



May 2007

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## Interpreting and implementing sections 23 and 24 of the Violent Crime Reduction Act 2006

# Persistently selling alcohol to children

1. This document should be read in conjunction with sections 23 and 24 of the Violent Crime Reduction Act 2006 ("the 2006 Act") itself and the Licensing Act 2003 ("the 2003 Act"). It has been prepared in consultation with the Association of Chief Police Officers ("ACPO"), the Trading Standards Institute ("TSI") and the Local Authorities Co-ordinators of Regulatory Services ("LACORS").
2. This document has no binding effect on police officers or trading standards officers who, within the terms of their force or authority orders and the law, remain operationally independent. The information is provided to support and assist police, community support officers and trading standards officers in interpreting and implementing sections 23 and 24 of the 2006 Act, which amend the Licensing Act 2003 as set out below, in the interests of protecting children from harm.

### General Summary

#### *The new offence*

3. From the commencement of Chapter 3 of Part 1 of the Violent Crime Reduction Act 2006 ("the 2006 Act") on 6 April 2007, a new offence was inserted into the Licensing Act 2003 (the 2003 Act"). The offence will be committed if, on three or more different occasions in a period of three consecutive months, alcohol is unlawfully sold on the same premises to a person aged under 18.
4. The 2003 Act will provide that the new offence is only committed if at the time of each sale:
  - the premises were licensed by a premises licence issued under that Act;  
or

- the premises were being used for a permitted temporary activity under the authority of a temporary event notice given under that Act.
5. The 2003 Act also provides that the new offence is committed by a person who, on the occasion of each unlawful sale, was a person, or one of the persons, holding the premises licence for the premises, or a person, or one of the persons, who is the premises user and gave the temporary event notice authorising licensable activities at the premises.
  6. The penalty for the new offence on summary conviction will be a fine not exceeding £10,000 and, where the offender is a premises licence holder, the premises licence could be suspended for up to three months insofar as it authorises sales by retail of alcohol.

### ***A new closure notice prohibiting sales of alcohol***

7. Chapter 3 of Part 1 of the 2006 Act also amended the 2003 Act to provide for a senior police officer, of the rank of superintendent or higher, or an inspector of weights and measures, to give a closure notice where:
  - there is evidence that a person has committed an offence of persistently selling alcohol to children at the premises in question; **and**
  - he or she considers that the evidence is such that there would be a realistic prospect of conviction if the offender was prosecuted for it.
8. A closure notice proposes a prohibition on sales of alcohol at the premises in question for a period not exceeding 48 hours. It also offers the opportunity to discharge all criminal liability in respect of the alleged offence by the acceptance of the prohibition proposed in the notice.
9. The premises licence holder will have fourteen days to decide whether or not to accept the proposed prohibition or to elect to be tried for the offence. The time from which the period of the prohibition would begin must be specified in the closure notice **and be at least 14 days after the date on which the closure notice was served.**

### **Detail**

#### **Section 23: Offence of persistently selling of alcohol to children**

10. Section 23(1) of the 2006 Act amended the Licensing Act 2003 by inserting new sections 147A and 147B.

#### **New section 147A of the Licensing Act 2003**

11. Following commencement of section 23 of the 2006 Act, section 147A(1) of the 2003 Act creates a new offence which is committed if on three or more different occasions in a period of three consecutive months alcohol is unlawfully sold on the same premises to a person aged under 18.
12. The offence is only committed if at the time of each sale:

