

12 Sale and Supply of Alcohol to Children

General

- 12.1 Section 186 of the 2003 Act provides that proceedings for any offences in the Act may be instituted by a licensing authority or by the Director of Public Prosecutions, and, in the case of an offence under section 146 or 147 (sale of alcohol to children) of the Act, by a local weights and measures authority (trading standards officers).
- 12.2 The introduction of sections 169A to 169H of the Licensing Act 1964 by the Licensing (Young Persons) Act 2000 made it an offence, for the first time, for any person (and not just licensees and their “servants”) to sell alcohol to an under 18 on licensed premises, or knowingly to allow another person to do so. It also created the offence of buying, or attempting to buy, alcohol on licensed premises on behalf of a person under 18. The amendments to the Licensing Act 1964 introduced by the Criminal Justice and Police Act 2001 strengthened this positive duty on licensees and their staff not to sell alcohol to under 18’s and for the first time, placed the “test purchasing” of alcohol, whereby the police and trading standards officers through making purchases test the compliance of retailers with the prohibition on underage sales, on a statutory footing. The Government’s intention behind the test purchasing measure was to increase the risk of detection of non-compliance and therefore increase the deterrent effect of the law on retailers.
- 12.3 The 2003 Act builds on these developments by providing, in section 146, that a person commits an offence if he sells alcohol to an individual aged under 18 **anywhere**. It also makes it an offence to supply alcohol to a minor on premises where supplies of alcohol are authorised by a club premises certificate. These provisions remove a range of exemptions that previously existed. However, licensing authorities, when considering instituting proceedings for offences under the 2003 Act, are expected to be concerned primarily with offences involving the sale and consumption of alcohol on premises licensed under a premises licence or where it is authorised by the giving of a temporary event notice or where the supply of alcohol is authorised by a club premises certificate. It should be noted that a body corporate, partnership or unincorporated association (see section 187 of the 2003 Act) may be the subject of proceedings for an offence under section 146.
- 12.4 Licensing authorities are expected to maintain close contact with the police, young offenders’ teams and trading standards officers about the extent of unlawful sales and consumption of alcohol by minors and to be involved in the development of any strategies to control or prevent these unlawful activities and to pursue prosecutions. For example, where as a matter of policy, warnings are given to retailers prior to any decision to prosecute in respect of an offence, it is important that each of the enforcement arms should be aware of the warnings each of them has given.
- 12.5 The Government primarily sees the development of these offences as having a deterrent effect on sales of alcohol to children by raising the risk of detection and by making the consequences of non-compliance significant. The Government is not proposing that a regime of constant test

purchasing exercises is pursued in all areas for all licensed premises. The need for and extent of test purchasing operations in any area is a matter for the police and trading standards officers to judge on the basis of their local knowledge and available resources, which will establish how far such operations are necessary in each licensing authority area.

- 12.6 Section 145 of the 2003 Act also makes it an offence to permit children under the age of 16 unaccompanied by an adult (that is a person aged 18 or over) to be present on premises open for the supply of alcohol for consumption there and being used exclusively or primarily for the supply of alcohol for consumption on those premises under the authorisation of a premises licence, club premises certificate or temporary event notice. In addition, it is an offence to permit the presence of children under 16 who are not accompanied by an adult (that is a person aged 18 or over) between midnight and 5am to be on premises supplying alcohol for consumption on the premises under the authorisation of any premises licence, club premises certificate or temporary event notice. The offence may be committed by a premises licence holder, designated premises supervisor or any person who works at licensed premises, whether paid or unpaid, in a capacity which authorises him or her to request an unaccompanied child under 16 to leave the premises. It may also be committed by any member or officer of a club, which holds a club premises certificate, who is present on the premises in a capacity which enables him to make such a request or a premises user in relation to premises being used under the authorisation of a temporary event notice. A defence of due diligence also applies to this offence (see the paragraph below).

Defences

- 12.7 The 2003 Act provides a defence to the offence of the sale of alcohol to children if the retailer of alcohol believed that the purchaser was 18 or over **and** either he took all reasonable steps to establish the purchaser's age or nobody could reasonably have suspected from a purchaser's appearance that he was under 18. The second limb of that defence would cover a case where the purchaser who was under 18 looked exceptionally old for his age. A similar defence is provided in relation to the offence concerning unaccompanied children under 16 being prohibited from certain premises in respect of the belief that an individual is aged 16 or over or 18 or over, as the case may be. The defendant will be deemed to have taken 'all reasonable steps' if he asked the individual for evidence of his age and that evidence would have convinced a reasonable person. This reflects the Government's strong support for the existing voluntary proof of age card schemes. However, if it is proved by the prosecution that the evidence of age was such that no reasonable person would have been convinced by it (for example if the proof of age was either an obvious forgery or clearly belonged to another person), the defence will fail.
- 12.8 The Government also strongly supports the PASS accreditation system which aims to approve and accredit various proof of age schemes that are in existence. PASS is the Proof of Age Standards Scheme launched in January 2003 by the British Retail Consortium and is supported by major retail associations, including those representing the licensed trade. It is an umbrella system, audited by the Trading Standards Institute, under which reliable proof of age card schemes will carry the same hologram logo in order that retailers can readily distinguish such

