



## **Children and the Licensing Act 2003 Frequently Asked Questions**

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### **What were the problems with the previous licensing law regarding children's access?**

The previous system contained some inadequacies and may not have afforded protection to children from risk of harm. Many inadequacies are the result of legislation being a combination of antiquated laws – some dating back as far as 1382. These laws have now been brought up to date through the Licensing Act and streamlined. In addition, the inclusion of the objective of the protection of children from harm places the protection of children at the centre of the new regime.

Previously, the consumption of alcohol by minors was only unlawful in the 'bar area' of licensed premises. An adult could have therefore bought a gin and tonic at the bar and given it to a child as young as five years in the beer garden or night club. This is no longer the case. All parts of a licensed premises are subject to the same prohibitions.

### **What are the offences of particular significance under the Licensing Act relating to children?**

- It is an offence for certain persons to allow children under 16 on relevant premises (which means premises to which a premises licence or a club premises certificate has been granted; or a permitted temporary event notice has been given) that are used exclusively or primarily for the supply of alcohol, or premises open for such supply under the authorisation of a temporary event notice, if they are not accompanied by an adult and those premises are open for the supply of alcohol for consumption there
- It is an offence for any person to allow an unaccompanied child under 16 to be on relevant premises (see above) between the hours of midnight and 5 a.m. when the premises are open for the supply of alcohol for consumption there
- It is an offence for any person to supply alcohol to children anywhere, not just on licensed premises
- It is an offence for a child to buy or attempt to buy alcohol; and
- It is an offence for a child knowingly to consume alcohol on relevant premises (see above)

### **To what types of premises do the provisions in the Act relating to children apply?**

The laws relating to children apply to any premises (which means "any place") that are to be used for licensable activities.

### **What types of premises will be restricted to children?**

Under the Licensing Act it is unlawful to allow any unaccompanied child under the age of 16 to be present on authorised premises which are exclusively or primarily used for supply and consumption of alcohol on the premises. This applies to premises operating under a premises licence, a club premises certificate or a temporary event notice. In effect, this applies to most pubs and bars where restaurant and food facilities are not provided as a permanent feature or attraction.

It is also unlawful to permit children under 16 not accompanied by an adult between midnight and 5 a.m. into any premises supplying alcohol for consumption there. This also relates to all premises operating under a premises licence, a club premises certificate or a temporary event notice. The most obvious examples of these premises would be nightclubs.

It is for enforcement authorities to decide whether they consider that an offence has been committed.

### **Are children allowed in the pub under the Licensing Act 2003?**

The Licensing Act does not make specific provision about access by children to premises operating under a premises licence, club premises certificate or temporary event notice, except through the creation of certain offences where premises are used primarily or exclusively for the supply and consumption of alcohol on the premises, or where relevant premises are open for such supply and consumption between midnight and 5 a.m. in respect of unaccompanied children under 16. This would apply to most pubs and similar establishments, although it is down to the licensing authority to assess when the rule applies to an individual establishment.

Some pubs that serve food may feel that the primary purpose of the establishment is not just the supply of alcohol.

### **Do the prohibitions on unaccompanied children aged under-16 extend to beer gardens or outside terraces?**

Yes. One of the major changes in the Act is for the first time the licensing laws extend to the whole of the premises rather than just the 'bar area' as was previously the case. Under the old regime, a child as young as 5 could be given alcohol to drink in a beer garden - this is no longer legal. The sale or supply of alcohol anywhere on relevant premises to anyone aged under 18 years is prohibited and is a prosecutable offence; as is the consumption of alcohol by an individual under 18 anywhere on relevant premises. However, an exception is provided for an accompanied individual aged 16 or 17 where the alcohol is beer, wine or cider to be consumed at a table meal.

Children aged under 16 have to be accompanied by an adult in establishments which are exclusively or primarily used for the supply of alcohol for consumption on

the premises. Most pubs with a beer garden or outside terrace will fall under that description.

