

Chapter 9

Alcohol and Licensing

9.1 Alcohol Restrictions on Persons under 16/18

The sale and supply of alcohol is regulated by the Licensing Act 2003 which creates a number of offences relating to children, young people, alcohol, drunkenness, and disorderly conduct.

The following offences protect children both on and off licensed premises; some of them apply anywhere and are not restricted to licensed premises.

9.1.1 Unaccompanied children prohibited from certain premises

It is an offence to admit children under 16 to certain categories of relevant premises if they are not accompanied by an adult or allow them to be on these premises between midnight and 5 a.m., and those premises are open for the supply of alcohol for consumption therein.

Offences

A person to whom subsection (3) applies commits an offence if—

- (a) knowing that relevant premises are **within subsection (4)**, he allows an **unaccompanied** child to be on the premises at a time when they are open for the purposes of being used for the **supply of alcohol** for consumption there, or
- (b) he allows an **unaccompanied child** to be on relevant premises at a time between the hours of midnight and 5 a.m. when the premises are open for the purposes of being used for the supply of alcohol for consumption there.

Licensing Act 2003, s 145(1)

Unaccompanied children prohibited from certain premises 9.1.1**Points to prove**

- ✓ being a person to whom subsection (3) applies
- ✓ knowing they were relevant premises
- ✓ allowed an unaccompanied child to be on premises
- ✓ when open or open between midnight and 5 a.m.
- ✓ when used for supplying alcohol for consumption therein

Meanings**Person to whom subsection (3) applies**

Any person who—

- works at the premises in a capacity, whether paid or unpaid, which authorises them to request the unaccompanied child to leave the premises;
- in the case of licensed premises, to the holder of a premises licence in respect of the premises, and the designated premises supervisor (if any) under such a licence;
- in the case of premises in respect of which a club premises certificate has effect, to any member or officer of the club which holds the certificate who is present on the premises in a capacity which enables him to make such a request;
- in the case of premises which may be used for a permitted temporary activity by virtue of Pt 5, to the premises user in relation to the temporary event notice in question.

Relevant premises

Means premises that—

- are licensed; or
- have a club premises certificate in force; or
- may be used for a permitted temporary activity (under Pt 5).

Relevant premises within subsection 4

Relevant premises are within this subsection if they are—

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

Child

Means an individual aged under 16.

Alcohol (s 191)

Means spirits, wine, beer, cider, or any other fermented, distilled, or spirituous liquor, but does **not** include—

- alcohol which is of a strength not exceeding 0.5 per cent at the time of the sale or supply in question;

9.1.1 Unaccompanied children prohibited from certain premises

- perfume;
- flavouring essences recognised by HMRC as not being intended for consumption as or with dutiable alcoholic liquor;
- aromatic flavouring essence commonly known as Angostura bitters;
- alcohol which is, or is included in, a medicinal product, or a veterinary medicinal product;
- denatured alcohol;
- methyl alcohol;
- naphtha; or
- alcohol contained in liqueur confectionery.

Unaccompanied

Means not in the company of an individual aged 18 or over.

Supply of alcohol

Means the sale by retail of alcohol, or the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club.

Explanatory notes

No offence is committed if the unaccompanied child is on the premises solely for the purpose of passing to or from some other place to or from which there is no other convenient means of access or exit.

Defences—s 145(6)–(8)

- That the conduct was by act or default of some other person and the defendant exercised all due diligence to avoid committing it.
- Where the defendant by reason of their own conduct—
 - ◆ believed that the unaccompanied child was aged 16 or over or that an individual accompanying the child was aged 18 or over; and
 - ◆ either:
 - had taken all reasonable steps to establish the individual's age; or
 - nobody could reasonably have suspected from the individual's appearance that they were aged under 16 or, as the case may be, under 18.

Defence notes

- A person is treated as having taken all reasonable steps to establish an individual's age if—
 - ◆ they asked the individual for evidence of their age; and
 - ◆ the evidence would have convinced a reasonable person.
- This defence will fail if the prosecution prove 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 (see 11.3.1).

Sale of alcohol to person under 18 9.1.2

- The defence also applies in situations where the child looks exceptionally old for his or her age.

Practical considerations

Age to be confirmed by ID card, driving licence, or similar document.

PCSO

Summary



12 months



Fine not exceeding level 3

9.1.2 Sale of alcohol to person under 18

The sale of alcohol to a person under 18 anywhere is an offence.

Offences

A person commits an offence if he sells alcohol to an individual aged under 18.

Licensing Act 2003, s 146(1)

Points to prove

- ✓ sold alcohol
- ✓ to person under the age of 18

Meaning of alcohol (see 9.1.1)**Explanatory notes**

- Similar offences apply where a club supplies alcohol to under 18 by it or on its behalf (s 146(2)) or where a person supplies to under 18 on behalf of the club (s 146(3)).
- The sale of alcohol to children is not only an offence if it occurs on relevant licensed premises, but **anywhere**.

9.1.3 Allowing the sale of alcohol to person under 18

Defences—s 146(4)–(6)

- Where a defendant by reason of their own conduct—
 - ♦ believed that the individual was aged 18 or over, and either:
 - they had taken all reasonable steps to establish the individual's age; or
 - nobody could reasonably have suspected from the individual's appearance that they were aged under 18.
- That the offence was committed by act or default of some other person and that the defendant exercised all due diligence to avoid committing it.

