

LICENSING ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

PART 7: Offences

Section 136 – Unauthorised licensable activities

219. This section makes it an offence to carry on or attempt to carry on a licensable activity without the authorisation provided by, as appropriate, a premises licence, a club premises certificate or a temporary event notice. It is also an offence knowingly to allow such an activity to be carried on. This provision is central to the enforcement of the licensing regime introduced by the Act.
220. Certain activities which would otherwise fall within the definition of “licensable activities” in section 1(1) are excluded from that definition by sections 173 to 175. Subsection (2) provides that an offence is not committed under section 136 if the only involvement of a person in the provision of regulated entertainment is his performance etc.

Section 137 – Exposing alcohol for unauthorised sale

221. This section makes it an offence to expose alcohol for sale by retail (see the definition in section 192) in circumstances where the sale would not be under and in accordance with a premises licence, club premises certificate or temporary event notice. The effect of this provision is that an offence can be committed in a case where no sale or attempted sale is in fact made. Subsection (4) provides that a court which convicts a person of this offence may order the confiscation of the alcohol in question and its containers, which may then be either destroyed or dealt with as the court orders.

Section 138 – Keeping alcohol on premises for unauthorised sale

222. This section makes it an offence to keep alcohol on premises with the intention of selling it by retail (see the definition in section 192) or supplying it (by or on behalf of a club or to the order of a member of the club) unless that sale or supply would be under and in accordance with an authorisation. Subsection (5) provides that a court which convicts a person of this offence may order the confiscation of the alcohol in question and its containers, which may then be either destroyed or dealt with as the court orders.

Section 139 - Defence of due diligence

223. This section provides that a person who is charged with the offence of carrying on an unauthorised licensable activity, exposing alcohol for unauthorised sale or keeping alcohol in premises for unauthorised sale or supply has a defence if his act or omission was mistaken, was due to his relying on information given to him, was the fault of another person or was due to some cause beyond his control, and he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

Section 140 – Allowing disorderly conduct on licensed premises etc.

224. This section makes it an offence knowingly to allow disorderly conduct on licensed premises and thus re-enacts part of the existing offences in sections 172(1) and 172A(1) of the Licensing Act 1964. Subsection (2) of this section sets out the categories of person who may commit the offence. These include any person who works at the premises in a capacity that gives him the authority to prevent the conduct, a premises licence holder or designated premises supervisor, an officer or member of a club who is present at the time of the disorder and who has authority to prevent it, and a premises user (see the definition in section 100 (2)) who has given a temporary event notice in respect of those premises.

Section 141 – Sale of alcohol to a person who is drunk

225. This section makes it an offence to sell or attempt to sell alcohol to a person who is drunk, or to allow alcohol to be sold to such a person, on relevant premises (see the definition in section 159). The section thus effectively re-enacts the existing offences in sections 172(3) and 172A(3) of the Licensing Act 1964. Subsection (2) of this section sets out the categories of person who may commit the offence. These include any person who works at the premises in a capacity that gives him the authority to sell the alcohol, a premises licence holder or designated premises supervisor, an officer or member of a club who is present at the time of the sale and who has authority to prevent it, and a premises user (see the definition in section 100(2)) who has given a temporary event notice in respect of those premises. Subsection (3) provides that the offence also covers supplies of alcohol by or on behalf of a club to or to the order of a member of the club.

Section 142 – Obtaining alcohol for a person who is drunk

226. This section makes it an offence knowingly to obtain or attempt to obtain alcohol for consumption on relevant premises (see the definition in section 159) by a person who is drunk. The section thus effectively re-enacts the existing offence in section 173(1) of the Licensing Act 1964.

Section 143– Failure to leave licensed premises etc.

227. This section provides that a person who is drunk or disorderly commits an offence if he fails to leave relevant premises (see the definition in section 159) at the request of a police constable or a person listed in subsection (2), or if he enters (or tries to enter) such premises when asked not to by such a person. No offence will be committed if the person has a reasonable excuse, for example, if he is disabled or injured and so unable to leave the premises. The persons listed in subsection (2) are:
- any person who works at the premises in a capacity that gives him the authority to make that request,
 - a premises licence holder or designated premises supervisor,
 - an officer or member of a club who is present at the time of the sale and who has authority to make that request, and
 - a premises user (see the definition in section 100(2)) who has given a temporary event notice in respect of those premises.
228. Subsection (4) provides that a police constable must help to expel drunk or disorderly individuals from relevant premises, or help to prevent them entering as the case may be, if requested to do so by anyone listed above. The section thus re-enacts the provisions of section 174 of the Licensing Act 1964 but unlike that section is not limited to premises with a licence for alcohol sales.

