

VIOLENT CRIME REDUCTION ACT 2006

EXPLANATORY NOTES

BACKGROUND

Part 1: Alcohol-related violence and disorder

35. In January 2005 the Government published a consultation paper called “Drinking Responsibly – The Government’s Proposals”. This set out proposals for introducing drinking banning orders. The range of prohibitions available through drinking banning orders – which could include exclusions from certain premises – will render the provisions of the Licensed Premises (Exclusion of Certain Persons) Act 1980 redundant. Schedule 5 therefore repeals the 1980 Act.
36. The Government’s proposals for powers for local authorities and the police to designate alcohol disorder zones and to charge licensed premises for the costs of dealing with alcohol-related crime and disorder were also included in the “Drinking Responsibly” consultation paper.

Alcohol disorder zones

37. Alcohol disorder zones are designed to tackle the problem of alcohol-related crime and disorder in town and city centres by focussing intervention activity on the public space around licensed premises and/or the management of individual premises.
38. Alcohol disorder zones will sit alongside other measures to change individuals’ behaviour, enforce the provisions of the Licensing Act 2003 and secure the collective responsibility of licensed premises to help build a robust local infrastructure to manage the night time economy. They are intended to be an intervention of the last resort.

Power of police to require review of premises licence

39. Through this legislation the Government is seeking to introduce a power for police to require an expedited review of an alcohol licence where the premises are associated with serious crime and disorder, and a power for councils to take temporary steps in relation to the licence (including imposing additional conditions) pending the determination of the review.
40. These objectives fit into the overall government aim of achieving a 15% reduction in crime, (including violent crime) by 2008 by:
 - contributing to changing the culture of carrying weapons – searching pubs and clubs where this is a demonstrable risk will serve as a clear deterrent to carrying knives;
 - reducing the risk of injury caused by glass – requiring pubs and clubs to use toughened glass where there is a demonstrable risk will help reduce the risk of injury from glassing.
41. These are selective measures. It is not the aim to require all licensed premises to undertake these searches or use toughened glass. Rather, the policy aim is to provide a selective tool, to be used proportionately, to limit this condition to those pubs that are at

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risk either because police intelligence shows there is a risk of knives/guns being carried or because crime and disorder has occurred on the premises.

42. The Licensing Act 2003 is the main statutory lever to regulate both on and off licence traders. Operators are issued with a licence to sell alcohol, and this licence is the main vehicle for regulating their behaviours.
43. There are conditions applied to this licence, relating to crime and disorder, which are on the face of the Licensing Act 2003 (e.g. not knowingly allowing alcohol to be sold to a person who is drunk) and apply universally to all licensed establishments.
44. There is also a provision which allows other conditions to be attached to licences, by licensing authorities, which are tailored to the particular circumstances of individual establishments. Searching for weapons and use of toughened glass are examples of this type of selective provision that can already be applied to licences where there is a demonstrable need.
45. The aim of this provision is to supplement the existing provisions in the Licensing Act 2003, which provide for conditions to be attached to licences. This is achieved by giving the police the power to issue a certificate where they believe that a premise is associated with serious crime and disorder. This would trigger an accelerated review of the licence with the attaching of temporary conditions to the licence.
46. The provision would cover serious crime and disorder generally (rather than be limited to weapons and glass related incidents – although the need to use the provision for these purposes could be brought out in guidance). And the appropriate modifications and conditions to the licence could be set.

Persistent selling of alcohol to children

47. The requirement to have reached 18 in order to make alcohol purchases has been the law in England and Wales since the coming into force of the Intoxicating Liquor (Sale to Persons under Eighteen) Act 1923. Despite measures over subsequent years aimed at reducing the underage purchase and consumption of alcohol, it remains the case that many children are able to obtain alcohol from some licensed sources now with ease. Since 1988, several attempts have been made to strengthen the offences and to make prosecution and conviction of offenders easier. These efforts have included:
 - replacing the “knowingly” aspect of the offence provisions with a restricted due diligence defence (Licensing Act 1988);
 - expanding those who are liable to prosecution for the offences (Licensing (Young Persons) Act 2000);
 - further restricting the defence of due diligence (Criminal Justice and Police Act 2001);
 - placing “test purchasing” of alcohol on a statutory footing (Criminal Justice and Police Act 2001); and
 - making the offence of selling alcohol to children subject to fixed penalty notice procedures (November 2004).
48. An Alcohol Misuse Enforcement Campaign in the summer of 2004 found that in premises targeted by test purchasing operations almost 50 per cent were committing offences of selling alcohol to children. A similar campaign during the Christmas/New Year period of 2004/2005 found that out of 989 test purchasing operations on targeted establishments, 32 per cent of on licence and off licence premises were found to be selling to under-18s.
49. Although the Licensing Act 2003 increased the maximum fines for offences related to sales of alcohol to children from £1,000 to £5,000, the impact of convictions for such

offences falls on the individual offender and therefore not necessarily on the business carrying on the licensable activity at the premises. Similarly, conviction may lead to the suspension of a personal licence if one is held by the offender, but not the premises licence which authorises sales of alcohol at the premises concerned. Whether any action is taken in respect of the premises licence depends on the police or trading standards officers applying to the licensing authority for a review of the premises licence. Whether any action is taken to suspend or revoke the premises licence would then depend on the view taken by the licensing authority following a hearing.

