An evaluation of the implementation of, and compliance with, the objectives of the Licensing (Scotland) Act 2005:
Sub-study of Test Purchasing and other measures to enforce underage alcohol sales regulations
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MacGregor A, Sharp C, Mabelis J and Corbett J
ScotCen Social Research
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Abbreviations and glossary

**ACPOS**: Association of Chief Police Officers in Scotland

**Agent purchase**: A young person asking someone over the age of 18 years to purchase alcohol on their behalf

**Alcohol diversion schemes**: Schemes aimed at decriminalising the young, with fixed penalties or charges related to alcohol-related incidents being waived if the individuals engage with Alcohol Counselling Services

**Best Bar None**: An initiative sponsored by the alcohol industry which focuses on safety and customer care, and gives each licensed venue the opportunity to prove it meets a standard of operation set in consultation with the government and alcohol industry at a national level

**Bottle marking**: A voluntary scheme run in some local authorities whereby retailers agree to mark their bottles of alcohol with an invisible code specific to their store; any alcohol confiscated from young people found drinking can be traced back to the premises where it was purchased

**Challenge 25**: Young customers who appear to be under the age of 25 years are asked for proof of age by staff serving in licensed premises

**COPFS**: Crown Office and Procurator Fiscal Service. COPFS is responsible for the prosecution of crime in Scotland, the investigation of sudden or suspicious deaths, and the investigation of complaints against the police

**‘Dry up’ or ‘round up’ operations**: These exercises involved Police Officers or community Police Officers (sometimes in combination with other agencies, volunteers and youth workers) going out onto the streets to identify and engage with young people who have been drinking

**LB**: Licensing Board. There is at least one Board in each local authority area. The main function of the Board is to regulate premises that sell alcohol to the public

**LLF**: Local Licensing Forum. LLFs were established in the Licensing (Scotland) Act 2005, and each local authority has at least one LLF. The role of the forums is to keep under review the operation of the Act by the Licensing Board in their area

**LSO**: Licensing Standards Officer. The LSO role was established in the Licensing (Scotland) Act 2005, and each local council has at least one LSO in post. LSOs provide information and guidance with regard to the Licensing Act, and supervise compliance and provide mediation for disputes
Licence Holder: The Licensing (Scotland) Act 2005 made it a requirement that anyone wishing to sell alcohol on his/her premises has to hold a premises licence. The Act also introduced a new personal licence. Each premises licence must name the ‘premises manager’. The premises manager will have to hold a personal licence. A personal licence permits that person to supervise and authorise the sales of alcohol on the premises. N.B. Personal licence holders were interviewed in this study, but other respondent types used the term ‘licensee’ to cover both licence holders and those serving in on- and off sale outlets.

Licensing (Scotland) Act 2005: This Act, which came into full effect on 1 September 2009, overhauled existing licensing arrangements and introduced a range of significant new measures to protect communities from alcohol-related harm. It established five licensing objectives, including, for the first time, the Protecting and Improving Public Health objective.

MESAS: Monitoring and Evaluating Scotland’s Alcohol Strategy

PASS: Proof of Age Standards Scheme

Procurator Fiscal: Public prosecutors in Scotland (see also COPFS above for role of PF). N.B. In this study Procurator Fiscal Deputes were interviewed, and as a result they are referred to as Prosecutors in that section.

Proof of age schemes: All licensed premises are required by law to take reasonable steps to establish that young customers are aged 18 or over.

Pubwatch: Licensees of the premises taking part in such a scheme agree on a number of policies to counter individuals who threaten damage, disorder, and violence or use or deal in drugs in their premises.


ServeWise: Licensing training courses developed for those working in the licensed trade – a number of different courses are offered.

Test purchasing: Suitable 16 year old volunteers are recruited by the police to attempt to purchase alcohol from licensed premises (with undercover police supervision). Premises which fail the test purchase are referred to the Procurator Fiscal and Licensing Board.

Young Scot: Young Scot is the national youth information and citizenship charity. The Young Scot Card is a free National Entitlement Card for young
people aged 11-26, created by the Scottish Government, Young Scot, local councils and other organisations
Executive summary

Background
As part of the Monitoring and Evaluating Scotland’s Alcohol Strategy (MESAS) portfolio of studies, NHS Health Scotland commissioned a three-year evaluation of the implementation of, and compliance with, the objectives of the Licensing (Scotland) Act 2005. The evaluation is being undertaken by the Scottish Centre for Social Research (ScotCen). This report is about an eight-month sub-study of test purchasing and other measures to enforce underage alcohol sales regulations. The key measures examined as part of this study included:

- Test purchasing – Suitable 16 year old volunteers are recruited by the police to attempt to purchase alcohol from licensed premises (with undercover police supervision). Premises which fail the test purchase are referred to the Procurator Fiscal and Licensing Board.
- Proof of age schemes – All licensed premises are required by law to take reasonable steps to establish that young customers are aged 18 or over.
- Challenge 25 – Young customers who appear to be under the age of 25 years are asked for proof of age by staff serving in licensed premises.
- Bottle marking – a voluntary scheme run in some local authorities whereby retailers agree to mark their bottles of alcohol with an invisible code specific to their store; any alcohol confiscated from young people found drinking can be traced back to the premises where it was purchased.

The sub-study was commissioned in April 2011. Fieldwork and data collection were carried out between July and December 2011.

Aims and objectives
The overall aims of this sub-study were:

- To explore the barriers and facilitators to test purchasing and other approaches aimed at enforcing underage alcohol sales regulations, and to identify lessons for improvement in terms of implementation to support the realisation of the longer term outcome of reducing underage drinking.

To achieve these aims the sub-study had six objectives:
1. To investigate the practical implementation of these mechanisms, including:

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1 More information on MESAS can be found at [http://www.healthscotland.com/scotlands-health/evaluation/planning/MESAS.aspx](http://www.healthscotland.com/scotlands-health/evaluation/planning/MESAS.aspx)
• what mechanisms were being implemented
• why these mechanisms were being implemented, and where test purchasing was not being implemented, why this was the case
• how these measures were being implemented
• the perceived outcomes of these mechanisms.

2. To identify through interviews with a range of stakeholders the perceived barriers and facilitators to, and (positive or negative) unintended consequences of these mechanisms.

3. To explore with a range of stakeholders the feasibility and sustainability of these mechanisms.

4. To examine the views of Procurators Fiscal and Licensing Boards on the mechanisms used locally for enforcing underage alcohol sales regulations in general, and on the reports submitted by the Police, in particular.

5. To examine the outcomes of decisions made by Procurators Fiscal and Licensing Boards in response to reports on test purchasing failures submitted by the Police.

6. To identify the learning for the Scottish Government, Police, Licensing Boards, and the licensed trade to improve the implementation of test purchasing and other mechanisms for enforcing the underage alcohol sales regulations.

**Methods**

A mixed methods approach was utilised to carry out the evaluation. It was also decided to adopt a case study design in order to explore the issues in three different Police Force areas of Scotland. Case Study Areas A and B both had recent experience of using test purchasing to enforce the underage sales of alcohol regulations. Area C was selected as the national data suggested that it was not actively using test purchasing.

In-depth interviews were conducted with three groups:

• Police (n=8): two interviewees per area – one respondent was selected to cover the strategic context and the other to address more operational matters. A further two interviews were conducted in another Police Force Area to cover a more rural perspective.
• Procurators Fiscal (Prosecutors: n=3): one interviewee per area.
• Licensing Board representatives (n=3): one interviewee per area.

Structured interviews were conducted with licence holders:

• Licence holders (n=60): In both Areas A and B, 25 interviews were carried out with licence holders. These licence holders were selected to represent premises that had relatively recent experience of test purchasing, including test purchase passes and failures. Ten interviews with licence holders were
holders were conducted in Area C to cover other enforcement mechanisms in relation to underage sales.

In addition, an analysis of routinely collected and readily available data relevant to test purchasing and breaches of regulations on underage alcohol sales was carried out. This also included telephone conversations with Police staff able to comment on local level data within each case study area.

**Summary and discussion**

The research demonstrated that despite the numerous barriers to all of the approaches aimed at enforcing underage alcohol sales regulations, possibly more so than facilitators, test purchasing in particular is regarded as a very useful way to gauge and potentially improve licensed trade staff practice. A majority of licence holders also reported that test purchasing was their preferred enforcement tool, as long as it was used in tandem with a robust proof of age documentation scheme.

There was merit seen in all of the approaches covered in this study, from test purchasing to alcohol diversion schemes. Challenge 25 was also implemented within the lifetime of the research project, and respondents were hopeful that it would also have an impact on direct sales of alcohol to those under the legal age for purchasing alcohol. All of the enforcement mechanisms were thought to have resulted in a reduction in direct sales of alcohol to underage young people.

The longer-term aim of reducing alcohol consumption in this age group was deemed to be more problematical. Interviewees in this study did not necessarily see a link between direct sales of alcohol to young people, and alcohol consumption in this age group. The consensus was that the drinking culture in Scotland as a whole would have to be addressed, possibly through measures such as minimum unit pricing, before there would be evidence of a fall in alcohol consumption levels among young people.

**Conclusions**

Despite many known problems with the way the enforcement measures work in practice, many of the measures were regarded as necessary ‘good practice’ by all respondent groups in this study, including licence holders, in terms of deterring underage sales. However, they were not regarded as sufficient in themselves in reducing alcohol consumption by young people where broader cultural factors were seen to be more powerful.

**Recommendations**

Improvements to current enforcement practice were suggested:

The Scottish Government should consider:
• measures to address young people loitering outside off-sales and soliciting people to purchase alcohol on their behalf
• the issue of agent purchase (a young person asking someone over the age of 18 years to purchase alcohol on their behalf)
• deliveries from online and off-sales - the adequacy of current measures and guidance, including the need for proof of age verification.

Any review of the current guidance and practice should consider:

• the adequacy of current guidance on proof of age
• Amending test purchase practice to include: for example, the use of volunteers up to (but not including) the age of 18 years given the implementation of Challenge 25, and possibly to be allowed to ‘role play’
• the issue of volunteers potentially appearing in court as witnesses, as well as their status in court. This should be made clear to volunteers and parents, as stipulated in the Association of Chief Police Officers in Scotland (ACPOS) guidance
• the need for more guidance on what Licensing Boards should do if, for example, an outlet fails a test purchase twice
• ensuring that bottle marking schemes are mandatory, if adopted in a locality, and a detailed evaluation conducted to assess their worth.

Police, Licensing Boards and Procurators Fiscal should consider:

• the provision of additional contextual information, if possible, in reports submitted to Procurators Fiscal and Licensing Boards by Police Officers related to underage alcohol sales or drinking, as stipulated in the ACPOS Guidance
• the need for Licensing Boards to make decisions more quickly, where possible, and not wait for decisions to be made by Procurators Fiscal
• the need for Prosecutors to follow existing Crown Office guidelines more consistently
• the need for the Crown Office and Licensing Boards to inform Police of the outcomes of reports that have been submitted
• the requirement for improved liaison between the Procurators Fiscal, Licensing Boards and Police.

Licensed trade should consider:

• asking for proof of age documentation as a matter of routine, and:
• requiring licence holders to produce a written Challenge 25 policy.

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1. Introduction

1.1 Background
As part of the Monitoring and Evaluating Scotland’s Alcohol Strategy (MESAS) portfolio of studies NHS Health Scotland commissioned a three-year evaluation of the implementation of, and compliance with, the objectives of the Licensing (Scotland) Act 2005\(^4\). The evaluation, which is being undertaken by the Scottish Centre for Social Research (ScotCen), included an eight-month sub-study of test purchasing and other measures to enforce underage alcohol sales regulations.

The study was commissioned in April 2011. Fieldwork and data collection was carried out between July and December 2011. This evaluation report covers the sub-study only.

This study investigated a number of measures which aim to enforce underage alcohol sales regulations: test purchasing, Challenge 25, proof of age schemes and bottle marking schemes. These are outlined below.

**Alcohol test purchasing:** this is a procedure used by the Police to test whether or not alcohol is being sold to those who are underage. They will use the services of a 16 year old volunteer who will be asked to go into a licensed premise to attempt to buy alcohol under the direct observation of a plain-clothes Police Officer situated within the premises (ACPOS Manual of Guidance on Test Purchase of Alcohol in Scotland). Since December 2007, a total of 4060 alcohol test purchases have taken place across Scotland, with 500 of these tests resulting in failures (failure rate 12.3\%).\(^6\)

**Proof of age schemes:** The Licensing (Scotland) Act 2005 outlines the regulations relating to the sale of alcohol to a child or young person. It states that it is an offence for a person to sell alcohol to a child or young person. Individuals who have sold to those underage must show that they believed the child or young person to be aged 18 or over; and either that they have taken reasonable steps to establish the age of the young person or show that no reasonable person could have suspected the young person was underage based on their appearance. The reasonable steps to establish age must include being shown one of the following documents: a passport, a European Union photocard driving licence, or a photographic identity card of a type approved by the British Retail Consortium for the purposes of its Proof of Age Standards Scheme (PASS).

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\(^4\) More information on MESAS can be found at http://www.healthscotland.com/scotlands-health/evaluation/planning/MESAS.aspx


\(^6\) Data supplied by ACPOS, February 2012
Challenge 25: In October 2011 the Alcohol etc (Scotland) Act 2010 introduced a new mandatory condition for all licensed premises to implement an age verification policy in relation to alcohol sales. A minimum age of 25 has been set so that staff serving in licensed premises across Scotland are required to ask customers who look under the age of 25 for identification to show they are 18 years or over and can legally purchase alcohol.

Bottle-marking schemes: A number of local authorities in Scotland are trialling bottle marking schemes. This is where retailers are required to mark bottles of alcohol with an invisible code specific to their store. Alcohol confiscated from young people found drinking can therefore be traced back to the premises where it was purchased. It is not mandatory for all retailers selling alcohol to participate in bottle-marking schemes.