Section 144 – Keeping of smuggled goods

229. This section provides that it is an offence knowingly to keep or allow to be kept, on relevant premises (see the definition in section 159), any unlawfully imported goods or goods on which duty has not been paid. Subsection (2) sets out the categories of person who may commit the offence. These are

- any person who works at the premises in a capacity that gives him the authority to prevent those goods from being kept on the premises,
- a premises licence holder or designated premises supervisor,
- an officer or member of a club who is present at the time when the goods are kept on the premises and who has authority to prevent them being so kept, and
- a premises user (see the definition in section 100(2)) who has given a temporary event notice in respect of those premises.

Subsection (4) provides that a court which convicts a person of this offence may order the confiscation of the goods in question and their containers, which may then be either destroyed or dealt with as the court orders.

Section 145 – Unaccompanied children prohibited from certain premises.

230. By virtue of this section it is an offence to admit children under 16 to certain categories of relevant premises (see section 159) if they are not accompanied by an adult and those premises are open for the supply of alcohol for consumption there. Those premises are

- a) those exclusively or primarily used for the supply of alcohol for consumption on the premises, or
- b) those open for the purposes of being used for the supply of alcohol for consumption on the premises by virtue of Part 5 (permitted temporary activities) and, at the time the temporary event notice in question has effect, they are exclusively or primarily used for such supplies.

It will also be an offence to allow an unaccompanied child under 16 to be on relevant premises at a time between the hours of midnight and 5 a.m when the premises are open for the supply for alcohol for consumption there.

231. Subsection (3) sets out the categories of persons who may commit the offence. These are:

- any person who works at the premises in a capacity that gives him the authority to request the child to leave,
- a premises licence holder or designated premises supervisor,
- an officer or member of a club who is present in a capacity which enables him to request the child to leave, and
- a premises user (see the definition in section 100(2)) who has given a temporary event notice in respect of those premises.

232. Subsection (6) provides for a defence where a person charged with an offence under this section believed the child was aged 16 or over, or the adult accompanying them was aged 18 or over, and either took all reasonable steps to establish the individual's age or nobody could reasonably have suspect from the individual's appearance that they were aged under 16 or 18. There is a further defence where someone is charged with an offence under this section because of the act or default of another person, and the person charged exercised all due diligence to avoid committing the offence. No offence is committed if the unaccompanied child is merely passing through the premises, where this is the only convenient route.

Section 146 – Sale of alcohol to children

233. Existing legislation ties the offence of selling alcohol to children to licensed premises. This section makes it an offence to sell alcohol to children anywhere. Subsections (2) and (3) further provide that it is an offence for a club, or a person on behalf of a club, to supply alcohol to or to the order of a child who is a member of a club, or to any child on the order of a member of a club. Subsection (4) provides a defence if the seller 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 the 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. The defendant will be deemed to have taken 'all reasonable steps' if he asked the individual for evidence of his age. 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. Subsection (6) provides a further defence in circumstances where the sale or supply was made by someone other than the person charged with the offence (for example, where the manager of a pub is charged with the offence although the actual sale was made by a barman) if the person charged exercised all due diligence to avoid committing the offence.

Section 147 – Allowing sale of alcohol to children

234. This section provides that it is an offence knowingly to allow the sale (or in, the case of clubs, the supply) of alcohol to a child, on relevant premises (see the definition in section 159). Subsections (2) and (4) set out the categories of person who may commit the offence. These include any person who works at the premises in a capacity that gives him the authority to prevent the sale (or supply), and, in the case of a supply by or on behalf of a club, 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.

Section 148 – Sale of liqueur confectionery to children under 16

235. This section makes it an offence to sell liqueur confectionery – as defined in section 191(2) – 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. Subsection (3) provides a defence 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. Subsection (5) provides a further defence in circumstances where the sale or supply was made by someone other than the person charged with the offence, if the person charged exercised all due diligence to avoid committing the offence.

Section 149 – Purchase of alcohol by or on behalf of children

236. Subsection (1) 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 by the club (in circumstances where he actively caused the supply) or attempt 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 to establish whether licensees and staff working in licensed premises are complying with the prohibition on underage sales.
237. Subsection (3) 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. Subsection (4) makes it a further offence for a person to buy or attempt to buy alcohol for consumption by a child on licensed premises, for example, where a father buys a drink for his son in a pub. The offence also applies where a member of a club has alcohol supplied to a child (in circumstances where he actively caused the supply) or attempts to do so. Subsection (5) provides that this offence will 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 (see the definitions in section 159), in circumstances where the 16 or 17 year old is accompanied by an adult. This provision thus re-enacts the existing exemption in section 169D of the Licensing Act 1964.