Defence notes

- For 'having taken all reasonable steps' (see 9.1.1 'Defence notes').
- The second part of the defence could be where the actual sale was made by a barman and the manager had exercised all due diligence to avoid this offence being committed.

Practical considerations

- Age to be confirmed by ID card, driving licence, or similar document.
- This offence can be dealt with by PND (see 7.1.1).

PND Issue for s 146(1), (3) offences only (**not** s 146(2) club offences)

PCSO Applies to s 146(1) offences only (no powers in relation to clubs)

 Summary  12 months

 A fine not exceeding level 5

9.1.3 Allowing the sale of alcohol to person under 18

It is also an offence to allow alcohol to be sold to a person under 18.

Offences

A person to whom subsection (2) applies commits an offence if he knowingly allows the sale of alcohol on relevant premises to an individual aged under 18.

Licensing Act 2003, s 147(1)

Allowing the sale of alcohol to person under 18 9.1.3

Points to prove

- ✓ being person to whom subsection (2) applies
- ✓ on relevant premises
- ✓ knowingly allowed the sale of alcohol
- ✓ to a person under the age of 18

Meanings

Person to whom subsection (2) applies

Any person who works at the premises in a capacity, whether paid or unpaid, which authorises them to prevent the sale.

Knowingly

Means having knowledge (see 'Related cases' below), an awareness, informed, consciously, intentionally, or an understanding.

Alcohol (see 9.1.1)

Relevant premises (see 9.1.1)

Explanatory notes

- There are no statutory defences to this offence. The mental element 'knowingly' applies only to allowing the sale, it does not require knowledge that the individual was under 18. The prosecution need only prove that the individual was under 18.
- Similar offences apply under s 147(2) where an employee or member/officer of a club fail to prevent supply on relevant premises by or on behalf of the club to a member/individual who is aged under 18.

Related cases

Ross v Moss and Others [1965] 3 All ER 145, QBD If the licensee or other appropriate person is on the premises and looks the other way to a particular unlawful practice they cannot then say that they had no personal knowledge. 'Knowledge' not only means actual knowledge, but it also includes 'shutting one's eyes' to what is going on and the intention that what is happening should happen but deliberately looking the other way.

Practical considerations

- Age to be confirmed by ID card, driving licence, or similar document.
- An offence of **persistently selling alcohol to children (under 18)** will be committed under s 147A if on two or more different occasions, within a period of three consecutive months, alcohol is unlawfully sold on the same premises to an individual aged under 18.
- The following procedural requirements under s 147A also apply—
 - ♦ The premises must be either licensed premises or authorised premises for a permitted temporary activity by virtue of Pt 5, and the offender must hold the premises licence or be the named premises user for a temporary event notice.

9.1.4 Purchase of alcohol by or on behalf of person under 18

- ◆ The same sale may not be counted as different offences for this purpose.
- ◆ The following shall be admissible as evidence that there has been an unlawful sale of alcohol to an individual aged under 18 on any premises on any occasion:
 - a conviction for a s 146 offence in respect of a sale to that individual on those premises on that occasion;
 - a caution in respect of such an offence; or
 - PND issue/payment in respect of such a sale.
- Section 147B provides that if the holder of a premises licence is convicted of a s 147A offence for sales on those premises, the court may order that the premises licence is suspended for a period not exceeding 3 months.
- A closure notice for persistently selling alcohol to children under 18 can be issued (see 9.3.4).



Summary



12 months



A fine not exceeding level 5

9.1.4 Purchase of alcohol by or on behalf of person under 18

Offences are committed by a person under 18, or person on behalf of the under 18, who purchases or attempts to purchase alcohol anywhere. Similarly it is an offence for a person to buy or attempt to buy alcohol for consumption by a person who is under 18 on licensed premises.

Offences

- (1)(a) An individual aged under 18 commits an offence if he buys or attempts to buy alcohol.
- (3)(a) A person commits an offence if he buys or attempts to buy alcohol on behalf of an individual aged under 18.
- (4)(a) A person commits an offence if he buys or attempts to buy alcohol for consumption on relevant premises by an individual aged under 18.

Licensing Act 2003, s 149

Purchase of alcohol by or on behalf of person under 18 9.1.4

Points to prove**s 149(1)(a) offence**

- ✓ being a person under the age of 18
- ✓ bought or attempted to buy alcohol

s 149(3)(a) offence

- ✓ bought or attempted to buy alcohol
- ✓ on behalf of individual under the age of 18

s 149(4)(a) offence

- ✓ bought or attempted to buy alcohol
- ✓ for consumption on relevant premises
- ✓ by an individual under the age of 18

Meanings

Alcohol (see 9.1.1)

Relevant premises (see 9.1.1)

Explanatory notes

- Offences in s 149(1)(a) and s 149(3)(a) may be committed **anywhere**.
- ‘**On behalf of**’ does not mean that the purchase must be instigated by the child; the alcohol need only be bought for a child.
- An example of an offence under this section would be where a person under 18 gives money to an adult to buy alcohol in an off-licence for consumption by that child/young person.
- Section 149(2) states that the s 149(1) offence does not apply to an individual aged under 18 who buys or attempts to buy the alcohol at the request of a constable, or a weights and measures inspector who are acting in the course of their duty. This exception allows test-purchasing operations to take place (see 9.3.1).
- Similarly s 149(5) states that a s 149(4) offence does not apply if—
 - ♦ the relevant person is aged 18 or over;
 - ♦ the individual is aged 16 or 17;
 - ♦ the alcohol is beer, wine, or cider;
 - ♦ its purchase or supply is for consumption at a **table meal on relevant premises**, and
 - ♦ the individual is accompanied at the meal by an individual aged 18 or over.
- **Table meal** means a meal eaten by a person seated at a table, or at a counter or other structure which serves the purpose of a table and is not used for the service of refreshments for consumption by persons not seated at a table or structure serving the purpose of a table.
- Bar snacks do not amount to a table meal.

