

# businesscompanion

## trading standards law explained

### Alcohol: age restrictions

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#### **This guidance is for England and Wales**

Everyone involved in sales from on-licensed and off-licensed premises should be aware of their obligations under the Licensing Act 2003 relating to the prevention of sales of alcohol to children.

It is essential that you keep within the law and have systems in place that will act as a legal defence to an allegation that an underage sale of alcohol has taken place. If you do sell alcohol to an individual who is under 18 you could be prosecuted and fined, and your licence to sell alcohol could be at risk.

#### **Preventing the sale of alcohol to children: an overview**

The Licensing Act 2003 sets out a series of objectives, which a licensing authority is required to promote. "The licensing objectives are:

- (a) the prevention of crime and disorder;

- (b) public safety;
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm."

The objective on "the protection of children from harm" includes preventing the sale and supply of alcohol to under-18s. The law sets out the framework that aims to achieve this objective.

The premises licence holder, the designated premises supervisor (who must be a personal licence holder), any other personal licence holders, and staff within on-licensed and off-licensed premises should all be aware of their obligations under the Licensing Act 2003 relating to the prevention of sales of alcohol to children.

Before someone can apply for a personal licence, they must be aged 18 or over and have obtained an accredited licensing qualification, which covers licensing law and social responsibility related to the sale of alcohol. In addition, relevant criminal convictions must be disclosed.

It is the premises licence holder and designated premises supervisor's responsibility to keep within the law and to have systems in place that will act as a legal defence to an allegation that a sale of alcohol has taken place to an individual under the minimum legal age.

A penalty notice for disorder (PND) is a type of fixed penalty notice that can be issued by a police officer, police community support officer or an 'accredited person' to a person who sells alcohol to someone under 18. It is intended to provide a quick and effective means of dealing with certain types of offending - as an alternative to prosecution - and may be issued where the person making the sale is the bar person or member of staff (in off-licensed premises). The current penalty charge is £90.

A responsible authority, such as police or trading standards, may ask the licensing authority to review the licence because of a problem at the premises related to any of the four licensing objectives. The licence could be suspended or revoked. Other licensable activities and non-licensable activities are not affected by this suspension order.

## **The law**

The Licensing Act 2003 sets out the offences, defences and penalties that relate to underage sales of alcohol.

### **Sale of alcohol to children**

A person commits an offence if they sell alcohol to an individual under 18.

If you are charged with an offence you have the defence that you believed the individual was aged 18 or over, and you had either taken all reasonable steps to find out the individual's age or that no one could reasonably suspect from their appearance that they were under 18. 'Reasonable steps' means asking the individual for evidence of their age, and that the evidence would convince a reasonable person.

If you are charged with an offence due to the conduct of someone else - a member of staff, for example - you have the defence that you exercised all due diligence to avoid committing it. (The '**Keeping within the law**' section below explains what this means.)

## **Allowing the sale of alcohol to children**

A person who works at premises in a capacity that authorises them to prevent the sale of alcohol to an individual under 18 commits an offence if they knowingly allow the sale of alcohol to take place.

## **Persistently selling alcohol to children**

It is an offence for a 'responsible person' (the premises licence holder) to unlawfully sell alcohol to an individual under 18 at the same premises on two or more different occasions within a period of three consecutive months.

An 'unlawful sale' is defined as where the person making the sale believed the individual was under 18 or that the person did not have reasonable grounds for believing the individual was 18 or over. 'Reasonable grounds' means asking the individual for evidence of their age and that this evidence when provided would convince a reasonable person, or that no one would reasonably suspect from the individual's appearance that they were under 18.

An enforcing body, such as the police or trading standards, can apply for a closure notice - which prohibits the sale of alcohol at the premises - as an alternative to prosecution; the duration of this notice can range from 48 to 336 hours. Where a premises licence holder is convicted of an offence of persistently selling alcohol to children, the court may suspend the licence authorising the sale of alcohol at that premises for a period of up to three months.

## **Prohibition of unsupervised sales by children**

The premises licence holder, designated premises supervisor, or other responsible person aged 18 or over, commits an offence if they allow an individual under 18 to sell or supply alcohol unless the sale has been specifically approved and the person is supervised. There are exceptions if alcohol is sold or supplied for consumption with a table meal. You must check the ages of your staff to make sure you comply with the law.

## **Temporary events**

If you want to organise a temporary event where a 'licensable activity' - such as the sale of alcohol - will take place on unlicensed premises, you must apply to your local council for a temporary event notice. A copy of the notice must be clearly displayed at the event. There are restrictions and requirements that you must be aware of before you make your application; contact your council for more information.

Offences under the Licensing Act 2003, including those that relate to age restrictions, also apply to temporary events.

## **Proxy sales of alcohol**

'Proxy sales' is a term used to describe the purchase of alcohol on behalf of children.

A person commits an offence if they buy or attempt to buy alcohol on behalf someone under 18. It is also

an offence for a person to buy or attempt to buy alcohol for someone under 18 to drink on licensed premises. However, it is legal for someone aged 18 or over to buy beer, wine or cider for someone aged 16 or 17 to drink with a table meal on licensed premises, as long as the young person is accompanied at the meal by a person aged 18 or over.

