



# Licensing (Scotland) Act 2005

## 2005 asp 16

### PART 8

#### OFFENCES

##### *Offences relating to children and young people*

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

- (1) A person who sells alcohol to a child or a young person commits an offence.
- (2) It is a defence for a person charged with an offence under subsection (1) (referred to in this section as “the accused”) to show that—
  - (a) the accused believed the child or young person to be aged 18 or over, and
  - (b) either—
    - (i) the accused had taken reasonable steps to establish the child’s or young person’s age, or
    - (ii) no reasonable person could have suspected from the child’s or young person’s appearance that the child or young person was aged under 18.
- (3) For the purposes of subsection (2)(b)(i), the accused is to be treated as having taken reasonable steps to establish the child’s or young person’s age if and only if—
  - (a) the accused was shown any of the documents mentioned in subsection (4), and
  - (b) that document would have convinced a reasonable person.
- (4) The documents referred to in subsection (3)(a) are any document bearing to be—
  - (a) a passport,
  - (b) a European Union photocard driving licence, or
  - (c) such other document, or a document of such other description, as may be prescribed.
- (5) A person guilty of an offence under subsection (1) is liable on summary conviction to—
  - (a) a fine not exceeding level 5 on the standard scale,
  - (b) imprisonment for a term not exceeding 3 months, or
  - (c) both.

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

- (1) Any responsible person who knowingly allows alcohol to be sold to a child or a young person on any relevant premises commits an offence.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to—
  - (a) a fine not exceeding level 5 on the standard scale,
  - (b) imprisonment for a term not exceeding 3 months, or
  - (c) both.

**104 Sale of liqueur confectionery to a child**

- (1) A person who sells liqueur confectionery to a child commits an offence.
- (2) It is a defence for a person charged with an offence under subsection (1) (referred to in this section as “the accused”) to show that—
  - (a) the accused believed the child to be aged 16 or over, and
  - (b) either—
    - (i) the accused had taken reasonable steps to establish the child’s age, or
    - (ii) no reasonable person could have suspected from the child’s appearance that the child was aged under 16.
- (3) For the purposes of subsection (2)(b)(i), the accused is to be treated as having taken reasonable steps to establish the child’s age if and only if—
  - (a) the accused was shown evidence of the child’s age, and
  - (b) that evidence would have convinced a reasonable person.
- (4) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

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

- (1) A child or young person who buys or attempts to buy alcohol (whether for himself or herself or another person) commits an offence.
- (2) It is not an offence under subsection (1) for a child or young person to buy or attempt to buy alcohol if the child or young person is authorised to do so by the chief constable for the purpose of determining whether an offence is being committed under section 102.
- (3) A chief constable may authorise a child or young person to buy or attempt to buy alcohol as mentioned in subsection (2) only if satisfied that all reasonable steps have been or will be taken to avoid any risk to the welfare of the child or young person.
- (4) A person other than a child or young person who knowingly buys or attempts to buy alcohol—
  - (a) on behalf of a child or young person, or
  - (b) for consumption on relevant premises by a child or young person,commits an offence.
- (5) Subsection (4)(b) does not apply to the buying of beer, wine, cider or perry for consumption by a young person along with a meal supplied on relevant premises.

- (6) A child or young person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 1 on the standard scale.
- (7) A person guilty of an offence under subsection (4) is liable on summary conviction to—
  - (a) a fine not exceeding level 5 on the standard scale,
  - (b) imprisonment for a term not exceeding 3 months, or
  - (c) both.

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

- (1) A child or young person who knowingly consumes alcohol on any relevant premises commits an offence.
- (2) Any responsible person who knowingly allows a child or young person to consume alcohol on any relevant premises commits an offence.
- (3) Subsections (1) and (2) do not apply to the consumption of beer, wine, cider or perry by a young person along with a meal supplied on relevant premises.
- (4) A child or young person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) A person guilty of an offence under subsection (2) is liable on summary conviction to—
  - (a) a fine not exceeding level 5 on the standard scale,
  - (b) imprisonment for a term not exceeding 3 months, or
  - (c) both.

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

- (1) Any responsible person who knowingly allows alcohol to be sold, supplied or served by a child or young person on any relevant premises commits an offence.
- (2) Subsection (1) does not apply to—
  - (a) any sale by a child or young person of alcohol for consumption off the premises, or
  - (b) any supply or service by a child or young person of alcohol for consumption on the premises along with a meal supplied on relevant premises,if the condition in subsection (3) is satisfied.
- (3) That condition is that the sale, supply or service is specifically authorised by—
  - (a) a responsible person, or
  - (b) any other person of or over 18 years of age who is authorised by a responsible person for the purposes of this section.
- (4) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

