

A close-up photograph of a person's hand holding a clear glass filled with beer. The glass is held between the thumb and index finger, with the rest of the hand supporting it from underneath. The beer is a golden color with a thick white head of foam. The background is slightly out of focus, showing a wooden chair and a person wearing an orange shirt and white sneakers. The overall lighting is warm and indoor.

PopplestonAllen

A **guide** to preventing
underage sales of
alcohol

Introduction

Underage sales can seriously damage the health of your business. This pack has been designed to help you, as unit managers and Premises Licence Holders to train and inform your staff about the law, consequences and preventative measures in respect of underage sales of alcohol.

Pack Contents

1. A video link – 8 minutes in duration. Please read through all of the materials in the pack before you play the video link to your staff.
2. What you need to know to avoid selling alcohol to under 18s.
3. Display notices for your premises (x1)
4. Certification of Training/Instruction (x1)

Further action you need to take

Display the posters prominently at your entrances. If you require more, you can copy the posters. Sometimes your local enforcement authorities may have posters they can give to you.

Instructions for Use

1. Play the video to all of your frontline staff – anyone who comes into contact with your customers.
2. Ask each member of staff to complete the certification of training as proof that you have completed the training. Then keep them in a safe place.
3. If you employ any new staff, please ensure they go through the same procedure from 1-2.

More information

For regular legal updates from Poppleston Allen go to www.popall.co.uk and sign up for our FREE eNews service.

www.pass-scheme.org.uk

www.citizencard.com



**What you need to know
to avoid selling alcohol to
under 18s**

The Offences

It is important that all front of house staff are aware that the following offences exist under the Licensing Act 2003 in relation to the sale of alcohol.

- Selling alcohol to someone under the age of 18 – **maximum fine is unlimited**
- Knowingly allowing the sale of alcohol to someone under the age of 18 – **maximum fine is unlimited**
- Delivering alcohol to someone under the age of 18 – **maximum fine is unlimited**
- Allowing someone under the age of 18 to sell alcohol without the specific approval of someone over 18 – **maximum fine is unlimited**
- Persistently selling alcohol to someone under the age of 18 – **maximum fine is unlimited plus possible three month suspension of alcohol sales (or 14 day closure)**
- Knowingly allowing consumption of alcohol on licensed premises by someone under the age of 18 – **maximum fine is unlimited**

NB: There is also an offence of purchasing of alcohol by an under 18 year old. This means that it is no longer legal for 16 and 17 year olds to purchase an alcoholic drink for consumption along with a meal. Under the Licensing Act 2003 an adult accompanying them must buy the drink for them but it is still legal for them to consume it with the meal as before. This relates only to beer, wine and cider.

The most frequently committed offence is the first one of selling alcohol to someone under the age of 18. It is really this offence that is being concentrated upon by the enforcing authorities.

Nonetheless it is important to be aware of the others! Most of the offences require actual “knowledge”, therefore a direct involvement in the offence. For example, the Designated Premises Supervisor might instruct a member of bar staff that it is fine to serve a particular individual who is asking for a drink. If that individual turns out to be under 18 then the DPS has knowingly allowed the sale. The element of knowledge does not relate to the age of the individual who was served, only the act of selling. Equally, if you have an outside area which forms part of your licence you need to make sure that a person under the age of 18 is not sitting out there consuming alcohol which has been bought for them by someone else. The knowledge element might be proved by the fact that you knew that the individual was there regardless of whether or not you knew what age they were and you might be guilty of allowing consumption.

In the alternative, if your outside area does not form part of your licence, you might be accused of knowingly allowing delivery of alcohol to an under 18 year old if you sold to an adult who subsequently provided it to the person under 18 in that outside area.

Home delivery is also a problem for off licences. It is an offence to knowingly deliver alcohol to someone under the age of 18 and the seller will have to be very careful that the purchaser’s age is checked. There is an exception, however, whereby an under 18 year old may take delivery of alcohol at their home address or place of work if they are only accepting delivery on behalf of an over 18 who has been sold the alcohol.

The Risk

Police and Trading Standards Officers are being provided with funding to actively enforce the law in relation to selling alcohol to children. They will carry out test purchasing exercises where they send children into the

premises to see if they can get served. It is therefore imperative that staff are fully aware of their responsibilities and that they challenge for identification where appropriate.

