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GUIDANCE: PERSISTENTLY SELLING ALCOHOL TO CHILDREN



Revised guidance following amendments introduced through the Police Reform and Social Responsibility Act 2011

Home Office

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Introduction

1. Changes have recently been made to sections 147A and 169A of the Licensing Act 2003 (“the 2003 Act”) by the Police Reform and Social Responsibility Act 2011 (“the 2011 Act”).

2. This guidance document has no binding effect on police officers or trading standards officers who, within the terms of their force or authority orders and the law, remain operationally independent. The information in this guidance is provided to support and assist police, community support officers and trading standards officers in interpreting and implementing sections 147A and 169A of the 2003 Act, as amended by the 2011 Act, in the interests of protecting children from harm. This guidance replaces that which was previously published by the Department for Culture, Media and Sport in May 2007.

General Summary

The effect of changes in the 2011 Act

3. On 25 April 2012, under s 147A(8) of the 2003 Act, the maximum fine for the offence of persistently selling alcohol to children was increased from £10,000 to **£20,000**. The offence of persistently selling alcohol is committed if, on two or more different occasions in a period of three consecutive months, alcohol is unlawfully sold on the same premises to a person aged under 18.

4. The 2003 Act provides that the offence is only committed if at the time of each sale:

- the premises were licensed by a premises licence issued under that Act; or
- the premises were being used for a permitted temporary activity by virtue of a temporary event notice (“TEN”) given under that Act.

5. The 2003 Act also provides that the offence is committed by a person who is, on the occasion of each unlawful sale, either the holder of the premises licence or a premises user by virtue of a TEN.

6. Where the offender is a premises licence holder, the premises licence could be suspended for up to three months by the courts insofar as it authorises sales by retail of alcohol.

Powers to give a closure notice

7. Section 169A of the 2003 Act, as amended by the 2011 Act, provides that a police officer (of at least the rank of superintendent) or an inspector of weights and measures may give a closure notice where:

- there is evidence that a person has committed an offence of persistently selling alcohol to children at the premises in question; and
- the officer considers that the evidence is such that there would be a realistic prospect of conviction if the offender was prosecuted for it.

8. The 2011 Act amended section 169A(2)(a) and (4) of the 2003 Act to extend the duration of a closure notice (prohibiting the sale of alcohol from premises) so that it ranges from 48 hours to a maximum period of 336 hours (14 days). A closure notice offers the opportunity to discharge all criminal liability in respect of the alleged offence by the acceptance of the prohibition proposed in the notice.

9. The premises licence holder will have 14 days to decide whether or not to accept the proposed prohibition or to elect to be tried for the offence. The time from which the period of the prohibition would begin must be specified in the closure notice and be at least 14 days after the date on which the closure notice was served.

Detail

Offence of persistently selling of alcohol to children

10. The measures are set out in sections 147A, 147B, 169A and 169B of the 2003 Act.

Section 147A of the Licensing Act 2003

11. The offence under section 147A(1) of the 2003 Act, as amended, is committed if on two or more different occasions in a period of three consecutive months alcohol is unlawfully sold on the premises to a person aged under 18.

12. The offence is only committed if at the time of each sale:

- the premises were licensed premises under the 2003 Act; or
- the premises were being used for a permitted temporary activity by virtue of a TEN given under that Act.

13. The offence may only be committed by a person described in the 2003 Act as "the responsible person". For these purposes, a responsible person is the premises licence holder or one of them, or in relation to a TEN the premises user or one of them at the time of each unlawful sale. The offence cannot be committed by any other person.

14. It should be noted that many premises licences, for example, are held in the names of businesses or organisations. For these purposes, "responsible person" could include a business.

15. For the purposes of the offence, section 147A(2) of the 2003 Act provides that alcohol has only been sold unlawfully to a person under 18 if:

- the person making the sale believed the individual to be under 18; or
- that person did not have reasonable grounds for believing the individual to be 18 or over (this applies only if the person asked the individual for evidence of his age and the evidence produced would have convinced a reasonable person; or if no person could reasonably have suspected that the person was aged under 18 years of age).