- the premises were licensed by a premises licence issued under the Licensing Act 2003; or
  - the premises were being used for a permitted temporary activity under the authority of a temporary event notice given under that Act.
13. The new offence may only be committed by what is termed "the responsible person". For these purposes, a responsible person is the premises licence holder or, in the case of a temporary event notice, the premises user; or (if there is more than one) each and every person who is one of the premises licence holders or premises users at the time of each unlawful sale. The offence cannot be committed by any other person.
  14. It should be noted that many premises licences, for example, are held in the names of businesses or organisations. For these purposes, therefore, "responsible person" could include a business or partnership or an unincorporated association.
  15. For the purposes of the offence, section 147A(2) of the 2003 Act provides that alcohol has only been sold unlawfully to a person under 18 if:
    - the person making the sale believed the individual to be under 18; or
    - did not have reasonable grounds for believing him to be 18 or over.
  16. And section 147A(3) provides that a person has reasonable grounds for so believing only if he asked the individual for evidence of his age and the evidence produced would have convinced a reasonable person; or if no person could reasonably have suspected that the person was less than 18 years of age.
  17. Paragraphs 15 and 16 will be important considerations when the police or trading standards officers are deciding whether it is appropriate to issue a closure notice under the terms of section 24 of the 2006 Act, details of which are explained below (see paragraphs 32ff). This is because a key test is "the realistic prospect of conviction" for the new offence.
  18. Section 147A(5) provides that the minor to whom the sales have been made may be the same individual on each of the three or more occasions, but need not be.
  19. Section 147A(6) provides that the same sale may not be counted in respect of different offences for the purpose of enabling the same person to be convicted for more than one instance of the offence in subsection (1). For example, if action had been taken against a premises licence holder under section 147A of the Act in respect of three sales that would have amounted to offences under section 146, none of those three sales can then count against the same premises licence holder for further action under section 147A in the future. The count would have to start again if section 147A were sought to be invoked a second time against the same licence-holder.
  20. The same sale may also not be counted in respect of different offences for the purpose of enabling the same person to be convicted of the offence in s147A(1) and offences under sections 146 (sale of alcohol to children) or 147 (allowing

the sale of alcohol to children) of the Licensing Act 2003. Accordingly, if a premises licence holder actually makes the illegal sale, he may not be prosecuted for the alleged offence under section 146 and the alleged offence under section 147(A) with respect to that sale. However, if he is given a caution or accepts a fixed penalty notice for the sale that was illegal under s146, this would not preclude proceedings under section 147A in respect of that sale (see paragraph 19 below). The prosecuting authorities need to decide what would be the most appropriate way forward.

21. Section 147A(7) provides that in determining whether an offence under subsection (1) has been committed the following shall be admissible evidence:
  - convictions for offences under section 146 of the Licensing Act 2003 (sale of alcohol to children);
  - cautions given in respect of such offences under Part 5 of the Police Act 1997; or
  - the payment of a fixed penalty under Part 1 of the Criminal Justice and Police Act 2001 in respect of an unlawful sale to a person under 18.
22. This is not an exclusive list. Other relevant evidence would be admissible. The purpose of this sub-section is to make it clear that although, for example, the payment of a fixed penalty under Part 1 of the 2001 Act discharges further criminal liability for the seller on a specific occasion, the fact of the acceptance of a fixed penalty could be evidence relating to commission of an offence under section 147A for the holder of the premises licence.
23. Section 147A(8) provides that a person guilty of the offence in subsection 147A(1) shall be liable on summary conviction to a fine not exceeding £10,000.

#### **New Section 147B of the Licensing Act 2003**

24. Section 23 of the 2006 Act also amends the Licensing Act 2003 by inserting new section 147B.
25. Section 147B(1) provides that on the conviction of a premises licence holder for an offence under clause 147A, the court may make an order suspending the premises licence for up to 3 months insofar as it authorises sales of alcohol.
26. This means that other licensable activities carried on at the premises, such as the provision of live music, would be unaffected, as would other, non-licensable activities. Sales of alcohol by retail within the period of the suspension would be unlawful, but sales of other goods would be unaffected. For example, it could be made unlawful for a shop to sell alcohol by retail for the period of the suspension but it could continue to sell other products such as vegetables. Similarly, a pub or restaurant could continue to sell food and non-alcoholic drink, but could not sell alcohol.
27. Where alcohol is retailed at premises during the period of a suspension, it would constitute an unauthorized licensable activity for the purposes of section 136 of the 2003 Act and the person or persons carry on these sales would be liable to prosecution under the terms of section 136. In addition, the persons concerned

- may also be committing an offence under section 137 of the 2003 Act (Exposing alcohol for unauthorised sale).
28. Section 147B(2) provides that where more than one person is liable for an offence under clause 147A, no more than one order suspending the premises licence may be made in relation to the premises in question in respect of convictions by reference to those sales.