Protection for the Seller

Any staff member who serves alcohol to someone under the age of 18 has a defence if they have asked for identification and that identification was not obviously false. As it is difficult for members of staff to accurately judge people's age, a Challenge 21 (or 25 as appropriate) policy should be adopted whereby all staff are to ask anyone who appears to be under the age of 21 (or 25 as appropriate) to produce identification. If the identification cannot be produced then the customer must not be served. Notices to this effect should be displayed around the premises for the benefit of both staff and customers so that everyone is clear on the policy (examples provided).

In requesting identification from customers sellers should be aware that only the following should be accepted as forms of identification:

1. Identity card bearing the PASS hologram
2. Photo card driving licence
3. Passport
4. Military ID

For detailed guidance please access the PASS website: www.pass-scheme.org.uk



Protection for Management and Companies

The legislation provides for a due diligence defence to be available to a DPS or Personal Licence Holder who may be held responsible for the sale due to their status even though they had no direct involvement in the sale itself. This may also apply to Premises Licence Holders to whom the same defence would also be available.

Due diligence essentially involves doing everything you can possibly do to prevent the offence happening. This means giving staff members the necessary knowledge and training to ask for identification and to refuse service in the event that it cannot be produced. Training records are therefore imperative to show that the necessary knowledge has been imparted.

Another important part of due diligence is to raise awareness of the issue generally by the placing of prominently displayed posters around the premises advertising the Challenge 21 (or 25) policy. This makes both staff and customers aware of what is going on. It reminds staff to ask for identification and makes it easier for them to explain to customers why they are doing it.

NB: It may also be worthy of note that a new Code of Practice on Age Related Products came into being in February 2013. It covers alcohol amongst a large number of other Age Restricted Products.

The Code makes no difference to the offences under the Licensing Act.

It essentially encourages a more partnership driven and educational approach to the issue of underage sales. For operators who have premises in various Local Authority areas it is interesting that they are

able to seek “primary authority approval” for their due diligence systems. This means – in theory – that if one authority has approved the training and measures in place to prevent underage sales then another authority should accept them. It will be interesting to see over time what effect the Code will have in practical terms.

Refusals’ Register

Another essential tool is the refusals’ register. This requires staff to record details of any occasion on which they refuse service. The time and date should be recorded together with a brief description of what happened. The description could simply be ‘ID requested as appeared under 21 (or 25). Customer had no ID.’ Clearly if the customer is willing to give their name then that could also be recorded but in reality most will probably not.

The importance of the refusals register is twofold. Firstly, it may enable you to demonstrate to a police or Trading Standards officer that a particular member of staff who has made a sale to someone under the age of 18 has a proven history of refusing service on a regular basis. Secondly, it enables the management at the premises to review the register on a regular basis to make sure that all staff members are refusing service. This would then satisfy the manager that staff have understood and are following their training.

All of the above will assist in establishing a due diligence defence. However paperwork is only paperwork. It is imperative that management keep the issue alive within the premises by constantly monitoring what staff are doing and leading by example. The issue should be raised at staff meetings and minutes taken. By keeping the issue alive you minimise the chances of having to rely on the documentation at all!

The consequences

If a sale nonetheless occurs then it is possible that this may be dealt with by way of a fixed penalty notice rather than a prosecution. This is normally in the sum of £90 payable within 21 days. If a fixed penalty notice is issued it should be accepted by the seller and then legal advice taken on whether to actually pay the penalty or not.

Payment of the penalty does not involve any admission of responsibility nor does it attract a criminal record. It is possible, however, that the police may seek to take the recipients' fingerprints, photographs and DNA.

It is open to the Police or Trading Standards to consider prosecution for an underage sale rather than dealing with the matter by way of a fixed penalty notice. The Police normally ask for voluntary attendance at an interview under caution. This applies to either an individual who has made the sale or indeed the Personal Licence Holder or the Designated Premises Supervisor. Legal advice should be immediately sought in the event that an interview under caution is to take place. If you are prosecuted then the maximum fine is unlimited and you will have to tell the Court that you are a Personal Licence Holder (if relevant) and your licence might be forfeited. You will also attract a criminal record which would have to be subsequently disclosed on job applications, visa applications etc.

The final possibility is that a formal caution may be offered. This does form part of a criminal record but is not as serious as a conviction. It may have to be disclosed on job application forms depending upon how the question is worded. This normally also follows a visit to the police station and an interview under caution. If the police decide to prosecute or issue

a formal caution they may then seek to take fingerprints, photographs and DNA. Not a pleasant experience!

Premises Licence Holder Beware!

