respect of his full time staff he utilised the Staff Training Record provided by Alcohol Focus (Scotland).

*(Any explanation or defence)*

Accused Smythe offered no defence.

About 1920 hours same date, the interview was terminated.

## Charge 6

About 1450 hours on Monday 27<sup>th</sup> December 2010, PC Three, in the presence of PC Four, interviewed accused Baxter under caution. Details of the interview were recorded in PC Three's notebook.

The salient points of the interview were as follows:

*(The details of all staff members present.)*

The staff members in the shop when the sale was made included accused Brenda Baxter and accused James Smythe.

*(The nature of the business)*

*No need to repeat this as provided above.*

*(The vendors position within the business and their responsibilities, including whether the vendor was a personal licence holder.)*

Accused Baxter, who made the sale, is employed on a full-time basis, working mostly weekdays. She is at times left in charge of the premises and is thus responsible for all sales made. She is not the holder of a Personal Licence under the Licensing (Scotland) Act 2005.

*(As the sale of alcohol must be authorised (either generally or specifically) by a personal licence holder, where the vendor is not a personal licence holder, who authorised this sale of alcohol?)*

Accused Baxter was aware that the sale of alcohol required to be authorised and that this authorisation required to be given by her employer James Smythe or another Personal Licence Holder.

*(The identity of all personal licence holders present and their responsibilities)*

Accused Baxter was aware that James Smythe was a Personal Licence Holder and was present within the shop at the time of sale. She was also aware that she did not require a verbal sanction from her employer each time she made a sale, but the responsibility for age verification lay with her as the vendor.

*(The identity of the designated premises manager and was the premises manager on the premises at the time of the sale?)*

Accused Baxter was unaware of the term "Premises Manager", but confirmed that accused Smythe was on the premises and would have been aware of the sale as he was standing beside her at the time.

*(Details of any training provided to the vendor and how it is recorded)*

Accused Baxter confirmed that she had received the appropriate training as prescribed under paragraph 6 of schedule 3 to the Licensing (Scotland) Act 2005. She was able to provide a training record dated 20<sup>th</sup> October 2010 confirming this.

*(Any explanation or defence)*

Accused Baxter offered no defence other than she was busy at the time of the sale and apologised.

About 1500 hours same date, the interview was terminated.

## Charge 7

About 1510 hours on Monday 27<sup>th</sup> December 2010, PC Three, in the presence of PC Four, interviewed accused Smythe under caution. Details of the interview were recorded in PC Three's notebook.

Accused Smythe declined to answer any questions apart from confirming that he was standing beside accused Baxter when she sold the bottle of vodka to the test purchaser. He stated that he had nothing further to add to the answers he had provided on 20<sup>th</sup> December 2010, except that after the first incident he had attempted to reinforce the message of the requirements of the Licensing (Scotland) Act 2005 to his staff.

The officers noted that the summary of premises licence was displayed beside the till within the premises. When asked, accused Smythe was able to provide his premises licence from the shop office. It was also noted that the statutory notice prescribed by section 110 of the Licensing (Scotland) Act 2005, in relation to the prevention of sales to persons under 18 years of age, was displayed on the rear of the till.

About 1515 hour same date the interview was terminated.

**Caution and Charge / Reply**

Charge 1.

About 1500 hours on Monday 20<sup>th</sup> December 2010, PC One, in the presence of PC Two, cautioned and charged accused Alexander in terms similar to that stated on the front of this report.

Accused Alexander intimated that he understood both caution and charge and replied,

"I JUST THOUGHT SHE WAS EIGHTEEN".

Charge 2

About 1920 hours on Monday 20<sup>th</sup> December 2010, PC One, in the presence of PC Two, cautioned and charged accused Smythe in terms similar to that stated on the front of this report.

Accused Smythe intimated that he understood both caution and charge and replied.

"IT'S NOT MY FAULT THAT WILLIAM SOLD ALCOHOL BECAUSE I WASN'T THERE AT THE TIME. HE SHOULD HAVE KNOWN BETTER".

Charge 3

About 1920 hours on Monday 20<sup>th</sup> December 2010, PC One, in the presence of PC Two, cautioned and charged accused Smythe in terms similar to that stated on the front of this report.

Accused Smythe intimated that he understood both caution and charge and replied.

"I WASN'T AWARE THAT THE LICENCE HAD TO BE KEPT ON THE PREMISES".