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

- (1) This section applies where alcohol is sold on any relevant premises for consumption off the premises.
- (2) Any responsible person who allows the alcohol to be delivered by a child or young person commits an offence.
- (3) Any responsible person who—
  - (a) delivers the alcohol, or
  - (b) allows it to be delivered,to a child or young person commits an offence.
- (4) Subsections (2) and (3) do not apply to the delivery of the alcohol by or to a child or young person who works on the relevant premises or at the place where the delivery is made in a capacity (whether paid or unpaid) which involves the delivery of alcohol.
- (5) It is a defence for a person charged with an offence under subsection (2) or (3)(a) (referred to in this subsection and subsection (6) as “the accused”) to show that—
  - (a) the accused believed the child or young person to be aged 18 or over, and
  - (b) either—
    - (i) the accused had taken reasonable steps to establish the child’s or young person’s age, or
    - (ii) no reasonable person could have suspected from the child’s or young person’s appearance that the child or young person was aged under 18.
- (6) For the purposes of subsection (5)(b)(i), the accused is to be treated as having taken reasonable steps to establish the child’s or young person’s age if and only if—
  - (a) the accused was shown any of the documents mentioned in subsection (7), and
  - (b) that document would have convinced a reasonable person.
- (7) The documents referred to in subsection (6)(a) are any document bearing to be—
  - (a) a passport,
  - (b) a European Union photocard driving licence, or
  - (c) such other document, or a document of such other description, as may be prescribed.
- (8) It is a defence for a person charged with an offence under subsection (3)(b) (“the accused”) to prove that the accused took all reasonable precautions and exercised due diligence not to commit the offence.
- (9) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**109 Sending a child or young person to obtain alcohol**

- (1) Any person who knowingly sends a child or young person to obtain alcohol sold or to be sold on any relevant premises for consumption off the premises commits an offence.
- (2) It is immaterial for the purposes of subsection (1) whether the child or young person is sent to obtain the alcohol from the relevant premises where it is sold or from some other place from which it is to be delivered.

- (3) Subsection (1) does not apply where the child or young person works on the relevant premises or at the place where the alcohol is to be delivered in a capacity (whether paid or unpaid) which involves the delivery of alcohol.
- (4) A person guilty of an offence under subsection (1) is liable on summary conviction to—
  - (a) a fine not exceeding level 5 on the standard scale,
  - (b) imprisonment for a term not exceeding 3 months, or
  - (c) both.

## **110 Duty to display notice**

- (1) This section applies in relation to any relevant premises.
- (2) The notice mentioned in subsection (3) must be displayed—
  - (a) at all times,
  - (b) at each place on the premises where sales of alcohol are made, and
  - (c) in a position where it is readily visible to any person seeking to buy alcohol.
- (3) That is a notice in the prescribed form and of the prescribed dimensions containing the following statements, namely—

“It is an offence for a person under the age of 18 to buy or attempt to buy alcohol on these premises.

It is also an offence for any other person to buy or attempt to buy alcohol on these premises for a person under the age of 18.

Where there is doubt as to whether a person attempting to buy alcohol on these premises is aged 18 or over, alcohol will not be sold to the person except on production of evidence showing the person to be 18 or over.”.
- (4) If the requirement in subsection (2) is not met in relation to any premises, the person specified in subsection (5) commits an offence.
- (5) That person is, in relation to any relevant premises—
  - (a) in the case of licensed premises—
    - (i) the premises licence holder, and
    - (ii) the premises manager,
  - (b) in the case of premises in respect of which an occasional licence has effect, the holder of the licence, and
  - (c) in the case of other relevant premises, the person having the management and control of the premises.
- (6) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Drunkenness and disorderly conduct***111 Drunk persons entering or in premises on which alcohol is sold**

- (1) A person who, while drunk, attempts to enter any relevant premises (other than premises on which the person resides) commits an offence.
- (2) A person commits an offence if the person, while drunk—
  - (a) is on any relevant premises, and
  - (b) is incapable of taking care of himself or herself.
- (3) A constable may arrest without warrant any person committing an offence under this section.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

**112 Obtaining of alcohol by or for a drunk person**

- (1) A person who, on any relevant premises, obtains or attempts to obtain alcohol for consumption on the premises by a person who is drunk commits an offence.
- (2) A person who, on any relevant premises, helps a person who is drunk to obtain or consume alcohol on the premises commits an offence.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**113 Sale of alcohol to a drunk person**

- (1) Any responsible person who, on any relevant premises, sells alcohol to a person who is drunk commits an offence.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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

- (1) Any responsible person in relation to any relevant premises who is drunk while on the premises commits an offence.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**115 Disorderly conduct**

- (1) A person on relevant premises who, while drunk—
  - (a) behaves in a disorderly manner, or
  - (b) uses obscene or indecent language to the annoyance of any person,commits an offence.
- (2) Any responsible person in relation any relevant premises who allows—
  - (a) a breach of the peace,

- (b) drunkenness, or
  - (c) other disorderly conduct,to take place on the premises commits an offence.
- (3) It is a defence for a person charged with an offence under subsection (2) (“the accused”) to prove—
  - (a) that the accused, or an employee or agent of the accused, took all reasonable precautions and exercised due diligence not to commit the offence, or
  - (b) that there were no lawful and reasonably practicable means by which the accused could prevent the conduct giving rise to the offence.
- (4) A person guilty of an offence under subsection (1)(a) is liable on summary conviction to—
  - (a) a fine not exceeding level 3 on the standard scale,
  - (b) imprisonment for a term not exceeding 60 days, or
  - (c) both.
- (5) A person guilty of an offence under subsection (1)(b) or (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **116 Refusal to leave premises**

