

Better Regulation Delivery Office – Age Restricted Products and Service Practice for Regulatory Delivery

Safer Stockton Partnership

25 September 2012

Summary

1. This consultation builds on the Age Restricted Products and Framework which was published in November 2011.
2. The code sets out an approach for those that are responsible for regulatory delivery in this area that underpins the principles set out in the framework for regulators and enforcers in respect of compliance and enforcement activities undertaken in the area of age restricted products and services. It is structured in four sections: prioritisation and targeting; working with businesses and communities; conduct of checks on compliance; and responses to non-compliance.
3. The proposal is that the draft code will be applicable to all local regulatory activities undertaken in England and Wales. It covers all products and services for which statutory age restrictions are in place including alcohol, cigarettes, gambling services and fireworks, and all relevant compliance and enforcement activities, whether in relation to premises, or to the online supply of these products and services.
4. Whilst the code is primarily aimed at local authorities, BRDO recommends that other enforcement agencies operating in this area also have regard to relevant provisions in this code.
5. The Consultation Document and the accompanying Impact Assessment can be found at <http://www.bis.gov.uk/brdo/publications/current-consultations> The consultation closes on the 28th September 2012.

Recommendations

6. That the Safer Stockton Partnership approve the draft response to the consultation at Appendix One

Detail

7. The draft code replicates much of the content of the previous national guidance, which local authority regulatory services have followed for a number of years.
8. The new code contains additional requirements around setting priorities and targeting resources; defining what factors an enforcing authority should consider before embarking on pro-active checks and introducing a system for notifying businesses following an enforcement check. These requirements could result in additional burdens on regulatory services especially in relation to recording decisions and actions taken.
9. The new code also automatically points to assigning a low priority, in this area of regulation, to those businesses in the Primary Authority Scheme (PAP). The reason for this is that the code recognises that PAP businesses are able to receive authoritative advice in this area. However these tend to be larger, national businesses which mean that small and medium sized businesses are dealt with differently under the code and could result in claims of unfairness from these businesses. This could also mean that local concerns and issues are not fully considered where they relate to a business participating in the scheme.

David Kitching
Trading Standards & Licensing Manager
Telephone: (01642) 526530
E-Mail: dave.kitching@stockton.gov.uk

Appendix One



Mike Batty
Head of Community Protection
Development & Neighbourhood Services
PO Box 232
16 Church Road
Stockton-on-Tees
TS181XD

Tel: (01642) 527074
Fax: (01642) 526583
e-mail: mike.batty@stockton.gov.uk

2012

Dear Sir

Age Restricted Products and Services - A code of practice for regulatory delivery, consultation Paper.

The Safer Stockton Partnership (SSP) is a thematic arm of Stockton Renaissance which deals with crime, anti-social behaviour and substance misuse related crime and anti-social behaviour. The partnership is made up of the following members:

- Catalyst
- Cleveland Fire Authority
- Cleveland Police
- Cleveland Police Authority (to be replaced by Police and Crime Commissioners in 2012)
- Drugs and Alcohol Action Team
- Durham Tees Valley Probation Trust
- H M Prison Holme House
- the four Local Area Partnership Boards
- Neighbourhood Watch
- Safe in Tees Valley
- Stockton Adult Protection Committee
- Stockton-on-Tees Borough Council
- Stockton Primary Care Trust (to be replaced by GP commissioning consortia in 2013)
- Stockton Youth Offending Service
- Tristar Homes Ltd
- University of Durham Queen's Campus
- the Vela Group
- Victim Support

Erica Butler
Programme Manager
Better Regulation Delivery Office
Department for Business, Innovation and Skills
The Axis
10 Holliday Street
BIRMINGHAM
B1 1TG
Email: consultation@brdo.bis.gsi.gov.uk

The comments in this response to the above mentioned consultation are made on behalf of all of the partners.

I hope that you find our response to the consultation of benefit. Please feel free to contact me if you require any further information.

Yours Sincerely

Mike Batty
Head of Community Protection

Age Restricted Products and Services - A code of practice for regulatory delivery, consultation Paper.

Name:	Mike Batty
Organisation (if applicable):	Safer Stockton Partnership
Address:	Development & Neighbourhood Services PO Box 232 16 Church Road Stockton-on-Tees TS181XD Tel: (01642) 527074 Fax: (01642) 526583 e-mail: mike.batty@stockton.gov.uk
Please tick a box from the list of options below that best describes you as a respondent. This allows views to be presented by group type.	
<input type="checkbox"/>	Local authority – with licensing function
<input type="checkbox"/>	Local authority – no licensing function
<input type="checkbox"/>	Local police authority
<input type="checkbox"/>	Professional body or association
<input type="checkbox"/>	Member of the public
<input type="checkbox"/>	Business
<input type="checkbox"/>	Trade association or other business representative group
<input type="checkbox"/>	Health body
<input type="checkbox"/>	Research body
<input type="checkbox"/>	Charity
<input checked="" type="checkbox"/>	Other (please describe) The Safer Stockton Partnership is a multi agency partnership that aims to improve the safety of the community in the borough of Stockton-on-Tees

Completed responses should be returned to:
Erica Butler
Email: consultation@brdo.bis.gsi.gov.uk

Response to the Age Restricted Products and Services – A Code Of practice for regulatory delivery.