16. Paragraphs 15 and 30 include considerations for police and trading standards officers when deciding whether it is appropriate to issue a closure notice.

17. Section 147A(5) provides that the child to whom the sales have been made may be the same individual on each of the two or more occasions, but need not be.

18. Section 147A(6) provides that the same sale may not be counted in respect of different offences for the purpose of enabling the same person to be convicted more than once for the offence. For example, if action had been taken against a premises licence holder under section 147A of the 2003 Act in respect of two sales that would have amounted to offences under section 146, neither of those two sales can then count against the same premises licence holder for further action under section 147A in the future. The count would have to start again if section 147A were sought to be invoked a second time against the same licence holder.

19. The same sale may also not be counted in respect of different offences for the purpose of enabling the same person to be convicted of the offence in s147A(1) and an offence under sections 146 (sale of alcohol to children) or 147 (allowing the sale of alcohol to children) of the 2003 Act. Accordingly, if a premises licence

holder actually makes the illegal sale, he may not be prosecuted for both the alleged offence under section 146 and the alleged offence under section 147(A) with respect to that illegal sale. However, if he is given a caution or accepts a fixed penalty notice for the sale that was illegal under section 146, this would not preclude proceedings under section 147A in respect of that sale (see paragraph 18 above). The prosecuting authorities need to decide on the most appropriate action.

Admissible evidence

20. Section 147A(7) provides that in determining whether an offence under subsection (1) has been committed, the following shall be admissible evidence:

- a conviction for an offence under section 146 of the 2003 Act (sale of alcohol to children);
- cautions given in respect of such an offence; or
- the payment of a fixed penalty under Part 1 of the Criminal Justice and Police Act 2001 in respect of such a sale.

21. This list is not exhaustive. Other relevant evidence may be admissible. The purpose of this subsection is to make it clear that although, for example, the payment of a fixed penalty under Part 1 of the 2001 Act discharges further criminal liability for the seller on a specific occasion, the acceptance of a fixed penalty could be evidence relating to commission of an offence under section 147A for the holder of the premises licence.

22. The amendment made by section 118 of the 2011 Act to section 147A(8) of the 2003 Act provides that a person guilty of the offence of persistent selling shall be liable on summary conviction to a fine not exceeding £20,000.

Section 147B of the Licensing Act 2003

23. Section 147B(1) provides that on the conviction of a premises licence holder for an offence under clause 147A, the court may make an order suspending the licence in so far as it authorises the sale of alcohol at the premises for up to 3 months.

24. This means that other licensable activities carried on at the premises, such as the provision of live music, would be unaffected, as would other, non-licensable activities. Sales of alcohol by retail within the period of the suspension would be unlawful, but sales of other goods would be unaffected. For example, it could be made unlawful for a shop to sell alcohol by retail for the period of the suspension but it could continue to sell other things such as vegetables. Similarly, a pub or restaurant could continue to sell food and non-alcoholic drink, but could not sell alcohol.

25. Where alcohol is sold at premises during the period of a suspension, it would constitute an unauthorised licensable activity for the purposes of section 136 of the 2003 Act and the person or persons carrying on these sales would be liable to prosecution under that section. In addition, the persons concerned may also be committing an offence under section 137 of the 2003 Act (exposing alcohol for unauthorised sale).

26. Section 147B(2) provides that where more than one person is liable for an offence under section 147A, no more than one order suspending the premises licence may be made in relation to the premises in question in respect of convictions by reference to those sales.

Suspension of orders pending appeals

27. Section 147B(3) provides that, subject to an order made pending any appeal, an order suspending a premises licence made by a court would come into force at the time specified by the court making the order.

28. Subsection (4) provides that where a magistrates' court has made such an order it may suspend the order pending an appeal. Subsection (5) makes provision for suspending the order pending other types of appeal.

Prosecuting authorities

29. The 2003 Act provides that only the Director of Public Prosecutions or the weights and measures authority may institute prosecutions for the offence.