1.2 Aims and objectives
The overall aims of this sub-study were:

- To explore the barriers and facilitators to test purchasing and other approaches aimed at enforcing underage alcohol sales regulations, and to identify lessons for improvement in terms of implementation to support the realisation of the longer term outcome of reducing underage drinking.

To achieve these aims the sub-study had six objectives:

1. To investigate the practical implementation of these mechanisms for enforcing underage alcohol sales regulations including:
   - what mechanisms were being implemented
   - why these mechanisms were being implemented, and where test purchasing was not being implemented, why this was the case
   - how these measures were being implemented
   - the perceived outcomes of these mechanisms.

2. To identify through interviews with a range of stakeholders the perceived barriers and facilitators to, and (positive or negative) unintended consequences of, these mechanisms.

3. To explore with a range of stakeholders the feasibility and sustainability of these mechanisms.

4. To examine the views of Procurators Fiscal and Licensing Boards on test purchasing and/or the mechanisms used locally for enforcing underage alcohol sales regulations in general, and on the reports submitted by the Police, in particular.

5. To examine the outcomes of decisions made by Procurators Fiscal and
Licensing Boards in response to reports on test purchasing failures submitted by the Police.

6. To identify the learning for the Scottish Government, Police, Licensing Boards, and the licensed trade to improve the implementation of test purchasing and other mechanisms for enforcing the underage alcohol sales regulations.
2. Methods

A case study design was utilised in order to explore the issues in three different Police Force areas of Scotland. Case Study Areas A and B both had recent experience of using test purchasing to enforce the underage sales of alcohol regulations. Area C was selected as the national data suggested that it was not actively using test purchasing. In each of the three case study areas, the following methods of data collection were used:

2.1 Qualitative in-depth interviews
In-depth interviews were conducted with representatives of the following three groups:

- Police (n=8): two interviewees per area – one respondent was selected to cover the strategic context and the other to address more operational matters. A further two interviews were conducted in another Police Force Area to cover a more rural perspective
- Procurators Fiscal (also referred to as Prosecutors in this report, n=3): one interviewee per area
- Licensing Board representatives (n=3): one interviewee per area.

2.2 Quantitative data collection
Structured interviews were conducted with Licence Holders (n=60). These were sampled from lists provided by the police in the three case study areas. In both Areas A and B, 25 interviews were carried out with licence holders of on and off sale premises with relatively recent experience of test purchasing, including test purchase passes and failures. Ten interviews with licence holders were conducted in Area C to cover other enforcement mechanisms in relation to underage sales. These interviews included both fixed choice responses as well as a few open-ended questions.

An analysis of routinely collected and readily available data relevant to test purchasing and breaches of regulations on underage alcohol sales was carried out. These data were obtained from the Scottish Government and ACPOS. These data helped provide a wider context for the findings of the study. Telephone conversations with Police staff enabled a better understanding of the local level data within each case study area.

2.3 Data collection and analysis

2.3.1 In-depth interviews
The in-depth topic guides for stakeholder interviews were developed by the evaluation team. These interviews were conducted on a face-to-face basis and by telephone. Interviews with Police respondents were carried out in July and August 2011. The Licensing Board interviews took place in November 2011. The Prosecutors were interviewed in November and December 2011. All interviews
were digitally recorded, with the interviewees’ consent, and fully transcribed. Transcripts were entered into NVivo 9.2, a qualitative data analysis package, and a thematic analysis was carried out. Direct quotes are reported in the Results section.

2.3.2 Structured interviews
The licence holder interviews were conducted on a face-to-face basis, although a few respondents were interviewed by telephone. Fieldwork took place between August and October 2011. ScotCen interviewing staff completed the fixed choice questions, took detailed notes during the open-ended questions, and wrote up a full near-verbatim account of these elements immediately after the completion of the survey. All the data were entered into the quantitative data analysis package SPSS. Data from fixed choice questions were analysed using SPSS, with basic frequencies presented in the Results section. Open-ended questions were printed out and a thematic analysis was carried out. Near-verbatim statements are also reported in the Results section.

2.3.3 Analysis of routine data
An analysis of routinely collected and readily available data relevant to test purchasing and breaches of regulations on underage alcohol sales was undertaken. Data were provided by the Scottish Government (offence data; see Appendix 1 Table A) and by ACPOS (test purchasing data; see Appendix 1 Tables B and C). Follow-up telephone conversations with Police staff able to comment on national and local level data within each case study area were also conducted (Appendix 1).

2.4 Limitations of the study design and methods
It must be acknowledged that there were a number of weaknesses and limitations in this study which mean that some of the results should be treated with caution. The main weaknesses were:

- The small scale of the sub-study informed the choice of a case study approach. This may limit the generalisability of the findings. In addition it was not possible to include participants from all the local and national stakeholder groups, for example, test purchase volunteers, parents/carers, Crown Office and ACPOS.
- As each police force area may adopt quite different approaches towards test purchasing, bottle marking and other schemes, regardless of social demography and geography, it is possible that it is problematical to generalise results to all areas of Scotland.
- To inform an understanding of the barriers and facilitators to test purchasing and other mechanisms, one case study area was selected which, on the basis of the available quantitative data, appeared to have chosen not to implement test purchasing. From the interviews, however, it appears that was not due to active opposition to this particular enforcement method. Police interviewees, for example, reported that it
was not a focus of current operations due to a lack of evidence of underage sales occurring in the area. As such, this area may not represent a Force which has actively chosen not to implement test purchasing.

- Licence holder structured interviews: only 60 licence holders were interviewed in total from across the three case study areas. As a result of the small sample, it was impossible to carry out statistical significance testing between or indeed within areas. Also, due to differences in the licence holder contact lists that were made available to the research team, there was quite a discrepancy in terms of when the licensed premises had been subject to specific enforcement measures, and indeed what these measures actually were.

- Interviews with prosecutors: Due to the fact that relatively few cases related to underage sales of alcohol had come before the prosecutors, they were not always able to answer all of the questions, or had not always had direct experience of cases related to the various enforcement mechanisms.

- The analysis of routinely-collected data (see Appendix 1): there are a number of issues related to these data. For example, as data were recorded and provided by police, the figures may be higher than nationally collated offence data. Also, due to police operational strategies and reporting patterns, it may be hazardous to draw too many conclusions in terms of, for example, trends in agent purchase.
3. Results

3.1 Routinely collected data
An analysis of routinely collected and readily available data relevant to test purchasing and breaches of regulations on underage alcohol sales was undertaken. Recorded offence data for the period 2000/2001 – 2010/2011 were provided by the Scottish Government (Table A, Appendix 1), data on test purchasing activity for the two years 2010 and 2011 were made available by ACPOS (Tables B and C, Appendix 1). Follow-up telephone conversations with Police staff able to comment on national and local level data within each case study area were also conducted (Appendix 1).

3.1.1 Relevant alcohol-related offence data
Table A, Appendix 1 shows the relevant alcohol-related offence data for the three case study areas and for Scotland as a whole for 2000-2011. It is important to note that these figures relate to crimes or offences recorded by the Police, and as a result they will be higher than the figures for convictions under these categories.

Across Scotland, over the financial year 2010/2011, for the four alcohol-related offence categories for which data were made available, the highest number of offences were recorded under the categories of “sale of drink to person under 18” (206 offences), and “purchasing excisable liquor for consumption by person under 18” (242 offences). The third largest category was “person under 18 buying excisable liquor or consuming in a bar”, for which 99 offences were recorded. Over the two-year period 2009/2010 to 2010/2011 there was a decrease in the numbers of recorded offences in all three categories.

What the data also, indicate, however, is the considerable fluctuation, over the 11 year period in the numbers of recorded offences under each of the categories. The number of offences recorded as “purchasing excisable liquor for consumption by person under 18”, for example, ranges from 147 in 2000/1, increasing to 562 in 2006/07, declining again to 242 in 2010/2011. This fluctuation may reflect changes in Police strategies or recording patterns over time or within police force areas.

3.1.2 Test purchase data
Data supplied by ACPOS suggest that across Scotland 887 and 837 test purchase visits were made in the calendar years 2010 and 2011 respectively (Tables B and C, Appendix 1).

The great majority of visits (around 90%) took place in off sales. For all test purchases the failure rate in both years was around 9.5%. 
3.2 Interviews with the Police

This section explores the views of Police interviewees in relation to test purchasing and other strategies used in their area to deal with underage alcohol sales and underage drinking.

3.2.1 Current local strategies to deal with underage drinking and alcohol sales

In describing their overall approach, interviewees talked about the links between alcohol use and crime, and that local strategies aimed to reduce the number of alcohol-related incidents and increase the detection of alcohol-related crimes. Reducing the availability of alcohol to young people was therefore seen as an important part of that strategy. Officers also talked of targeting resources towards areas where there were problems with youth disorder, antisocial behaviour and vandalism which impact on local communities.

'We all have a responsibility to sort of use the staff and the resources that we have to tackle underage drinking. It's obviously one of our divisional targets, and it's linked to our own Force objectives. It's obviously an accepted fact underage drinking is... It's closely linked to a lot of reports of sort of disturbance – low level disturbances – annoyance to residents, and also to sort of low level crime such as vandalism....' (Resp 7, Rural Area)

There was recognition that no one single mechanism could address such issues and interviewees talked of a combination of methods (see below) that were being used in their areas, some of which included test purchasing.

Test purchasing

Of the four Police Forces included in this part of the study, three indicated that they were currently using test purchasing as a mechanism for tackling underage sales. Whilst the fourth had done so in the past, they were not currently conducting test purchasing on the basis that they had no information coming in to suggest that young people in the area were buying alcohol directly from off or on-sales.

This intelligence-led nature of test purchasing was highlighted by officers whose Force areas were currently deploying test purchasing. Previously test purchasing had been conducted using a minimal amount of intelligence, which could be fairly historical, and sometimes used a ‘blanket’ approach. However, the current approach was described by officers as being much more driven by intelligence and engagement with licensees. An Area A respondent described the steps leading up to a test purchase event, and talked of a ‘traffic light’ system they used in relation to licensing issues. Intelligence suggesting illegal alcohol sales would trigger a number of activities – firstly, a letter to the premises to notify them about information received and request that they be vigilant in managing the premises; secondly, if additional information is received to strengthen the original intelligence, a visit to the licence holder to discuss solutions; and thirdly, on receiving further intelligence that the problem is persisting, then a test purchase operation would be arranged.
‘… there would have to be some sort o’ intelligence on our Scottish Intelligence Database for us to justify doing it because that’s usually one o’ the first questions that … If a shop fails twice, and is reported, our licensing department usually phone up and ask for the intelligence number that gave us the authority… to do it. So we won't just do it willy nilly.’ (Resp 4, Case Study Area A)

The current system of engagement was also seen by one officer as being fairer to licensees, and helped provide justification for any sanctions that may be applied to breaches.

‘...with the new approach I think it's far fairer on the licensee… We're just trying to engage with them, trying to offer them support, trying to make sure that they put some measures in place themselves to try and minimise the likelihood of an opportunity of an underage sale, and, as a last resort then, we would carry out a test purchase operation. And then, when we do that, and we can report to the Fiscal saying that, “Well, we've tested the premises. They've failed. But we've also sent them a letter...gave them a visit”, you know? Then it actually adds credence and adds weight to the test purchase operation, and any sanction thereafter is justifiable.’ (Resp 3, Case Study Area A)

In one of the more rural forces, test purchasing was described as having an ‘education phase’. Where intelligence showed that a test purchase operation was needed in a particular town, they would attempt to speak with all licensees in the town beforehand, issuing them with leaflets on test purchasing and explaining that it would be carried out on their premises. Local radio and newspapers would also be used to raise awareness. This awareness raising exercise was undertaken during the pilot and within all areas where test purchasing was being introduced during the ‘roll-out’.

**Other strategies**

It is clear that test purchasing is only one of a number of strategies aimed at addressing the issue of underage drinking. A respondent from the rural area reported:

‘We try to use a number of methods of tackling underage drinking... there's obviously a problem with underage drinking in licensed premises... that’s where we can use test purchasing and use the Pub Watch schemes to try and address that issue. There’s an issue with parents not taking responsibility perhaps, sometimes providing the alcohol, so that’s where Operation Round Up can, you know, (confront) parents with the situation there and then.’ (Resp 7, Rural Area)

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Where other strategies were used, the Police were working in partnership with other agencies on many of these, such as Best Bar None, the licensing forums, Licensing Boards, Health Board, the licensed trade, the local council, Licensing Standards Officers, Trading Standards Officers, youth groups, voluntary agencies and the education sector. Examples of these measures included:

- **Bottle-marking schemes** - Police interviewees in three of the four areas mentioned that bottle-marking schemes had been used in their areas. In one area, bottle-marking had recently been tested and the local Licensing Board was currently consulting on whether this initiative should be rolled out across the whole area.

- **’Dry up’ or ‘round up’ operations** – These exercises involved Police Officers or community Police Officers (sometimes in combination with other agencies, volunteers and youth workers) going out onto the streets to identify and engage with young people who had been drinking. These ‘dry up’ or ‘round up’ operations sought to achieve a number of things: alcohol confiscation; intelligence obtained on where the young people got their alcohol, and young people escorted home or a home visit arranged for a later date. In some cases, young people who had been drinking were taken back to the Police Station and their parents asked to come in to collect them. There was then an opportunity for parents to talk to professionals from other agencies involved in youth or social work who were available to offer appropriate support in relation to their child’s drinking behaviour.

- **Alcohol diversion schemes** - Alcohol diversion schemes had been used in at least one of the areas. These schemes aim at decriminalising the young, and fixed penalties or charges related to alcohol-related incidents are waived if the individuals engage with Alcohol Counselling Services.

- **Compliance testing of age-restricted policies (other than test purchasing)** - One interviewee talked of ‘compliance testing’ in their area whereby Police Officers and trading standards officers have gone into shops with volunteers aged over 18 years to test whether they are complying with the age-restricted policies they have in place (e.g. Challenge 21, Challenge 25).