**Will children aged under 16 be allowed to buy and consume soft drinks in any premises?**

The purchase and consumption of soft drinks are not licensable activities. However, the offence provisions relating to certain categories of premises may mean that unaccompanied children under 16 may not have access to those premises even to buy and consume soft drinks.

**Is the legal drinking age still be 18?**

Yes. The only exception is that 16 and 17 year-olds may drink beer, wine or cider with a table meal in relevant premises, where accompanied by an adult aged 18 years or over. In all other cases, it is illegal for children under 18 to knowingly consume alcohol on relevant premises, or to buy or attempt to buy alcohol. Where the alcohol is consumed by accident, the child will have committed no offence. An exception to this law is when a child has been asked to test-purchase alcohol from a relevant premises by a police officer or a trading standards officer. In these cases, the child will not be committing an offence.

**Are licensees or members of a club liable for prosecution for selling alcohol to children if they have genuine reason to believe that a child is over 18?**

The Act provides that where a person is charged with the offence of selling, or a club supplying, alcohol to a child under 18, it is a defence that he believed the individual was 18 or over and either he had taken all reasonable steps to establish the individual's age, or that nobody could reasonably have suspected that the individual was aged under 18.

The Act defines 'reasonable steps' as asking the individual for evidence of his age and that evidence would have convinced a reasonable person. However, if the steps taken are shown to be inadequate, for example the proof of age is obviously forged or belongs to someone else, this defence will not be applicable.

**Does the fourth licensing objective, 'the protection of children from harm' refer only to physical harm?**

'Harm', for the purpose of the Act, refers to not only physical harm but also to psychological and moral harm, it can be interpreted in the widest possible sense by the licensing authority in response to representations from responsible authorities, such as the police, social services, or local Area Child Protection Committees and interested parties. If there is genuine reason to believe that allowing children to enter certain premises could result in harm of any kind, necessary conditions will be imposed on the licence or certificate that the licensee or club will have to abide by.

**How does the Licensing Act 2003 affect events such as under 18 discos held in nightclubs?**

It is unlawful under the Act to allow unaccompanied children aged under 16 years into relevant premises between midnight and 5 a.m. where alcohol is supplied for consumption on the premises. In effect, this applies to many nightclubs as they operate longer hours and have alcohol for sale after midnight.

For licensees or clubs to stage under-18 discos, they will have to outline their intentions in their operating schedule, including descriptions of the measures they propose to take to promote the protection of children from harm. In most instances, the presence of an organiser of the event should be satisfactory in ensuring that the children attending the event are accompanied by an adult. In addition, if the premises in question does not serve any alcohol on the night of the event and only sells soft drinks to the under 18s, the rule will not apply.

### **What does 'accompanied' mean in practical terms?**

Under the terms of the Act, a child is defined as being accompanied by an adult if they are in the company of an individual aged 18 or over. Whether a child aged under 16 is in the company of an adult will be a matter of fact. However, if it is discovered that unaccompanied children under 16 are on premises restricted to them, the licensee or club (and other categories of persons) will be liable for prosecution.

No offence will be committed if the unaccompanied child is on premises solely for the purpose of passing to or from some other place where there is no other convenient means of access.

### **What restrictions can be placed on a premises licence or club premises certificate relating to children's access?**

The restrictions placed on a licence or certificate will vary according to the individual circumstances of the premises or club and any representations made by responsible authorities and interested parties and in all cases will be subject to the test of being necessary for the promotion of any of the licensing objectives.

Every application for a premises licence or a club premises certificate has to include an operating schedule outlining the measures it is proposed to take to promote the protection of children from harm. Where representations are made by a responsible authority or interested party, the licensing authority may place conditions on the licence relating to times, ages of the children, and any other measures they deem to be necessary to protect children.

In the Secretary of State's Guidance to licensing authorities, three tiers of suitability are outlined:

1. For premises that have known associations with activities that could be harmful to children, there will be a strong presumption against allowing children to have access at any time

2. For premises that do not serve alcohol for consumption on the premises but are open later than 10.00pm, there will be a presumption that unaccompanied children under 12 should not be there after that time
3. For all other premises, there will be the expectation that there will be unrestricted access for children