

14 Other Offences

- 14.1 This Chapter provides guidance about a number of offences contained in the 2003 Act. It does not deal with those offences relating to children which are contained in Chapter 12 of the Guidance or with offences relating to rights of entry and inspection or non-compliance with administrative requirements with which licensing authorities will be more familiar.

General

- 14.2 Section 186 provides that proceedings for any offences under the 2003 Act may be instituted by a licensing authority as well as the DPP, and by the local weights and measures authority in certain circumstances (the sale of alcohol to children). It is important that licensing authorities liaise closely with the police and should so far as possible agree protocols for instituting proceedings in connection with these proceedings and for exchanging information and intelligence about them. Section 185 of the Act provides for such exchanges of information.
- 14.3 Licensing authorities should consult their own legal advisers about such matters, who may at any time consult the DCMS for further information.

Unauthorised licensable activities

- 14.4 It is an offence to carry on or attempt to carry on a licensable activity on or from any premises otherwise than under or in accordance with the authorisation provided by a premises licence, a club premises certificate or a temporary event notice meeting the conditions of section 98(2) – (4) of the 2003 Act.
- 14.5 It is also an offence knowingly to allow such an activity to be carried on.
- 14.6 These offences therefore cover premises that are entirely unlicensed, for example, an unlicensed drinking den or unlicensed film exhibitions; and premises that are licensed for one activity, for example, premises licensed for the sale of alcohol but not for another, for example the provision of regulated entertainment. In addition, the offence refers to an activity carried on otherwise than in accordance with a premises licence, club premises certificate or temporary event notice meeting the conditions of section 98(2) – (4) of the 2003 Act. Accordingly, these offences relate to breaches of the terms and conditions included in such licences, certificates or notices including any relating to hours during which the licensable activities may take place.
- 14.7 Where the licensable activity in question is the provision of regulated entertainment, a person does not commit an offence if his only involvement in the provision of the entertainment was that he performed in a play, participated as a sportsman in an indoor sporting event, boxed or wrestled in such an entertainment, performed live music, played recorded music, performed a dance, or did something similar to music and dancing. But it should be noted that if the individual also organised or helped to organise the event, and subject to the defence of due diligence explained below, an offence may be committed notwithstanding the fact that the individual was also a performer.

- 14.8 The maximum sentence available to a convicting court is high because at its worst these offences could involve circumstances in which the public have been placed in serious danger through the unauthorised sale or supply of alcohol or unregulated entertainment or breach of a licensing condition. However, the offence covers a very wide spectrum of acts or omissions some of which will be considerably less serious than the example cited above. It will be for the convicting court to decide what is an appropriate and proportionate sentence within the maximum provided in the 2003 Act in any individual circumstances.
- 14.9 Licensing authority enforcement officers should also note section 139 of the 2003 Act which provides a due diligence defence in proceedings against a person for carrying on unauthorised licensable activities. For example, in the case of a manager of premises assured inaccurately by the premises licence holder (his employer) that the premises were licensed for the provision of regulated entertainment such as live music, he may have a defence that he had relied on false information given to him and had taken all reasonable precautions and exercised all due diligence to avoid committing the offence.

Exposing alcohol for unauthorised sale

- 14.10 It would be an offence to expose alcohol for sale by retail in circumstances where the sale would be a licensable activity requiring the authority of a premises licence, a club premises certificate or temporary event notice without such an authorisation. 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. This means that the licensing authority would not have to prove that a sale had been completed. The 2003 Act 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.
- 14.11 A due diligence defence is also provided in connection with this offence.

Keeping alcohol for unauthorised sale

- 14.12 It is also an offence to keep alcohol with the intention of selling it by retail or supplying it by or on behalf of a club or to the order of a member of the club where that sale or supply would be an unauthorised licensable activity. The 2003 Act also 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.
- 14.13 A due diligence defence is also provided in connection with this offence.

Defence of due diligence

- 14.14 The 2003 Act provides that a person who is charged with the offence of carrying or attempting to carry on an unauthorised licensable activity, exposing alcohol for unauthorised sale or keeping alcohol for unauthorised sale or supply has a defence if his act or omission was due to a mistake, or to reliance on information given to him, or to an act or omission by

another person or was due to some other cause beyond his control, and he had taken all reasonable precautions and had exercised all due diligence to avoid committing the offence. It is therefore important that both elements of the defence must be in place before the defence would be effective. The burden of satisfying the court that this defence has been met falls on the individual raising it.

