



BRIEFING

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Sales of Alcohol to Under Age Persons - Three Strikes and You're Out!

Introduction

The Violent Crime Reduction Act 2006 ('the 2006 Act') has now been partly enacted. This introduces new offences under the Licensing Act 2003 ('the 2003 Act'). The provisions which relate to under age sales come into force on 6 April 2007.

We have heard rumours of government funding for test purchasing to start in April/May 2007. This is, no doubt, to coincide with the new provisions.

Premises licence holders, and, in particular, holders of licences for premises that sell alcohol for consumption off the premises, will need to take extra care to ensure that there are no sales to persons under the age of eighteen.

Persistently selling alcohol to children

A licence holder will be guilty of an offence if, on 3 or more different occasions within a period of 3 consecutive months, alcohol is unlawfully sold on the same premises to an individual under the age of 18.

In order to determine whether an offence has been committed, the following will be admissible as evidence:-

- The conviction of a person for an offence being a sale to an under age person
- The giving to a person of a caution in respect of such an offence or
- The payment by a person of a fixed penalty in respect of such a sale

The premises licence holder, guilty of this new offence will be liable to a fine not exceeding £10,000.

In addition, the court may order the licence to be suspended for a period not exceeding 3 months. There is no defence available to a licence holder.

Closure Notice

A police officer or trading standards officer may give a notice to a licence holder which proposes a prohibition, for a period not exceeding 48 hours, on the sale of alcohol on premises where the relevant officer has evidence that an offence has been committed under the 2006 Act (i.e. the sale of alcohol to an under age person on 3 or more different occasions within a period of 3 consecutive months).

Amazingly, the closure notice must offer the opportunity to the licence holder to discharge all criminal liability in respect of the alleged offence, by the acceptance of the prohibition proposed by the notice. In other words, if the licence holder accepts the 48 hour prohibition on sales of alcohol, there will be no further action in respect of the offence of selling 3 times to an under age person.

Security Industry Authority Conditions

As you may be aware, if a premises licence requires that individuals carry out security activity, the 2003 Act requires such individuals to be licensed by the Security Industry Authority. The 2006 Act changes this to provide that such persons must be authorised to carry out that activity by a licence granted under the Private Security Industry Act 2001 or be entitled to carry

out that activity by virtue of section 4 of that Act (this provides for certain exemptions which will not be detailed in this note).

Alcohol Disorder Zones

The 2006 Act allows a local authority to designate an area as an alcohol disorder zone. The local authority may then impose charges on licensed premises by reference to the zone. The only exemptions from charges will be for premises for which the principal use does not consist of or include the sale or supply of alcohol and the availability of alcohol on those premises is not the main reason, or one of the main reasons, why individuals enter or remain on those premises.

This part of the 2006 Act is not yet in force.

Conclusion

We have, for some time, been warning of the danger that bar staff or cashiers may be accepting cautions or fixed penalty notices without taking appropriate advice. It can be seen now that this presents a real risk to licence holders. It is not inconceivable that a licence holder will be unaware that its bar staff or cashiers have accepted cautions or fixed penalty notices which would make the licence holder liable under the 2006 Act.

Licence holders should already be taking all possible steps to alert staff and colleagues of the dangers of selling alcohol to under age persons. Such steps should be reinforced. It is vitally important that the message gets through to those persons actually making the sales.

We recommend that licence holders keep clear records of any failed test purchases so that increased measures can be implemented at premises which could be at risk.

There will be no due diligence defence for licence holders of premises caught selling to underage persons 3 times in 3 consecutive months.

All of the above is additional to the risk of a formal review of the licence before the Licensing Sub-Committee.

For further information, please contact:



Robert Botkai | Partner

T: 020 7593 5004

E: rbotkai@wslaw.co.uk