Charge 4

About 1920 hours on Monday 20<sup>th</sup> December 2010, PC One, in the presence of PC Two, cautioned and charged accused Smythe in terms similar to that stated on the front of this report.

Accused Smythe intimated that he understood both caution and charge and replied.

"NO ONE EVER TOLD ME ABOUT THIS".

Charge 5

About 1920 hours on Monday 20<sup>th</sup> December 2010, PC One, in the presence of PC Two, cautioned and charged accused Smythe in terms similar to that stated on the front of this report.

Accused Smythe intimated that he understood both caution and charge and replied.

"I HAD A POSTER STATING THAT WE CHALLENGE 25. I THOUGHT THAT WAS ENOUGH".

#### Charge 6

About 1500 hours on Monday 27<sup>th</sup> December 2010, PC Three, in the presence of PC Four, cautioned and charged accused Baxter in terms similar to that stated on the front of this report.

Accused Baxter intimated that she understood both caution and charge and replied,

"I WAS BUSY AT THE TIME OF THIS SALE AND I APOLOGISE THAT I SOLD ALCOHOL TO A YOUNG BOY. I SHOULD HAVE ASKED WHAT HIS AGE WAS".

#### Charge 7

About 1520 hours on Monday 27<sup>th</sup> December 2010, PC Three, in the presence of PC Four, cautioned and charged accused Smythe in terms similar to that stated on the front of this report.

Accused Smythe intimated that he understood both caution and charge and replied,

"I WAS STANDING NEXT TO BRENDA WHEN SHE MADE THE SALE AND SHE SHOULD HAVE ASKED THE BOY HIS AGE, BUT SHE WAS BUSY".

#### **Analysis of Evidence**

Witness Hurt can identify accused Alexander and speaks to taking part in the test purchase operation on Monday 20<sup>th</sup> December 2010, entering the shop premises (locus), being sold the alcohol by accused Alexander, providing a statement to PC Two.

Witness Hurt cannot identify accused Smythe.

Witness Walsh can identify accused Baxter and speaks to taking part in the test purchase operation on Monday 27<sup>th</sup> December 2010, entering the shop premises (locus), being sold alcohol by accused Baxter, providing a statement to PC Four.

Witness Walsh cannot identify accused Smythe.

PC One can identify accused Alexander and Smythe and speaks to observing accused Alexander sell alcohol to witness Hurt; the fact that the premises licence was not available on the premises; the summary of premises licence and statutory notices were not displayed, and the interview, caution and charge of accused Alexander and Smythe.

PC Two can identify accused Alexander and Smythe; the fact that the premises licence was not available on the premises; the summary of premises licence and statutory notices were not displayed, noting a statement from witness Hurt and the interview, caution and charge of accused Alexander and Smythe.

PC Three can identify accused Baxter and Smythe and speaks to observing accused Baxter sell alcohol to witness Walsh; interview, caution and charge of accused Baxter and Smythe.

PC Four can identify accused Baxter and Smythe; the interview, caution and charge of both accused and noting a statement from witness Walsh.

### Details of Defence

*Comment should be made here if the accused intends to rely on the statutory defence provided by section 102(2) of the Licensing (Scotland) Act 2005, namely-*

- 102 (2) *It is a statutory defence for a person charged with an offence under subsection (1) "the accused" to show that:*
- (a) *the accused believed the child or young person to be aged 18 or over, and*
  - (b) *either*
    - (i) *the accused had taken reasonable steps to establish the child's or young person's age, or*
    - (ii) *no reasonable person could have suspected from the child's or young person's appearance that the child or young person was aged under 18.*
- 102(3) *For the purpose of subsection (2)(b)(ii) the accused is to be treated as having taken reasonable steps to establish a child's or young person's age if and only if-*
- (a) *the accused was shown any of the documents mentioned in subsection (4), and*
  - (b) *that document would have convinced a reasonable person.*
- 102(4) *The documents referred to in subsection (3)(a) are any document bearing to be-*
- (a) *a passport,*
  - (b) *a European Union photo card driving licence, or*
  - (c) *such other document, or a document of such other description, as may be prescribed (i.e. it bears the PASS hologram).*

### Further Enquiry

N/A

### Remarks

Reviewing Officer: PC 123 One

Sensitivity: N/A

This report makes reference to reports of anti-social behaviour relating to under-age youths observed drinking alcohol in the area near to locus, where the alcohol is suspected to have come from these premises. These premises have been of interest to the police for over a year with reports indicating that they may be selling alcohol to youths. As a consequence the premises have been subject to four test purchase operations, in addition to those listed within this report.