- **Activities for young people** - One interviewee mentioned that they work with other agencies to provide a number of activities for young people in the area over weekends including evenings, such as ‘blue light discos’, ‘twilight sports’ and ‘midnight football’. The Police Liaison Officers in their area had also worked closely with local youth clubs, getting to know the staff and the young people who attend.
• **Initiatives involving licensed premises** - A number of approaches involved working with the licensed trade, such as providing training events for premises staff on prevention of underage alcohol sales; Pub Watch schemes, whereby officers worked closely with pub landlords to try to ensure young people are not accessing alcohol in pubs; community Police acting as ‘licensing champions’, and visits to licensed premises to tackle licensing enforcement in general.

‘For us we would always prefer to be intelligence-led but sometimes we will have... a city wide or a city centre wide campaign or initiative whereby we’ll flood licensed premises, go in speak to the clientele, speak to the staff.....look for signs of underage drinking, drug dealing.... it’s a kind of a multi-stranded approach to licensing interventions that we adopt.’ (Resp 6, Case study Area B)

### 3.2.2 Dealing with breaches

In terms of test purchase failures, the Police followed the guidance provided in the Association of Chief Police Officers in Scotland (ACPOS) Manual of Guidance for Test Purchase of Alcohol in Scotland\(^8\); after the first failure the relevant person(s) would be charged. A second test purchase would take place within a fortnight. A report would be sent to the Procurator Fiscal (and a premises licence review application sent to the Licensing Board) following the second test, regardless of whether there was a single or double failure. It was then up to the Fiscal and the Board to take appropriate action.

Police respondents reported that the responses from the Procurators Fiscal and Boards were mixed. Some respondents indicated that they were not always aware of any action taken directly in relation to test purchase failure or selling alcohol to minors – this was often due to the time lag that resulted – they might subsequently hear that a licence had been revoked but this could be down to breaching a number of different licensing regulations. It was also thought that the Prosecutor may only bring a prosecution if there were a number of associated crimes or contributory factors (such as a previous similar offence) linked to a licence holder and/or the licensed premises. One respondent stated that in his area there had been test purchase failures at two licensed premises, which were reported to the Procurator Fiscal and Board, but no court proceedings resulted. Other respondents reported that in some areas not many cases were reaching the Procurator Fiscal, and a Licensing Board may wait for the outcome of this before making its own decision. This was seen as conflicting with one of the aims of the Licensing (Scotland) Act 2005 which was to hear cases quickly. It also meant that premises which had not complied with the Licensing Act objectives could continue to operate for a considerable number of months until the review was actually heard.

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\(^8\) See document at: http://www.acpos.police.uk/Documents/Policies/OP_ACPOSTestPurchaseOfAlcoholMOGv11.0.pdf
In contrast, other respondents reported that the Board had reacted very quickly to a test purchase failure and this had resulted in a licence review and a written warning to the licence holder. Other reported sanctions included the suspension of a licence for a few months.

The overall consensus, though, was that very few licenses were suspended or revoked due to supplying underage children with alcohol and, in some cases, multiple breaches would need to take place for serious action to be taken. Respondents thought that the Boards appeared reluctant to act because their decision was not backed up by a court judgement and could be challenged.

3.2.3 Feedback from licence holders
The Police respondents were asked about the licensee reaction to test purchasing and, more generally, licensees’ responses to local mechanisms to deal with underage drinking.

Overall it was reported that there was generally a positive reaction from a slight majority of licensees. On the whole it was remarked that standards had improved, possibly due to the knowledge that licence holders risked losing their licence if they adopted poor operating procedures.

‘So a lot of the licensees I think have raised their game. There’ll be some less reputable ones who are quite happy to chance their arm and supply... to juveniles. I would like to think that that’s maybe less and less, with quite a good knowledge amongst them that their licensing regulations would maybe challenge... their reputation to hold a licence.’ (Resp 01, Case study Area C)

In terms of test purchasing, it was said that licensees were understandably always pleased to hear they had passed a test purchase visit. However, those premises that failed often reacted negatively and occasionally made complaints and tried to contest the test purchasing process, by, for example, arguing that they were singled out and/or the test purchaser did look older than they were. Nevertheless, some premises that failed test purchasing reacted positively as it highlighted concerns over a particular member of staff or operating practices.

‘By and large and I have to absolutely go on the record and say there’s 90 per cent of licensees are very, very positive about interaction with the Police and in fact welcome you on their premises...’ (Resp 06, Case study Area B).

Respondents commented that there were differences between different types of establishments; bigger operators, such as supermarkets, tended to be more willing to cooperate than smaller establishments such as corner shops. Many of the larger chains operated their own test purchase schemes, and so were generally comfortable with the idea of test purchasing.
It was thought that smaller operators, under greater pressure to make money and compete with the larger operators might be tempted to serve underage young people. In addition, an initiative such as bottle marking (which requires extra work for the licensees and staff) could be quite labour intensive for smaller shops and a few had resisted taking part in such initiatives. However, it was also pointed out that some licensees had voluntarily adopted measures such as ‘Challenge 21’. It was reported that a very small minority of licensed premises were run by ‘rogue operators’ who did not want the Police on their premises at all.

3.2.4 Impact of local strategies
The Police interviewees were asked for their perceptions of the impact the various strategies they had adopted in dealing with underage sales and underage drinking, in isolation or in combination, had made in their areas. Firstly, the areas cited so many different initiatives (see Section 3.2.1) that they said it was difficult to tease out the effect of one initiative only. The consensus from the four areas was that the overall impact of the initiatives had been positive in the main, although a few respondents argued that it was a mixed picture, with some of the perceived benefits balanced by negative outcomes. No interviewee reported an overall negative outcome from all of the different approaches that had been taken.

The Police view was that the measures that had been adopted in their areas had resulted in a reduction in direct sales of alcohol to young people and in some cases, a decreased availability of alcohol to those who were underage. Examples were also given of positive impacts in the community, with known drinking spots being targeted and young people who had been drinking alcohol being returned to their parents, as well as initiatives involving licensed trade staff and door stewards. The two respondents from the rural area in particular spoke at length of the highly successful youth work being carried out across different parts of their area, which they felt gave young people another outlet and made it less likely that they would engage in underage drinking. However, all areas cited the work of community response or safety teams, as well as other Police Officers, as having benefits in their areas. The local media was also thought to play an important role by publicising the outcomes of Police initiatives or the results of young people binge drinking, which increased awareness in young people and their parents of these issues.

‘There was no overt sign of drunkenness. What was that down to? And I think it was the consistent approach to targeting of youth alcohol abuse at the weekends, and basically no quite a ‘zero tolerance’, but they could just about guarantee the Police would be on their tail trying to prevent that. And that was a very positive community impact that I saw, and it's probably as good an example…that this strategy was working.’ (Resp 2, Case Study Area C)
‘I don’t think you can quantify how much test purchasing in isolation has influenced (access to alcohol) or how much other enforcement measures, inspection and whatever has led to that, or how much simply good licensee-ship has contributed to that. What I can say is that it will have contributed in some measure to it. The other bit for me is all of the publicity that goes around this is that we make sure that every transgressor ends up being publicised in some way, shape or form.’ (Resp 6, Case Study Area B)

Despite these positive perceptions, and the view that direct sales of alcohol to those who were underage had arguably decreased, the consensus was that either drinking levels in young people remained the same or were possibly even higher, or at least there was no evidence for a reduction in alcohol consumption among those under the age of 18 years. There were several reasons cited for this. Agent purchase, involving older people purchasing alcohol for those who are underage, was reported as being on the increase in all of the areas. Related to this, the fact that parents often provided the alcohol to their children, knowingly or unknowingly, (for which they were criticised by a number of respondents for lacking responsibility) was felt to have resulted in young people having access to alcohol. It was also argued that the Scottish drinking culture condoned drinking among young people to a certain extent, as often previous generations had started drinking alcohol before the legally permissible age, and there was a belief that the youth of today should experience the same rite of passage.

‘The problem doesn’t go away, you know? They just get the alcohol in a different way, so... that doesn’t mean (test purchasing is) wrong. It’s still a valid and useful tactic, but it... hasn’t solved the problem. It’s just they reduced the direct sale of alcohol to persons under the age of 18 years of age, and, I would suggest, it's directly influenced the vigilance of licence holders in relation to the sale of alcohol to persons under 18 years of age... the youth’s drinking is a cultural issue and it's a big one for the Government, and it's got to be addressed.’ (Resp 3, Case Study Area A)

There were other reasons given for drinking levels among young people remaining unchanged. The Police view was that test purchasing was useful and had an impact, but that there would always be about 5-10% of licensed trade staff who would flout the law. Also, it was stated that a few licensed trade staff members sometimes sold alcohol to young people if they knew their parents, as they were sure it was not part of a test purchase operation. A minority of licensed trade staff were also said to ask the age of those attempting to buy alcohol, as they were aware that test purchase volunteers have to tell the truth, and would then sell the alcohol if the purchaser gave an age of 18 years or above. Some young people were also perceived as being willing to try almost anything to access alcohol, from the forging of cards to encouraging proxy purchase, and there was a concern expressed that if Police-led initiatives were successful, that alcohol-related problems in the young would emerge in another way.
‘Kids that are underage… (the licensees) they maybe know their mums and dads. They know that they're not going to be a test purchaser, and they feel comfortable selling them alcohol in that way. I would say that it's deterred a lot o' premises, but you still have your core… which is obvious, because there's still kids drinking in the street, so they're obviously still a problem…., but I don't think we'll completely eradicate it to be honest. I really don’t.’ (Resp 4, Case Study Area A)

The respondents were asked if there had been any unintended consequences as a result of their underage drinking strategies. A number of perceived positive consequences were reported. An interviewee in Area C, for example, said that he no longer had to deal with licensees selling to those who were underage when he attended the Licensing Board. An Area B respondent said that he had better links and more engagement with the licensing forum. Other comments included: more premises adopting an over 21 sales policy, test purchasing having only benefits and no drawbacks, as well as volunteers gaining invaluable work experience when they took part in test purchase visits. Negative findings included relatively young members of staff being at the point of sale – it was thought that these inexperienced members of staff may find it more difficult to ask for proof of age documentation from their peers.

‘The Licensing Board… what's been positive for me is that when I've been going to the Licensing Board, I've not had to deal with licensees selling to juveniles. That’s a positive for me… almost an unexpected positive in some ways.’ (Resp 2, Case Study Area C)

3.2.5 Dealing with underage drinking and alcohol sales: key facilitators
Police interviewees were asked whether there were any factors which had helped them in their efforts to address underage drinking in their area. The reported facilitators included:

- **The quality of test purchasing volunteers** – officers felt that the volunteers they had used had been the key to the effectiveness of test purchase operations. It was said that the young people involved had conducted themselves very confidently during the visits, despite the process being potentially daunting for some. The help received from schools to identify suitable candidates to act as volunteers was also acknowledged.

- **Good intelligence** - receiving good intelligence was seen as being vital to addressing underage drinking. Much of this was said to come from local residents who came forward to provide information about underage drinking and associated problems in their communities. Other sources of intelligence were from officers on patrol, complaints from local community councils, Crimestoppers, and ‘informal’ discussions with other agencies involved in working with young people.
• **Skills and experience of officers** – one of the interviewees said that test purchasing in their area was working very well due to a combination of experience through conducting test purchasing and the provision of regular training to ensure that skills are refreshed. This was seen as particularly important given that Police Officers move posts fairly frequently.

• **Support from licensees** - It was suggested that the majority of licensees had shown a willingness to work in partnership with the Police to address underage drinking, and had shown support for specific initiatives. It was felt that this has been demonstrated by the large number of test purchase passes. Good licensee training was also seen as being crucial in this regard.

• **Raising awareness** - Licensees were viewed as being much more aware of the need to address underage drinking and the consequences if there was a breach of the rules. Raising awareness of test purchasing and of any suspensions or losses of licence via local radio and newspapers was seen to be particularly effective in influencing licensees. Engaging with licensees either through organised talks or visits to premises also raised awareness about test purchasing, and allowed licensees to ask questions.

• **Working in partnership** - Partnership engagement to address underage drinking was seen as being ‘absolutely pivotal’ especially in relation to prevention measures. A joint action group with the Council had been set up in one area to look at underage drinking, including representation from Police, council, housing and the Health Board.

3.2.6 Dealing with underage drinking and alcohol sales: key barriers
Police interviewees were also asked whether there were any factors which had acted as barriers in addressing underage drinking in their area. The perceived barriers included:

• **Agent purchase** - The issue of agent or proxy purchase, where those over the age of 18 years buy alcohol on behalf of those who are underage, was raised as an issue across the areas. Although it was felt by one officer that sanctions now used against licensees meant that most are very wary of selling to young people, the upshot was that proxy sales had increased in some areas. It was also described as being a problem in relation to bottle marking schemes working effectively as even though a bottle confiscated from a young person could be traced back to a particular outlet, there may be no way of knowing whether it was sold directly to the young person or to an ‘agent’ buying on their behalf. One respondent queried whether they were doing enough marketing around proxy purchase.
• **Young people getting alcohol from home** - The issue of young people obtaining alcohol from home, sometimes with the consent of their parents was raised. Getting alcohol from home was felt to be relatively easy as many parents would not even notice if some alcohol was missing. A perceived lack of parental responsibility was also raised in this context.

• **Selling to local children** - Another barrier to test purchasing was considered to be the practice of selling to local young people known to the licensee. These local children were seen to make test purchasing very difficult given the policy of not using local volunteers, as licensees would automatically refuse them on the grounds that they were not known to them. Also, a few licensees were said to ask young people their age, in the full knowledge that volunteers had to tell the truth, whereas non-volunteers would be able to claim they were 18 or over.

‘One of the difficulties we’re encountering with test purchasing is that a lot of the places that we suspect are selling to underage kids know the kids, and as soon as an unfamiliar face comes in, they’ll not serve.’ (Resp 5, Case study Area B)

• **Cheap alcohol** - The low cost of some alcohol in supermarkets was seen as another barrier to addressing underage drinking. Cheap alcohol, often large two litre bottles of cider was what tended to be confiscated from young people in one area.