cards from forgeries or cards issued under unreliable schemes. This ensures that such schemes maintain high standards, particularly in the areas of integrity and security. The Government recommends that licensing authorities should promote the PASS arrangements.

- 12.9 A further defence is provided in circumstances where the sale or supply was made by someone other than the person charged with the offence (for example, where a barman makes a sale having been told by his manager that he knows the purchaser is 18 or over) if the person charged exercised all due diligence to avoid committing the offence.

Allowing sale of alcohol to children

- 12.10 Under section 147 of the 2003 Act, it is an offence knowingly to allow the sale (or in the case of clubs, the supply) of alcohol to an individual aged under 18, on relevant premises, which are defined in section 159. The offence may be committed by those who work at the premises, whether paid or unpaid, in a capacity that gives them the authority to prevent the sale (or supply); and, in the case of a supply by or on behalf of a club, by an officer or member of the club who is present at the time of the supply in a capacity that gives him authority to prevent that supply. It should be noted that a body corporate, partnership or unincorporated association (see section 187 of the 2003 Act) may be the subject of proceedings for an offence under section 147.

Sale of liqueur confectionery to children under 16

- 12.11 The definition of liqueur confectionery is given in section 191(2) of the 2003 Act. It is an offence to sell liqueur confectionery to a child under 16, or for a club or person on behalf of a club to supply it to or to the order of such a child. A defence is provided if the seller believed that the purchaser was 16 or over and if either he took all reasonable steps to establish the purchaser's age or if nobody could reasonably have suspected from the purchaser's appearance that he was under 16. The defendant will be deemed to have taken 'all reasonable steps' if he asked the individual for evidence of his age, and that evidence was such that it would have convinced a reasonable person. Section 148(5) provides a further defence in circumstances where the sale or supply was made by the accused by reason of the act or default of another, if the accused exercised all due diligence to avoid committing the offence.
- 12.12 It is important to note that although children aged 16 and 17 can buy alcohol in the form of liqueur chocolates they cannot buy or be sold any other foodstuffs which contain alcohol of a strength exceeding 0.5 per cent ABV.

Purchase of alcohol by or on behalf of children

- 12.13 The 2003 Act also makes it an offence for a child to buy or attempt to buy alcohol whether or not on licensed premises, or, if he is a member of a club, for him to have alcohol supplied to him or to his order by or on behalf of the club (in circumstances where he actively caused the supply) or attempts to do so. The offence will not be committed if the child was asked by a

police constable or trading standards officer, acting in the course of their duty, to buy or attempt to buy alcohol in order to conduct test purchasing operations, designed to establish whether licensees and staff working in licensed premises are complying with the prohibition on underage sales. It is expected that enforcement officers will have regard to the LACORS/TSI Code of Best Practice on test purchasing operations which includes advice on the protection of children engaged in such operations.

- 12.14 The 2003 Act also makes it an offence for a person to act as an agent for a child in purchasing or attempting to purchase alcohol, for example, if a child gives money to an adult to buy alcohol in an off-licence for consumption by the child. The offence also applies where a member of a club has alcohol supplied to a child or attempts to do so.
- 12.15 A further offence occurs if a person buys or attempts to buy alcohol for consumption by a child on licensed premises, for example, where a father buys a drink for his son under eighteen in a pub. The offence also applies where a member or officer of a club has alcohol supplied to a child (in circumstances where by act or default he caused the supply) or attempted to do so. There is an exemption provided in respect of these offences so that they would not be committed if a person aged 18 or over buys beer, wine or cider for a person aged 16 or 17 to consume with a table meal on relevant premises, in circumstances where the 16 or 17 year old is accompanied by a person aged 18 or over. Licensing authorities will want to note that the exemption only applies while a table meal is being consumed. It would not be sufficient for a person to claim that bar snacks amounted to a table meal.