Although it is the person who buys or attempts to buy alcohol for a child who commits the offence, you have a duty under "the protection of children from harm" licensing objective to prevent such sales from occurring.

**Note:** It is against the law to give children alcohol if they are under five years old.

## Keeping within the law

In order to keep within the law and therefore satisfy the legal defences, you must introduce an age verification policy and have effective systems to prevent sales to persons under the minimum legal age. These systems should be regularly monitored and updated as necessary to identify and put right any problems or weaknesses, or to keep pace with any advances in technology.

Key best practice features of an effective system include the following.

### Age verification checks

The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010 introduced conditions that apply to all licensed premises. One of these is that if your premises sells or supplies alcohol, you must have an age verification policy.

Always ask young people to produce proof of their age. The Chartered Trading Standards Institute, the Home Office and the National Police Chiefs' Council support the UK's national [Proof of Age Standards Scheme \(PASS\)](#), which includes a number of card issuers. You can be confident that a card issued under the scheme and bearing the PASS hologram is an acceptable proof of age.

A passport or photocard driving licence can also be accepted but make sure that the card matches the person using it and the date of birth shows they are at least the minimum legal age. Military identification cards can be used as proof of age but, as with other forms of identification, make sure the photo matches the person presenting the card and check the date of birth. Be aware that military identification cards can be held by 16 and 17-year-old service people.

You do not have to accept all of the above forms of identification and it may be best to exclude any type of document that your staff are not familiar with.

Some young people may present false identification cards, so it is advisable to also check the look and feel of a card. For example, the PASS hologram should be an integral part of a PASS card and not an add-on.

If the person cannot prove that they are at least the minimum legal age - or if you are in any doubt - the sale should be refused.

Please see the Home Office [False ID Guidance](#) for more information.

## **Operate a Challenge 21 or Challenge 25 policy**

This means that if the person appears to be under 21 or 25, they will be asked to verify that they are at least the minimum legal age by showing valid proof of age. You can incorporate this into your age verification policy.

### **Staff training**

Make sure your staff are properly trained. They should know which products are age restricted, what the age restriction is and the action they must take if they believe an underage person is attempting to buy. It is important that you can prove your staff have understood what is required of them under the legislation. This can be done by keeping a record of the training and asking the member of staff to sign to say that they have understood it. These records should then be checked and signed on a regular basis by management or the owner. Members of staff should be advised that they themselves might be personally liable if they sell to young persons in breach of the legal requirements.

### **Maintain a refusals log**

All refusals should be recorded (date, time, incident, description of potential buyer). Maintaining a refusals log will help to demonstrate that you actively refuse sales and have an effective system in place. Logs should be checked by the manager / owner to ensure that all members of staff are using them.

A specimen [refusals log](#) is attached.

Some tills have a refusals system built in. If using a till-based system, you should ensure that refusals can be retrieved at a later date. You should also be aware that some refusals are made before a product is scanned.

### **Store and product layout**

Off-licensed premises should consider the layout of their store and site the alcohol in a place where it can be easily monitored, such as nearer to the counter or even behind it.

### **Till prompts**

If you possess an EPoS system then it may be possible to use it to remind staff of age restrictions via a prompt.

### **Signage**

Display posters showing age limits and a statement regarding the refusal of such sales. This may deter potential purchasers and act as a reminder to staff.

## **Closed circuit television (CCTV)**

A CCTV system may act as a deterrent and reduce the number of incidents of underage sales. It will also help you to monitor 'blind spots' within your store if it is not possible to change the layout or relocate the products behind, or closer to, the counter.

Stay vigilant. Be aware of any young people outside your premises or nearby who may attempt to buy alcohol themselves or who may try and persuade an older person to buy it on their behalf.

## **Online sales**

If you sell by distance means, such as online or via a catalogue, you should set up an effective system capable of verifying the age of potential purchasers. Please see '[Online sales of age-restricted products](#)' for more information.

## **Further information**

Detailed [guidance](#) has been produced by the Home Office under section 182 of the Licensing Act 2003.

For guidance on alcohol labelling and composition, including low-alcohol products, see '[Alcoholic beverages, spirits and food](#)'; and for measuring requirements, stamps on glasses, etc see '[The sale of alcohol in licensed premises](#)'.

## **Trading standards**

For more information on the work of trading standards services - and the possible consequences of not abiding by the law - please see '[Trading standards: powers, enforcement and penalties](#)'.

## **In this update**

General detail added.

Last reviewed / updated: May 2022

## **Key legislation**

[Licensing Act 2003](#)

[Licensing Act 2003 \(Mandatory Licensing Conditions\) Order 2010](#)

## **Please note**

This information is intended for guidance; only the courts can give an authoritative interpretation of the law.

The guide's 'Key legislation' links often only shows the original version of the legislation, although some amending legislation is linked to separately where it is directly related to the content of a guide. Information on changes to legislation can be found by following the above links and clicking on the 'More Resources' tab.

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