

## Under Age Sales Update and Expedited Licence Review

### Introduction

The battle on under age sales continues. Licence holders are fighting on three fronts. First they must train all cashiers and/or bar staff to ensure that they are aware of the law relating to under age sales. Secondly, licence holders face determined youngsters trying to purchase alcohol. Thirdly, police and trading standards officers are undertaking test purchase campaigns where they attempt to catch licence holders in the act of making sales to young persons sent in by the authorities with a view to acquiring alcohol. In this briefing note we report on the latest of these test purchase campaigns.

We also report on the recently introduced process for expedited licence reviews. This new provision has come into force quickly and with little, if any, consultation and provides an important new power to the authorities.

### Under Age Sales

The Violent Crime Reduction Act 2006 ("the 2006 Act") introduced, in April 2007, a new offence of persistently selling alcohol to children. A licence holder is guilty of an offence if, on three or more different occasions within a period of three consecutive months, alcohol is unlawfully sold on the same premises to an individual under the age of 18.

Between 4 May and 13 July 2007 trading standards officers and the police targeted premises with test purchase operations during a campaign known as the Tackling Under Age Sales of Alcohol Campaign ("TUSAC").

The results of TUSAC have now been published by the Institute of Licensing. During TUSAC, 2,683 premises were targeted by police and trading standards officers. In nearly 9,000 test purchase operations, children were able to obtain alcohol in 14.7% of cases.

Only 22 premises (0.8% of premises targeted) sold alcohol to children on three separate occasions.

In 2004, the overall test purchase failure rate was 50%. During TUSAC, the figure stands at just below 15%.

It is difficult to compare TUSAC with previous campaigns as we understand that TUSAC was targeted at premises that the authorities believed have problems with under age sales. Previous campaigns were more randomised.

### Challenge 21

The industry deserves credit for embracing, mostly on a voluntary basis, Challenge 21 policies. This means that a cashier or bar person must challenge a customer for identification if he or she suspects the person to be under the age of 21. If no identification is produced, there must be no sale. If the customer is 18 or over and produces proper identification, then the sale may take place.

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Page 1 of 4

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It is important that the trade maintains the profile of Challenge 21, both in the training of staff and in promotional material on display in the stores. This not only warns younger customers that they will be challenged, it also acts as a reminder to staff of the importance of complying with the policy.

Companies with multiple premises should have in place a process whereby premises are inspected on a regular basis to ensure that the Challenge 21 policy is being properly followed. This can be done together with a simple audit on other licensing law compliance. We encourage clients to carry out this audit on a regular basis.

### Conditions on the Licence

Many police and trading standards officers are seeking, as a matter of course, a condition on licences requiring compliance with the Challenge 21 policy. Premises licence holders should consider the effect of such conditions extremely carefully. The law provides that it is illegal to sell alcohol under the age of 18. It is a defence if a person charged with this offence believed that the individual was 18 or over and either he had taken all reasonable steps to establish the individual's age, or nobody could reasonably have suspected from the individual's appearance that he was aged under 18. A person is treated as having taken all reasonable steps to establish an individual's age if he has asked the individual for evidence of his age and, the evidence would have convinced a reasonable person.

If the Government had intended it to be a legal requirement to check the age of anybody who appears to be under the age of 21, it would have provided for this in the Licensing Act 2003. It did not do so. In our view Challenge 21 is a perfectly sensible policy to be adopted voluntarily by licence holders as a means to prevent its staff from committing the offence of selling to persons under the age of 18.

By agreeing a Challenge 21 condition on the licence, licence holders run the risk that they can be prosecuted for making a sale to a person aged 20 on the basis that that person was not challenged for identification. A licence holder could also be prosecuted if Challenge 21 material is not prominently on display. This all depends on the wording of the licence conditions. By way of reminder a breach of a licence condition is an offence under the 2003 Act carrying with it a fine of up to £20,000 and/or a prison sentence of up to six months.

