

# **LICENSING (SCOTLAND) ACT 2005**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON PARTS**

#### **Part 8 – Offences**

##### ***Section 102 – Sale of alcohol to a child or young person.***

210. This section makes it an offence for anyone to sell alcohol to children or young people anywhere. This is a widening of the existing offence provided for in section 68 of the Licensing (Scotland) Act 1976, which is restricted to the licence holder, or an employee or agent of the licence holder in licensed premises.
211. Subsection (2) provides a defence if the seller believed that the purchaser was 18 or over and either took all reasonable steps to establish the purchaser's age or nobody could reasonably have suspected from the purchaser's appearance that he was under 18.
212. The seller is deemed to have taken all reasonable steps if he or she had seen evidence of the purchaser's age and that evidence would have convinced a reasonable person. However, if it is proved by the prosecution 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), the defence would fail.

##### ***Section 103 – Allowing the sale of alcohol to a child or young person***

213. This section deals separately with "allowing" the sale of alcohol to children or young people. It applies only to sales on "relevant premises" by "responsible persons". "Relevant premises" is defined in section 122 and essentially covers any premises on which alcohol is lawfully sold. "Responsible person" is also defined in section 122 of the Act. It has different meanings in relation to different types of premises and covers those with some responsibility for sales of alcohol. It also includes anyone over 18 who works on the premises and who has authority to prevent the sale.

##### ***Section 104 – Sale of liqueur confectionery to a child***

214. This section makes it an offence to sell liqueur confectionery to a child under 16. Subsection (2) provides a defence if the seller believed that the purchaser was 16 or over and if either he or she took all reasonable steps to establish the purchaser's age or if nobody could reasonably have suspected from the purchaser's appearance that he or she was under 16.
215. Subsection (3) provides that the accused is deemed to have taken "all reasonable steps" if he or she was shown evidence of the individual's age and that evidence was such that it would have convinced a reasonable person.

##### ***Section 105 – Purchase of alcohol by or for a child or young person***

216. Subsection (1) makes it an offence for a child or young person to buy or attempt to buy alcohol whether or not on licensed premises.

- 217. Subsection (2) gives the child or young person immunity from committing an offence under this section where the child or young person is taking part in test purchasing authorised by a chief constable.
- 218. Subsection (3) places an obligation on the chief constable to avoid any risk to the welfare of the child or young person who has been authorised to buy or attempt to buy alcohol.
- 219. Subsection (4) makes it an offence for an adult to act as an agent for a child or young person in purchasing or attempting to purchase alcohol (for example, if a child gives money to an adult to buy alcohol on their behalf). It is also an offence to buy alcohol for a child or young person to consume on relevant premises. The offence also applies where a member of a club has alcohol supplied to a child or attempts to do so.
- 220. Subsection (5) provides that it is not an offence to buy beer, wine, cider or perry for a person aged 16 or 17 to consume with a table meal on relevant premises.

### ***Section 106 – Consumption of alcohol by a child or young person***

- 221. Subsection (1) makes it an offence for a child or young person knowingly to consume alcohol on relevant premises.
- 222. Subsection (2) also makes it an offence for a responsible person knowingly to allow the consumption of alcohol by a child or young person on relevant premises.
- 223. Subsection (3) provides that the offences in this section will not be committed where a 16 or 17-year-old consumes beer, wine, cider or perry with a meal.

### ***Section 107 – Unsupervised sale of alcohol by a child or young person***

- 224. This section makes it an offence for a responsible person knowingly to allow a child or young person to sell, supply or serve alcohol, unless the alcohol is for consumption off the premises or is for consumption with a meal and (in either case) the sale is specifically authorised by someone aged 18 or over.

### ***Section 108 – Delivery of alcohol by or to a child or young person***

- 225. This section relates to off-sales. Subsections (2) and (3) make it an offence for any responsible person to allow someone under the age of 18 to deliver alcohol from such a premises or to deliver (or allow to be delivered) alcohol to someone under 18.
- 226. Subsection (4) provides for an exemption. Delivery by a child or young person is not an offence where the child or young person delivering or taking delivery works at the relevant premises, or at the place of delivery, in a capacity which includes the delivery of alcohol. An example of this would be where a young person is helping out in a family business, or works at a reception desk at the place of delivery.
- 227. Subsection (5) establishes a defence to the offences in subsections (2) and (3)(a) (allowing delivery to a child or young person), namely that the person accused took all necessary precautions to avoid committing the offence. Subsection (8) establishes a defence for the offence in subsection (3)(b) (delivering to a child or young person). It is a defence to show that the person making or allowing the delivery had been shown documents bearing to be proof of age of the child or young person. Those types of documents which are acceptable for this purpose are set out in subsection (7).