- (1) A person on any relevant premises who—
  - (a) behaves in a disorderly manner, and
  - (b) refuses or fails to leave the premises on being asked to do so by a responsible person or a constable,commits an offence.
- (2) A person on any relevant premises who, after the end of any period of licensed hours, refuses or fails to leave the premises on being asked to do so by a responsible person or a constable commits an offence.
- (3) Where a person refuses or fails to leave any relevant premises as mentioned in subsection (1) or (2), an authorised person may—
  - (a) remove the person from the premises, and
  - (b) if necessary for that purpose, use reasonable force.
- (4) A constable must, if—
  - (a) asked by an authorised person to assist in exercising a power conferred by subsection (3), and
  - (b) the constable reasonably suspects the person to be removed of having refused or failed to leave as mentioned in subsection (1) or (2),provide the assistance asked for.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) In this section, “authorised person” means, in relation to any relevant premises, any of the following persons, namely—
  - (a) a responsible person, and
  - (b) any other person who—
    - (i) works on the premises, and

(ii) is authorised by a responsible person for the purposes of this section.

### *Miscellaneous offences*

#### **117 Offences relating to sale of alcohol to trade**

- (1) A person who sells alcohol to trade otherwise than from premises which are used exclusively for the purpose of the selling of goods (whether solely alcohol or not) to trade commits an offence.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **118 Prohibition of unauthorised sale of alcohol on moving vehicles**

- (1) A person who knowingly sells alcohol on or from a vehicle at a time when the vehicle is not parked (whether permanently or temporarily) commits an offence, unless the selling of alcohol on or from the vehicle at such a time is expressly authorised by a premises licence or occasional licence in respect of the vehicle.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to—
  - (a) a fine not exceeding £20,000,
  - (b) imprisonment for a term not exceeding 3 months, or
  - (c) both.

#### **119 Delivery of alcohol from vehicles etc.**

- (1) A person who, pursuant to a sale of alcohol by that person, delivers the alcohol from a vehicle or receptacle without the information mentioned in subsection (2) having been entered, before the despatch of the alcohol, in—
  - (a) a day book kept on the premises from which the alcohol is despatched, and
  - (b) a delivery book or invoice carried by the person delivering the alcohol,commits an offence.
- (2) The information referred to in subsection (1) is—
  - (a) the quantity, description and price of the alcohol, and
  - (b) the name and address of the person to whom it is to be delivered.
- (3) A person who carries in a vehicle or receptacle in use for the delivery of alcohol pursuant to a sale of the alcohol by that person any alcohol the quantity, description and price of which was not entered as mentioned in subsection (1) commits an offence.
- (4) A person who, pursuant to a sale of alcohol, delivers the alcohol to an address not entered as mentioned in subsection (1) commits an offence.
- (5) A person who refuses to allow a constable or a Licensing Standards Officer to examine—
  - (a) any vehicle or receptacle in use for the delivery of alcohol, or
  - (b) any—
    - (i) day book kept as mentioned in subsection (1)(a), or
    - (ii) delivery book or invoice carried as mentioned in subsection (1)(b),



commits an offence.

- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (7) In this section, “alcohol” does not include any alcohol being delivered to a trader for the purposes of that person’s trade.

## **120 Prohibition of late-night deliveries of alcohol**

- (1) This section applies where alcohol is sold on any relevant premises for consumption off the premises.
- (2) A responsible person commits an offence if the person knowingly delivers the alcohol to any premises (other than licensed premises) between the hours of midnight and 6am.
- (3) A responsible person who knowingly allows the alcohol to be so delivered commits an offence.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **121 Keeping of smuggled goods**

- (1) Any responsible person who knowingly keeps or allows to be kept on licensed premises any goods which—
  - (a) have been imported without any duty payable on their importation having been paid, or
  - (b) have otherwise been unlawfully imported,commits an offence.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (3) The court by or before which a person is convicted of an offence under subsection (1) may order the goods in question to be—
  - (a) forfeited, and
  - (b) destroyed or otherwise dealt with in such manner as the court may order.

### *Interpretation of Part*

## **122 Interpretation of Part 8**

- (1) This section has effect for the purpose of the interpretation of this Part.
- (2) “Relevant premises” means—
  - (a) any licensed premises,
  - (b) any exempt premises on which alcohol is sold, and
  - (c) any premises used for the selling of alcohol to trade.
- (3) “Responsible person” means, in relation to relevant premises—
  - (a) in the case of licensed premises in respect of which a premises licence has effect, the premises manager,

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*Status: This is the original version (as it was originally enacted).*

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- (b) in the case of licensed premises in respect of which an occasional licence has effect, the holder of the licence,
- (c) in the case of other relevant premises, the person having management and control of the premises, and
- (d) in any of those cases, any person aged 18 or over who works on the premises in a capacity (whether paid or unpaid) which—
  - (i) authorises the person to sell alcohol, or
  - (ii) in relation to any offence under this Part of allowing something to be done, authorises the person to prevent the doing of the thing.