The Safer Stockton Partnership is a multi agency partnership that aims to improve the safety of the community in the borough of Stockton-on-Tees by:

- Reducing crime in the borough;
- Reducing disorder and anti-social behaviour in the borough;
- Reducing fear of crime in the borough;
- Reducing fear of disorder and anti-social behaviour in the borough.

In Stockton the main objectives of test purchasing activity is to safeguard children from the associated health risks and participation in risky behaviour and to reduce related anti-social behaviour which blights the lives of many communities and individuals. These in turn support and promote the licensing objectives. Test purchasing is also seen as a tool which assists in ensuring that standards and compliance continue to improve and is used by the both the police and local authority regulatory services.

We feel that the proposed move to a new Code of Practice for the Regulatory Delivery for Age Restricted Products and Services is flawed around a number of key elements.

The existing document 'A practical guide for those organisations involved in the conduct of test purchasing operations involving young people and the sale of age-restricted products' updated by LACORS in March 2010, covers this area of work in great detail and has the benefit of being a clear operational guide as well as setting out legal requirements in a coherent manner. During this consultation process we have seen no convincing evidence that this code is either a burden on business or being applied inconsistently.

We are particularly concerned about the lack of clarity around whether the proposed code will be applied differently to local authority regulatory services and the police when undertaking test purchasing work, a situation of no benefit to any interested party including business.

We believe that the code should concentrate on the practical issues around test purchasing. Considerations such as local authority Enforcement Policies which are already covered by separate legislation and others codes do not need a separate mention here.

In respect of the use of the child volunteers being asked to lie about their true age when challenged or the use of fake ID, we believe that enforcement tactics must reflect real life purchase attempts to be effective and, it should therefore be open to regulators to employ these tactics in appropriate circumstances and when appropriately authorised by a responsible person.

We also have concerns regarding the application of the Primary Authority Partnership Scheme (PAP). The code points to automatically assigning a low priority to PAP businesses. Our view is that this discriminates against small and medium sized enterprises that may not want to or need to join this process. Further, the Licensing Act 2003 took the responsibility of the operation of the licensing regime away from the

Courts, other than in appeals, to ensure that licensing decisions and enforcement took into consideration local concerns and issues; the code seeks to reverse this.

We find the proposals to be overly bureaucratic, prescriptive and believe that they will burden regulatory services with additional work. These proposals are an unnecessary complication to combat a problem where, put at its simplest those engaged in selling a controlled product can ask for appropriate ID to avoid the commission of an offence. We would wish to highlight the need to conduct a full Impact Assessment on the implementation of any proposed Code on Regulatory Services, which would include the full costs of the associated bureaucracy and administration.

Question 1

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

Response: We believe that prioritisation and resource targeting are not matters that should be embraced by this type of code and are matters for individual enforcing authorities to determine.

Question 2

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

Response: Nothing to add

Question 3

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

Response: We are in agreement with this fundamental statement of intent and note that whilst sections 1-4 captures factors that should be considered when determining priorities and allocating resources, these are more likely to be determined across a whole service rather than in respect of the enforcement of a limited range of legislative controls. The importance of the Enforcement Policies our partnership bodies already have in place which have been developed over many years should be recognised.

These Enforcement Policies clearly set out what businesses and others being regulated can expect from our enforcement officers. They also help to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. These Enforcement Policies have been developed in accordance with the Regulators Compliance Code and other national guidance.

Question 4

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

Response: The products covered by restricted sales legislation are controlled because of the risk of harm they pose to young people. The risk varies with the type of product, and all encompassing national risk assessment model would be too prescriptive.

It would have to balance serious immediate risk of criminal activity, i.e. with alcohol and long term health risks tied in with this is the need to make appropriate adjustments around localised concerns including those of local residents. Our view is that central direction will reduce innovation and introduce a layer of bureaucracy for enforcing authorities that fails to accommodate local circumstances and the judgement of competent enforcement officers.

Question 5

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

Response: The Safer Stockton Partnership would always support partnership working;

We currently work together as partners to assist the trade through schemes such as our Think B4U Drink campaigns and our 'We Don't Overlook Underage' retailer training and information packs.

This working in partnership with the trade should occur at a local level based on local needs and information and should not be bound by national guidance.

Question 6

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

Response: see Q 5

Question 7

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

Response: Nothing to add

Question 8

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

Response: Whilst sections 12-14 capture what regulatory services might consider before embarking on proactive and responsive compliance checks, these should not be included in binding guidance. The list of actions is far too long and very over-prescriptive.