9.1.5 Consumption of alcohol by person under 18

- Similar offences apply to clubs, under s 149(1)(b), (3)(b), and (4)(b) respectively, where a member of a club is supplied with alcohol by or on behalf of that club for—
 - ◆ that member (being under 18), as a result of his act, default or attempts to do so;
 - ◆ an individual aged under 18 as a result of his making, attempting to make such arrangements; and
 - ◆ consumption on relevant premises by an individual aged under 18, by his act, default or attempts to do so.

Defences






Section 149(3) and (4) offences only

The defendant had no reason to suspect that the individual was aged under 18 (s 149(6)).

Related cases (on test purchases see 9.3.1)

Practical considerations

All the s 149 offences can be dealt with by PND (see 7.1.1).

 PND	 PCSO	(Except clubs)
	Summary	 12 months
	s 149(1) offence	A fine not exceeding level 3
	s 149(3) and s 149(4) offences	A fine not exceeding level 5

9.1.5 Consumption of alcohol by person under 18

Persons aged under 18 are not allowed to consume alcohol on relevant premises.

Consumption of alcohol by person under 18 9.1.5

Offences

- (1) An individual under 18 commits an offence if he **knowingly** consumes alcohol on relevant premises.
- (2) A **person to whom subsection (3) applies** commits an offence if he knowingly allows the consumption of alcohol on relevant premises by an individual aged under 18.

Licensing Act 2003, s 150

Points to prove**s 150(1) offence**

- ✓ being a person under the age of 18
- ✓ knowingly consumed alcohol on relevant premises

s 150(2) offence

- ✓ being a person to whom subsection (3) applies
- ✓ knowingly allowed
- ✓ an individual under the age of 18
- ✓ to consume alcohol on relevant premises

Meanings**Knowingly** (see 9.1.3)**Alcohol** (see 9.1.1)**Relevant premises** (see 9.1.1)**Person to whom subsection (3) applies**

This subsection applies—

- (a) to a person who works at the premises in a capacity, whether paid or unpaid, which authorises him to prevent the consumption, and
- (b) where the alcohol was supplied by a club to or to the order of a member of the club, to any member or officer of the club who is present at the premises at the time of the consumption in a capacity which enables him to prevent it.

Explanatory notes

- The s 150(1) knowingly consumed offence will not be committed if the individual inadvertently consumes alcohol, for example if the drink is spiked.
- Section 150(4) states the s 150(1) and (2) offences do not apply if—
 - ◆ the individual is aged 16 or 17;
 - ◆ the alcohol is beer, wine, or cider;

9.1.6 Delivering alcohol to person under 18

- ♦ its consumption is at a **table meal** on relevant premises; and
- ♦ the individual is accompanied at the meal by an individual aged 18 or over.
- **Table meal** meaning is given in 'Explanatory notes' under 9.1.4.
- Both offences under s 150(1) and (2) also apply to clubs.

Practical considerations

- Knowledge has to be proved for both offences, either to 'knowingly' consume or to 'knowingly' allow consumption of the alcohol.
- Age to be proved by ID card, driving licence, or similar documentation.
- Consider issuing a PND for the s 150(1) and (2) offences (see 7.1.1).

PND **PCSO** (Except clubs)



Summary



12 months



s 150(1) offence

A fine not exceeding level 3

s 150(2) offence

A fine not exceeding level 5

9.1.6 Delivering alcohol to person under 18

It is an offence for certain people to deliver or allow delivery of alcohol to a person under 18.

Offences

- (1) A person who works on **relevant premises** in any capacity, whether paid or unpaid, commits an offence if he **knowingly** delivers to an individual aged under 18—
 - (a) **alcohol** sold on the premises, or
 - (b) alcohol supplied on the premises by or on behalf of a club to or to the order of a member of the club.
- (2) A **person to whom subsection (3) applies** commits an offence if he knowingly allows anybody else to deliver to a person under 18 **alcohol** sold on **relevant premises**.

Licensing Act 2003, s 151

Delivering alcohol to person under 18 9.1.6

Points to prove**s 151(1) offence**

- ✓ being a person who worked in a capacity, whether unpaid or paid
- ✓ on relevant premises
- ✓ knowingly delivered to an individual under the age of 18
- ✓ alcohol sold on those premises or
- ✓ supplied on those premises (by or on behalf of a club/order of member)

s 151(2) offence

- ✓ being a person to whom subsection (3) applies
- ✓ on relevant premises
- ✓ knowingly allowed another person to deliver
- ✓ to an individual under the age of 18
- ✓ alcohol sold on those premises

Meanings**Relevant premises** (see 9.1.1)**Knowingly** (see 9.1.3)**Alcohol** (see 9.1.1)**Person to whom subsection (3) applies**

Any person who works on the premises in a capacity, whether paid or unpaid, which authorises him to prevent the delivery of the alcohol.

Explanatory notes

- Offences in this section cover various situations, for example under s 151(1)(a) a child takes delivery of a consignment of alcohol bought by a parent from an off-licence (unless the defence applies); or a person authorises a delivery of that sort, under s 151(2).
- A similar offence to s 151(2), is to knowingly allow somebody else to deliver alcohol supplied by a club under s 151(4).