### Licence Reviews

The 2006 Act deals with premises that persistently sell alcohol to under age persons. We are finding that the police and trading standards are seeking reviews of premises licences, sometimes on the strength of a single failed test purchase or two failed purchases but some 12 months' apart. When an application for a review has been submitted, a hearing must be held even if the parties to the review (normally the police and/or trading standards and the licence holder) come to an agreement. At the review hearing the Licensing Sub-Committee may take such steps as it considers necessary for the promotion of the licensing objectives. The steps include:

- To modify the conditions of the licence
- To exclude a licensable activity from the licence
- To remove the designated premises supervisor
- To suspend the licence for a period not exceeding 3 months
- To revoke the licence

Reviews on the basis of under age sales are extremely difficult for licence holders. The applicant for the review may be a trading standards officer (employed by the local authority) or the police. They will be asking the Licensing Sub-Committee (Local Councillors) to take certain steps. The licence holder will be seeking to explain what steps it has already taken to prevent under age

sales. However, the issue of under age drinking is very much in the media spotlight at the moment and, no matter how unreasonable the review may be, a licence holder runs the risk of severe penalties as a consequence of a failure of a member of staff to properly exercise judgement.

### Expedited Licence Reviews

Section 18 of the Violent Crime Reduction Act 2006 inserts a new section 53A into the Licensing Act 2003 and provides for a new and quicker process for undertaking a licence review when the premises concerned is associated with serious crime or serious disorder (or both).

The new power will allow:-

- The police to trigger a fast track process to review a premises licence where the police consider that the premises are associated with serious crime or serious disorder (or both); and
- The licensing authority to respond by taking interim steps quickly, where appropriate, pending a full review.

In summary, the process is:-

- A local chief officer of police may apply to the licensing authority for an expedited review of a premises licence where a senior police officer has issued a certificate stating that in his/her opinion, the premises are associated with serious crime or serious disorder (or both);
- On receipt of the application and the certificate the licensing authority must within 48 hours consider whether it is necessary to take interim steps pending determination of a review of the premises licence. There is no opportunity for the licence holder to make representations at this stage. The authority must, in any event, undertake a review within 28 days of receipt of the application.

“Serious crime and/or serious disorder” has the same meaning as in the section 81 of the Regulation of Investigatory Powers Act 2000 which sets out tests for serious crime. Those tests are:-

- That the offence or one of the offences that is or would be constituted by the conduct is an offence which if a person has attained the age of 21 and has no previous convictions could reasonably be expected to be sentenced in prison for a term of three years or more; or
- That the conduct involves the use of violence, results in substantial financial gain or is conducted by a large number of persons in pursuit of a common person.

In considering whether to make an application under this new provision the police must consider whether other powers or actions are not felt to be appropriate. The police should also take into account the fact that an intended use of the power is to tackle the use of dangerous weapons and the violence they fuel. In the explanatory notes that accompany the Violent Crime Reduction Act 2006 the Government has stressed that the policy aims to provide a selective tool, to be used proportionately and the clear aim is to target those premises where there is a risk of knives or guns being carried or because crime and disorder has occurred on the premises.

### Conclusion

Under age drinking is likely to remain very much in the public eye in the months to come and we can expect more reviews of licences. It is imperative that licence holders have proper policies in place to minimise the risk of an under age sale. It is equally important that licence holders have in place a process for checking that the policies are implemented at the coalface. Anyone who has worked in a store or pub will know the difficulties of serving customers at a busy time. Anyone who has worked with young people will know the difficulty in assessing someone's age. Faced with young people trying to acquire alcohol and the authorities now sending in young people with a view to securing a sale, licence holders are very much up against it in the battle on under age sales.

The Expedited Licence Review process is another weapon in the armoury of the authorities but it is hoped that this will be used in very limited circumstances.

For further advice on implementing policies and licensing law compliance generally, please contact the licensing team at Winckworth Sherwood.

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This briefing note is not intended to be an exhaustive statement of the law and should not be relied on as legal advice to be applied to any particular set of circumstances. Instead, it is intended to act as a brief introductory view of some of the legal considerations relevant to the subject in question.