• **Deliveries of alcohol** - One respondent mentioned that their local area was experiencing problems related to young people obtaining alcohol via deliveries from off-sales. This was the subject of two cases currently being reviewed. Whilst it was acknowledged that off-sales were entitled to deliver alcohol, it was highlighted that this has to be done within the guidelines of the Licensing (Scotland) Act, including asking the person receiving the delivery for identification. However, it was felt that the system was open to misuse and that the guidance needed to be tightened up.

‘And I spoke to the two officers, who are trained up there in relation to licensing issues, and I said, “What’s our problem in [place] right now with alcohol?”’, and they said, “It’s not buying, it’s no agent purchase. It’s delivering. The kids know now; phone up and deliver”, and premises will deliver to a certain known spot. “Can you deliver it to the blue stairs?” “Aye. We know where that is. We’ll do that.” “Can you deliver it to this address?” “No bother”. So the kids don’t even have to go out now to try and buy it. They don’t even have to badger adults to buy for them. They can just phone up. It’s the ‘dial a drink’ type thing.’ (Resp 5, Case Study Area B)

• **Recruiting and retaining test purchase volunteers** - Officers talked of the difficulties of recruiting and retaining test purchase volunteers. This
was thought to be due to a number of factors: reluctance from parents in letting their child participate, especially if there was a chance of a court appearance (it is understood that for some review cases, solicitors for the licensee have requested to speak to the volunteer); the narrow age range for volunteers (between 16 and 16 and-a-half years in some areas) meaning that they can only be used for a short period of time and need to be replaced quickly.

- **False IDs** - The ease of obtaining false identification was another concern, with fake driving licences being obtained relatively cheaply via the Internet. Another issue relates to forging student cards or nationally accepted identification cards such as Young Scot. One officer suggested that some licensees will still sell to young people who produce ID stating they are 18, even though they look younger.

- **Current economic climate** - The difficulties faced by some of the smaller licensed premises due to the current economic climate were acknowledged by interviewees, whereby the licensed trade staff may decide not to adhere as strictly to the licensing rules related to alcohol sales to young people. This was also said to impact on the decisions of Licensing Boards.

‘….when things do come before them there’s a reluctance to deal with it in what I would suggest… is the proper way… fine them, take their licence from them. Not necessarily take their licence from them permanently but suspend it for two weeks, three weeks….. I know why because there’s economic situations and jobs are at risk and… it’s not easy but that’s the situation we’re in.’ (Resp 1, Case Study Area C)

- **Delays in dealing with cases** – another concern related to delays in review hearings by Licensing Boards who want to wait until a case which is also going through the criminal courts has concluded as it would give them a higher standard of evidence on which to base their decision (see Section 3.1.2). The summer recess taken by some Licensing Boards was also felt by one interviewee to cause delays.

- **Drinking culture** - Officers in all three case study areas, as well as the respondents from the rural area, referred to the drinking culture in Scotland as one of the main barriers in addressing drinking among young people. Whilst their enforcement activities can help to address some of the problems faced by communities, there was a view that more could be done to address Scotland’s drinking culture through education and changing attitudes towards alcohol, not only for young people, but very importantly for adults too.
‘….there’s a huge issue with people and the misuse of alcohol in general and actually you’ve got a continuum that starts round about the age of 14 and actually doesn’t kind of come down until people are in their late 30s, if it does, and all of the research shows us that the culture in Scotland with young people and I’m talking about people of a legal age to drink as well, is that you drink to get drunk and in some cases you drink to get very drunk and this goes right across the social spectrum…’ (Resp 6, Case Study Area B)

- **Resources** – it was suggested that some Forces may have more resources than others to deal with underage drinking and that some Forces may have to spend more time dealing with other sorts of crime depending on the type of area they work in. Alcohol diversion schemes (see Section 3.2.1) may also suffer when resources are scarce.

‘Having to divert on to other things when we’ve got planned operations for test purchase…lack of resources, definitely.’ (Resp 4, Case Study Area A)

- **Lack of support/engagement with some licensees** - Some licensees were described as being generally more difficult to engage with, both within the on and off-sales sector. Lack of training for premises staff was raised as an issue and there was a perception that the training given to staff working in smaller off-sales premises was not as robust as that provided by supermarkets, which were thought to be stricter in applying regulations in relation to younger person’s purchase of alcohol.

3.2.7 Changes to strategies aimed at enforcing underage alcohol sales regulations

The interviewees proposed a number of changes to the various strategies aimed at enforcing underage alcohol sales regulations, as well as reducing alcohol-related harm in this age group. As one of the issues identified was that the Scottish drinking culture was viewed to be problematical, and Scots of all ages were perceived as accepting the fact that drinking to excess was normal, it was thought that this very culture itself had to be challenged and changed if young people were to develop a more responsible attitude towards alcohol. It was acknowledged that this was far from straightforward and there was no “quick fix”, but respondents did argue that the cost and availability of alcohol had to be considered, and that minimum unit pricing was to be encouraged and supported in this regard. Similarly, interviewees called for certain licensees to be more responsible, both in the on trade in relation to, for example, serving those who are drunk, to small independent off-sale shops trying to compete with supermarkets by selling cheap cider and beer. Issues such as these were perceived as having the capacity to change Scotland’s relationship with alcohol.
'The Force has gone on record as supporting minimum pricing and any other types of intervention that will reduce misuse, so alcohol is a big, big thing for us, ... we have a culture ... in Scotland where people drink to get off their face ... we have licensees that are quite happy to sell drink to people until they fall down, and we don’t do nearly enough enforcement around that ... there’s a culture of misuse of alcohol in this country, ... if we can break the culture in Scotland around the alcohol, we’ll reduce the demand and the rest of the stuff will kind of fall into place.' (Resp 6, Case Study Area B)

Specific comments were made in relation to individual initiatives. Respondents in two areas stated that the volunteers taking part in test purchasing exercises should be allowed to be aged between 16 and (almost) 18 years. This was because recruitment could be difficult and a test purchaser could in some areas be used for only a short six month period, as well as the fact that current approaches favoured licensees as the volunteers tended to look relatively young. As Challenge 25 was going to be implemented not long after the Police interview phase, this was thought to add credence to raising the upper age limit of the test purchasing volunteer. Another idea was raised by a Case Study B respondent to make test purchasing more attractive to volunteers, possibly by allowing it to become part of a recognised national qualification scheme.

‘...from October of this year, I think it’s across the Board our Challenge 25 policy. If that is the case, then why are we restricting ourselves so much in relation to test purchase?, because if you want to go down the letter of the law with it, and .. and get a test purchase operative for six months, who is between 16 and 16 and-a-half, no make up, no facial hair for the guys, to look young ... I am still quite surprised that some places still fail a test purchase. I really am. I think we just restrict ourselves too much with it. It just needs to be revamped, and stop favouring the licence holder...' (Resp 5, Case Study Area B)

The respondents also reported that agent purchase had increased as strategies such as test purchasing had become more common place. The guidance provided by the Surveillance Commissioner around when it was appropriate to engage the provisions of The Regulation of Investigatory Powers (Scotland) Act 2000 (RIP(S)A) have changed since test purchasing was introduced. Previously Test Purchasing was not considered to be ‘directed surveillance’ and as such there was no requirement to invoke RIP(S)A; this was left to the discretion of individual Chief Constables. This may no longer be the case. Finally in relation

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10 There is a view amongst officers who are specialists within this field that RIP(S)A authority may now be required for Test Purchase operations. With an increase in agent/proxy purchases other tactics have to be considered in respect of evidencing this, and there is no doubt that if surveillance was deployed to gather
to test purchasing specifically, respondents from both Area B and the rural area both called for more guidance to be given to Licensing Boards from the Scottish Government on how to deal with test purchasing breaches, as Boards’ decisions were reported to vary so widely across the country. A respondent from Area A also added that he would like Boards and Procurators Fiscal to deal with cases in a more appropriate way – his view being that often the decisions taken were unduly lenient.

‘Whether there be some new legislation in terms of licensing in respect of you’re caught two or three times selling to young people then maybe your licence should be suspended but I understand that’s a decision for the Licensing Board locally. And all the Boards throughout Scotland are very different and can take different views. So I think it would be useful whereby guidance could be given to Licensing Boards.’ (Resp 8, Rural Area)

Other changes were suggested which were viewed as having the potential to reduce either sales or alcohol-related harm in young people. Raising the legal age for purchasing alcohol to 21 was mooted. Another respondent said that he would like bottle marking schemes to become mandatory, at least for single bottles and items not part of larger cases. An Area A representative thought that more community schemes aimed at engaging with and involving young people would help provide other opportunities for this age group, and would lessen the likelihood of alcohol-related harm. Finally, in the rural area, it was reported that good practice guidelines were being developed which were to draw on local initiatives and approaches across the entire Force area.

‘… which we can do to a certain extent through the community safety and with the schools and the blue light discos and stuff like that… Aye. Diversion. That’s giving them something to do, as opposed to lying about a park, drinking a bottle o’ cider, which we can only do what we can do in that respect. Education as well.’ (Resp 4, Case Study Area A)

3.3 Views of licence holders
This section explores the views of licence holders in relation to test purchasing and underage alcohol sales.

3.3.1 Overview of sample of licence holders
Sixty semi-structured interviews were conducted with licence holders in the three case study areas. Table 3.1 provides an overview of the key sample demographics. The two areas selected as they were actively using test purchasing approaches provided 25 interviewees each. Ten licence holders took part in the interview phase in Area C, selected as many had experienced issues related to underage drinking in the recent past. However, it should be noted that
four of these respondents also reported being targeted as part of test purchase operations in previous years. The majority of interviewees represented the off-sales sector (n=47), with licence holders of off licences, supermarkets and licensed grocers all taking part. Ten interviewees representing the on-sale sector were licence holders of public houses. The final three interviewees represented nightclubs and hotels. Table 3.1 also shows that the majority of premises sold alcohol to those over 18 years of age (n=31), although 18 respondents said that they sold to those over the age of 25 (Challenge 25 frequently being invoked).

Table 3.1: Key demographics and other information

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<td>Case Study B</td>
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<tr>
<td><strong>Total number</strong></td>
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</tbody>
</table>

*one respondent said that the outlet served those aged 22 and over

3.3.2 Awareness, knowledge and views of methods aimed at restricting underage sales

Figure 3.1 shows that almost all of the interviewees were aware of the following ways of tackling underage alcohol sales: licensee and staff training, proof of age card schemes and test purchasing. Fifty-one licence holders stated that they were aware of Challenge 25, with six respondents citing other initiatives including Challenge 21, use of CCTV, bottle marking and companies conducting their own test purchase operations.
Figure 3.1: Awareness of methods

Figure 3.2 shows that the vast majority of licence holders reported that they knew at least quite a lot about proof of age schemes and test purchasing. Although the majority of respondents also stated that they had a fair amount of knowledge of Challenge 25 (the interview phase spanned its implementation), over one third of interviewees said that they had little or no knowledge of this initiative. It should also be noted that the minority of respondents who mentioned other initiatives, such as bottle marking, internal test purchase operations and staff training, reported that they had a lot of knowledge of these schemes.

Figure 3.2: Licence Holders’ knowledge of methods to tackle underage sales

Among the licence holders, the most popular method for restricting underage sales appeared to be test purchasing, with 33 respondents describing test purchasing as a very good idea and a further 16 stating that it is quite a good idea (see Figure 3.3). There was some evidence of polarisation, though, as seven licensees described test purchasing as not being a good idea at all. A majority of respondents also thought that Challenge 25 and proof of age card schemes were at least quite a good idea, although seven licence holders were unable to give a view in relation to Challenge 25.
The open-ended comments showed that all of the approaches had their supporters, although test purchasing received more positive comments than the other initiatives. Those who favoured test purchasing emphasised that it ensured that licensed trade staff remained alert at all times. Those who felt that test purchasing visits had been conducted unfairly, though, were very critical of this measure. As Challenge 25 was still such a recent measure not every licensee seemed to have formalised their views, but the general view was that it was a help to the trade as it allowed more leeway in asking for proof of age. A few respondents, however, said that it could be uncomfortable asking someone around the age of 25 for identification. Mixed views were expressed in relation to proof of age card schemes, with some licence holders arguing that PASS cards could be forged and passports and driving licences were the only sources of identification worth asking for, whereas others stated that the Young Scot and other PASS cards were sufficiently robust.

'I think (test purchasing) is a great idea. It helps to wheedle out the ones who don't care and sell to young people and helps staff to be vigilant.' (Resp 19)

'It (test purchasing) is very unreasonable - I was taken to court, it cost me a lot of money in legal fees (£5k) and it was thrown out of court.' (Resp 7)

'Challenge 25 is the best one which they have produced so far. Everyone under 25 is asked for ID - it is much better and safer for us.' (Resp 33)

'We only accept passport and driving licences - we don't accept any of the others as they can be tampered with.' (Resp 50)

3.3.3 Licence holder and staff training
Table 3.2 demonstrates that the majority of licence holders reported that they and their staff had received at least quite a lot of training in the sale of alcohol to young people. Only one respondent reported receiving a little training, and no
respondent said that he/she or the staff on the premises had been given no training.

Table 3.2: Training related to alcohol sales to young people

<table>
<thead>
<tr>
<th>How much training received?</th>
<th>Licence Holder N</th>
<th>Other staff N</th>
</tr>
</thead>
<tbody>
<tr>
<td>A lot of training</td>
<td>38</td>
<td>29</td>
</tr>
<tr>
<td>Quite a lot of training</td>
<td>20</td>
<td>24</td>
</tr>
<tr>
<td>A little training</td>
<td>1</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>59*</td>
<td>53**</td>
</tr>
</tbody>
</table>

* Can’t say/Don’t know = 1; ** Can’t say/Don’t know = 7

The licence holders reported a number of training courses they had attended over a number of years. Personal licence holder training, Servewise, Challenge 21 and in-house training were all cited. The fact that courses were mandatory was also mentioned. The training other staff members received appeared to be more varied. Again compulsory training, such as personal licence training or training on licensing laws and selling to young people, were referred to. It was also stated that the licence holders who had been on the longer training courses disseminated information to their own staff members.