#### **Suspension of orders pending appeals**

29. Section 147B(3) provides that subject to subsections (4) and (5), an order suspending a premises licence made by a court would come into force at the time specified by the court making the order.
30. Subsection (4) provides that where a magistrates' court has made such an order it may suspend the order pending an appeal. Subsection (5) provides that where an appeal has been made to the Crown Court or to the Court of Appeal (including an application for leave to appeal to the Court of Appeal) against his sentence or conviction, the Courts may suspend the order made. In addition, where an offender appeals or applies for leave to appeal to the House of Lords or the High Court, the Court of Appeal may suspend the order.

#### **Prosecuting authorities for the new offence**

31. Section 23(2) of the Violent Crime Reduction Act 2006 amends the Licensing Act 2003 by providing that the licensing authority may not institute prosecutions for the offence in new section 147A. The 2003 Act provides that only the Director of Public Prosecutions or the weights and measures authority may institute prosecutions for the offence. This is because the licensing authority should not have predetermined any related matters should it be required to consider an application for a review of premises licences on grounds relating to the commission of such offences. It should be noted that the licensing authority and the weights and measures authority are legally distinct for this purpose.

#### **Changes to the maximum fine**

32. Among other things, Section 23(3) of the 2006 Act provides that the maximum fine on conviction for an offence under section 147A of the 2003 Act may only be increased by making an order which is approved by each House of Parliament unless the increase relates solely to changes in the value of money.

#### **Offences under section 146 and 147 of the 2003 Act before 6 April 2007**

33. Section 23(4) provides that a sale of alcohol is not to count for the purposes of the offence under section 147A of the 2003 Act if it took place before the commencement of the section on 6 April 2007.

#### **Section 24: Closure notices for persistently selling alcohol to children**

34. Section 24(1) amends the Licensing Act 2003 by inserting new sections 169A and 169B.

35. New section 169A(1) of the 2003 Act provides that a relevant officer may give 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; **and**
  - 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 conviction; **and**
  - the offender is still, at the time the notice is given, the holder, or one of the holders, of the premises licence in respect of those premises.

#### **"Relevant officer"**

36. Section 169A(11) of the 2003 Act defines a "relevant officer" as a police officer of the rank of superintendent or above; or an inspector of weights and measures appointed under section 72(1) of the Weights and Measures Act 1985.
37. This does not mean that the relevant officer must personally serve the closure or that he/she must be personally present at the premises. He/she must however only authorise service if he/she is satisfied that the three criteria in paragraph 33 above are met. If communicating with a relevant officer, officers at the premises would need to provide him/her with sufficient evidence to enable him/her to make the necessary decision in accordance with section 169(A)(1).

#### **A closure notice**

38. Section 169A(2) defines a "closure notice" for the purposes of section 169A. It is a notice that *proposes* a prohibition on sales of alcohol at the premises in question for a period not exceeding 48 hours; and offers the opportunity to discharge all criminal liability in respect of the alleged offence under section 147A by the acceptance of the prohibition proposed in the notice.
39. Section 169A(3) provides that a closure notice must:
- be in a form prescribed by the Secretary of State in regulations;
  - specify the premises to which it applies;
  - give particulars of the alleged offence;
  - specify the length of the period during which sales of alcohol would be prohibited;
  - specify when that period would begin;
  - explain the effect of the proposed prohibition and the consequences under the Licensing Act 2003 (including maximum penalties) of a sale on the premises during the period for which it is in force;
  - explain the right of every person who was one of the holders of the premises licence at the time of the alleged offence to be tried for that offence; and
  - explain how that right may be exercised and how the proposed prohibition may be accepted.