Section 150 – Consumption of alcohol by children

238. Subsection (1) makes it an offence for a child knowingly to consume alcohol on relevant premises (see the definition in section 159). The offence will thus not be committed if the child inadvertently consumes the alcohol, for example if his drink is spiked. Subsection (2) also makes it an offence knowingly to allow the consumption of alcohol by a child on relevant premises. Subsection (3) sets out the categories of person who may commit this offence. These include any person who works 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, to any officer or member of a club who is present at the time of the consumption in a capacity which allows him to prevent it. Subsection (4) provides that the offences in this section will not be committed where a 16 or 17-year-old consumes beer, wine or cider with a table meal (see the definition in section 159) in circumstances where he is accompanied by an adult.

Section 151 – Delivering alcohol to children

239. This section sets out offences relating to the delivery of alcohol to children. Subsection (1) provides that it is an offence for someone working on relevant premises (see the definition in section 159) knowingly to deliver to a child alcohol which is sold on the premises or supplied there by or on behalf of a club. The offence would cover, for example, circumstances where a child takes delivery of a consignment of alcohol bought by his father from an off-licence (in a case where the exceptions mentioned below do not apply). Subsections (2) and (3) provide that it is also an offence for a person working on relevant premises and in a position which gives him authority to prevent it knowingly to allow another person to deliver alcohol to children. This offence would cover, for example, a person who authorises a delivery of the sort mentioned above. Subsections (4) and (5) provide that this offence will also apply in the case of a delivery by or on behalf of a club or to or to the order of a member 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.
240. Subsection (6) provides that the offences in this section are not committed if the alcohol is delivered to the home or place of work of the purchaser or person who is supplied (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 of the minor 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.

Section 152 – Sending a child to obtain alcohol

241. This section re-enacts the existing offence (in section 169G of the Licensing Act 1964) of knowingly sending a child to obtain alcohol which is sold for consumption off the premises, or which is 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. Subsection (2) provides that the offence will be 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. Subsection (3) provides that the offence will not be committed where the minor's works at the premises in question and his job involves taking deliveries of alcohol. Subsection (4) provides that the offence will also not be committed if the child is sent by a police or trading standards officer, in the course of his duty, to obtain alcohol to test the compliance of the retailer with the prohibition on underage sales.

Section 153 – Prohibition of unsupervised sales by children

242. This section re-enacts provisions in the Licensing Act 1964 so that it is an offence 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. Subsection (4) sets out the categories of person who may commit this offence. These are

- a premises licence holder, designated premises supervisor or someone over 18 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 temporary permitted activity, the premises user or a person over 18 authorised by him.

Subsection (2) provides that the offence in this section is not committed where the alcohol is sold 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 will be able to serve alcohol in a restaurant.

Section 154 – Enforcement role for weights and measures authorities

243. This provision re-enacts section 169I of the Licensing Act 1964 which confers on weights and measures authorities the role of conducting test purchase operations to check retailers' compliance with the prohibition on underage sales. In practice, these activities are usually carried out by trading standards officers. Subsection (2) provides that a weights and measures inspector may either make purchases himself or may authorise another person to do so. Thus, for example, he might lawfully ask a child to attempt to purchase alcohol.

Section 155 – Confiscation of sealed containers for alcohol

244. This section amends the Criminal Justice and Police Act 2001 and the Confiscation of Alcohol (Young Persons) Act 1997 so that the police have the power 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. Police powers in relation to confiscation of alcohol currently apply only in relation to opened containers.

Section 156 – Prohibition of sale of alcohol on moving vehicles

245. This section makes it an offence to sell alcohol by retail on or from any vehicle which is not permanently or temporarily parked. Subsection (3) provides a defence in circumstances where:

- the sale was mistaken, was due to the seller relying on information given to him, was the fault of another person or was due to some cause beyond his control, and
- he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

*These notes refer to the Licensing Act 2003 (c.17)
which received Royal Assent on 10 July 2003*

- For example, a person might mistakenly believe the beverages he is serving are non-alcoholic.

Section 157 – Power to prohibit sale of alcohol on trains

246. Subsections (1) and (2) provide for the prohibition of sales of alcohol at specified stations or on trains travelling between specified stations for a specified period. A prohibition order may be made by local magistrates on the application of a police officer of at least the rank of inspector, if the magistrates are satisfied that the order is necessary for the prevention of disorder. Subsection (4) requires the police officer who applied for the order (or another police officer who has been designated by the chief officer of police) to serve a copy of the order on the train operator or operators concerned. It is to be an offence knowingly to sell alcohol, or to permit its sale, in contravention of such an order.

Section 158 – False statements made for the purposes of this Act

247. This section provides that it is an offence for a person knowingly or recklessly to make any false statement in connection with applications and notices under the Act.