Giving a closure notice

30. Section 169A(1) of the 2003 Act provides that a relevant officer may give a closure notice applying to any premises if:

- there is evidence that a person ("the offender") has committed the persistent selling offence in relation to the premises; **and**
- the relevant officer considers that the evidence is such that, if the offender were prosecuted for the offence, there would be a realistic prospect of conviction; **and**
- the offender is still, at the time the notice is given, the holder, or one of the holders, of the premises licence in respect of those premises.

Definition of "relevant officer"

31. Section 169A(11) of the 2003 Act defines a "relevant officer" as a police officer of the rank of at least superintendent or above; or an inspector of weights and measures appointed under section 72(1) of the Weights and Measures Act 1985.

32. While the relevant officer need not personally serve the closure or be personally present at the premises, the officer must, however, only authorise service if he is satisfied that the three criteria in paragraph 30 above are met. If communicating with a relevant officer, officers at the premises would need to provide him with sufficient evidence to enable him to make the necessary decision in accordance with section 169 (A)(1).

Effect of a closure notice

33. Section 118 of the 2011 Act amended section 169A(2)(a) and (4) of the 2003 Act so that a "closure notice" proposes a prohibition on sales of alcohol at the premises in question for a period specified in the notice (see paragraph 36). Section 169A offers the opportunity to discharge all criminal liability in respect of the alleged offence under section 147A by the acceptance of the prohibition proposed in the notice.

34. Section 169A(3) provides that a closure notice must:

- be in a form prescribed by the Secretary of State in regulations;
- specify the premises to which it applies;
- give particulars of the alleged offence;
- specify the length of the period during which sales of alcohol would be prohibited;
- specify when that period would begin;
- explain the effect of the proposed prohibition and the consequences under the 2003 Act (including maximum penalties) of a sale on the premises during the period for which it is in force;

- explain the right of every person who was one of the holders of the premises licence at the time of the alleged offence to be tried for that offence; and
- explain how that right may be exercised and how the proposed prohibition may be accepted.

35. Section 169A(4) provides that the period of the prohibition on sales of alcohol specified in the notice must be at least 48 hours but not more than 336 (14 days). It also provides that the time specified as the time from which the period of the prohibition would begin must be **at least 14 days after the date on which the notice was served**. The period of prohibition must relate to a single period over consecutive days.

Considerations to be taken into account by the police and trading standards in determining the closure period of a closure notice

36. Previously, a closure notice could apply for a maximum period of 48 hours. The 2011 Act amended the 2003 Act to introduce a closure period during which alcohol cannot be sold from 48 hours to a maximum of 336 hours. This was extended in tandem with the increase in the maximum fine from £10,000 to £20,000. It provides the police and trading standards with a tougher alternative sanction to the previous maximum period of closure of 48 hours.

37. Enforcing officers may wish to take into account the following matters when determining an appropriate length of prohibition on the sale of alcohol to impose. **This list of factors is for guidance only and is non-exhaustive**. Ultimately, it is for the police and trading standards to consider appropriate factors. The notice should be issued by them without negotiation.

Aggravating factors

These may include: the age of the purchaser (the gravity of the offence increases if sales were made to a younger purchaser); following an offence, a failure to take appropriate steps, such as refresher training, to prevent further underage sales; the quantity of alcohol sold to the underage purchaser; whether previous offences have been committed by the premises licence holder; absenteeism of the Designated Premises Supervisor ("DPS") or premises licence holder at the time of the offence; a failure to follow an action plan agreed with police to tackle the sale of alcohol to children; and a failure to comply with relevant conditions, among others.

Mitigating factors

These may include situations where: a negligent staff member had not followed the premises stringent standard practice/age verification scheme despite good and established training schemes; the sale of alcohol forms a large part of the business and a longer closure period would cause financial hardship or threaten the survival of the business; and if the premises licence holder is willing to make a minor variation/accept conditions on his licence.