40. Section 169A(4) provides that the period of the prohibition on sales of alcohol **must not exceed 48 hours**. It also provides that the time specified as the time from which the period of the prohibition would begin must be **at least 14 days after the date on which the closure notice was served**.
41. Section 169A(5) provides that in explaining how the right to be tried for the alleged offence under section 147A may be exercised and how the proposed prohibition may be accepted, the closure notice must:
- provide a means of identifying a police officer or trading standards officer to whom notice exercising the option accepting the prohibition may be given;
  - set out particulars of where and how the notice exercising the option accepting prohibition may be given;
  - require the notice exercising the option accepting the proposed prohibition to be given within 14 days after the date on which the closure notice was served; and
  - explain that the right to be tried for the alleged offence will be taken to have been exercised unless every person who was a holder of the premises licence at the time the closure notice was given accepts the proposed prohibition.
42. Section 169A(6) disapplies section 184 of the Licensing Act 2003 (giving of notices) to the arrangements for giving closure notices; and provides that a closure notice must be served on the premises to which it applies.
43. The form of the closure notice was prescribed in **The Licensing Act 2003 (Persistent Selling of Alcohol to Children) (Prescribed Form of Closure Notice) Regulations 2007 (Statutory Instrument 2007 No. 1183)** which came into effect on 3 May 2007. The form is attached at the end of this guidance.

#### **When may a closure notice be given and to whom?**

44. Section 169A(7) provides that a closure notice may be served only at a time when it appears to a constable or trading standards officer that *licensable activities* are being carried on there. This means, for example, when the premises are open for sales of alcohol.
45. It also provides that a closure notice **may only be given** by being handed by a constable or trading standards officer to a person on the premises who appears to the constable or trading standards officer to have control of or responsibility for the premises. In some cases, this may be the designated premises supervisor, or in the absence of designated premises supervisor, another manager. However, if the premises have been left in the charge of a more junior member of staff, the closure notice may be handed to that person.
46. Section 169A(8) provides that a copy of every closure notice given must be sent to the holder of the premises licence for the relevant premises at whatever address for that person is given on the premises licence itself. The details of the premises licence holder should be displayed at the premises in the premises

licence summary or contained in a copy of the premises licence that must be kept at the premises.

47. Section 169A(9) provides that a closure notice must not be given more than 3 months after the time of the last of the three unlawful sales described in section 147A(1). If there is a problem of persistent sales of alcohol to children, the notice should normally be given as soon as possible after the third relevant unlawful sale is detected. The purpose of the new provisions is to protect children from harm and delays in resolving such problems should be avoided wherever possible.
48. Section 169A(10) provides that no more than one closure notice may be given in respect of offences relating to the same sales; and that a closure notice may **not** be given in respect of an offence under section 147A in respect of which a prosecution has already been brought.

### **Section 169B of the Licensing Act 2003**

49. Section 169B applies where a closure notice is given under section 169A in respect of an alleged offence under section 147A.
50. New section 169B(2) provides that no proceedings may be brought for an alleged offence at any time before the time when the prohibition proposed by the closure notice would take effect.
51. Section 169B(3) provides that if, before the time when the prohibition proposed by the closure notice would take effect, and within 14 days of the notice being served, every holder of the premises licence has agreed to accept the proposed prohibition in the manner specified in the notice, then:
  - the prohibition takes effect **at the time specified in the closure notice** at the premises in question; and
  - no proceedings may be **subsequently** brought for the alleged offence against the holders of the premises licence or "*any related offence*".
52. Section 169B(5) provides a definition for the words *any related offence*. Such an offence would include any offences under sections 146 and 147 of the Licensing Act 2003 in respect of any of the sales alleged to comprise the offence under section 147A. This does not preclude an application for a review of the premises licence from being progressed.
53. Section 169B(4) provides that where the prohibition has been given effect, **the premises licence is suspended for the period specified in the closure notice insofar as it authorises the sale by retail of alcohol**. This means that any sales of alcohol which took place during the period when the premises licence was temporarily suspended would be unauthorised under the terms of the Licensing Act 2003.
54. However, this also means that other licensable activities carried on at the premises, such as the provision of live music, would be unaffected. Furthermore, although any sales of alcohol by retail within the period specified in the closure

