



AN ROINN DLÍ AGUS CIRT AGUS ATHCHÓIRITHE DLÍ
DEPARTMENT OF JUSTICE AND LAW REFORM

GUIDELINES ON TEST PURCHASING OF INTOXICATING LIQUOR

**issued by
the Minister for Justice and Law Reform
under section 37C(4) of the Intoxicating Liquor Act 1988
(as inserted by section 14 of the Intoxicating Liquor Act 2008)**

1 October, 2010

1. INTRODUCTION

1.1 Legislative basis for the Guidelines

Under the Intoxicating Liquor Act 1988 (the “1988 Act”), the holder of a licence shall not sell or deliver, or permit any person to sell or deliver, intoxicating liquor to persons under 18 years of age. These provisions have been supplemented in the Intoxicating Liquor Act 2008 by the insertion of a new section 37C in the 1988 Act. The new section permits the Garda Síochána to engage in test purchasing of intoxicating liquor.

Test purchasing involves the sending of a person who is at least 15 years of age but under the age of 18 years (the “test purchaser”), acting on the instruction of a member of the Garda Síochána, into licensed premises for the purpose of purchasing alcohol. The objective is to ascertain if a licensee is complying with statutory provisions regarding the sale of alcohol to underage persons and, if he or she is not compliant, to obtain evidence for possible legal proceedings.

Section 37C sets out the basis on which licensed premises will be selected for test purchasing and contains a number of safeguards for the test purchaser. Parental or guardian consent in writing is required for the participation of test purchasers in test purchasing operations and all reasonable steps must be taken to avoid harm to their welfare. In addition, these Guidelines, issued by the Minister for Justice and Law Reform following consultation with the Commissioner of the Garda Síochána and the Minister for Health and Children, deal with the practical operation of test purchasing.

1.2 Enforcement of licensing laws

Test purchasing of intoxicating liquor is intended to form part of the overall Garda Síochána programme for enforcing licensing law provisions relating to persons under the age of 18 years of age. Decisions concerning specific enforcement policies and actions are matters for the Garda Síochána and will necessarily reflect local needs and priorities. The implementation of the Guidelines is the responsibility of the Superintendent in each Garda district. All members of the Garda Síochána involved in test purchasing operations must be familiar with these Guidelines.

2. WELFARE OF TEST PURCHASERS

The welfare of test purchasers involved in the test purchasing operations is paramount. The UN Convention on the Rights of the Child is relevant in this context. Article 3 of the Convention provides that the best interests of the child shall be a primary consideration in all actions concerning children, and administrative measures shall be appropriate to ensure each child such protection and care as is necessary for his or her wellbeing, taking into account the rights and responsibilities of his or her parents or guardians. Institutions, services and facilities responsible for the care or protection of children shall conform with the established standards, particularly for safety, health, the number and suitability of staff, and competent supervision.

Reflecting the terms of this Convention and national policy objectives set out in the Children First National Guidelines for the Protection and Welfare of Children ("Children First Guidelines"), the highest possible level of protection for the test purchaser is required. Accordingly, when applying these Guidelines, the Garda Síochána shall have regard to the following:

- a) If, at any time during test purchasing operations, a test purchaser indicates that he or she does not wish to continue, or shows signs of distress, the operation must be halted immediately;
- b) If, while in the care of the Garda Síochána, the test purchaser is injured or suffers loss or damage to his or her property, the incident must be reported without delay to the parent or guardian and the Superintendent in whose area the operation has taken place;
- c) Test purchasing operations are to be organised in such a way as to avoid as far as possible the test purchaser being called as a witness in court proceedings. As a general rule, a witness statement need not be taken from the test purchaser since a member of the Garda Síochána will accompany the test purchaser at all times and witness any purchase which may take place. The required witness statement can therefore be provided by the Garda Síochána in any court proceedings arising from test purchasing operations. Nevertheless, in exceptional circumstances, the test purchaser may be required to attend court as a witness;
- d) Parental or guardian agreement and consent for the participation of a test purchaser must be obtained. Annex 1 provides for agreement for participation in test purchasing operations and Annex 2 provides for parental/guardian consent.

Members of the Garda Síochána conducting test purchasing operations should satisfy themselves that:

- the safety and welfare of the test purchaser has been fully considered;
- any risk has been properly explained to and understood by the test purchaser;
- a risk assessment has been undertaken as detailed in Annex 4, and
- a record is kept of the operation.

If, at any point, a member of the Garda Síochána involved in the operation considers that it is necessary to halt the operation in order to avoid harm to the welfare of the test purchaser, the member should do so.

All members of the Garda Síochána involved in test purchasing operations must be mindful of the procedures provided for under the Children First Guidelines.