The first was on 2<sup>nd</sup> April and second on 12<sup>th</sup> April 2010 when on both occasions no alcohol was sold.

The third was on 25<sup>th</sup> June 2010, when alcohol was sold to a person under 18 years of age. The subsequent re-test (and fourth test purchase operation) was conducted on 1<sup>st</sup> July 2010 when no alcohol was sold.

In respect of the sale of alcohol to a person under 18 years of age on 25<sup>th</sup> June 2010, a report was submitted to the Procurator Fiscal, where no proceedings were taken. A request to the Fife Licensing Board seeking a Review of the Premises Licence resulted in a suspension of the Premises Licence for one week from 1<sup>st</sup> September 2010. At the time of these offences James Smythe was the Premises Licence Holder and Premises Manager. The alcohol was not sold by an accused named within this report.

The reporting officer notes that accused Smythe has undertaken staff training in relation to the requirements of paragraph 6 of schedule 3 of the Licensing (Scotland) Act 2005, with accused Baxter, but not accused Alexander. It would appear that he was under the mistaken belief that he did not require to train part time staff. This is incorrect and accuse Smythe should have been aware of this through his own training, a mandatory requirement before he applied for and was granted a Personal Licence.

Section 110 of the Licensing (Scotland) Act 2005 places a statutory requirement on a Premises Licence Holder and Premises Manager, to display a notice on the premises stating that:

"It is an offence for any person under the age of 18 to buy or attempt to buy alcohol on these premises.

It is also an offence for any person to buy or attempt to buy alcohol on these premises for a person under the age of 18.

Where there is any doubt as to whether a person attempting to buy alcohol on these premises is aged 18 or over, alcohol will not be sold to the person except on production of evidence showing the person to be 18 or over".

Such a notice was displayed within the premises, and in addition there was a notice above the till stating that identification may be requested regarding the sale of alcohol to those aged under twenty-five.

During both test purchase operations the shop assistants, accused Alexander and Baxter, neither asked for proof of age nor indeed asked the age of the test purchaser.

Accused Smythe considers that he has taken all necessary measures to ensure that his staff do not sell alcohol to persons under the age of eighteen.

Despite accused Baxter having undertaken the statutory training she failed to comply with the law. Despite the statutory notice and the shop policy of "challenge 25" this did not appear to have been complied with. This brings into question the effectiveness of the training provided by accused Smythe and the understanding of the legal requirements placed on staff under the Licensing (Scotland) Act 2005.

The reporting officer considers that accused Smythe appeared somewhat confused when questioned regarding his licensing paperwork and the importance of same. The circumstances surrounding these premises have been reported to

Fife Council Licensing Standards Officers in relation to any potential breaches of licensing conditions.

*(If there are further "aggravations" or "mitigating factors" that may well assist the Procurator Fiscal in determining how to proceed with this report these should be made know in remarks. i.e. alcohol being sold by a person under 18 years of age.)*

**Productions**

Productions: Yes

**Reporting Officer**

William One, PC 123, CPD, Anytown

**Supervisory Officer**

Frank Five, PS 998, CPD, Anytown

**List of Witnesses**

**Civilian**

Sheila Hurt (16) Student  
Care of AnytownPolice Station  
Main Road,  
Anytown  
Fife

**Additional Information**

Date of Involvement: 20/12/2010  
Vulnerability: None  
Additional Needs: N/A  
Hostile Witness: No  
Unavailability:  
Responsible Person:

Mark Walsh (16) Student  
Care of AnytownPolice Station  
Main Road,  
Anytown  
Fife

**Additional Information**

Date of Involvement: 27/12/2010  
Vulnerability: None  
Additional Needs: N/A  
Hostile Witness: No  
Unavailability:  
Responsible Person:

**Police**

William One, PC, 123, Anytown

**Additional Information**

Date of Involvement: 20/12/2010

Family Liaison Officer: No

Additional Needs:

Unavailability:

Anthony Two, PC, 456, Anytown

**Additional Information**

Date of Involvement: 20/12/2010

Family Liaison Officer: No

Additional Needs:

Unavailability:

John Three PC, 789, Anytown

**Additional Information**

Date of Involvement: 27/12/2010

Family Liaison Officer: No

Additional Needs:

Unavailability:

Christine Four PC, 159, Anytown

**Additional Information**

Date of Involvement: 20/12/2010

Family Liaison Officer: No

Additional Needs:

Unavailability:

**Documents**