- notice would be unlawful, sales of other goods would be unaffected. For example, it could be made unlawful for a shop to sell alcohol by retail for the period of the suspension but the shop could continue to sell other products such as vegetables.
55. It should therefore be noted that a *closure* notice does not require that the premises must not open to the public. Very few premises only sell alcohol and do not engage in other commercial activities.
  56. Under section 136 of the Licensing Act 2003, a person commits an offence if he carries on or attempts to carry on any licensable activity on or from any premises otherwise than under or in accordance with an authorisation; or he knowingly allows a licensable activity to be so carried on. A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £20,000, or to both.
  57. Section 169B(6) provides that the operation of section 169B is not affected by any contravention of new section 169A(8), which is the requirement to send a copy of every closure notice to the holder of the premises licence for the premises in question. It is however important that every effort is made to comply with this requirement of the Act in every case. These provisions mean that where it may be disputed that a copy was sent to the premises licence holder, this would not prevent service of a closure notice.

#### **Liabilities for damages**

58. Sections 24(2) and (3) of the 2006 Act amend section 170 of the Licensing Act 2003 by extending the exemption for the police from liabilities for damages to their functions in respect of closure notices and by providing a similar exemption for trading standards officers.
59. Section 24(4) also amends section 170 of the 2003 Act to extend the exemption to the actions of community support officers in serving closure notices (see paragraph 61 of this guidance).

#### **Definitions**

60. Section 21(5) amends section 171(5) of the Licensing Act 2003 (interpretation of Part 8) by providing definitions of "trading standards officer" and "weights and measures authority" and "closure notice".
61. "Closure notice" is defined by reference to section 169A.
62. A "trading standards officer" is defined as a person authorised by a local weights and measures authority to act in the area where the premises in question are situated in relation to proposed prohibitions contained in closure notices. It is recognised that terminology used to refer to weights and measure inspectors and trading standards officers might differ from those commonly used in trading standards departments. For clarity, a trading standards officer has to be at inspector level (ie appointed under section 72(1) of the Weights and Measures Act 1985) to be able to *give* a closure notice. However, that notice can be

- physically *served* at the premises by any authorised enforcement officer working for the weights and measures authority.
63. "Weights and measures authority" is given the same meaning as is given to it by section 69 of the Weights and Measures Act 1985.
  64. Section 24(6) amends Part 1 of Schedule 4 to the Police Reform Act 2002 (powers of community support officers). It provides that **a community support officer shall have the capacity of a constable to serve a closure notice.**

### Good Practice

65. The new provisions inserted in the Licensing Act 2003 do **not** require enforcement officers to inform either the designated premises supervisor or the premises licence holder when they detect unlawful sales of alcohol by bar staff or shop workers which may later count towards an offence under section 147A by the premises licence holder. However, officers should consider what action would best serve the licensing objectives set out in the 2003 Act.
66. Two of the licensing objectives are:
  - The prevention of crime and disorder; and
  - The protection of children from harm.
67. It is for the retailer to ensure adequate arrangements and processes are in place for information about unlawful sales and results of test purchase operations to be passed to the most appropriate person(s) in the organisation. Practice will vary between different retailers on who is responsible for following up the information and it is not for the enforcement agency to identify and trace that individual. However, it may be in the best interest of the licensing objectives, and particularly those of children, for enforcers to draw the attention of the premises licence holder, or the store or area manager, to instances where unlawful sales of alcohol have been detected.
68. This should enable remedial action to be taken by licence holders to put their house in order before offences under section 147A are committed. Notification also enables employers to deal with problem staff, thereby preventing future sales, as well as rewarding good practice when staff have correctly refused a sale.
69. There will be a few cases where local enforcement agencies will decide it is not appropriate to notify the retailer of the result of a test purchase operation at the earliest opportunity. This might include where the operation is part of an ongoing criminal investigation or where a retailer is relying on police/trading standards information on non-compliance rather than putting their own monitoring of staff performance in place.
70. Such cases should be rare and the Home Office and ACPO agree that the default position is that police/trading standards officers should share information of passes and failures with premises as soon as practicable. Note that administrative convenience should not be the deciding factor.