50. In the “Drinking Responsibly” consultation paper, the Government argued that the existing and future offence provisions and the increased penalties associated with the implementation of the Licensing Act 2003 may be insufficient in themselves to curb the current level of unlawful sales. A key proposal was to legislate to create a power for the police and trading standards officers (inspectors of weights and measures) to close premises for a period of up to 48 hours where there was evidence of persistent unlawful selling to children. The provisions in sections 23 and 24 of the Act give effect to these proposals.
51. **Part 3** introduces a new power for a police constable to issue an individual with a direction to leave a public place where it is necessary to prevent alcohol-related crime or disorder. The direction can prohibit the person’s return to the area for up to 48 hours. This provision will be particularly useful to the police as an early intervention tool as a direction could be given to a person who it is considered is likely to be involved in alcohol-related crime or disorder. It will therefore help the police to reduce the potential risk of alcohol-related crime or disorder taking place.

Part 2: Weapons etc.

52. Gun crime remains relatively rare and as a proportion of all recorded crime, remains stable at 0.4% (including air weapon offences). However, gun crime remains of considerable concern to the Government.
53. There is a range of legislation in place which makes it an offence to possess a prohibited firearm and to carry other offensive weapons in public without reasonable excuse. People may in some circumstances, however, escape prosecution by entrusting their weapon to another person, in particular to a child. Part 2 of the Act addresses this issue, and reflects the fact that using children in this way presents particularly serious dangers, as in addition to the risk of injuring themselves with the weapon and being arrested for possession of the weapon, they may in the longer term be drawn into gun and knife crime as a result of their early association with weapons.
54. In recent years imitation firearms have featured in an increasing number of crimes, ranging from nuisance and intimidation to armed robbery. In 2004/5, imitation firearms were involved in 3,333 crimes. This was an increase of 55% following an 18% rise the previous year. Much of the problem involves young people misusing imitation firearms, including using realistic imitations to threaten and intimidate others. There is a range of existing offences and controls relating to imitation firearms but they have not proved sufficient to halt this trend. The Act seeks to tackle the problem at source by restricting the sale of imitation firearms.
55. Air weapons were used in 11,825 crimes in 2004/5. This was a fall of 14% from the previous year but still represents an unacceptable level of misuse. Much of this misuse is committed by young people. The Act seeks to tackle this problem at source by controlling who can sell air weapons and by increasing the minimum age for acquiring or possessing an air weapon. A small number of offences involve firing air weapons beyond the boundary of premises. This was already an offence but applied only to young people. The Act closes this gap in the law.
56. While whole rounds of ammunition are subject to licensing, component parts of ammunition are not. In recent years, the police have identified several cases where

criminals had been found in possession of home-loaded ammunition. The Act seeks to address this problem by restricting sales of primers.

57. On knife crime, the Home Secretary announced on 15 December 2004 that he was considering raising the minimum age at which a young person can buy a knife from 16 to 18 and that this measure (included in Part 2 of the Act) formed part of wider Government proposals on tackling knife crime.
58. Section 45 gives head teachers or staff authorised by them a power to search a pupil and his or her belongings for knives or offensive weapons without the pupil's consent. The section provides a power and does not impose a duty. Head teachers may decide to exercise the power or to rely on the current option of calling the police – an option which remains. The Government is aware that a significant number of pupils (though low in percentage terms) have carried a knife in school for illegitimate purposes, which is a statutory offence, and that there have been a number of knife-related fatalities or serious injuries involving young people of school age. Section 46 creates an equivalent power for principals of a further education institution or an authorised member of staff, and section 47 a similar power for officers in charge of attendance centres or an authorised member of staff.

