

## Q&A

**What offences constitute unauthorised licensable activities?**

**What is meant by 'exposing alcohol for unauthorised sale'?**

**What does keeping alcohol on premises for unauthorised sale mean?**

**What is a defence of due diligence?**

**Does the Licensing Act 2003 make permitting disorderly conduct on licensed premises an offence?**

**Is it still illegal to sell alcohol to a person who is drunk?**

**Is it still illegal to obtain alcohol for a person who is drunk?**

**What is the situation under the Licensing Act 2003 where someone who is drunk and refuses to leave relevant premises?**

**What offences constitute unauthorised licensable activities?**

It is an offence to carry on, or attempt to carry on a licensable activity without or not in accordance with the authorisation provided by a **premises licence**, a **club premises certificate** or a **temporary event notice**. An example of this type of offence would be selling alcohol without a premises licence. It is also an offence to knowingly allow a licensable activity to be carried on in these circumstances. Where the licensable activity is the provision of **regulated entertainment** (the definition of which is found in Schedule 1 to the Act) a person who is involved in the performance only of that entertainment but does no more will not be committing an offence. There is a defence of due diligence (see below) to the offence of carrying on unauthorised licensable activities, although this defence cannot be used where someone knowingly allowed the licensable activity to be carried on. The unauthorised licensable activities provision is central to the enforcement of the licensing regime introduced by the Act.

The sentence on conviction of this offence, is a fine up to £20,000, or up to six months' imprisonment, or both.

**What is meant by 'exposing alcohol for unauthorised sale'?**

It is an offence to expose alcohol for sale by retail on premises without an authorisation or in such a way which does not comply with the authorisation. The effect of the provision is that an offence can be committed even where no sale or attempted sale is made. An example of this offence would be where alcohol was displayed in a shop as being for sale at a time when the premises licence did not authorise sale, it would not be necessary for anyone to actually buy the alcohol. There is a defence of due diligence (see below) to this offence.

The sentence, on conviction of this offence is a fine up to £20,000 or up to six months' imprisonment, or both. In addition, the court may order that the alcohol and its containers be forfeited and either destroyed, or dealt with in such manner as the court considers appropriate.

**What does keeping alcohol on premises for unauthorised sale mean?**

It is an offence to have in your possession alcohol with the intention to sell it by retail or supply it unless this would be under or in accordance with an authorisation.

The sentence, on conviction of this offence, is a fine of up to £500. In addition the court may order that the alcohol and its containers be forfeited and either destroyed or dealt with in such manner as the court considers appropriate.

#### **What is a defence of due diligence?**

This applies to the offences described in sections 136(1)(a), 137 and 138 of the Act (which are described above).

This defence is available if a person is able to show two things. First, he must show that his act was due to a mistake; or to placing reliance on information given to him; or to an act or an omission by another person; or to some other cause beyond his control. Secondly, he must show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

#### **Does the Licensing Act 2003 make permitting disorderly conduct on licensed premises an offence?**

The Act creates an offence to knowingly allow disorderly conduct on licensed premises. This offence is different from the offences, found in the Licensing Act 1964, which include a relevant person permitting "violent, quarrelsome or riotous" conduct.

Those who may commit this new offence include any person working in a licensed premises in a capacity (whether paid or unpaid) which allows him to prevent the conduct or, in the case of a club, any member or officer of the club who is present at the time of the conduct in a capacity which enables him to prevent the conduct. The holder of the **premises licence**, designated premises supervisor (if there is one) and the premises user (in relation to a **temporary event notice**) may also commit this offence.

The sentence on conviction of this offence is a fine of up to £1,000.

#### **Is it still illegal to sell alcohol to a person who is drunk?**

Yes. The Act includes an offence of selling alcohol, or attempting to sell alcohol, to a person who is drunk, or knowingly to allow alcohol to be sold to such a person.

The categories of person to whom this offence applies include, any person who works at the premises in a capacity (whether paid or unpaid) which gives him authority to sell the alcohol, the holder of the premises licence and the designated premises supervisor (if any) and, in the case of a club, any member or officer of the club who is present on the premises in a capacity which enables him to prevent it. In the case of premises used for a permitted temporary activity, the premises user in relation to the event notice in question could also commit this offence.

The sentence, on conviction of this offence, is a fine of up to £1,000.

**Is it still illegal to obtain alcohol for a person who is drunk?**

Yes. The Act contains an offence of knowingly to obtain or attempt to obtain alcohol for consumption on licensed premises for a person who is drunk. The sentence on conviction of this offence is a fine of up to £1,000.

**What is the situation under the Licensing Act 2003 where someone who is drunk and refuses to leave relevant premises?**

A person who is drunk or disorderly commits an offence if he fails to leave relevant premises (defined as licensed premises, premises for which a club premises certificate is in force, or premises which may be used for a permitted temporary activity by virtue of Part 5 of the Act) at the request of:

- a police constable;
- any person who works at the premises in a capacity (whether paid or unpaid) authorising him to make such a request;
- the premises licence holder or designated premises supervisor (if any);
- an officer or member of a club who is present at the time of sale in a capacity which enables him to make such a request; and
- the premises user relating to the relevant temporary event notice.

On being requested to do so by one of the above class of persons a police constable must help expel drunk or disorderly patrons and prevent their readmission to the relevant premises.

The sentence on conviction of this offence is a fine of up to £200.

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