The most potentially costly offence is that of persistently selling alcohol to under 18s. It targets the Premises Licence Holder rather than the individuals who make the sales. An offence is committed if two underage sales take place at given premises within a three month period. The Police will simply have to show that there has been a fixed penalty notice a formal caution or a conviction for two or more offences. There does not seem to be any available defence for such proceedings. All a Premises Licence Holder can do is try to minimise the penalty by arguing that there are good systems in place to try to prevent such sales occurring (the importance of good due diligence systems is therefore paramount once again!).

The maximum fine for the new offence is now unlimited and Magistrates have the option to order up to three months suspension of alcohol sales at the premises. In the alternative, the Police may ask the premises to close voluntarily for a period of up to 14 days to avoid being prosecuted. The police will choose the period, which is likely to include a weekend or a Bank Holiday weekend. Either way it is not good news!

NB: As with all offences under the Licensing Act 2003 it is technically possible for a company director to be prosecuted if it can be shown that the offence was committed with his consent or connivance or due to neglect on his part. Whilst it is highly unlikely that such proceedings would be brought, it is nonetheless important to be aware of this possibility.

As if all of that wasn't bad enough...

There is always the possibility of review of the Premises Licence. This has already been happening in some areas as a result of even one underage sale and certainly following two or three. On review the licensing committee has a wide range of powers including curtailing your hours, removing the DPS or, indeed, revoking the licence!



Summary of Key Points

Summary of Key Points

For the individual

- £90 fixed penalty or an unlimited maximum fine
- Comply with Challenge 21/25 and ask for ID.
- Complete the refusals register

For Premises Licence Holder/DPS/ Personal Licence Holders

- Maximum fine is unlimited for individual sales.
- Maximum fine is unlimited for Premises Licences Holders for persistently selling to someone under the age of 18 with possible suspension of alcohol sales for up to three months.
- Ensure all staff are trained before they serve behind the bar or counter and that all training is recorded.
- Review the refusals register regularly and sign it to say that you have done so.
- Test purchasing campaigns are ongoing in your area so be on your guard!

Teenage Kicks video

Click [here](#) to access an 8 minute video related to this.

CERTIFICATE OF TRAINING

YOU MUST NOT:

- 1 Sell alcohol to someone under the age of 18
- 2 Knowingly allow the sale of alcohol to someone under the age of 18
- 3 Deliver alcohol to someone under the age of 18
- 4 Allow someone under the age of 18 to sell alcohol without the specific approval of someone over 18
- 5 Knowingly allow consumption of alcohol on licensed premises by someone under the age of 18

YOU CAN BE FINED AN UNLIMITED AMOUNT FOR BREACHES OF THE LAW IN RELATION TO THE ABOVE MATTERS.

In addition, for persistently selling alcohol to someone under the age of 18 (2 sales in 3 months) the maximum fine is unlimited plus possible three month suspension of alcohol sales (or 14 day closure).

In this venue we operate a Challenge 21/25 policy. This means that if you are not satisfied that someone looks over 21/25 years of age then you must ask them for identification.

Acceptable forms of identification are:

- 1 Identity card bearing the PASS hologram
- 2 Photo card driving licence
- 3 Passport
- 4 Military ID

If the individual in question is unable to provide one or more of these pieces of identification you must refuse the sale.

IF IN DOUBT, REFUSE THE SALE.

I confirm that I have read and understood my legal responsibilities in the sale of alcohol as outlined above.

I confirm that I have been trained in how to use the refusals book and confirm that I will complete it as and when I refuse service of alcohol to any customer:

Owner/Manager signature _____

Signature _____ Date _____

UNDERAGE SALES OF ALCOHOL

IDENTIFICATION

It is illegal for us to sell alcohol to anyone under the age of 18. In an effort to ensure that this does not occur within these premises we will request identification from anyone who appears to be under the age of 21.

Acceptable forms of identification will be:

- 1. ID card bearing PASS hologram**
- 2. Valid UK driving licence with photograph**
- 3. Valid passport**
- 4. Military ID**

PopplestonAllen

SOLICITORS TO THE LICENSED TRADE

Nottingham 37 Stoney Street • The Lace Market • Nottingham • NG1 1LS • Tel: 0115 953 8500

London The Stanley Building • 7 Pancras Square • London • N1C 4AG • Tel: 0203 859 7760 • **email** mail@popall.co.uk

For more information visit www.popall.co.uk



PopplestonAllen

From pubs, clubs and restaurants to arcades, casinos and online gaming; some of the biggest operators rely on our legal advice to run their businesses. As do fast growing start-ups and one-off brands.

popall.co.uk

Nottingham: 0115 953 8500

London: 020 3859 7760

Licensing law. We get it.