38. Section 169A(5) provides that in explaining how the right to be tried for the alleged offence under section 147A may be exercised and how the proposed prohibition may be accepted, the closure notice must:

- provide a means of identifying a police officer or trading standards officer to whom notice exercising the option accepting the prohibition may be given;
- set out particulars of where and how the notice exercising the option accepting prohibition may be given;
- require the notice exercising the option accepting the proposed prohibition to be given within 14 days after the date on which the closure notice was served; and

- explain that the right to be tried for the alleged offence will be taken to have been exercised unless every person who was a holder of the premises licence at the time the closure notice was given accepts the proposed prohibition.

39. Section 169A(6) disapplies section 184 of the 2003 Act (giving notices) to the arrangements for giving closure notices; and provides that a closure notice must be served on the premises to which it applies.

40. The form of the closure notice is prescribed in the Licensing Act 2003 (Persistent Selling of Alcohol to Children) (Prescribed Form of Closure Notice) (Amendment) Regulations 2012.

When may a closure notice be given and to whom?

41. Section 169A(7) provides that a closure notice may be served on a premises only at a time when it appears to a constable or trading standards officer that *licensable activities* are being carried on there. This means, for example, when the premises are open for sale of alcohol. Part 1 of Schedule 4 to the Police Reform Act 2002 (powers of community support officers) provides that **a community support officer shall have the capacity of a constable to serve a closure notice**.

42. It also provides that a closure notice **may only be given** by being handed by a constable or trading standards officer to a person on the premises who appears to have control of or responsibility for the premises. This would usually be the DPS. However, if the premises have been left in the charge of a more junior member of staff, the closure notice may be handed to that person.

43. Section 169A(8) provides that a copy of every closure notice given must be sent to the holder of the premises licence for the relevant premises at whatever address for that person is given on the premises licence itself. The details of the premises licence holder should be displayed in the premises licence summary or contained in a copy of the premises licence which must be kept at the premises.

44. Section 169A(9) provides that a closure notice must not be given more than three months after the time of the second of the two unlawful sales described in section 147A(1). If there is a problem of persistent sales of alcohol to children, the notice should normally be given as soon as possible after the second relevant unlawful sale is detected.

45. Section 169A(10) provides that no more than one closure notice may be given in respect of offences relating to the same sales; and that a closure notice may not be given in respect of an offence under section 147A in respect of which a prosecution has already been brought.

Section 169B of the Licensing Act 2003

46. Section 169B applies where a closure notice is given under section 169A in respect of an alleged offence under section 147A.

47. Section 169B(2) provides that no proceedings may be brought for an alleged offence at any time before the time when the prohibition proposed by the closure notice would take effect.

48. Section 169B(3) provides that if, before the time when the prohibition proposed by the closure notice would take effect, and within 14 days of the notice being served, every holder of the premises licence has agreed to accept the proposed prohibition in the manner specified in the notice, then:

- the prohibition takes effect **at the time specified in the closure notice** at the premises in question; and
- no proceedings may be **subsequently** brought for the alleged offence against the holders of the premises licence or “any related offence”.

49. Section 169B(5) provides a definition for the words “any related offence”. Such an offence would include any offences under sections 146 and 147 of the 2003 Act in respect of any of the sales alleged to comprise the offence under section 147A. This does not preclude an application for a review of the premises licence from being progressed.

50. Section 169B(4) provides that where the prohibition has been given effect, the premises licence is suspended for the period specified in the closure notice insofar as it authorises the sale by retail of alcohol. This means that any sales of alcohol which took place during the period when the premises licence was temporarily suspended would be unauthorised under the terms of the 2003 Act.

51. As mentioned at paragraph 24, other licensable activities carried on at the premises, would be unaffected.

52. As a consequence, **a closure notice does not require that the premises must not open to the public – it simply means that alcohol must not be sold from it.**

53. Under section 136 of the 2003 Act, a person commits an offence if he carries on or attempts to carry on any licensable activity on or from any premises otherwise than under or in accordance with an authorisation; or he knowingly allows a licensable activity to be so carried on. A person guilty of such an offence is liable on conviction to imprisonment of up to 6 months or a fine not exceeding £20,000, or to both.