Consumption of alcohol by children

- 12.16 Under the 2003 Act it is an offence for a child knowingly to consume alcohol on relevant premises. Relevant premises are places licensed by a premises licence, or providing licensable activities under the authority of a temporary event notice or qualifying club activities under a club premises certificate. The offence is not committed if the child inadvertently consumes the alcohol, for example, if his drink is spiked. It is also an offence knowingly to allow the consumption of alcohol by a child on relevant premises. Those who can commit this offence are any person who works – whether paid or unpaid – at the premises in a capacity that gives him the authority to prevent the consumption and, in the case of a supply by a club, any officer or member of a club who is present at the time of the consumption in a capacity which authorises him to prevent it. An exemption is provided by which these offences are not committed where a 16 or 17 year-old consumes beer, wine or cider with a table meal in circumstances where he is accompanied by a person aged 18 or over. As mentioned above, the exemption only applies while a table meal is being consumed. It would not be sufficient for a person to claim that bar snacks amounted to a table meal.

Delivering alcohol to children

- 12.17 It is an offence for someone working, whether paid or unpaid, on relevant premises knowingly to deliver to an individual under 18, alcohol which is sold on the premises or supplied on premises by or on behalf of a club or to the order of a member of the club. Relevant premises

are places for which a premises licence is in force, or where licensable activities are carried on under the authority of a temporary event notice or where qualifying club activities are carried on under a club premises certificate. The offence would cover, for example, circumstances where a child takes delivery of a consignment of alcohol ordered by an adult by telephone (in a case where the exceptions mentioned below do not apply). It is also an offence for a person working, whether paid or unpaid, on relevant premises, and in a position which gives him authority to prevent it, knowingly to allow another person to deliver alcohol supplied on relevant premises to individuals under 18. This offence would cover, for example, a person who authorises a delivery of the sort mentioned above in the knowledge that the recipient will be a child. The offence also applies in the case of a delivery by or on behalf of a club or to the order of a member or officer of the club, where the delivery is allowed by a person working on the premises in a capacity which gives him authority to prevent it. The offences are not committed if the alcohol is delivered to the home or place of work of the purchaser or person who is to be supplied with the alcohol (for example, where a child answers the door and signs for the delivery of his father's order at his house), nor where the job, whether paid or unpaid, of the child who took delivery of the alcohol involves delivery of alcohol (for example, where a 16 year old office worker is sent to collect a delivery for his employer), nor where the alcohol is sold or supplied for consumption on the relevant premises.

Sending a child to obtain alcohol

12.18 Under the 2003 Act, it is an offence knowingly to send a child to obtain alcohol which is sold or to be sold for consumption off the premises, or which is supplied or to be supplied by or on behalf of a club to or to the order of a member of the club for such consumption. This offence would cover, for example, circumstances where a parent sends their child to an off-licence to collect some alcohol which had been bought over the telephone. The offence is committed regardless of whether the child is sent to the actual premises from where the alcohol is sold or supplied, or whether he is sent to other premises to which the alcohol has been sent. The offence will not be committed where the child works, whether paid or unpaid, at the premises in question and his job involves taking deliveries of alcohol. The offence is also not committed if the child is sent by a police or trading standards officer, in the course of his duty, to obtain alcohol as a test purchaser to test the compliance of the retailer or club with the prohibition on underage sales. Enforcement officers will want to have regard to the LACORS/TSI Code of Best Practice on test purchasing operations which includes advice on the protection of children engaged in such operations.

Prohibition of unsupervised sales by children

12.19 It is an offence under the 2003 Act knowingly to allow an individual under the age of 18 to sell or, in the case of a club, to supply alcohol, unless each such sale or supply has been specifically approved. The offence may be committed by:

- a premises licence holder, designated premises supervisor or someone aged 18 or over authorised by them, or

- in the case of a club, any member or officer of the club who is present on the premises in a capacity that enables him to prevent the supply, or
- in a case where the premises are used for a permitted temporary activity, the premises user or a person aged 18 or over authorised by him.

12.20 The 2003 Act provides that the offence is not committed where the alcohol is sold or supplied for consumption with a table meal in a part of the premises used only for this purpose. The effect of this exception is that, for example, a minor working as a waiter or waitress in a restaurant is able to serve alcohol lawfully in a restaurant.

Confiscation of sealed containers of alcohol

12.21 The 2003 Act also amended the Criminal Justice and Police Act 2001 and the Confiscation of Alcohol (Young Persons) Act 1997 so that the police have the power under these Acts to confiscate alcohol in sealed containers from anyone in an area which has been designated by the local authority for the purposes of curbing anti-social behaviour and from people under 18 in any public place. Prior to the 2003 Act coming into force, police powers in relation to confiscation of alcohol applied only in relation to opened containers.