'I have been in the business for 35 years and done lots of training over the years and more recently the new licensing course for Licence Holders - City & Guilds – Servewise.' (Resp 19)

'Staff trained on shift, also use corrective training, and every month we have a quota of tests and checks to send to the company as part of training and we are scored on that which includes selling alcohol to young people and how to properly ID people.' (Resp 60)

Almost all of the licence holders described the training they or their staff had received as being very or quite helpful (see Table 3.3). Two respondents argued that the training had not been helpful personally, and one of these individuals also said that it had been of no assistance to other staff members.
Table 3.3: Assessment of training received on alcohol sales to young people

<table>
<thead>
<tr>
<th>Helpfulness of training?</th>
<th>Licence Holder N</th>
<th>Other staff N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very helpful</td>
<td>36</td>
<td>36</td>
</tr>
<tr>
<td>Quite helpful</td>
<td>22</td>
<td>23</td>
</tr>
<tr>
<td>Not very helpful</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>Not at all helpful</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>60</td>
<td>60</td>
</tr>
</tbody>
</table>

3.3.4 Impact of measures on licence holder practice

A majority of interviewees stated that test purchasing and proof of age schemes had at least quite a large impact on their own practice (see Figure 3.4). As might be expected, Challenge 25 had not had the same level of perceived impact given a number of interviews took place before its implementation, and thus 23 licence holders were unable to say what impact it had had on their own practice at the time of interview. The licence holders were also asked what impact all of the measures had had on other licensees in their area. A majority of respondents were unable to answer the question for any of the measures. However, 16 respondents argued that test purchasing had impacted in at least quite a large way on other licensees in their area, compared with 10 interviewees who said that the impact had been minimal.

Figure 3.4 Licence holders’ views of impact of measures on own practice

3.3.5 Licence holders’ views of most suitable enforcement mechanism

Table 3.4 demonstrates that the most popular measure aimed at restricting sales of alcohol to young people was the use of test purchasing in tandem with proof of age card schemes (n=29). It is important to note that few of the licence holders thought any of the measures used in isolation were particularly effective. The ‘other’ category tended to include other combinations of measures; indeed five of these responses involved test purchasing used with other measures such as surveillance, training or Challenge 25. A few licence holders also stressed that
any proof of age card would only be worthwhile if it was part of a national scheme. Four respondents argued that no changes were needed to current practices.

### Table 3.4: Licence holders’ assessment of enforcement measures to reduce underage sales

<table>
<thead>
<tr>
<th>Which measure aimed at stopping sales to underage young people works best?</th>
<th>Licence Holders</th>
</tr>
</thead>
<tbody>
<tr>
<td>Test purchasing combined with proof of age documentation</td>
<td>29</td>
</tr>
<tr>
<td>Other</td>
<td>10</td>
</tr>
<tr>
<td>National proof of age card scheme alone</td>
<td>6</td>
</tr>
<tr>
<td>Test purchasing alone</td>
<td>3</td>
</tr>
<tr>
<td>Challenge 25 alone</td>
<td>2</td>
</tr>
<tr>
<td>Increased surveillance alone</td>
<td>2</td>
</tr>
<tr>
<td>Education and training of staff alone</td>
<td>2</td>
</tr>
<tr>
<td>No change, the status quo is fine</td>
<td>4</td>
</tr>
<tr>
<td>TOTAL</td>
<td>58*</td>
</tr>
</tbody>
</table>

*Don’t know/can’t say: n=2

The open-ended comments suggested that a combination of methods, such as test purchasing, plus Challenge 25, or a robust proof of age documentation was most likely to restrict sales of alcohol to those who are underage. Again, as noted above, the view was expressed that proof of age documentation varied in quality at present, and indeed a few licence holders argued that the only source of identification they trusted was the passport. A number of respondents also reported that test purchasing had no impact on their own businesses, but was necessary for other traders who they perceived to have more lax practices. However, a few licensees were critical of all the measures, and stressed that it was unfair that the onus was on them and not those who were breaking the law by trying to purchase alcohol, or entice others to buy alcohol for them.

‘I think you need TP to keep us on our toes, but [also] proof of age cards of some kind although we only accept driving licences or passports.’ (Resp 1)

‘Test purchasing is okay but not needed with Challenge 25. We are a huge national retailer with strong retail practice. The problem is not with shops like ours but with typical corner shops who sell alcohol to young people if they can get away with it. For those shops test purchasing is a good idea.’ (Resp 39)

‘Test purchasing works as a deterrent to unscrupulous shop keepers and the proof of age works as a deterrent to young people - if they don’t have ID they won’t get served in here.’ (Resp 54)
3.3.6 Views of test purchase operations

In case study Areas A and B licence holders were sampled on the basis of their test purchase status. However, due to some of the sampling information provided to the research team being out-of-date, a number of outlets had been subject to both test purchase passes and failures, and seven respondents also stated that their premises had not been visited as part of a test purchase operation before (see Table 3.5).

Table 3.5: Outcome of test purchase visit in premises

<table>
<thead>
<tr>
<th>Test purchase outcome?</th>
<th>Licence Holders N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Passed test purchase visit</td>
<td>41</td>
</tr>
<tr>
<td>Failed test purchase visit</td>
<td>18</td>
</tr>
<tr>
<td>Not had test purchase visit</td>
<td>7</td>
</tr>
</tbody>
</table>

*N=50; respondents were able to tick more than one option

The licence holders were asked in more detail about the test purchase visit. In cases where there had been both a test purchase pass and fail, the interviewees were asked to answer when considering the most recent test purchase failure. If the premises had always passed the test purchase, the licence holders responded in relation to the most recent pass.

Table 3.6 shows that both senior and junior staff were serving when the test purchase was carried out. However, in terms of the 18 test purchase failures, licence holders were at the point of sale on five occasions, senior staff on seven occasions and junior staff during six of these visits. The other category consisted of interviewees who could not recall who had served during the actual test purchase visit.

Table 3.6: Staff member serving during test purchase

<table>
<thead>
<tr>
<th>Which staff member served during actual test purchase visit?</th>
<th>Licence Holders N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Licence holder was serving</td>
<td>11</td>
</tr>
<tr>
<td>Another senior staff member serving</td>
<td>16</td>
</tr>
<tr>
<td>Junior staff member serving</td>
<td>12</td>
</tr>
<tr>
<td>Other</td>
<td>4</td>
</tr>
<tr>
<td>Total</td>
<td>43</td>
</tr>
</tbody>
</table>

Figure 3.5 demonstrates that the majority of licence holders, whether their outlet had passed or failed the visit, reported that the test purchase had not been obvious. As might be expected, 16 licence holders whose premises failed the test purchase visit said that it had not been obvious (two were unable to answer the question).
Figure 3.5: Licence Holders’ views of test purchase visit

![Bar chart showing views of test purchase visit](chart1.png)

It is also important to note that the majority of licence holders who were able to offer an opinion said that the test purchase had been carried out fairly, regardless of whether their outlet had passed or failed the visit or not (see Figure 3.6).

Figure 3.6: Licence Holders’ views of fairness of test purchase visit

![Bar chart showing fairness of test purchase visit](chart2.png)

The open-ended comments demonstrate that the majority of the respondents thought that the test purchase was carried out fairly, even if the visit was not always obvious to staff. The consensus was that the volunteers looked young or at least young enough to warrant the staff member to ask them for identification. A minority of respondents, though, stated that the volunteers looked older than 18 years or the Police took advantage of particular situations, such as a shop or bar being busy, leading to the staff members not paying full attention to the volunteer attempting to buy the alcohol.

‘A boy came in and asked for two litres of Strongbow and he was served. Our staff member was not paying attention.’ (Resp 38, Test Purchase Fail)

‘The guy looked young - he looked 17 and I asked him his age and he said 17. I didn't bother to ask for ID - I told him "this conversation stops now" and
he left the shop. I thought it was done very fairly and didn’t feel I was being conned.’ (Resp 33, Test Purchase Pass)

‘The two Policemen approached the bar, chatted away and purchased two pints then went to sit down, then the youngsters came in. The Police shouldn’t be buying alcohol. It makes me feel like a criminal and I think by pretending to be normal customers it is entrapment.’ (Resp 6, Test Purchase Fail)

3.3.7 Outcome of test purchase visit
The 18 respondents who stated that their outlet had failed a test purchase visit reported a number of different outcomes (see Table 3.7). Twelve licensees said that they had been reported to the Licensing Board, and many of these cases also resulted in reports to Procurators Fiscal. Three cases resulted in a Police warning, and in two instances no further action was taken.

Table 3.7: Outcome of test purchase sale to volunteer

<table>
<thead>
<tr>
<th>What happened as a result of the sale during the test purchase?</th>
<th>Licence Holders N</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reported to Licensing Board</td>
<td>12</td>
</tr>
<tr>
<td>Reported to Procurator Fiscal</td>
<td>10</td>
</tr>
<tr>
<td>Police warning</td>
<td>3</td>
</tr>
<tr>
<td>No further action</td>
<td>2</td>
</tr>
</tbody>
</table>

*N=18; respondents were able to tick more than one option

Of the 12 cases that were considered by Licensing Boards, the reported outcomes were:

- No further action (n=4)
- Licence suspended (n=4) – in two of these cases the suspension was for one week
- Other (including written warnings and those unable to say (n=4)

Of the 10 reports sent to Procurators Fiscal:

- Licence holder or staff member fined (n=6)
- No further action (n=3)
- One licensee went to court and was found not guilty.

It can be seen in Table 3.8 that a majority of licence holders had made changes to their retail practice as a result of being targeted as part of test purchase operations. All 18 of those who had been associated with failed test purchase visits said that they had changed practice as a direct consequence. A number of those who had only passed test purchases (n=5) stated that they had also made changes to their practices as a result of the test purchase visits.
The licence holders reported a number of changes as a result of the test purchase visit. Even those who said that they had not made changes tended to say that they were more vigilant as a result of the test purchase visit. Apart from a heightened awareness among staff, licence holders reported increasing staff training, implementing Challenge 25 and generally tightening up practice. It should also be noted that a number of licence holders also said that they had sacked staff members as a result of a test purchase failure.

‘The staff member was sacked. At the time the policy was 18 and we implemented a 21 policy.’ (Resp 34)

‘We retrained all staff after failure (Nov 2010). We were retrained when taken over by a new company after that.’ (Resp 8)

### 3.3.8 Case study C outcomes

In Case Study C, test purchasing had not been used actively in the recent past. As a result, licence holders were asked if their premises had been reported in relation to an underage drinking incident. Three of the 10 respondents indicated that they had been reported as a result of such an episode. One of these cases was reported to the Licensing Board, and the other two were subject to reports to the Procurator Fiscal.

Of the case that was considered by the Licensing Board, the reported outcome was:

- Licence revoked

Of the two reports sent to the Procurator Fiscal:

- Licence holder or staff member fined (n=1).
- No further action (n=1).

It is important to note that all of the three respondents who said that they had been reported to the Licensing Board or Procurator Fiscal stated that they had made changes to their retail practice. These changes included increasing vigilance, setting up a refusals book (this is a book to record incidents of refused sales where the customer is believed to be aged under 18 years), putting up

<table>
<thead>
<tr>
<th>Have you made changes to retail practice as a result of test purchase visit?</th>
<th>Licence Holders</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>23</td>
</tr>
<tr>
<td>No</td>
<td>20</td>
</tr>
<tr>
<td>Total</td>
<td>43</td>
</tr>
</tbody>
</table>
posters, more staff training and changes in policy regarding sources of identification.

'Made our staff more aware to be careful to ask for ID and if the customer has no ID don't sell. We'd rather lose a sale than lose our licence. When we were reported to the PF it wasn't taken any further because we had asked for ID and the ID turned out to be a fake. Now we only accept PASS or Young Scot, Driving Licences and Passports.' (Resp 52)

3.3.9 Other possible ways of enforcing underage alcohol sales legislation
Respondents from all the case study areas were asked what else could be done to ensure that alcohol was not sold to those under the age of 18 years. A majority of licence holders thought that all the measures, such as test purchasing, proof of age card schemes and Challenge 25, were already being utilised and there was not much else that could be done. However, other licence holders called for a national identity card, ways of counteracting agent purchase, improved communication between Police and licensed trade staff and for those who were purchasing the alcohol illegally to be prosecuted.

'Apart from the national proof of age card, I can't think of anything. A big problem is parents buying for their children, how do you stop that?' (Resp 3)

3.4 Views of Licensing Board respondents

3.4.1 Mechanisms to stop underage sales
The respondents from the three case study areas reported a number of mechanisms aimed at enforcing underage sale regulations in their areas. It should be noted that the Area C interviewee, representing the area not actively pursuing test purchasing, spoke of attending a test purchase presentation convened by the local Police Force a few years previously. However, his view was that it had not then been utilised, and no cases reached the Board as a result of a test purchase exercise.

Other mechanisms, reported by the Police and other informants, were also mentioned. In each case study area the main initiatives that were cited were voluntary bottle marking schemes and the recent implementation of Challenge 25 and its effect on licensee practice. The bottle marking schemes were said to be operating in specific areas, such as small towns, covered by the local Police Force and Licensing Board.

3.4.2 Licensing Board role in enforcing underage sales regulations
The interviewees tended to give examples of cases that had been heard and dealt with by Boards when asked about their role in relation to underage sales. In general, though, the respondents spoke of premises licence review hearings, and the steps that might then be taken by Boards if an outlet was found to have breached the underage sales regulations. These hearings resulted in the vast
majority of cases from reports received from the Police. Suspension or revocation of licenses, as well as written warnings and/or no further action being taken were all reported. As well as these sanctions, other Board-related tasks were reported, such as helping develop guidance for licensees regarding Challenge 25, with the help of Licensing Standard officers (LSOs)\(^{11}\), and ensuring that a refusal book is being used appropriately as a condition of new licence applications.

