



# Home Office

**Covert Investigation Policy Team  
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J W Giffard Esq CBE QPM  
Chief Constable  
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Our Ref

Your Ref

Date 14 December 2004

Dear Mr Giffard,

**ALCOHOL MISUSE ENFORCEMENT CAMPAIGN II:  
REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) AND  
RETAIL TEST PURCHASING**

With the second Alcohol Misuse Enforcement Campaign starting on 17 December, I am writing to you in your capacity as ACPO portfolio holder in relation to alcohol issues to offer guidance on an issue that arose from this summer's campaign. It relates to the authorisation and tasking of minors undertaking retail test purchasing and the legal basis for their conduct and that of their handlers.

Various operational policies and procedures have been adopted by BCUs and trading standards departments undertaking test purchases for the purpose of determining whether or not the provisions of section 169 of the Licensing Act 1964 are being complied with.

Some BCUs have authorised children undertaking test purchases as covert human intelligence sources under section 29 of RIPA. Some have done that and also authorised directed surveillance under section 28 of RIPA to cover the conduct of an accompanying officer. Anecdotally, one BCU is said to have authorised as directed surveillance the conduct of an officer standing outside retail premises whilst the child test purchaser and an adult handler, also both subject of RIPA authorities, were inside. Equally some BCUs have undertaken test purchases without RIPA authorisation or not undertaken test purchasing because of a perceived requirement for RIPA authorisation.

The Code of Practice providing guidance on the authorisation of the use or conduct of covert human intelligence sources, made under section 71 of RIPA, includes the following advice:

4.29 In some instances, the tasking given to a person will not require the source to establish a personal or other relationship for a covert purpose. ... Alternatively, a trading standards officer may be involved in the test purchase of items which have been labelled misleadingly or are unfit for consumption. In such cases, it is for the relevant public authority to determine where, and in what circumstances, such activity may require authorisation [emphasis added]

The reference to a trading standards officer can equally be read as a reference to a police officer or to a test purchaser aged under 18 years acting at the request of a constable under section 149(2) of the Licensing Act 2003. Equally the under age test purchase may be made in accordance with the provisions of the Licensing Act 1964 as amended by section 31 of the Criminal Justice and Police Act 2001.

Ultimately only the courts can interpret legislation with any authority. However it is the view of the Home Office that, in the majority of instances, alcohol test purchasing by persons under 18 years of age is not conduct to which Part II of RIPA need be applied. Any use of persons aged under 18 to make test purchases must nonetheless be subject to risk assessment and must take account of the safety and welfare of the child.

I am aware of the practice adopted by a number of agencies whereby a letter was sent to all local licensees in advance of AMEC I notifying them that test purchasing exercises would take place. To that extent the conduct of test purchasing is an overt exercise and due notice has been given to licensees so that they may address their behaviour (should they be contravening licensing legislation).

In each instance of alcohol test purchasing by a person under 18 years of age, on a one-off basis in retail premises accessible to the public, it is reasonable to assume that:

- (a) surveillance is not likely to be conducted in such a way as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation) within the meaning of section 26(2) RIPA, and
- (b) the test purchaser is not a covert human intelligence source because he/she does not establish or maintain a personal or other relationship with a person for the covert purpose of facilitating the obtaining of information within the meaning of section 26(8) RIPA. The one-time act of making a purchase in a shop open to the public, where there may even be no verbal exchange, cannot reasonably constitute establishing a relationship, personal or otherwise – other than a momentarily fleeting one in which no information is obtained which could reasonably constitute an interference with the privacy of the retailer.

Those assumptions are equally valid in circumstances where it is appropriate to evidence systematic breach of licensing legislation at any given licensed premises by using a number of different test purchasers each making a one-off purchase.

The Home Office does not believe that the use of a covert surveillance or evidence gathering device by either the child test purchaser or an observing officer alters the position stated above.

There are, however, some important qualifications to this advice. Firstly, different considerations would apply where the test purchaser had made previous visits to the premises, or is to make repeated visits, and had established or is to establish a relationship with the retailer prior to the attempted test purchase. Secondly, different considerations would apply if the attempted test purchase is made other than from retail premises open to the public, for example from a person's home including parts of their home adjacent to retail premises.

It is important that those individuals involved in the planning and conduct of test purchasing exercises avoid inciting, instigating, persuading or pressurising a person into committing an offence that, otherwise, would not have been committed.

Finally the use being made of the powers in RIPA is being explored as part of an ACPO-Home Office review being led by Trevor Pearce, Acting Director General of the National Crime Squad. This review of RIPA is looking at the practices and procedures in place for the conduct of covert surveillance and the use of covert human intelligence sources with a view to identifying where further guidance is needed in the application of RIPA powers. However with AMEC II starting now, I have felt it important to offer this advice to you and your colleagues now.

I am copying this letter, for their information, to the President of ACPO, Chris Fox, and to the President of the Superintendents' Association, Rick Naylor.

Yours sincerely

A handwritten signature in black ink, appearing to be 'S. Watkin', written over a faint, illegible typed name.

**SIMON WATKIN**