Part 3: Miscellaneous

59. In the light of the significant contribution that football banning orders are making to reducing levels of English and Welsh football disorder, particularly at regulated matches played outside England and Wales, the Act removes the current time limitation on key measures. The Act also puts in place some refinements to the administration of football banning orders and abolishes provisions for the setting up of a national membership scheme. The provisions have never been implemented and the principle of restricting access to football matches to individuals who are members of such a scheme is inconsistent with the strategic aim of encouraging football fans from all sections of society to attend matches. The Act also updates ticket touting provisions in connection with football to cover unauthorised internet ticket sales and other ticket touting practices designed to avoid prosecution under current provisions.
60. Section 145 of the Nationality, Immigration and Asylum Act 2002 introduced a new offence of traffic in prostitution. Section 146 of that Act applied sections 25C and 25D of the Immigration Act 1971 to an offence under section 145. Broadly, the application of sections 25C and 25D allowed the court to order the forfeiture of a ship, vehicle or aircraft used or intended to be used in connection with the offence subject to certain conditions, and allowed a constable or chief immigration officer to detain such a ship, vehicle, or aircraft, again subject to certain conditions.
61. The Sexual Offences Act 2003 repealed sections 145 and 146 of the 2002 Act and replaced those provisions with three new offences in the 2003 Act itself: trafficking into the UK for sexual exploitation (section 57), trafficking within the UK for sexual exploitation (section 58), and trafficking out of the UK for sexual exploitation (section 59).
62. In relation to those three new offences, section 25C and section 25D of the 1971 Act were not applied. It was believed at the time that it was enough to rely on police detention powers in the Police and Criminal Evidence Act 1984 and the general forfeiture provision in section 143 of the Powers of Criminal Courts (Sentencing) Act 2000. The Government's current view is that section 143 of the Powers of Criminal Courts (Sentencing) Act 2000 does not meet the policy aim because section 143 does not help with detention prior to conviction, nor does it allow for the special conditions for forfeiture of a ship or aircraft.
63. The Government's policy is that the courts should have the power to order the forfeiture of ships, vehicles or aircrafts used or intended to be used in connection with offences under sections 57 to 59 of the 2003 Act, and the police should have the power to detain

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such vehicles, ships or aircrafts, in the same way as the courts and police have such powers under sections 25C and 25D of the 1971 Act.

64. In a recent court case in respect of a sexual offence, the judge took the view that since it was not clear whether the offence was committed before or after the Sexual Offences Act 2003 came into force, the case against the defendant could not be put to the jury either under the old or the new law and he ruled therefore that there was no case to answer. It is the Government's view that an offender should not avoid conviction for a sexual offence because it cannot not be proven beyond reasonable doubt exactly when such an offence took place. The provision made by section 55 is intended to make that clear.
65. In June this year, the Scottish Executive passed the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005. This Act introduced in Scotland several new offences and civil orders which are similar to those which the Sexual Offences Act 2003 introduced in England, Wales and Northern Ireland. The Scottish Act however cannot amend the law as it relates to England, Wales and Northern Ireland. Section 56 makes provision dealing with the cross-border aspects of the two pieces of legislation to ensure that offenders should not be able to avoid monitoring by moving around the United Kingdom.
66. The Criminal Justice Act 2003 introduced a new type of sentence. Where a person aged 18 or over is convicted of a serious offence and the court is of the opinion that there is significant risk to members of the public of serious harm from future offences, the court must impose a sentence of imprisonment for public protection. This is not the same as a life sentence. Because it is not a life sentence and because the judge is not required to express the length of the sentence in terms of months or years to be spent in custody, a person handed down such a sentence for a sexual offence would, as the law stood before this Act, have only been required on release to notify their details under the Sexual Offences Act 2003 for a period of 5 years, a considerably shorter period than those convicted of less serious crimes.
67. The Government is of the view that those persons who are convicted of the most serious sexual crimes and potentially pose the greatest threat should be required to notify their details to the police for the rest of their lives following their release from prison.
68. It is the Government's intention that the police have all the powers that they require to manage effectively the risks posed to the community by relevant sexual offenders. Following a stocktake of the effectiveness of the Sexual Offences Act 2003 and a report into the management of sex offenders in Scotland, the Government formed the view that police officers should, on production of a warrant issued by a magistrate, be able to enter and search, by force if necessary, the homes of registered sex offenders for the purposes of assessing the risks they pose, where it is both necessary to do so and where it has not previously been possible to secure entry.
69. The Mobile Telephones (Re-programming) Act 2002 created a number of offences relating to the electronic identifiers of mobile wireless communications devices. In particular it became an offence to change the unique International Mobile Equipment Identity (IMEI) number which identifies a mobile telephone handset. It is also possible to interfere with the operation of the IMEI by the addition of a small electronic chip to the handset and this too was an offence.
70. From September 2002 all the major mobile telephone network providers have been able to bar mobile telephone handsets, when these are reported stolen or lost, by reference to the IMEI number. However, if the IMEI number of the stolen or lost telephone is changed, it is not possible to implement the barring process and the telephone is able to continue in use.
71. It is clear from international Global System for Mobiles (GSM) standards that the IMEI number should not be changed and that it should be resistant to change. There

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is no legitimate reason why anyone other than the manufacturer of a mobile telephone (or its authorised agents) should need to alter an IMEI number. It is therefore the Government's view that it should be an offence to offer or agree to re-programme a mobile telephone.