We also have concerns about the application of the Primary Authority Partnership Scheme in relation to test purchasing. Our view is that what is relevant is the compliance system that each premise not only has, but more importantly implements. It cannot be accepted that because a large company has an excellent compliance system in place, that every store chooses to implement it as it should. This can be supported by our partners who can evidence large supermarket chains having failed test purchases. Therefore, surely the testing of that compliance by regulators and enforcers is welcomed by major businesses who invest significant amounts of money in the training of staff and development of procedures aimed at preventing underage sales.

We understand that the counter argument is that businesses already have in place both internal and sometimes external means of checking compliance. However, our response would be that we will continue to undertake test purchasing, as it is our responsibility to safeguard children.

Question 9

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

Response: See response to Q 8

Question 10

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

Response: Nothing to add

Question 11

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

Response: We believe there is a danger in focusing on business asking an individual their age. The purchaser, in real life, may well lie about their age. This may lull the seller into a false sense of security.

If sellers are not 100% certain that the person they are selling to meets the necessary age requirement they should not be asking their age, but should be asking for appropriate id as confirmation.

It is our view, that where necessary and proportionate, lying should be allowed. The reality is that those who attempt to purchase alcohol will without doubt lie about their

age. Many businesses are aware when test purchasing has been conducted as it is only volunteers who provide their true age when challenged.

The issue here is not about a volunteer lying but about proof of age. Should a volunteer be asked to lie, how can that can be seen as unacceptable when the business should then be asking for proof of age in support of their own policies?

We would agree that authorisation should be required by a senior officer before lying or the use of fake ID is allowed.

Question 12

If so, please provide evidence to support this view.

Response: Nothing to add to our previous statements made in Questions 11.

Question 13

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

Response: Other factors may arise in dealing with specific problems or incidents.

Question 14

If so, please list these factors.

Response: Nothing to add

Question 15

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

Response: Whilst sections 15-18 capture what regulatory services might consider before using these tactics, these should not be included in binding guidance. In addition the list is too prescriptive, particularly in relation to recording decisions and written notifications to businesses.

We also have concerns about the suggestion that covert surveillance should be considered before asking a volunteer to lie. Covert surveillance should only be used when less intrusive methods of enforcement have been exhausted. Asking a volunteer to lie is, in our view, far less intrusive than covert surveillance.

Question 16

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

Response: Nothing to add

Question 17

Response: Nothing to add

Question 18

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

Response: We recognise the importance of offering guidance which may provide a consistent and uniform approach around this important area of work, we do not agree however, that in all cases a letter should be sent following test purchase exercises.

Binding guidance which would require regulators and enforcers to inform business after each test purchase is adding bureaucracy when it is not required. Information in relation to test purchasing is available to anyone at any time.

Should it be considered necessary to supply such information then we suggest the introduction of a notification scheme in a similar format to Section 178 of the Licensing Act 2003. This would require businesses to register their interests in obtaining the results of test purchase attempts on any particular premise on an annual basis with regulators and the regulator would then provide them with such details. To offset the cost of the regulator for undertaking this additional task a fee should be charged. The current Licensing Act fee of £21 per premise would appear to be appropriate.

Question 19

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

Response: We have no problem with the proposed timescales for written notifications but it represents yet more bureaucracy in additional recording etc

Question 20

If not, why not?

Response: See Q19

Question 21

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

Response: Nothing to add

Question 22

If not, why not?

Response: Nothing to add

Question 23

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

Response: Whilst we disagree with parts of the proposals they are clearly set out.

Question 24

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

Response: See response to Q 18

Question 25

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

Response: Nothing to add

Question 26

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

Response: Overall the Partnership takes the view that proposals within the Code are very clear on the main criteria around the welfare of the child volunteer and sets out the well established and best practice clearly. It has always been the clear understanding of all regulatory services engaged with test purchasing exercises that

they must follow very similar procedures designed to protect the volunteer test purchaser above every other concern.

Question 27

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

Response: Nothing to add to our previous statements made in Question 26 above.

Question 28

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

Response: Nothing to add to our previous statements made in Question 26 above.

Question 29

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

Response: Nothing to add to our previous statements made in Question 26 above.

Question 30

Please provide any other comments that you would like to make about sections 24-32.

Response: Nothing to add to our previous statements made in Question 26 above.

Question 31

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

Response: Our view is that whilst sections 33-34 capture what regulatory services might consider before deciding on what response is appropriate in the event of a breach, they should not be included in this code. Our view is that these factors are more relevant when set out in an individual organisations enforcement policy, covering all legislation enforced by that particular body. We see no reason why age restricted products or services should be dealt with separately.

These Enforcement Policies already clearly set out what businesses and others being regulated can expect from our enforcement officers. They also help to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. These Enforcement Policies have been developed in accordance with the Regulators Compliance Code.

Question 32

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

Response: Nothing to add

Question 33

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

Response: Nothing to add

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.