Defences—s 151(6)

Subsections (1), (2), and (4) do not apply where—

- (a) the alcohol is delivered at a place where the buyer or, as the case may be, person supplied lives or works, or
- (b) the individual aged under 18 works on the relevant premises in a capacity, whether paid or unpaid, which involves the delivery of alcohol, or
- (c) the alcohol is sold or supplied for consumption on the relevant premises.

9.1.7 Sending person under 18 to obtain alcohol

Defence notes

This covers cases where, for example, a child answers the door and signs for the delivery of an order for the house, or where a 16-year-old office worker is sent to collect an order for their employer.

Practical considerations

- Knowledge has to be proved for all the offences, either to 'knowingly' (see 9.1.3) deliver or to 'knowingly' allow anybody else to deliver the alcohol.
- Age to be proved by ID card, driving licence, or similar document.
- Consider issuing a PND for these offences (see 7.1.1).

PND



Summary



12 months



A fine not exceeding level 5

9.1.7 Sending person under 18 to obtain alcohol

A person under 18 must not be sent to obtain alcohol.

Offences

A person commits an offence if he **knowingly** sends an individual aged under 18 to obtain—

- alcohol sold or to be sold on **relevant premises** for consumption off the premises, or
- alcohol supplied or to be supplied by or on behalf of a club or to or the order of a member of the club for such consumption.

Licensing Act 2003, s 152(1)

Points to prove

- ✓ knowingly sent an individual under the age of 18
- ✓ to obtain alcohol
- ✓ sold/to be sold on relevant premises or
- ✓ supplied/to be supplied (by/on behalf of club/order of member)
- ✓ for consumption off those premises

Sending person under 18 to obtain alcohol 9.1.7

Meanings*Knowingly* (see 9.1.3)*Alcohol* (see 9.1.1)*Relevant premises* (see 9.1.1)**Explanatory notes**

- It is immaterial whether the individual aged under 18 is sent to obtain the alcohol from the relevant premises or from other premises from which it is delivered in pursuance of the sale or supply.
- Section 152(3) allows an individual under 18 who works on the relevant premises in a capacity (whether paid or unpaid) that involves delivery of alcohol.
- Similarly s 152(4) states that no offence will be committed if an individual aged under 18 is sent by a constable, or a weights and measures inspector, who are acting in the course of their duty. This exception allows test-purchasing operations to take place (see 9.3.1).

Related cases (on test purchases see 9.3.1)**Practical considerations**

- This offence covers, for example, circumstances where a parent sends their child (being under 18) to an off-licence to buy and collect alcohol for them.
- Knowledge has to be proved as to 'knowingly' send an individual aged under 18 to obtain alcohol sold or supplied from the relevant premises.
- Further offences concerning alcohol and children are—
 - ♦ sale of liqueur confectionery to children under 16 (s 148);
 - ♦ prohibition of unsupervised sales by children (s 153).



Summary



12 months



A fine not exceeding level 5

Links to alternative subjects and offences

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9.2 Drunkenness on Licensed Premises

The sale and supply of alcohol is regulated by the Licensing Act 2003. This Act creates a number of offences relating to alcohol and offences concerning drunkenness and disorderly conduct.

9.2.1 Sale of alcohol to person who is drunk

It is 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.

Offences

A person to whom subsection (2) applies commits an offence if, on relevant premises, he knowingly—

- (a) sells or attempts to sell alcohol to a person who is drunk, or
- (b) allows alcohol to be sold to such a person.

Licensing Act 2003, s 141(1)

Points to prove

- ✓ person to whom subsection (2) applies
- ✓ knowingly sold/attempted to sell/allowed sale of alcohol
- ✓ on relevant premises to a person who was drunk

Meanings

Person to whom subsection (2) applies

- Any person who works at the premises in a capacity, whether paid or unpaid, which gives him authority to sell the alcohol concerned.
- In licensed premises, clubs, or permitted temporary activity premises, the same persons as given in s 145(3) (see 9.1.1).

Relevant premises (see 9.1.1)

Knowingly (see 9.1.3)

Alcohol (see 9.1.1)

Drunk (see 7.2.1)

Explanatory notes

- In each case, drunkenness will be a question of fact for the court to decide.
- It is also an offence, under s 141(3), to supply alcohol by or on behalf of a club or to the order of a member of the club to a person who is drunk.

Failure to leave licensed premises 9.2.2

Practical considerations

- If the person is under 18 consider offences under s 145 (see 9.1.1).
- Knowledge has to be proved as to 'knowingly' sell, attempt to sell, or allow to be sold alcohol to a person who is drunk.
- Details of the licence holder and/or the designated premises supervisor should be clearly displayed in the premises.
- Under s 142 it is also an offence to knowingly obtain or attempt to obtain alcohol on relevant premises for consumption on those premises by a person who is drunk.

PND **PCSO** (Except clubs)



Summary



12 months



A fine not exceeding level 3 on the standard scale

9.2.2 Failure to leave licensed premises

People who are drunk or disorderly may be requested to leave certain premises and commit an offence if they fail to do so.

Offences

A person who is drunk or disorderly commits an offence if, without reasonable excuse—

- he fails to leave relevant premises when requested to do so by a constable or by a person to whom subsection (2) applies, or
- he enters or attempts to enter relevant premises after a constable or a person to whom subsection (2) applies has requested him not to enter.