3.4.3 Perceived impact and success of local mechanisms
All of the Board representatives were asked for their perceptions of the impact and success of the measures taken locally to enforce regulations related to underage sales. It must be stressed that no respondent argued that there had been a negative impact or unsuccessful outcome as a result of individual mechanisms. However, views of impact and success did differ dependent upon the mechanism being utilised locally.

The respondents from Areas A and B tended to be the most positive, which seemed to be related to the active utilisation of test purchasing in these areas. As a consequence the Boards in Areas A and B had dealt with licence reviews as a result of failed test purchase operations. The fact that licensees had also been actively engaged with many of these operations before was seen to have helped raise awareness and knowledge and was also viewed as being beneficial.

'I think because (the licensees) now see the more robust approach that’s being taken by both the Police and the Licensing Board, and they understand… what’s at stake if they were to fail a test purchase. I think to that extent, it’s been very successful. Perhaps…. where success is still to be shown to that degree is with smaller independent traders, particularly with the off-sales, rather than the on-sales.' (LB3, Case Study Area B)

However, although test purchasing seemed to be the most favourably received measure by these Board respondents, there was also evidence of some problems arising from this approach. For example, it was argued that the Board’s then policy of suspending a licence after a second test purchase failure had resulted in cases being overturned by local sheriffs.

‘… we've had cases that have been overturned, given that we've been too strict, so we get criticised for not doing enough, in terms of not suspending enough and what have you, whereas we had a sort of ‘two strikes and you're out’ policy... Basically, if you had been found selling to underagers twice, then generally you ended up with suspension, but that decision was overturned by the Sheriff who was saying “you can't have a...blanket policy like that”.' (LB2, Case Study Area A)

\(^{11}\) For LSO role see: http://www.legislation.gov.uk/asp/2005/16/part/2/crossheading/licensing-standards-officers
Also, there was a view that agent purchasing may increase if test purchasing had an impact on underage sales. Complaints had been received in Area B as a result of members of the public being challenged in supermarkets when trying to buy alcohol when they had their sons or daughters with them, although the interviewee argued that this increased licensee diligence was a positive outcome of underage sales enforcement measures.

The Area C interviewee thought that there had been little or no impact locally as a result of prevention of underage sales initiatives. This was mostly because in the absence of test purchasing few cases related to underage sales breaches had reached the Board. In every area the view was expressed that it was too early to gauge the impact and success of Challenge 25, given it only came into force in October 2011. Concern was also expressed that Challenge 25 was still quite vague, and did not necessitate licence holders to have a written policy in place. Despite this, the interviewees did seem to be optimistic that it would help licensees to ask for proof of age and thus might reduce underage sales in the future.

Bottle marking schemes were not perceived as having much of an impact in any of the areas as yet. There were a number of reasons for this, the main one being that the schemes had been voluntary and not mandatory, and in certain localities only, and thus only a relatively small number of licensees had signed up to participate. Also, the interviewees had a number of concerns related to bottle marking initiatives. Examples of these included licensees only marking some of their stock and only providing unmarked bottles to young people, young people taking marked bottles purchased by their parents from the family home, and the marking fading over time or being removed if placed on a label. Again, though, a few positive outcomes from bottle marking schemes were reported, such as having a positive impact on the practice of some licensees.

3.4.4 Information received by Licensing Boards

**Sources and format of information**

Given the fact that the interview focused on measures such as test purchasing and bottle marking schemes, it is not surprising that the interviewees stated that the Police provided the relevant reports or reviews of licences. However, in relation to underage sales issues as a whole, it was also said that on occasion other reports or documents reached the Board, for example, from LSOs or members of the public.

‘Occasionally, we could probably get an anonymous letter or a letter from a member of the public, and we would normally pass it to the Police for them to deal with, because generally they act on intelligence now in this area, and so the Police would maybe set up a sort of…an operation – a test purchase operation – in the area, just to see what's happening.’ (LB2, Case Study Area A)
Perceptions of quality of information
The respondents made a number of comments in relation to the information received by Boards, and how it could be improved. Firstly, frustration was expressed that during open review hearings Police may not be able to answer all the questions raised by Board members as these issues were considered to be sub judice. Secondly, it was stated that Boards have to deal with conflicting information, such as test purchase volunteers described in one way by the Police but licence holders stating that they look much older – the females wearing make-up and the males with facial hair – with the Board members not having access to photographs of the volunteers. The Area B respondent called for more Police reports to cover the local context, as a Sheriff in a recent case had put much credence on the Police view that the locality in question had a problem with underage drinking. Otherwise reports from the Police were viewed as providing sufficient information.

‘The difficulty, because these hearings are in public as well..., we appreciate the restrictions the Police are under. We ourselves find it frustrating at times, and particularly as I say with pending cases, they say, “Oh, sorry. We can't tell you any more about that... it's sub judice”... Within the constraints of what they're allowed to tell us, I think we appreciate the information we get from the Police, but maybe we feel we might be able to get a bit more from them, but ultimately they have to liaise with the Fiscal as to what they can tell us, and most o’ the time their hands are tied, so it’s a bit of a vicious circle.’ (LB1, Case Study Area C)

3.4.5 Perceptions of local problems related to underage drinking
The respondents reported that their Board areas had significant problems related to underage drinking. When they were then asked if these local problems related more to the on or off-sale sector, the consensus was that the off-sale sector was responsible for a majority of the alcohol-related problems that involved young people. However, the Area C respondent in particular also gave examples of problems that had arisen in pubs and nightclubs. It was also said in all areas that the off-sale sector was a more visible problem as gangs of young people could be seen outside certain outlets, they could ask others to buy alcohol for them and also they could be seen drinking the bottles and cans in public spaces. It should be noted that the respondents tended to say that the perceived problem was widespread, yet not as many reviews of licences related to underage sales or breaches were being considered by their respective Boards as might be expected. This supports the Police view that it is relatively labour-intensive and time-consuming, as well as difficult, for the Police to gather sufficient evidence to call for a review of the licence.

‘I think it's a lot more common than the Board ever see... I think...but I think we all know that it goes on, and I think that's part of the issue. We're only seeing a small minority. The Police can't be at every off-sales premise ... 24/7, you know, every week sort o' thing.’ (LB2, Case Study Area A)
3.4.6 Dealing with breaches related to underage drinking

Respondents were asked how breaches were dealt with by Licensing Boards. When an outlet had failed a test purchase visit, the Police would usually send a report to the Licensing Board (in most cases a report would also go to the Procurator Fiscal) asking the Board to carry out a review of the premises. Other types of breach in relation to underage sales may also be referred, generally by the Police or through LSOs. For example an LSO may alert the Board when a premises is not maintaining their refusals book properly.

At the review, which would be attended by the licence holder, the Board would consider the most appropriate action, which may include suspending or revoking a licence, varying the licence conditions, issuing a written warning or taking no action.

Respondents described some of the difficulties faced by Boards when deciding how to handle a review case. There was a view that some of the reports they received were not based on ‘hard evidence’ as such, and that they were more about what people say had happened, and they have to make a judgement based on potentially conflicting accounts. Consequently Boards felt reluctant to take a strong decision in some cases, and were concerned that any decisions they made may be challenged and even overturned. It was added that Boards were more confident in handling such cases once they knew the outcome from the Procurator Fiscal (especially if there has been a conviction as this would have been based on strong evidence).

‘The Board is always aware that there’s a possibility that its decision can be challenged and that does have a significant financial impact upon the Board.’ (LB3, Case Study Area B)

There was also a view from one respondent that Boards would benefit from some more contextual information in the reports they receive, which would help them decide on how best to deal with cases:

‘It's not just a case of giving information about the failed test purchase itself. It's setting the scene about the context of the area where the test purchase failure occurred. Is there a problem with underage drinking in that area? Is it a serious issue of concern to local residents?’ (LB3, Case Study Area B)

Respondents were asked about the type of cases they had experienced in relation to test purchase failures or breaches of the regulations in relation to underage alcohol sales, and how these were dealt with. Most cases were said to relate to the off-sales sector, although one respondent from Area C talked of a case they had experienced a few years ago in which a local nightclub had been allowing underage young people in and serving them alcohol. At the suspension hearing called by the Board, a decision was made to issue a warning and give
the nightclub another chance. However, Police evidence collected later showed that the nightclub was continuing to breach the conditions (including door stewards not asking for ID and letting people in for free). As a result the club was called for a second review hearing but had actually gone out of business before this was heard.

In cases where licences were revoked, there had also been more serious offences (and repeated underage drinking) connected with the premises. One respondent talked of a case where the licence holder appeared at a review hearing in relation to underage sales. He had his licence removed and was eventually imprisoned, but this was due to the more serious offences of which he was found guilty.

An example where a licence had been suspended had involved a premise belonging to a food retail chain where the personal licence holder of that particular store failed a test purchase by selling the volunteer a bottle of wine without asking for their age. At the review hearing the solicitor acting for the company pointed out the various policies that the company had in place and that training had been given to staff. Their case hinged on the fact that the personal licence holder, who had since been dismissed by the company, had not observed company policy and that it was therefore not possible for the premises licence holder to prevent staff from straying from the procedures. However the Board view was that policy and procedures were clearly not being followed properly given that it was the personal licence holder (an individual who has responsibility for the training of others) who had breached them. The Board had decided that a written warning would not send out a sufficient deterrent and suspended the licence for five days.

3.4.7 Communication with other parties
The Board respondents were asked to comment on the communication they had with other organisations (LSOs, the Local Licensing Forum (LLF) and Procurators Fiscal) in relation to reports to the Board on test purchasing failures and underage alcohol sales.

It was said that when a Board received information about a test purchase failure they could ask the LSO to comment on the licence review application. The LSO would also assess if the licensee was complying with other parts of the licensing legislation (e.g. training of staff), find out the severity of the issues and potentially identify how responsive the licensee was to changing their practice.

Communication between the Licensing Board and the LLF occurred mainly during the annual meeting between the two bodies. However, LLFs are not allowed to comment on particular cases or individuals, so it would therefore be inappropriate for the LLF to comment on specific test purchase failures. In one case study area, however, the LLF had advocated the introduction of the bottle marking scheme in the local area, which had been taken forward by the Board.
As has been mentioned above, Boards are often in contact with the Police about test purchasing or mechanisms to prevent underage drinking. In addition, it was said that the clerk may also pass on information/intelligence to the Police that the Board has received from individuals who have express concerns about licensed premises. It was also reported that on occasion the Police will sometimes notify the Board of decisions made by the Fiscal.

The Board respondents reported having no direct contact with Procurators Fiscal; it is the Police role to liaise between these two bodies. The Procurator Fiscal, though, would occasionally pass a report back to the Board. The Boards may not always be aware of the outcome of Police reports reviewed by the Procurator Fiscal, and may only learn of the outcome if a conviction resulted. It was said that Boards also became aware of convictions through review hearings or Police reports.

'The Fiscal is one person that we haven’t spoken to directly. We tend to leave that for the Police to sort out. We are appreciative of the fact that sometimes the Fiscal will decide that the most appropriate forum for a case is the Licensing Board rather than someone being prosecuted, which can place us in some difficulty, because obviously the Board always like to have the security of a conviction… if you just have an unproved allegation, then there’s more scope for someone to challenge that.' (LB1, Case Study Area C)

3.4.8 Suggested changes
The Board respondents did not have many suggestions for changes that might help the enforcement of underage alcohol sale regulations. It was felt that some mechanisms (in particular Challenge 25) would need some time to bed in and that it was too early to suggest changes at this stage. In addition, it was suggested that if all licensees pursued a policy in which every purchase of alcohol involving a younger person required the buyer to show identification, this would then make asking for identification more commonplace and acceptable.

In terms of test purchasing, the respondent from Area B (where test purchase decisions had been overturned) reported that stronger governmental guidance would be beneficial, stipulating, for example, that if a licensed premises were to fail a test purchase twice then this would automatically lead to a licence suspension. However, one respondent expressed concerns over ‘agent purchase’ and thought that this might be on the increase. It was also argued that this would be difficult for the licence holder to tackle and for the authorities to prove that it had taken place.

The consensus, though, was that the powers of Licensing Boards, since the introduction of the Licensing (Scotland) Act 2005, were sufficient and the sanctions available to them were wide enough to cover different issues. For example, the ability to suspend licences (with immediate effect), issue warnings,
vary operating plans and attach new conditions to licences were viewed as being more than adequate.

3.5 Views of prosecutors

3.5.1 Views on test purchasing and other mechanisms
In relation to test purchasing, the prosecutors interviewed in all three areas were generally positive about this mechanism as a way of addressing underage alcohol sales. There was a belief that some licensees routinely sell alcohol to underage young people and that test purchasing is an effective way of targeting these premises and checking whether they are complying with the legislation. Another view was that cases resulting from a test purchase were easier to prove because both the volunteer and Police Officers were able to provide evidence.

With regard to other strategies, one view was that Challenge 25 could be effective, possibly more so than other schemes, because of its potential as a mode of prevention of sales to those who are underage. This approach was also favoured because enforcement approaches could often be subject to delay, and that cases involving underage alcohol sales attract a less severe penalty than other offences, such as knife-related crime.

‘I was just having a look at some of the cases we’ve had reported to us, and…in only one case [for agent purchase] was there imprisonment awarded, and that was only because the…accused was actually facing charges of possession of a knife as well.’ (P1, Case Study Area C)

3.5.2 How test purchasing and other mechanisms impact on the work of the Prosecutors and the courts
In term of impact on their own work, one respondent said that they were not getting as many reports from the Police as they had previously. Another view was that test purchasing had had ‘quite a valuable’ impact on their work in that it provided evidence for underage drinking cases. Whilst another interviewee could not identify any impact from test purchasing on their work, they did talk of the wider impact on licensee behaviour.