3. OPERATIONAL CONSIDERATIONS

3.1 Selection of Licensed Premises

As provided for in section 37C(4)(b), licensed premises will be selected by the Garda Síochána by reference to one or more of the following criteria:

- the location of the premises;
- complaints received by the Garda Síochána concerning the premises;
- the number and kind of contraventions (if any) of the Licensing Acts 1833 to 2010 relating to the premises;
- the clientele attracted to the premises, or
- any combination of the above criteria.

Test purchasing may be carried out in premises with on-licences (e.g. public houses, hotels, wine bars) and in off-licences, as well as in registered clubs.

3.2 Selection of Test Purchasers

Superintendents must ensure that the test purchaser and the parent or guardian are fully conversant with the nature of test purchasing operations. In particular—

- a) Volunteers may be sought by the Garda Síochána from local youth groups, schools, etc. If, in the opinion of the Garda Síochána, a candidate appears to be over-eager to take part and/or to succeed in purchasing intoxicating liquor, he or she should not be selected for participation in test purchasing operations.
- b) At the outset, proof of the age of the candidate must be obtained. This may be in the form of the birth certificate produced by their parent or guardian, or by evidence of photographic ID, such as a passport.
- c) Participation will be on a voluntary basis and the parent or guardian of the test purchaser must be fully informed of the nature of the task involved. The written agreement of the test purchaser and his or her parent or guardian, as provided for in Annex 1, must be completed at the selection stage. The set of instructions for the test purchaser, as provided for in Annex 3, should also be discussed at this point.
- d) While the actual age of the test purchaser selected is a matter for the Garda Síochána to determine within the context of the particular operation, the test purchaser must be at least 15 years of age and under 18 years of age.
- e) The test purchaser must not look older than their age and should be broadly representative of their age group. If a reasonable person regards the age of the test purchaser to be below the age of 18 years, then the person may be deemed suitable for test purchase operations.

- f) Consideration should also be given to the clothing, jewellery and makeup worn by the test purchaser. The purpose must be, as far as possible, to replicate normal conditions and to that end and within reason, the test purchaser should wear their normal clothing. However, the test purchaser must not set out to look older and nothing in these Guidelines advocates this course of action.
- g) Participation in test purchasing operations does not constitute employment and does not attract any remuneration. However, nothing in the Guidelines precludes the Garda Síochána from paying necessary out-of-pocket expenses arising from the test purchaser's involvement in a test purchasing operation.
- h) The parent or guardian must give his/her written consent to the participation of the test purchaser each time they are deployed on a test purchase operation. A test purchasing operation is likely to involve a number of attempted test purchases in different licensed premises. The consent form for signature by the test purchaser and the parent/guardian is attached at Annex 2.

3.3 Briefing the Test Purchaser

The test purchasing operation will, as far as possible, be made in the same manner as a member of the public would seek to make a similar purchase. The following procedure should be followed:

- a) Test purchasers must be instructed to follow the instructions on test purchasing set out in Annex 3;
- b) The test purchaser must be advised not to mislead, or attempt to mislead, any person regarding their age. The test purchaser must answer any questions about their age truthfully;
- c) The test purchaser should not have any proof-of-age documents with them when undertaking test purchasing operations. If asked for proof of age, the test purchaser should reply **“I don't have any”**;
- d) If the initial attempt to purchase intoxicating liquor fails, the test purchaser must be instructed not to coax or attempt to persuade the seller into making a sale. They must leave the premises and return to a predetermined location.

3.4 Risk Assessment

As outlined in part 2 of these Guidelines, the Garda Síochána involved in organising test purchasing operations must have regard to best practice in relation to protecting child welfare. Accordingly, test purchasing operations will be carried out in conjunction with the risk assessment criteria specified in Annex 4 of these Guidelines. The Superintendent in each Garda district must ensure that the risk assessment procedures are applied appropriately in each case.

At least two non-uniformed members of the Garda Síochána must assist at each test purchasing operation. One Garda must be present on the licensed premises to witness the attempted test purchase. In cases of test purchasing operations involving off-sales, the other Garda will remain at an agreed location outside the licensed premises and make contact with the test purchaser when he or she leaves the premises. In cases of test purchasing operations involving on-sales, the other Garda will be at an agreed location on the premises and the Garda (or Gardaí) will escort the test purchaser off the premises.

Depending upon the outcome of any risk assessment, a decision may be made concerning the need, or otherwise, to have more than one member of the Garda Síochána present on the premises with the test purchaser at the time of the attempted test purchase.

4. REVIEW CLAUSE

These Guidelines will be kept under review and revised in the light of experience.

