

**Appendix 1**  
**West Lothian Council**  
**Planning & Economic Development – Environmental Health & Trading Standards**

**Procedure for Test Purchase Operations**  
**The Tobacco and Primary Medical Services (Scotland) Act 2010**

**Procedure:**

This procedure covers the issuing of an FPN under the Tobacco and Primary Medical Services (Scotland) Act 2010 ('the Act') and the organising of a test purchase operation using an underage volunteer. The issuing of an FPN will cover all offences under Chapter 1 and 2 of the Act as prescribed by Section 27.

1. All officers undertaking test purchasing operations of tobacco products or cigarette papers should make themselves familiar with the provisions of the Act and any secondary legislation thereunder.
2. All officers undertaking test purchasing operations of tobacco products or cigarette papers should make themselves familiar with the provisions of the Practical Guide to Test Purchasing in Scotland.
3. Prior to undertaking a test purchase operation and during the selection of young volunteers, the lead officer for the test purchase operation should obtain an authorisation (Form 1) for exemption from offences of purchasing or attempting to purchase tobacco products or cigarette papers under Section 5 (2) of the Act.
4. Authorisation for exemption from offences of purchasing or attempting to purchase tobacco products or cigarette papers under Section 5 of the Act can only be issued by the Trading Standards Manager (TSM) or in his/her absence, the Senior Trading Standards Officer.
5. Prior to applying for authorisation for exemption from offences of purchasing or attempting to purchase tobacco products or cigarette papers under Section 5 of the Act, the officer leading the test purchase operation should ensure that a risk assessment to avoid any risk to the welfare and safety of the young volunteer is carried out (Form 2).
6. The risk assessment should be completed and submitted along with the application for exemption by the officer leading the test purchase operation.
7. Prior to the commencement of the test purchase operation, the officer leading the test purchase shall ensure that the volunteer(s) is advised of the authorisation for exemption from committing offences under the act and the dates to which the authorisation applies.
8. Officers carrying out test purchase operations involving young people should have regard to current practices and the principles of risk assessment. Test purchase

operations should always be carried out in accordance with West Lothian Council procedures in respect of health and safety.

9. In the event of a person selling tobacco products or cigarette papers to an underage person, the officer shall issue a Fixed Penalty Notice (FPN). The person issued with an FPN should be issued with the original copy (top copy) and the officer should retain the second and third copies.
10. In limited circumstances, the officer may choose not to issue an FPN but to recommend the submission of a report to the Procurator Fiscal. In these circumstances, the officer shall submit justifications to the TSM for such recommendations.
11. The FPN shall be issued on the spot and in very limited instances shall be issued no later than the next working day where practicable. In the event where the FPN is not issued on the spot the officer shall submit an explanation for the delay.
12. Officers shall observe the prescribed time limits prescribed by the Act and subsequent legislation for issuing an FPN.
13. The officer issuing an FPN shall gather the appropriate information and evidence to enable the successful preparation of a prosecution report in the event that the person fails to pay the FPN.
14. The second copy of any FPNs issued shall be held by the issuing officer and the third copy submitted to Support Services as soon as possible. Copies of the FPNs shall be kept by Support Services for the purpose of financial control of payments of FPNs, any possible banning orders under the Act and for any subsequent determination of representations made by a person receiving an FPN.
15. Copies of FPNs shall be kept in pursuance of the provisions of the Act and for a period determined by the Environmental Health and Trading Standards Manager in accordance with the principles of the Data Protection Act 1998.
16. Support Services shall monitor the payment of FPNs and any delay for payments along with the escalation of FPNs in cases where the prescribed delays are not met.
17. Where FPNs are not paid within the prescribed period, Support Services shall immediately notify the issuing officer.
18. If the person receiving an FPN fails to make payment within the prescribed periods, the officer after consultation with the TSM shall draft a report for submission to the Procurator Fiscal recommending that legal proceedings be instituted.
19. In the event that the person receiving an FPN makes representations as to why the FPN ought not to have been issued, the person shall be invited to make representations in writing to Environmental Health and Trading Standards Manager. The issuing officer will also be invited to make a written submission as to why the FPN should stand.