Test purchasing and the other enforcement mechanisms were viewed by one Prosecutor from Area C, where test purchasing had not been used in recent years, as having had quite a large impact on the workload of the courts based on the reduced number of current cases compared with previous years. The other interviewees perceived that there had been a little impact, based on the relatively few cases they had dealt with. Proof of age schemes were viewed as possibly contributing to this low number of cases.
3.5.3 Success of test purchasing and other mechanisms for dealing with underage sales and drinking

The consensus was that test purchasing and other mechanisms had been fairly successful, in so far as there had been a reduced number of cases reported to the prosecutors. It was stated that test purchase failures have provided the prosecutor with a higher standard of evidence to deal with cases and have proved to be a useful deterrent. There was also a view that the Police were doing a good job based on local intelligence, and were aware of who the responsible licence holders were, and which localities or outlets were more problematical. Initiatives raising the profile of test purchasing in the local community were seen as contributing to its success.

Whilst test purchasing was viewed favourably, some problems had been experienced. One of these concerned cases where volunteers and their parents had been asked to attend court, a possibility which they had not fully appreciated. In addition, it was pointed out that by the time a case comes to court the volunteers themselves may no longer be within the ‘vulnerable witness’ age group, and therefore could be identified in court.

'I know a couple of cases where … I’ve had to go and speak to the parents, test purchasers haven’t been terribly happy to be cited to court which they’re thinking ‘well I won’t be identified or I’ll be behind screens’… but because they’re 16 when it happens, so they’re adults, they’re 17 invariably by the time the case comes to court and so really they’re not vulnerable witnesses… and therefore that has caused issues and that’s why I probably couldn’t put it into the very successful category but in general I think it’s worked quite well.’ (P2, Case study Area A)

Another issue was in relation to the sanctions used when there had been a test purchase failure. An interviewee viewed success as removing the licence from individuals who had been convicted of selling to those under 18 years. However, he stressed that this was something that would have to be pursued with the Licensing Board:

‘… the penalty is when the licence to sell alcohol is withdrawn. Now, that is the success. All we’re doing is we’re looking at a situation where a shop is selling… now the Police know about that….and it's then up to the Police to then go back to the Licensing Board and say, “Hold on a minute… Is he a fit person to hold a licence to sell?” so maybe the success rate of all of this is how many licences have been cancelled.’ (P3, Case Study Area B)

Proof of age schemes were thought by some to have had an element of success in cutting down sales of alcohol to under 18s, especially because they placed the onus on the person selling alcohol to check identification routinely. However, there was a perception that some licensees were better at complying and that smaller scale outlets were less likely to implement proof of age schemes.
rigorously. The Area C interviewee suggested that some licensees may find it difficult to comply with the regulations as anecdotal evidence indicates smaller scale premises may feel forced into selling to young people who ‘terrorise’ them. An alternative view was that proof of age schemes have had limited success given the amount of cases involving young people reaching court which are related to alcohol consumption.

3.5.4 Reports based on test purchasing and other mechanisms relating to underage sales

All three Prosecutors interviewed found it difficult to estimate the number of reports they had received in relation to underage alcohol sales, but the general view was that the numbers were low. In Area C it was estimated that fewer than 10 reports had been received over the last two years, which was considered low based on the size and population of this particular area. However, as has been said, test purchasing was not being conducted in this area. All incidents had related to the off-sales sector and had involved adults buying alcohol, predominantly cheap cider, on behalf of young people, some as young as 12 or 13 years. The reports received in Areas A and B also involved the off-sales sector and related to individuals selling to underage persons and included mainly test purchase failures, as well as a range of other offences under the Licensing Act.

In relation to the quality and detail included in the reports, the general view was that these were satisfactory. It was noted that the quality of the reports relating to test purchasing had been the subject of previous discussions in Area A when they started these operations because it had been viewed that the Police reports could have included more detail, such as information on the appearance of the volunteer. The skills and experience of the officers who mount these operations, as well as any additional information they provided were viewed as very useful:

‘I always find the Police remarks section to be very illuminative. I think they help somebody to look through the detail and work out what the best way of dealing with a case is.’ (P1, Case study Area C)

In relation to test purchase reports, one interviewee commented that it would be useful to know background details on how the operation was planned including whether the premises had been targeted on the basis of Police intelligence or not. This information was viewed as useful in deciding on the most appropriate case disposal, especially in instances where there was uncertainty about who was the most culpable person – the person who actually sold the alcohol or the licence holder.

3.5.5 How cases are dealt with

The Prosecutors were asked how reports they receive in relation to underage sales and underage drinking are generally dealt with. It was stated that such reports would be treated like any criminal report, starting off with questions
around whether they have jurisdiction, whether the incident happened in their area, if it was a recognised crime, and if there was sufficient evidence of a crime. Once all of these were addressed, they considered what would be the most appropriate action in terms of the public interest. Consideration would then be given to whether the case should proceed to court, be dealt with via a Fiscal direct measure such as a fine or whether a warning letter would be adequate. One interviewee described some of the circumstances around underage drinking cases which would also have to be taken into account:

‘The age of the child, the age and circumstances of the accused, any previous convictions, any aggravating factors... was the child found... with drink and had to be taken home by the Police,... has had a hospital admission or something like that. All of these things would be put into the mix, and hopefully a reasonable decision made.’ (P1, Case Study Area C)

In considering how cases should be dealt with it was pointed out that guidance had been provided by the Crown Office outlining the evidential requirements as well as general policy in relation to these cases. It was recommended that Lead Procurators Fiscal were also brought in to act as a ‘single point of contact’ for such cases. One respondent outlined their lead role as having two stages – firstly, liaising with the Police on what they were planning to do in relation to test purchasing operations (the area and number of premises to be targeted); and secondly, receiving all the cases submitted as a result of the test purchase operation to ensure sufficient information was there for prosecution purposes and that the Police have complied with the relevant procedures. As cases submitted to the Fiscal’s office were all marked by the lead Procurator Fiscal in this area, this was felt to offer a consistent approach across the Board.

Another point made in relation to how cases are dealt with was that special arrangements needed to be made for test purchasing cases to protect child witnesses. In such cases, child witnesses should be afforded ‘vulnerable witness’ status, and would require to be screened off from the rest of the court. However, as was mentioned in Section 3.5.3, this guarantee of ‘vulnerable witness’ status would not always appear to be possible.

Interviewees were asked whether they had any dealings and contact with Licensing Boards in relation to reports they had received from the Police on test purchase failures. Views about the usefulness and appropriateness of communication between Prosecutors and Licensing Boards varied. While two of the Prosecutors reported no dealings with Boards to date, they did add that information from Boards on the sanctions they had imposed on an outlet would be useful in informing how they would then deal with an accused person.

Another respondent, though, reported that it was not within the remit of Prosecutors to liaise with the Board or take any of their decisions into account:
'We don’t have any remit for that. Our job, if you consider it, is the investigation and prosecution of all criminal matters in Scotland, so if it goes out with that... whether somebody holds a licence or gets a licence, or has it revoked... That’s a totally different area because we have no involvement over whether someone is licensed or not.' (P3, Case study Area B)

3.5.6 Outcomes of cases
The general view was that where there was sufficient evidence in a case (which was considered to be a likely scenario for cases based on test purchase failures), it was more likely than not to proceed to court. It was estimated by one interviewee that court proceedings were taken in just over half the cases they examined. For cases which did proceed to court, the most likely outcome was viewed to be a fine. Custodial sentences were said to be rare for these types of case, and in a case where this had occurred, which related to agent purchase, the conviction was due to the other more serious charges against the individual in question.

Where cases did not proceed to court these were dealt with using Fiscal direct measures, warning letters or taking no further proceedings where there was insufficient evidence. One interviewee thought that some cases may not even reach the Prosecutor and may be dealt with directly by the Police issuing a warning to the licensee. However, it was thought that where the Police had mounted a test purchase operation, it was highly likely they would report any failures to the Procurator Fiscal.

One respondent argued that it was the withdrawal of licences which would have most impact on licensees' behaviour, and that this could only be addressed through sanctions delivered via the Licensing Board.

'I can take an individual into court and we can get a conviction for that individual, but ultimately the impact would be if the licensing authority withdraws the licence. Unless they do that, then there's not going to be an impact because the chances are they're going to go back out and do it all over again.' (P3, Case Study Area B)

3.5.7 Changes to test purchasing and other mechanisms
The Prosecutors interviewed were asked whether there were any changes they would like to see in relation to test purchasing or other mechanisms for regulating underage sales or drinking. One interviewee stated that he would like to see the existing Crown Office guidelines followed more consistently. In relation to test purchase cases, another interviewee wanted to see clearer information given to test purchase volunteers and their parents to explain that they might have to attend court. This respondent also reiterated the importance of having full information about a case in order to allow them to take appropriate decisions.
4. Discussion

This discussion section will focus on the study aim and objectives, and will draw out the main points from the results section in relation to these.

4.1.1 The main study aims

The main aim of the sub-study was to explore the barriers and facilitators to test purchasing and other approaches aimed at enforcing underage alcohol sales regulations, and to identify lessons for improvement in terms of implementation to support the realisation of the longer term outcome of reducing underage drinking.

A whole series of barriers and facilitators were cited by the different respondent groups in relation to test purchasing and other mechanisms aimed at enforcing the underage alcohol sales regulations. The Police interviewees reported many initiatives that were aimed at enforcing the regulations (see Section 3.2.1), but the discussion will focus on the three main mechanisms that all respondent groups commented upon: test purchasing; proof of age initiatives/Challenge 25; and bottle marking schemes.

Test purchasing

Test purchasing was being used in two of the case study areas. It was described as being intelligence-led, with the police acting on information received from the general public, police officers and indeed traders themselves. As such, test purchase visits would then target premises in which there was evidence that sales of alcohol to underage young people were taking place.

One of the most important findings from the research was that test purchasing tended to receive the most positive feedback as an enforcement mechanism from all of the different respondent types. A majority of the licence holders were in favour of test purchasing, albeit in tandem with other approaches such as proof of age card schemes. The Police representatives saw more benefits than drawbacks in test purchasing, and even the area which was not employing test purchasing as a technique had used it in the past, and was not currently doing so as there was no evidence that young people were purchasing alcohol directly from off or on-sales. Prosecutors and Licensing Board interviewees stated that test purchasing had the potential to provide a higher standard of evidence in cases where young people were being sold alcohol, and shared the view of all respondent types that it helped improve licensee practice.

As might be expected, test purchasing was also seen as having a number of flaws. For example, a few licence holders who had failed tests stated that the whole process verged on entrapment. It should be noted, though, that the Lord Advocate was content that the entrapment argument was unfounded, as the young person had to tell the truth and the seller was not being encouraged to act in a way contrary to his/her usual practice. Prosecutors had reviewed few cases.
involving sales of alcohol to those who were underage, whether related to test purchasing or other mechanisms, and expressed concern that volunteers may have to appear in court, and may not always have vulnerable witness status. A Police respondent shared this concern. Police representatives also expressed misgivings about test purchasing favouring the licensee given the age profile and appearance of volunteers, the limited time period volunteers were available for operations as well as staff resorting to ‘trusty sales’ – selling to young people if they were known to shop staff, or if the young person said that they were over 18 years then proceeding with the sale. Licensing Board representatives spoke of their difficulty in dealing with test purchasing reports, as the Police account would often be directly contradicted by the licensee.

The results section includes many other examples of perceived facilitators and barriers in relation to test purchasing specifically. Agent purchasing (adults purchasing alcohol for young people) was raised by all respondent groups as an increasing problem, and possibly a direct consequence of increased licensee compliance with enforcement mechanisms like test purchasing. In addition, new routes for underage alcohol sales were reported to have emerged, such as home deliveries of alcohol by shops, as well as vans selling cases of cheap alcohol and targeting groups of young people. The Police argued that using directed surveillance and RIP(S)A to counteract this could be time-consuming and resource intensive. However, the national data suggest that over time test purchase failure rates may be decreasing or at least are static12, yet agent sales would also seem to be decreasing – which would appear to contradict the testimonies of respondents in this study. Of course, the apparent decrease in agent sales figures may reflect, for example, different Police reporting patterns as well as Police resources being targeted in other priority areas.

Proof of age schemes and Challenge 25
Proof of age schemes elicited a lot of comment in the study. Challenge 25, in which those who appear to be under the age of 25 years are asked for proof of age by staff serving in licensed premises, came into force towards the end of the study, but still most respondent types were able to comment on its potential implications. As has been mentioned, licensees tended to favour test purchasing used in combination with a robust proof of age card scheme. There was little support for proof of age schemes on their own, but the same was true for test purchasing used in isolation. Driving licences and passports were reported as being the most robust identification available, with PASS card schemes having supporters and detractors – the detractors saying that these cards could be too easily replicated. As was the case in previous test purchase evaluations13,14, a minority of the licence holders called for a national proof of age card scheme to be implemented.

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12 Data supplied by ACPOS, February 2012
Challenge 25 came into force in the middle of the fieldwork phase, on October 1st 2011. It elicited a fair amount of positive comment, although respondents added that it needed time to become properly established before its impact could be gauged. However, the consensus was that it had the potential to change licensee practice, and it might become more accepted for identification to be asked from both the perspective of the young adult and the person at the point of sale. As such, it would then result in approved proof of age materials being carried by young people, and might also reduce the test purchase failure rate. Despite the fact that it had been just introduced, barriers to its successful operation were also identified. For example, Licensing Board respondents argued that Challenge 25 still needed some clarification, and would be improved if it required licence holders to also have a written ‘Challenge 25’ policy in place.

**Bottle marking schemes**
The bottle marking schemes that had been in operation in the different areas tended to be targeted in particular localities, obviously in off-sale outlets, and were voluntary. Limited successes were reported with tracing the alcohol confiscated from young people back to its point of purchase. Most respondent groups were able to comment on the bottle marking schemes, although few licence holders and Prosecutors were able to comment in detail. Many criticisms were voiced in relation to these schemes. The major problem, according to the Police and Licensing Board respondents in particular, was the voluntary nature of the scheme which arguably attracted traders viewed as not being responsible for underage alcohol sales in the first place. Also, it was claimed that traders would be able to have both marked and unmarked stock, and as such could choose to sell to those under 18 if they so wished. In addition, it was argued that the young people may have obtained the marked bottles via agent purchase or even from the family home.