ANNEX 1 - AGREEMENT WITH PARENT/GUARDIAN, TEST PURCHASER AND THE GARDA SÍOCHÁNA FOR TEST PURCHASING

The purpose of this agreement is to ensure that the parent/guardian and test purchaser are aware of what the Garda Síochána intends to do and what safeguards will be used.

1. The test purchaser will be fully briefed in what to say and do. The test purchaser's parent/guardian may attend the briefing session(s). The test purchaser will be instructed to tell the truth about their age.
2. At least one Garda member will accompany the test purchaser at all times.
3. The test purchaser will not be asked to make test purchases in any areas where he/she is likely to be recognised.
4. In any operation, the test purchaser's welfare is paramount. The nature of the test purchaser's involvement in the operation will not be revealed whilst they are on the premises, unless the Garda is of the opinion that their welfare is at risk.
5. Participation in test purchasing operations does not constitute employment and, accordingly, does not attract any remuneration. However, necessary expenses arising from the test purchaser's involvement in a test purchase operation may be paid by the Garda Síochána.
6. This exercise may result in legal action. The Garda Síochána will endeavour to ensure that the test purchaser will not be required to attend court as a witness, unless this is found to be necessary in a particular case.
7. The parent/guardian will provide an official document to confirm the date of birth of the test purchaser.
8. The test purchaser will be photographed by the Garda Síochána as part of the test purchase operation. All such photographs will be destroyed at the earliest possible opportunity.
9. The test purchaser will be required to assist with test purchasing for no more than eight hours in any week.

I have read and understood the above:

Signed: (Test Purchaser)

Signed:(Parent/Guardian) Tel. No.....

Signed:(Member in charge of operation)

Date:

Contact details of Superintendent:

Name:.....**Station**.....

**ANNEX 2 - PROVISION OF ASSISTANCE BY TEST PURCHASER TO THE
GARDA SÍOCHÁNA: PARENTAL & TEST PURCHASER CONSENT FORM**

Name of test purchaser:	
Date of Birth:	Male/Female:
Address of test purchaser:	
Nature of exercise:	
Date and time of collection of test purchaser and address (if different from above):	
Date and time of return of test purchaser and address (if different from above):	
Daytime contact number for parent/guardian and address (if different from above) during above dates:	
Alternative daytime number and address, if required, for parent/guardian during above dates:	
Areas in which test purchasing exercise will take place:	
Areas to be avoided (e.g. areas where the test purchaser is likely to be recognised):	
Any special dietary/medical needs etc:	

I (name of parent/guardian)
 am the parent/guardian of the above mentioned person (test purchaser) and I agree that
 he/she will be available to assist the Garda Síochána as detailed above. I have discussed
 the details of this operation with Garda (name)

Signed: (Test Purchaser)

Signed: (Parent/Guardian)

Telephone No......

Signed: (Member in charge of operation)

Date:

ANNEX 3: INSTRUCTIONS FOR TEST PURCHASERS

It is important the test purchasers are familiar with the following instructions:

- 1 If at any stage during the procedure you feel uncomfortable or unhappy about engaging in the test purchasing operation, you should inform the Gardaí of your concern. The operation can be stopped at any stage and will be, if you are unhappy to proceed.
- 2 At least one non-uniformed member of the Garda Síochána will be on the premises before and during the test purchase operation.
- 3 If at any time you see someone on the premises you know, you should return to the pre-agreed location.
- 4 If asked your age, state your correct age.
- 5 Do not bring any identification with you on a test purchasing operation and if asked for identification, say “I don’t have any”.
- 6 If you are refused alcohol, leave the premises immediately.
- 7 If you are sold alcohol as an off-sale, leave the premises with your purchase and give it to the other Garda who is waiting at an appointed location close to the licensed premises.
- 8 The Garda who was on the premises and witnessed the attempted test purchase will join you and the other Garda as soon as possible.
- 9 If you are sold alcohol for consumption on the premises, go to the agreed location on the premises where a member of the Garda Síochána will take possession of the alcohol and the Garda or Gardaí will escort you off the premises. You will be joined by the Garda who witnessed the attempted test purchase as soon as possible.
- 10 If at any stage something goes wrong during the operation, notify the Gardaí and the operation will be stopped immediately.

Definitions:

The term ‘off-sales’ refers to alcohol sold for consumption off the premises.

The term ‘on-sales’ refers to alcohol sold for consumption on the premises.