Licensing Act 2003, s 143(1)

Points to prove

- ✓ without reasonable excuse while drunk or disorderly
- ✓ failed to comply with request
- ✓ by a constable or a person to whom subsection (2) applies
- ✓ to leave or not to enter/attempt to enter relevant premises

9.2.3 Allowing disorderly conduct on licensed premises

Meanings

Drunk (see 7.2.1)

Disorderly (see 7.2.1)

Relevant premises (see 9.1.1)

Person to whom subsection (2) applies

- Any person who works at the premises in a capacity, whether paid or unpaid, which authorises them to make such a request.
- In licensed premises, clubs, or permitted temporary activity, the same persons as given in s 145(3) (see 9.1.1).

Explanatory notes

- An offence may not be committed if the person has a reasonable excuse, for example if they are physically prevented by serious disability or injury from leaving the premises.
- Apart from licensed premises, this offence also applies to clubs and premises being used for a permitted temporary activity.
- Whether a person is drunk and/or disorderly will be a question of fact for the court to decide.

Practical considerations

- On being requested to do so by the appropriate person, a constable must help to expel from relevant premises a person who is drunk/disorderly or help to prevent such a person from entering relevant premises.
- Consider the offence of being drunk on licensed premises (see 7.2.2), for which a PND (see 7.1.1) can be issued.



Summary



12 months



A fine not exceeding level 1

9.2.3 Allowing disorderly conduct on licensed premises

It is also an offence to knowingly allow disorderly conduct on relevant premises.

Offences

A person to whom subsection (2) applies commits an offence if he knowingly allows disorderly conduct on relevant premises.

Licensing Act 2003, s 140(1)

Allowing disorderly conduct on licensed premises 9.2.3

Points to prove

- ✓ being a person to whom subsection (2) applies
- ✓ knowingly allowed disorderly conduct on relevant premises

Meanings**Person to whom subsection (2) applies**

- Any person who works at the premises in a capacity, whether paid or unpaid, which authorises them to prevent the conduct.
- In licensed premises, clubs, or permitted temporary activity, the same persons as given in s 145(3) (see 9.1.1).

Knowingly (see 9.1.3)**Disorderly** (see 7.2.1)**Relevant premises** (see 9.1.1)**Explanatory notes**

- Knowledge has to be proved as to 'knowingly' allow disorderly conduct on the relevant premises.
- Apart from licensed premises, this offence also applies to clubs and premises which may be used for a permitted temporary activity.



Summary



12 months



A fine not exceeding level 3 on the standard scale

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9.3 Powers to Enter/Close Licensed Premises and Test Purchases

The sale and supply of alcohol is regulated by the Licensing Act 2003, which creates a variety of offences relating to alcohol; it also contains powers to enter/close licensed premises/clubs and allows test purchases.

9.3.1 Test purchases

Sections 149 and 152 allow the police and trading standards officers to use individuals under 18 to make test purchases to ascertain if such individuals can buy or be supplied with alcohol from on/off licensed premises, certified club premises, or premises used for a permitted temporary activity without any offences being committed.

Authorities

149(2) But subsection (1) [see 9.1.4] does not apply where the individual buys or attempts to buy the alcohol at the request of—

- (a) a constable, or
- (b) a weights and measures inspector who is acting in the course of his duty.

152(4) Subsection (1) [see 9.1.7] also does not apply where the individual aged under 18 is sent by—

- (a) a constable, or
- (b) a weights and measures inspector, who is acting in the course of his duty.

Licensing Act 2003, ss 149(2) and 152(4)

Explanatory notes

This statutory authority allows test-purchasing operations to establish whether licensees and staff working in relevant licensed premises are complying with the prohibition on the sale/supply of alcohol to individuals aged under 18.

Related cases

DPP v Marshall [1988] 3 All ER 683, QBD Police in plain clothes bought alcohol from a shop; it was argued that evidence should be excluded under s 78 of PACE, as the officers had not revealed the fact that they were policemen at the time of the purchase and this was unfair. On appeal it was held that evidence of police officers had been wrongly excluded; it had not been shown that the evidence would have had an adverse effect on the proceedings.

Powers to enter licensed premises and clubs 9.3.2

R v Loosely/A-G's Reference (No 3 of 2000) [2001] UKHL 53, HL This was a case on entrapment; police officers must not instigate the commission of an offence. But if police do what an ordinary customer would do, whether lawful or unlawful, this will not normally be regarded as objectionable.

Practical considerations

- Consider the protection of children engaged in such operations.
- Assess the reliability of their evidence.

9.3.2 Powers to enter licensed premises and clubs

The Licensing Act 2003 contains provisions dealing with powers of entry to investigate licensable activities and offences, namely:

- Section 179(1) gives power to a constable or an authorised person to enter premises, if they have reason to believe that they are being, or are about to be, used for a licensable activity, in order to see whether the activity is being carried on in accordance with the authorisation. However, this does not apply to clubs, unless there is other authorisation apart from a club premises licence.
- Similarly under s 180(1) a constable may enter and search any premises in respect of which they have reason to believe that an offence under the Licensing Act has been, is being, or is about to be committed.
- PCSOs can enter and search premises (other than clubs), in the relevant police area, providing they are in the company and under the supervision of a constable, unless they are 'off-licence' premises (see 11.1.2).
- Section 97(1) allows a constable to enter and search club premises if they have reasonable cause to believe that certain offences relating to the supply of drugs have been, are being, or are about to be committed or that there is likely to be a breach of the peace.