**4.1.2 Impact on alcohol consumption levels among young people**
The above were the main mechanisms reported by the respondent groups, although others such as licensed staff training and alcohol diversion schemes were also mentioned. However, the consensus was that these enforcement mechanisms had all contributed to a perceived decrease in the number of direct sales of alcohol to underage young people, Indeed, those who reported this positive impact (and no-one argued that the overall impact of these measures was negative) said that they could not tease out which initiative had been most effective in this regard, and it may have been the combination of approaches which had reduced young people’s opportunities to purchase alcohol directly. One of the overarching aims of this study was “…identify lessons for improvement in terms of implementation to support the realisation of the longer term outcome of reducing underage drinking.” Despite the fact that there was agreement that these measures were having, at worst, a mixed impact, and in many instances were viewed favourably, no-one reported a decrease in young people’s alcohol consumption at this time. Many respondents, though, argued
that drinking in this age group was on the increase, based on anecdotal reports as well as, in the case of the Police in particular, evidence gathered during the course of their own work.

“The fact that direct sales to young people was reported as being on the decrease, whilst alcohol consumption was viewed as increasing, exemplifies one of the largest perceived barriers to addressing the longer-term aim of reducing underage drinking. As mentioned above, at the same time as enforcement mechanisms were felt to be having an impact on sales to young people, agent and ‘trusty’ sales were said to be increasing. Most respondents argued that young people would always get access to alcohol by some means or other, and the problem was related to Scotland’s drinking culture. As a consequence, adults were thought to condone young people getting access to alcohol as they started to drink at a similar age themselves, and many adults were also poor role models as they liked to drink to excess. Some parents were also said to lack responsibility, in that they would give their tacit approval to their children taking large quantities of alcohol from the home, or indeed would buy the alcohol directly for their offspring, to drink outdoors with other young people. Also, a minority of traders were described as being willing to sell alcohol to those who were underage, for reasons of profit.”

No individual claimed to have the answer to addressing this issue. All of the enforcement mechanisms outlined above were thought to have benefits, but one measure which was thought to have the potential to reduce the harm caused by Scotland’s drinking culture, at least by a few respondents, was minimum unit pricing of alcohol. Even this was not thought to be a complete panacea, but it was perceived to be a crucial part of any initiative which is aimed at reducing alcohol consumption across all age groups, including young people.

4.1.3 Views of Prosecutors and Licensing Board members
Two of the study’s objectives specifically addressed the views of Prosecutors and Licensing Board representatives, as well as the outcomes of decisions they had made in relation to cases involving alcohol sales to underage young people. As has been mentioned above, both of these respondent types spoke positively about test purchasing in particular, as it had the potential to provide a higher standard of evidence, with both the Police and volunteers able to give first-hand accounts of the actual test purchase visit. Although these respondent groups seemed to favour test purchasing over other enforcement mechanisms, they also expressed direct concerns. For example, a Prosecutor pointed out that volunteers may not have vulnerable witness status and could be cited to appear in court, the Police therefore needed to make this clear to them before they become actively involved in test purchasing (though this is covered in the ACPOS Manual of Guidance). Board respondents stated that they were often given directly conflicting accounts of test purchase operations at review hearings from Police and licensees.
Although both Prosecutors and Boards tended to say that Police reports they received in relation to alcohol sales to those aged under 18 years (or involving underage drinking) were of good quality, they did express a preference for submissions which gave additional contextual information, as this helped them reach final decisions. Again, it was pointed out that the ACPOS guidance does include the need for Police to include additional contextual information in reports to the Procurator Fiscal and Boards.

One objective addressed the outcomes of relevant decisions reached by Licensing Boards and Prosecutors. Firstly, it should be noted that the interviewees had reviewed relatively few cases which involved sales of alcohol to those who were underage. Also, Prosecutors stated that these cases resulted in less severe penalties than others on their caseload, such as assaults. Examples were given by both respondent types of outcomes they had reached after receiving Police reports. Prosecutors, and indeed licence holders, tended to mention fines being issued to licensees/a staff member or no further action being taken. Cases they mentioned which warranted stiffer sentences had more serious associated charges, such as knife-related offences. Board representatives gave examples of licences being suspended, but also of no action being taken as they were unable to resolve conflicting accounts from Police and licensed trade staff.

It is important to note that many comments were elicited during the study in relation to the time it took for the outcomes of these cases to be reached. Licensing Boards were thought to want to wait for decisions to be made by Prosecutors, as they based decisions on higher standards of evidence, and Board decisions were less likely to be overturned if the Prosecutor or courts had taken action. On the other hand, one view from Prosecutors was that Boards should be fully responsible for the licensing issues themselves, and that no liaison was necessary between the two services. Police interviewees expressed disappointment in relation to specific cases they had submitted to Boards or Prosecutors, but also admitted that they did not always know the outcome of these cases. There were different views in relation to this – on the one hand it was argued that it would be useful for current and future Police work if they received official notification of the outcomes of these cases, whereas others thought the time lag that resulted in decisions being reached meant that Police had already moved on to other priorities. It would appear that there is a need for closer liaison between Prosecutors, Licensing Boards and Police to ensure that there is a common understanding of roles and responsibilities.

4.1.4 Key learning
All of the enforcement mechanisms being utilised were reported as having some benefits, and direct sales to young people were said to have decreased. No respondent argued that the measures being taken were having a negative impact overall and as has already been discussed above, test purchasing seemed to be
the favoured mechanism among the different respondent groups in this study. The area which was not using test purchasing had done so in the past, and its decision not to conduct such operations in recent times did not appear to be due to concerns about its efficacy, but that direct sales to young people were not a major problem. It should be noted, though, that most respondents thought that a combination of measures was the best way of restricting alcohol sales to young people.

Perhaps one of the most important findings of the study was that all of the enforcement measures being taken, whilst helping to decrease direct sales of alcohol to young people, were having no perceived impact on their alcohol consumption levels. It was argued that for this to happen Scotland’s relationship with alcohol would have to change, and new initiatives such as minimum unit pricing might have to be adopted.

Nearly every respondent, apart from four licence holders who favoured the status quo, proposed a number of modifications to be made to the current enforcement mechanisms. As there was often no clear consensus, though, and conflicting views were often elicited, it is difficult to know which of these would be worthy of consideration by the different stakeholder groups. A few of the main suggested changes are summarised below:

- Test purchases to allow volunteers to be used up to (but not including) the age of 18 years given the implementation of Challenge 25, as this would arguably be a ‘fairer’ or more accurate test, and may also address elements of ‘trusty purchase’
- The issue of agent purchase to be examined, and possibly marketing campaigns aimed at counteracting it to be implemented
- Bottle marking schemes, if ever adopted in a locality, to be mandatory, and also properly evaluated to assess their worth
- Licensed trade staff to improve practice, and routinely ask for proof of age documentation as a result of the implementation of Challenge 25, and licence holders to be required to produce a written Challenge 25 policy
- Police to give additional contextual information, if possible, in reports to Procurators Fiscal and Licensing Boards related to underage alcohol sales or drinking, as recommended in the ACPOS guidance
- The issue of volunteers potentially appearing in court, as well as their status in court, should be made clear, as is addressed in the ACPOS guidance
- More guidance to be given by the Scottish Government in relation to what Licensing Boards should do if, for example, an outlet fails a test purchase twice
- Licensing Boards to make decisions more quickly, where possible, and not wait for decisions to be made by Procurators Fiscal
- Existing Crown Office guidelines to be followed more consistently by Procurators Fiscal
- Crown Office and Licensing Boards to inform Police of the outcomes of reports that have been submitted.
- Improved liaison between the Procurators Fiscal, Licensing Boards and Police.
5. Conclusions

The research demonstrated that although there were numerous barriers to all of the approaches aimed at enforcing underage alcohol sales regulations, possibly more so than facilitators, test purchasing in particular was perceived to be a particularly useful way to gauge and potentially improve licensed trade staff practice. A majority of licence holders also reported that test purchasing was their preferred enforcement tool, as long as it was used in tandem with a robust proof of age card scheme.

There was merit seen in all of the approaches outlined in this study, though, from test purchasing to alcohol diversion schemes. Challenge 25 was also implemented within the lifetime of the research project, and respondents were hopeful that it would also have an impact on direct sale of alcohol to those under the legal age for purchasing alcohol. All of the enforcement mechanisms were thought to have resulted in a reduction in direct sales of alcohol to underage young people.

The longer-term aim of reducing alcohol consumption in this age group was deemed to be more problematical. Interviewees in this study did not necessarily see a link between direct sales of alcohol to young people, and alcohol consumption in this age group. The consensus was that the drinking culture in Scotland as a whole would have to be addressed, possibly through measures such as minimum unit pricing, before there would be evidence of a fall in alcohol consumption levels among young people.

A number of suggested improvements to current approaches and processes were cited. The key learning points are summarised below:

The Scottish Government should consider:

- Measures to address young people loitering outside off-sales and soliciting people to purchase alcohol on their behalf
- The issue of agent purchase (a young person asking someone over the age of 18 years to purchase alcohol on their behalf)
- Deliveries from online and off-sales - the adequacy of current measures and guidance, including the need for proof of age verification

Any review of the current guidance and practice should consider:

- the adequacy of current guidance on proof of age
- amending test purchase practice to include: for example, the use of volunteers up to (but not including) the age of 18 years given the implementation of Challenge 25, and possibly to be allowed to ‘role play’
- the issue of volunteers potentially appearing in court as witnesses, as well as their status in court. This should be made clear to volunteers and
parents, as stipulated in the Association of Chief Police Officers in Scotland (ACPOS) guidance\textsuperscript{15}.

- the need for more guidance on what Licensing Boards should do if, for example, an outlet fails a test purchase twice
- ensuring that bottle marking schemes are mandatory, if adopted in a locality, and a detailed evaluation conducted to assess their worth.

Police, Licensing Boards and Procurators Fiscal should consider:

- the provision of additional contextual information, if possible, in reports submitted to Procurators Fiscal and Licensing Boards by Police Officers related to underage alcohol sales or drinking, as stipulated in the ACPOS Guidance
- the need for Licensing Boards to make decisions more quickly, where possible, and not wait for decisions to be made by Procurators Fiscal
- The need for Prosecutors to follow existing Crown Office guidelines more consistently
- the need for the Crown Office and Licensing Boards to inform Police of the outcomes of reports that have been submitted
- the requirement for improved liaison between the Procurators Fiscal, Licensing Boards and Police.

Licensed trade should consider:

- asking for proof of age documentation as a matter of routine, and:
- requiring licence holders to produce a written Challenge 25 policy.

\textsuperscript{15} See document at: http://www.acpos.police.uk/Documents/Policies/OP_ACPOSTestPurchaseOfAlcoholMOGv11.0.pdf
Appendix 1: Alcohol-related offence and test purchase data
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*Columns represent financial year; hence 2000-2001 = April 1st 2000 to March 31st 2001

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### Table C: Test Purchase data summary: 2010

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Telephone discussions with Police data informants
In order to try to provide more context to these data, as well as find out if there were particular issues related to the collection of these figures, and any possible areas for improvements, the researchers spoke to a Police representative in each case study area. The following issues were raised in these discussions (please note, this list is not exhaustive):

- As expected the Police generated most of the relevant data, although use was occasionally made of, for example, NHS data (e.g. admissions data), overprovision data or figures arising from local initiatives.
- Alcohol diversion schemes could decrease the number of offences reported by the Police. Therefore, the figures in some of the categories noted in Table A may be artificially low if young people agree to go on to the diversion scheme as they are not then charged. The view was expressed that it was important not to criminalise young people, if possible.
- It was thought that the percentage of test purchase failures was decreasing across Scotland. However, it was added that test purchasing had its limitations, with ‘trusty sales’ arguably on the increase. Also, the difficulty of gaining evidence during agent purchase cases, through the resource-intensive direct surveillance and RIP(S)A, was also noted. As such many of the figures were viewed as being underestimates of the true picture.
- Most of the public complaints regarding underage alcohol sales and drinking centred on off-sales hence, for example, the increased numbers of test purchases in off-sale outlets.
- Challenge 25: Although it was said to be too early for any impact to have resulted at the time of interview, one respondent suggested that any impact will be seen in future in the alcohol offence data (i.e. Table A) in the future
- ‘Delivery of alcohol to a child or young person’: This relatively new offence was interpreted in slightly different ways. One view was that it related mostly to proxy or agent sales. The other view was that it was proxy or agent sales on a much larger scale, with adults targeting groups of underage drinkers with a van filled with alcohol. In other cases social marketing sites and mobile phones were thought to be used by young people to organise the larger scale delivery of alcohol in this way. However, it was argued that the first criminal cases were now taking place, and as a result this would probably not result in many cases in the future.
- There was some sympathy for the trade view that very few young people under the age of 18 years are prosecuted for attempting to purchase alcohol, but the consensus was that it was more important not to criminalise the young, and responsible licensee practice was essential.
• Outcome data from Licensing Boards and Procurators Fiscal: the Police did not tend to know the outcomes of the reports they had submitted to Boards and Procurators Fiscal. There was a time lag relating to the judicial process running its course. Also, a view was expressed that Boards ideally wanted to wait for the decision from the Procurator Fiscal or the court. In addition, it was said that some Procurators Fiscal wanted Licensing Boards to be much more active, and eventually take over the responsibility for some of these decisions themselves. Some disappointment was expressed at the outcomes of cases that reached both Boards and Procurators Fiscal.

• The Police informants expressed differing views on the lack of outcome data from Boards and the Crown Office. One view was that the data would be very useful for Police, would help inform their future activities if they knew what had happened to the case and would help encourage a joined-up approach if they knew the result of every submitted report. The other view was that due to the time lag by the time a decision was made this was often ‘yesterday’s news’ and the Police had moved on to other cases or priorities.

• It was stated that the Chief Constable is required to provide an annual report in relation to policing in connection with the 2005 Act, including steps taken to prevent the sale or supply of alcohol to children and young persons, and that Licensing Boards should also be required to report on what action they have taken to uphold the Licensing Objectives, and in particular test purchasing and the protection of children from harm.