ANNEX 4 – STANDARD RISK ASSESSMENT CRITERIA FOR TEST PURCHASE OPERATIONS

Risk: High – Stop activity until controls are put in place. Review action required urgently

Medium – Tolerable risk, but monitoring is required to ensure the controls are maintained

Low – The risk is broadly acceptable

TASK STEP	HAZARD DESCRIPTION	HAZARD CAUSE	HAZARD CONSEQUENCE	CURRENT CONTROLS	FR ¹	SEV ²	RISK	CURRENT CONTROL	RECOMMENDATION
Inviting persons who are at least 15 years of age and under 18 years to assist with test purchasing	Personal data collected about test purchasers, including photographs, being handled insensitively	Information left lying around the office	Confidential information about test purchasers being divulged	Nominated Gardaí have responsibility for collecting data which is recorded on files and will be kept locked away	L	L	L	Adequate	
Assessment of test purchaser's suitability for test purchasing	Garda will need to make personal contact with all test purchase candidates	Direct contact needed with test purchaser to assess suitability	Test purchaser could unduly be exposed to risk during the test purchase operation, e.g. assault	Member will visit and vet candidates in presence of parent or guardian. Arrangements for such visits will always be made with parent/guardian	L	H	L	Adequate	A member not below the rank of Sergeant will review assessments and check that parent/guardian was present
Arranging test purchasing operation with test purchaser	Garda may speak directly to test purchaser and arrange a time and date of collection from home	Test purchaser makes contact with Garda Sfochána or vice versa	Parent/guardian of test purchaser not aware of their whereabouts	Arrangements always made with parent/guardian	L	M	L	Adequate	A member not below the rank of Sergeant will review assessments and check that parent/guardian was present

1 Frequency

2 Severity

TASK STEP	HAZARD DESCRIPTION	HAZARD CAUSE	HAZARD CONSEQUENCE	CURRENT CONTROLS	FR ¹	SEV ₂	RISK	CURRENT CONTROL	RECOMMENDATION
Collection and return of test purchaser	Test purchaser becomes the responsibility of the Garda Síochána	Parent /guardian not available to witness collection or return of test purchaser	Parent/guardian of test purchaser not aware of their whereabouts	Parent/guardian must always witness the test purchaser being collected and returned	L	H	L	Adequate	<p>If parent/guardian is not available to oversee the collection and return of test purchaser, he/she should not be used in the operation.</p> <p>Garda will agree estimated time of collection and return of test purchaser. If, for operational reasons, these times change, the Garda will check that the proposed new collection and/or return time is acceptable to both test purchaser and parent/guardian.</p> <p>Test purchaser always accompanied when crossing roads.</p>
Ensuring that a Garda and test purchaser are never alone in a non-public place	Garda may be left alone with test purchaser while transporting the test purchaser	Garda diverted to other business	Risk of allegation of abuse	At least 2 Gardaí will be involved in test purchase operations and involved in transporting the test purchaser	L	H	M	Adequate	<p>At least 2 Gardaí are required for test purchase operations and one of the Gardaí must be of the same sex as the test purchaser. Where the test purchaser is female, the observer outside premises should be female.</p> <p>Any allegations made by the test purchaser are to be immediately reported in accordance with the Children First Guidelines.</p>
Ensuring that the test purchaser is accompanied at all times during the test purchase operation	Test purchaser is briefly left unsupervised during the operation	Garda diverted to other business	Test purchaser could be exposed to danger	At least 2 Gardaí always to be used in operations, one to provide protection for the test purchaser during the operation and the other to provide protection for the test purchaser after the attempted test purchase	L	H	M	Adequate	<p>In the case of off-sale test purchase operations, a rendezvous point with Garda in a public place outside the licensed premises agreed with test purchaser in advance.</p> <p>In the case of on-sale test purchase operations, a rendezvous point inside the licensed premises to be agreed with the test purchaser and Garda or Gardaí who will escort the test purchaser off the premises.</p>

TASK STEP	HAZARD DESCRIPTION	HAZARD CAUSE	HAZARD CONSEQUENCE	CURRENT CONTROLS	FR¹	SEV²	RISK	CURRENT CONTROL	RECOMMENDATION
Test purchaser attempts test purchase	During test purchase operation, purchase refused and retailer becomes abusive or threatening to test purchaser	Retailer angry with test purchaser	Test purchaser could be exposed to danger	One Garda always on the licensed premises and able to intervene, if necessary	L	H	L	Adequate	Test purchaser always instructed that if anything goes wrong, to end the attempted test purchase and to meet the member of the Garda Síochána at the agreed rendezvous point. Test purchaser will not participate in operations in an area where they may be recognised.
Matters arising while test purchaser in care of Gardaí	Sudden illness	Inadequate knowledge of test purchaser's personal details	Personal injury	Details of allergies, health conditions and current medication obtained from parent/guardian	L	H	M	Adequate	Gardaí in possession of contact number for parent/guardian during operations
Court action	Test purchaser required to appear in Court	Not guilty plea entered	Stress and anxiety caused to test purchaser	Test purchaser fully supported throughout and not forced to attend Court	L	H	M	Adequate	If test purchaser is unable to face Court, removed from test purchasing list