Explanatory notes

- In exercising these powers a constable may, if necessary, use reasonable force.
- It is not necessary to obtain a warrant.
- Police have lawful authority to require production of a premises licence, club premises certificate, or temporary event notice.
- The police may lawfully enter premises in order to inspect them before a licence or certificate is granted.

9.3.3 Police powers—closure orders

9.3.3 Police powers—closure orders

A police officer of or above the rank of inspector may close specific premises for up to 24 hours, if there is actual or imminent disorder on, or in the vicinity of and related to the premises or if it is necessary to prevent a public nuisance caused by noise coming from the premises.

Offences

A person commits an offence if, without reasonable excuse, he permits relevant premises to be open in contravention of a closure order or any extension of it.

Licensing Act 2003, s 161(6)

Points to prove

- ✓ without reasonable excuse
- ✓ permitted relevant premises to be open
- ✓ in contravention of a closure order/extension to a closure order

Meanings

Relevant premises

Premises in respect of which a premises licence and/or a temporary event notice have effect.

Premises licence

Means a licence granted under the Licensing Act 2003, in respect of any premises, which authorises the premises to be used for one or more licensable activities, namely—

- sale and/or supply of alcohol;
- provision of regulated entertainment;
- late night refreshments.

Temporary event notice

Used on premises where licensable activities are allowed to take place for not more than 96 hours.

Explanatory notes

- An inspector (or above) can make a closure order on reasonable belief that—
 - ◆ there is actual or likely imminent disorder on or in vicinity of the premises and their closure is required in the interests of public safety; or
 - ◆ closure is necessary to prevent a public nuisance caused by excessive noise coming from the premises.

Police powers—closure notice 9.3.4

- This closure order cannot exceed 24 hours, after coming into force.
- If required the order can be extended (by inspector or above) for a further 24 hours if it is apparent that a magistrates' court will not have had the opportunity to determine the matter.

Practical considerations

- A superintendent or above can make an application to a magistrates' court for an order to close all licensed premises in an area experiencing disorder. If granted, it is an offence (under s 160) to knowingly allow/keep such premises open during the period of the order.
- Should a review of the licence be sought instead?
- Have other premises been closed/licence holders warned in the area?
- Has the licence holder been given any early reminders or warnings or the opportunity to close the premises voluntarily?
- The police have powers to close down premises, if there are reasonable grounds for believing that they are being used in connection with the production, supply, or use of Class A controlled drugs (see 5.3).



Summary



12 months



3 months' imprisonment and/or a fine not exceeding £20,000

9.3.4 Police powers—closure notice

Where an offence of persistently selling alcohol to children (under 18) has been committed under s 147A (see 9.1.3) then a closure notice can be issued by a superintendent (or above) to close the premises for up to 48 hours.

Closure notice

A **relevant officer** may give a notice under this section (a 'closure notice') applying to any premises if—

- there is evidence that a person ('the offender') has committed an offence under section 147A in relation to those premises;
- the relevant officer considers that the evidence is such that, if the offender were prosecuted for the offence, there would be a realistic prospect of his being convicted; and
- the offender is still, at the time when the notice is given, the holder of a premises licence in respect of those premises, or one of the holders of such a licence.

Licensing Act 2003, s 169A(1)

9.3.4 Police powers—closure notice

Meaning of relevant officer

Means a police officer of the rank of superintendent or above; or an appointed inspector of weights and measures.

Explanatory notes

- The **closure notice** will—
 - ◆ propose to prohibit sales of alcohol on the premises, not exceeding 48 hours; and
 - ◆ if accepted will discharge all criminal liability in respect of the s 147A offence (see 9.1.3).
- A closure notice must—
 - ◆ be in the form as prescribed by regulations;
 - ◆ specify the premises and circumstances surrounding the offence;
 - ◆ specify the period when sales of alcohol are prohibited;
 - ◆ explain the consequences/penalties of any sale of alcohol on the premises during that period; the rights of that person; and how those rights may be exercised.

Practical considerations

- The period specified must be not more than 48 hours; and the time specifying when that period begins must be not less than 14 days after the date of the service of the closure notice.
- Service of the closure notice may be served on the premises by a constable, PCSO, or trading standards officer to a person having control/responsibility for the premises; and only when licensable activities are being carried on there. A copy must be served on the licence holder of the premises.
- Section 169 gives a constable power to use such force as may be necessary for the purposes of closing premises in compliance with a closure order.
- A closure notice must not be given more than 3 months after the s 147A offence.
- No more than one closure notice may be given in respect of offences relating to the same sales; nor may such a notice be given in respect of an offence in respect of which a prosecution has already been brought.
- Section 169B prescribes other matters when a closure notice has been issued—
 - ◆ No proceedings may be brought for the s 147A offence or any related offence at any time before the time when the prohibition proposed by the notice would take effect.
 - ◆ If the premises' licence holder accepts the proposed prohibition in the manner specified in the notice then that prohibition takes effect (as specified) and no proceedings may be brought against that person for the alleged offence or any related offence.

Police powers—closure notice 9.3.4

- ♦ ‘**Related offence**’ means an offence under s 146 (see 9.1.2) or s 147 (see 9.1.3) in respect of any of the sales to which the alleged offence relates.