Allowing disorderly conduct on licensed premises etc.

14.15 This is an extremely important offence and is central to the management of premises where alcohol is sold for consumption on those premises, though it applies equally to premises where other licensable activities are taking place. Its existence is central to the safety of law-abiding customers on the premises. It is an offence knowingly to allow disorderly conduct on relevant premises. The offence may be committed by any person who works at the premises, whether paid or unpaid, 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 (with a club premises certificate) who is present at the time of the disorder and who has authority to prevent it, and a premises user who has given a temporary event notice in respect of those premises. The licensing authority should draw the attention of any person, business or club granted a licence, club premises certificate or giving a temporary event notice to this offence and of the licensing authority's readiness to prosecute any person who fails in his duty in this respect. It is important to note the words "knowingly to allow" disorderly conduct on relevant premises. The outbreak of disorder may not of itself give rise to this offence. It is the failure to address the problem either through direct action or calling the police that is likely to give rise to an offence.

Sale of alcohol to a person who is drunk

14.16 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. The offence may be committed by any person who works at the premises, whether paid or unpaid, 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 (with a club premises certificate) who is present at the time of the sale and who has authority to prevent it, and a premises user who has given a temporary event notice in respect of those premises which meets the conditions laid down in the 2003 Act. 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.

14.17 Licensing authorities and the police should note that anti-social behaviour once customers are beyond the direct control of licensees and managers of licensed premises will sometimes (some drunkenness will arise through consumption at private parties) be a result of sales made earlier on licensed premises when an individual was drunk. It is therefore important that these offences are prosecuted effectively to ensure that there is a strong deterrent in respect of such sales. The control of excessive consumption and drunkenness on relevant premises should reduce the risk of anti-social behaviour occurring elsewhere after customers have left the premises.

Obtaining alcohol for a person who is drunk

14.18 It is also an offence knowingly to obtain or attempt to obtain on relevant premises alcohol for consumption on those premises by a person who is drunk.

Failure to leave licensed premises

14.19 The 2003 Act provides that a person who is drunk or disorderly commits an offence if he fails to leave relevant premises at the request of:

- a police constable;
- any person who works at the premises, whether paid or unpaid, in a capacity which authorises him to make such a request;
- the premises licence holder;
- the designated premises supervisor;
- in the case of a club, any member or officer of the club who is there in a capacity which gives him authority to make such a request; or
- in the case of premises used for permitted temporary activities, the premises user.

14.20 It is also an offence for a person to enter or attempt to enter such premises when asked not to do so by one of the people listed above.

14.21 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 in paragraph 14.19.

Keeping of smuggled goods

14.22 The sale of contraband cigarettes and alcohol is a matter of considerable concern to the Government. In addition, some of the goods sold have not been manufactured by responsible manufacturers but are fake products smuggled from other countries, for example Eastern European countries and China on behalf of organised criminal gangs, and could therefore contain dangerous ingredients. The 2003 Act provides that it is an offence knowingly to keep or allow to be kept, on relevant premises, any goods which have been imported without payment of duty or which have otherwise been unlawfully imported. The 2003 Act sets out the categories of person who may commit the offence. These are:

- any person who works at the premises, whether paid or unpaid, 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 where there is a club premises certificate and who has authority to prevent them being so kept,
- a premises user who has given a temporary event notice in respect of those premises which meets the conditions in section 98 of the Act.

- 14.23 The 2003 Act also 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. Licensing authorities should liaise closely with Customs and Excise in respect of the investigation and prosecution of such offences.

Prohibition on the sale of alcohol on moving vehicles

- 14.24 An offence is committed if a person sells by retail alcohol on or from a vehicle at a time when the vehicle is not permanently or temporarily parked. A due diligence defence is provided in connection with this offence. It should be noted that this does not amount to a ban on the consumption of alcohol on coach trips: only the sale by retail of alcohol is prohibited on moving vehicles.

Breach of orders prohibiting sales on trains

- 14.25 On the application of a police officer of the rank of inspector or above, the 2003 Act empowers a magistrates' court to make an order (that is necessary to prevent disorder) prohibiting the sale of alcohol on any railway vehicle at such railway stations as may be specified or travelling between such stations as may be specified. Selling or attempting to sell alcohol in breach of such an order or allowing such sales to take place are offences under the Act.