71. It nevertheless remains a fundamental responsibility of premises licence holders to ensure that licensing law and licensing conditions are observed at their premises. They should have in place sufficient management supervision to ensure that staff do not commit undetected offences. Premises licence holders should not rely on enforcement officers to conduct this supervision for them.

**DCMS**  
May 2007

# CLOSURE NOTICE FOR PERSISTENTLY SELLING ALCOHOL TO CHILDREN

## Section 169A(2) of the Licensing Act 2003

This notice offers a period of closure as an alternative to criminal prosecution for an offence of repeatedly selling alcohol to underage persons. It is addressed to the person(s) (which may include a company etc) who hold the relevant premises licence for the premises concerned. A copy of this closure notice will be sent to the holder of the premises licence at the address for that person set out in the licence.

The premise licence holder(s) should read parts 10, 11, 12 and 13 of this notice with particular care as they contain information concerning their rights. If you have been handed this notice and are not the premises licence holder, you may wish to inform the premises licence holder(s) that this notice has been served.

<b>1. Name and rank of the police officer (must hold the rank of superintendent or above) / name of the inspector of weights and measures <i>[delete as appropriate]</i> <u>giving</u> this closure notice</b>							
<b>2. Name of the police, community support or trading standards officer <i>[delete as appropriate]</i> <u>servicing</u> this closure notice. (A closure notice may be served by being handed to a person on the premises who appears to have control of or responsibility for the premises and who need not be the premises licence holder).</b>							
<b>3. Date on which closure notice is given</b>	D	D	M	M	Y	Y	Y

Details of premises and premises licence holder(s)	
4. Address of premises in respect of which this notice is being given	
5. Premises Licence Reference number and issuing licensing authority	
6. Name of premises licence holder(s)	
7. Address of premises licence holder(s). <i>(This is the address to which a copy of this closure notice will be sent)</i>	

<b>8. Particulars of alleged offence under section 147A of the Licensing Act 2003, including:</b>	
<ul style="list-style-type: none"> <li>particulars of unlawful sales made to persons under 18;</li> <li>dates of the sales; and</li> <li>the individuals making the sales (so far as known).</li> </ul>	
(Note: you can be liable for the offence if you were a premises licence holder at the time each unlawful sale took place on the premises)	
First unlawful	

sale:	
Second unlawful sale:	
Third unlawful sale:	

**9. Proposed period (maximum 48 hours) during which sales of alcohol by retail are to be prohibited (commencing not less than 14 days after this closure notice was served):**

From	Time:	To	Time:
	Date:		Date:

**10. Effect of accepting of the proposed prohibition (closure)**

If you decide to accept the proposed closure (on how to do this, see part 12 below), all sales by retail of alcohol at the premises during the period specified in part 9 of this notice will be unauthorised. An unauthorised sale is a criminal offence (see section 136 of the Licensing Act 2003). A person guilty of an offence under that section is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £20,000, or to both.

**11. Right to elect to go to trial**

You do not have to accept the proposed closure. As an alternative, you may elect to be tried in a court of law for the offence described in part 8 above. That right may be exercised by informing the officer named in part 14 in writing or by e-mail.

**12. How to accept the proposed prohibition**

In order to accept the proposed closure, all premises licence holder(s) should notify the officer named in part 14 of their decision in writing or by e-mail **within 14 days** of this notice being served. Failure to notify the officer named in part 14 of acceptance of the prohibition within 14 days will be taken as a decision to elect for trial for the alleged offence described in part 8.

**13. Effect of a failure by one or more of the premises licence holders to accept the proposed prohibition**

The right to be tried for the alleged offence described in part 8 of this closure notice will be taken to have been exercised unless every person who was a holder of the premises licence at the time this notice was given accepts the proposed prohibition.

**14. Name of the police officer or trading standards officer to whom notice exercising the option to accept the prohibition should be given, or election to go to trial must be sent, within 14 days**

The address of the officer in part 14
E-mail address and telephone number of the officer in part 14