PCSO

Links to alternative subjects and offences

5.3.2	Premises closure notices/orders (Class A drugs)	199
7.2	Drunkenness in Public Places/Drink Banning Orders	288
7.3	Breach of the Peace	293
7.6	Fear or Provocation of Violence	305
7.8	Threatening/Abusive Words/Behaviour	313
7.13	Anti-Social Behaviour	352
9.1	Alcohol Restrictions on Persons under 16/18	486
9.2	Drunkenness on Licensed Premises	500
9.4	Alcohol in Designated Public Places	510
9.5	Alcohol in Public Place (under 18)—Offences/Confiscation	513
11.1.2	Powers relating to licensing/alcohol	656
12.2	Powers of Arrest	704

9.4 Alcohol in Designated Public Places

Section 12 of the Criminal Justice and Police Act 2001 is intended to reduce the incidence of disorder and public nuisance arising from alcohol consumption in designated public places. A police officer or PCSO can require a person to cease drinking alcohol in the designated public place, with powers to confiscate and dispose, and failure to comply is an offence.

9.4.1 Power to require person to cease drinking alcohol

Powers

- (1) Subsection (2) applies if a constable reasonably believes that a person is, or has been, consuming alcohol in a **designated public place** or intends to consume alcohol in such a place.
- (2) The constable may require the person concerned –
 - (a) not to consume in that place anything which is, or which the constable reasonably believes to be, alcohol;
 - (b) to surrender anything in his possession which is, or which the constable reasonably believes to be, alcohol or a container for alcohol.

Criminal Justice and Police Act 2001, s 12

Meanings

Alcohol (see 9.1.1)

Designated public place

Is a public place in the area of a local authority; and identified in an order made by that authority under s 13.

Explanatory notes

- Local authorities designate areas as public places for the purposes of s 12. Police powers under s 12 automatically become available, once an order has been made.
- The person must be informed that failure to comply with the police officer's request, without reasonable excuse, is an offence (see 9.4.2).
- Section 14 denotes those areas that are not public places for the purposes of consuming alcohol in public places (eg consumption of alcohol in these places is allowed subject to regulation by other legislation).
- A place is not a designated public place or a part of such a place if it—
 - ♦ premises which have a premises licence or club premises certificate;

Failure to comply with alcohol requirements 9.4.2

- ◆ a place within the curtilage of any premises which have a premises licence or club premises certificate;
- ◆ a place where the sale of alcohol is for the time being authorised by a temporary event notice or was so authorised within the last 30 minutes;
- ◆ a place where facilities/activities relating to the sale/consumption of alcohol are permitted by a permission granted under s 115E of the Highways Act 1980.
- A constable/PCSO may dispose of anything surrendered to them under s 12(2) in such manner as they consider appropriate.
- Consider using the power to confiscate alcohol from people under 18 years of age (see 9.5).

9.4.2 Failure to comply with alcohol requirements**Offences**

A person who fails without reasonable excuse to comply with a requirement imposed on him under subsection 12(2) [see 9.4.1] commits an offence.

(Criminal Justice and Police Act, s 12(4))

Points to prove***Surrender alcohol***

- ✓ without reasonable excuse
- ✓ failed to surrender
- ✓ something that was or reasonably believed to be
- ✓ alcohol or container for such
- ✓ in their possession
- ✓ in a designated public place
- ✓ when required by a constable

Consume alcohol

- ✓ without reasonable excuse
- ✓ failed to comply with requirement
- ✓ imposed by constable
- ✓ not to consume in a designated public place
- ✓ something that was or reasonably believed to be alcohol

9.4.2 Failure to comply with alcohol requirements

Example of constable's requirement

'This is a designated public place in which I have reason to believe that you are/have been drinking alcohol. I require you to stop drinking and give me the container from which you are/have been drinking and any other containers (sealed or unsealed). I must inform you that failure to comply with my request, without reasonable excuse, is an offence for which you can be arrested.'

Practical considerations

- A constable who imposes the requirement shall inform the person concerned that failing without reasonable excuse to comply with the requirement is an offence.
- The seizure and disposal of alcohol in both sealed and unsealed containers is allowed, although officers should follow their own force orders in relation to disposal.
- Consider issuing a PND (see 7.1).

PND

PCSO



Summary



5 months



A fine not exceeding level 2 on the standard scale

Links to alternative subjects and offences

1.1	Human Rights	1
2.2	Assault/Resist/Impersonate and Obstruct Police and Others	33
7.1	Penalty Notices for Disorder (PND)	281
7.2	Drunkenness in Public Places/Drink Banning Orders	288
7.3	Breach of the Peace	293
7.6	Fear or Provocation of Violence	305
7.8	Threatening/Abusive Words/Behaviour	313
7.13	Anti-Social Behaviour	352
9.1	Alcohol Restrictions on Persons under 16/18	486
9.2	Drunkenness on Licensed Premises	500
9.3	Powers to Enter/Close Licensed Premises and Test Purchases	504
9.5	Alcohol in Public Place (under 18)—Offences/Confiscation	513
11.1.2	Powers relating to licensing/alcohol	656
12.2	Powers of Arrest	704

9.5 Alcohol in Public Place (under 18)—Offences/ Confiscation

The Confiscation of Alcohol (Young Persons) Act 1997 allows the police to confiscate alcohol from people under 18 years in certain public places, with a failure to comply offence. Whereas s 30 of the Policing and Crime Act 2009 makes it an offence for a person under 18 to persistently possess alcohol in a public place.