### ***Section 109 – Sending a child or young person to obtain alcohol***

- 228. This section makes it an offence to send a child or young person to obtain alcohol which is sold for consumption off the premises. This offence covers, for example, circumstances where a parent sends his or her child to an off-licence to collect some alcohol which has been bought over the telephone.

229. Subsection (2) provides that the offence will be committed regardless of whether the child or young person is sent to the actual premises from where the alcohol is sold or supplied, or whether he is sent to other premises to which the alcohol has been sent.
230. Subsection (3) provides that the offence will not be committed where the child or young person works at the premises in question and his or her job involves taking deliveries of alcohol.

### ***Section 110 – Duty to display notice***

231. This section makes it a statutory requirement that there be displayed on all relevant premises (defined in section 147) in a prominent place at all times a notice stating that it is an offence for a person under the age of 18 to buy or attempt to buy alcohol on the premises or for a person to buy alcohol on their behalf. The notice must also contain a statement as to the “no proof – no sale” requirement.
232. The form and size of the notice will be set out in regulations.
233. Subsection (4) makes it an offence for anyone specified in subsection (5) relating to the premises in question, not to display such a notice.

### ***Section 111 – Drunk persons entering or in premises on which alcohol is sold***

234. This section makes it an offence for a drunk person to attempt to enter any relevant premises (defined in section 147 – basically any premises on which alcohol is lawfully sold). It also makes it an offence for a person, whilst on relevant premises, to be drunk and incapable of taking care of himself or herself. A person committing an offence under this section can be arrested without warrant by the police.

### ***Section 112 – Obtaining of alcohol by or for a drunk person***

235. This section makes it an offence for any person to buy or attempt to buy alcohol for someone who is drunk or to help a drunk person to obtain or consume alcohol. The offences only apply where the alcohol is to be consumed on relevant premises.

### ***Section 113 – Sale of alcohol to a drunk person***

236. This section makes it an offence for any responsible person working on relevant premises to sell alcohol to someone who is drunk.

### ***Section 114 – Premises manager, staff etc. not to be drunk***

237. This section makes it an offence for any responsible person (ie the premises manager and anyone else who works on relevant premises) to be drunk on the premises.

### ***Section 115 – Disorderly conduct***

238. Subsection (1) makes it an offence for any person to behave in a disorderly manner or to annoy others with offensive language on relevant premises.
239. Subsection (2) makes it an offence for any responsible person in relation to relevant premises to allow disorderly conduct on the premises. Subsection (3) provides a “due diligence” defence for a person charged with an offence under subsection (2).
240. Subsections (4) and (5) confirm the penalties for offences committed under this section.

### ***Section 116 – Refusal to leave premises***

241. This section makes it an offence for a disorderly person to refuse to leave relevant premises when asked or for any person to refuse to leave licensed premises at closing time when asked. Subsection (3) allows certain authorised persons to use reasonable force to remove from any premises on which alcohol is sold a person who is behaving in

a disorderly manner but refuses to leave when asked. “Authorised persons” is defined in subsection (6)

***Section 117 – Offences relating to sale of alcohol to trade***

242. This section makes it an offence for a person to sell alcohol to trade otherwise than from premises used exclusively for the purpose of selling to trade (whether such sale is solely of alcohol or not).

***Section 118 – Prohibition of sale of alcohol on moving vehicles***

243. This section deals with, for example, “party buses” and “stretch limousines” that currently provide alcohol. It makes it an offence for any person to knowingly sell alcohol on any vehicle whilst it is moving unless authorised to do so. “Vehicle” is defined in section 147 and basically means any road vehicle.

***Section 119 – Delivery of alcohol from vehicles etc.***

244. This deals with deliveries of alcohol and would provide that all such deliveries and carrying of alcohol in vehicles is properly and clearly recorded.

***Section 120 – Prohibition of late-night deliveries of alcohol***

245. This section deals with off-sales and makes it an offence for anyone who works on these licensed premises to deliver alcohol between 12 midnight and 6 am and also an offence for any responsible person to allow such a delivery.

***Section 121 – Keeping of smuggled goods***

246. This section makes it an offence knowingly to keep or allow to be kept on any licensed premises any illegally imported goods.
247. Subsection (3) provides a power for the courts to order the forfeiture or destruction of goods kept in breach of subsection (1).