9.5.1 Offences/confiscation of alcohol (under 18)

Power

- (1) Where a constable reasonably suspects that a person in a **relevant place** is in **possession** of alcohol and that either—
- he is under the age of 18; or
 - he intends that any of the alcohol should be consumed by a person under the age of 18 in that or any other relevant place; or
 - a person under the age of 18 who is, or has **recently** been, with him has recently consumed alcohol in that or any other relevant place,
- the constable may require him to surrender anything in his possession which is, or which the constable reasonably believes to be, alcohol or a container for alcohol.
- (1AA) A constable who imposes a requirement on a person under subsection (1) shall also require him to state his name and address.

Offences

- (3) A person who fails without reasonable excuse to comply with a requirement imposed on him under subsection (1) or (1AA) commits an offence.

Confiscation of Alcohol (Young Persons) Act 1997, s 1

Points to prove

- ✓ without reasonable excuse
- ✓ failed to comply with requirement
- ✓ imposed by constable

9.5.1 Offences/confiscation of alcohol (under 18)

- ✓ to surrender
- ✓ alcohol/suspected alcohol or a container for such
- ✓ in their possession
- ✓ and/or state their name and address

Meanings

Relevant place

Means any **public place**, other than **licensed premises**; or any place, other than a public place, to which the person has unlawfully gained access.

Licensed premises

Means premises which may by virtue of Pt 3 or Pt 5 of the Licensing Act 2003 (premises licence; permitted temporary activity) be used for the **supply of alcohol**.

Supply of alcohol (see 9.1.1)

Public place

For this purpose a place is a public place if at the material time the public or any section of the public has access to it, on payment or otherwise, as of right, or by virtue of express, or implied permission.

Possession

At common law possession is defined as: **actual** or **potential** physical control and an intention to possess, in practice visible or external signs of possession, which can be demonstrated to a court, must support the two conditions above (*Jowett's Dictionary of English Law*).

Alcohol (see 9.1.1)

Recently

Defined by the *Oxford English Dictionary* as 'lately' or 'comparatively near to the present time'.

Explanatory notes

- Officers can seize sealed and open containers, as well as the alcohol they hold, and dispose of both in an appropriate manner. Where a young person has, for example, a sealed six-pack under his arm, officers should still consider who sold it, and whether there are any child welfare issues, and take action as appropriate.
- A constable may dispose of anything surrendered in such manner as s/he considers appropriate.
- When imposing a requirement to surrender a constable must inform the person of the suspicion and that failing without reasonable excuse to comply with the requirement as to surrender of alcohol and/or to state their name and address is an offence.

Persistently possess alcohol in public (under 18) 9.5.2**Example of officer's requirement:**

'I have reason to suspect that you are under 18 years of age. You are/have been drinking alcohol/beer/cider (or whatever). You must stop drinking immediately (if applicable). I require you to give me that can/bottle/plastic cup etc. and to give me your name and address. I must warn you that failure to comply with my requests is an offence for which you can be arrested.'

Practical considerations

- A constable imposing a requirement under s 1(1) may, if the constable reasonably suspects that person to be under the age of 16, remove that person to their place of residence or a place of safety.
- Officers should follow their own force orders in relation to disposal.
- A PCSO has the same powers as a police constable under this section (other than the arrest power) (see 11.1.2).

PCSO



Summary



6 months



A fine not exceeding level 2 on the standard scale

9.5.2 Persistently possess alcohol in public (under 18)**Offence:**

A person under the age of 18 is guilty of an offence if, without reasonable excuse, the person is in possession of alcohol in any relevant place on 3 or more occasions within a period of 12 consecutive months.

Policing and Crime Act 2009, s 30(1)

9.5.2 Persistently possess alcohol in public (under 18)

Points to prove

- ✓ person under 18
- ✓ without reasonable excuse
- ✓ in possession of alcohol
- ✓ in any relevant place
- ✓ on 3 or more occasions
- ✓ within a 12-month (consecutive) period

Meanings

Possession (see 9.5.1)

Alcohol (see 9.1.1)

Relevant place

Means any public place, other than **excluded premises**; or any place, other than a **public place**, to which the person has unlawfully gained access.

Excluded premises

Means premises which may by virtue of the Licensing Act 2003—

- Pt 3 or 5 (premises licence or permitted temporary activity) be used for the supply of alcohol;
- Pt 4 (club premises certificate) be used for the supply of alcohol to members or guests.

Public place (see 9.1.1)

Explanatory notes

This offence only applies to people under the age of 18 if they possess alcohol in a relevant public place; and this has occurred on 3 or more occasions within a 12-month period.



Summary



6 months



A fine not exceeding level 2 on the standard scale

Persistently possess alcohol in public (under 18) 9.5.2

Links to alternative subjects and offences

1.1	Human Rights	1
2.2	Assault/Resist/Impersonate and Obstruct Police and Others	33
7.1	Penalty Notices for Disorder (PND).....	281
7.2	Drunkenness in Public Places/Drink Banning Orders	288
7.3	Breach of the Peace	293
7.8	Threatening/Abusive Words/Behaviour.....	313
7.13	Anti-Social Behaviour.....	352
7.15.1	Dispersal of groups	373
9.1	Alcohol Restrictions on Persons under 16/18.....	486
9.2	Drunkenness on Licensed Premises	500
9.3	Powers to Enter/Close Licensed Premises and Test Purchases.....	504
9.4	Alcohol in Designated Public Places	510
11.1.2	Powers relating to licensing/alcohol.....	556
12.2	Powers of Arrest.....	704