54. Section 169B(6) provides that the operation of section 169B is not affected by any contravention of section 169A(8), which is the requirement to send a copy of every closure notice to the holder of the premises licence for the premises in question. It is however important that every effort is made to comply with this requirement of the 2003 Act in every case. These provisions mean that where it may be disputed that a copy was sent to the premises licence holder, this would not prevent service of a closure notice.

Liabilities for damages

55. Section 170 of the 2003 Act provides an exemption for the police from liabilities for damages to their functions in respect of closure notices and provides a similar exemption for trading standards officers.

56. Section 170 also exempts community support officers in serving closure notices (see paragraph 41 above).

Definitions

57. Section 171(5) of the 2003 Act provides definitions of a “trading standards officer”, “local weights and measures authority” and “closure notice”.

58. A “closure notice” is defined by reference to section 169A.

59. A “trading standards officer” is defined as a person authorised by a local weights and measures authority to act in the area where the premises in question are situated in relation to proposed prohibitions contained in closure notices. It is recognised that terminology used to refer to weights and measure inspectors and trading standards officers might differ from those commonly used in trading standards departments. For clarity, a trading standards officer has to be at inspector level (i.e. appointed under section 72(1) of the Weights and Measures Act 1985) to be able to *give* a closure notice. However, that notice can be physically served at the premises by any authorised enforcement officer working for the weights and measures authority.

60. A “local weights and measures authority” is given the same meaning as is given to it by section 69 of the Weights and Measures Act 1985.

Good Practice

61. Section 147A of the 2003 Act does not require enforcement officers to inform either the designated premises supervisor or the premises licence holder when they detect unlawful sales of alcohol by bar staff or shop workers which may later count towards an offence under section 147A of by the premises licence holder. However, officers should consider what action would best serve the licensing objectives set out in the 2003 Act.

62. Two of the licensing objectives are:

- The prevention of crime and disorder; and
- The protection of children from harm.

63. It is for the retailer to ensure adequate arrangements and processes are in place for information about unlawful sales and the results of test purchase operations to be passed to the most appropriate person(s) in the organisation. Practice will vary between different retailers on who is responsible for following up the information and it is not for the enforcement agency to identify and trace that person. However, it may be in the best interest of the licensing objectives and particularly those of children, for enforcers to draw the attention of the premises licence holder, or the store or area manager, to instances where unlawful sales of alcohol have been detected.

64. This should enable remedial action to be taken by licence holders before offences under section 147A are committed. Notification also enables employers to deal with problematic staff – and preventing future underage sales – as well as rewarding good practice when staff have correctly refused a sale.

65. There will be a few cases where local enforcement agencies will decide that it is not appropriate to notify the retailer of the result of a test purchase operation at the earliest opportunity. For example, this may arise where the enforcing authority has credible evidence of deliberate disregard of the law and considers that it is likely to take enforcement action. In this case, it might be reasonable for the enforcing authority to delay written notification while it carries out further test purchases in a short space of time, in order to obtain further evidence. The decision to delay notification should be taken on a case by case basis and the reasons for the decision should be recorded.

66. These occasions should be rare and **police and trading standards officers should usually consider sharing the results of test purchase operations with premises.**

67. It nevertheless remains a fundamental responsibility of premises licence holders to ensure that licensing law and licensing conditions are observed at their premises. They should have in place sufficient management supervision to ensure that staff do not commit undetected offences. Premises licence holders should not rely on enforcement offices to conduct this supervision for them.

68. Amendments to the statutory guidance issued under section 182 of the 2003 Act (following revisions through the Police Reform and Social Responsibility Act 2011) recommend that where the offence of persistently selling alcohol to children has been committed at a premises that licensing authorities should review the premises licence with a view to considering revocation of the licence unless such a course is plainly not appropriate. To help this process, **the police and trading standards should ensure that they notify licensing authorities about underage sales.** This might be done through regular meetings with the licensing authority or through forums on which the police, trading standards and licensing authorities sit.

CLOSURE NOTICE FOR PERSISTENTLY SELLING ALCOHOL TO CHILDREN

Section 169A(2) of the Licensing Act 2003

This notice offers a period of closure as an alternative to criminal prosecution for an offence of repeatedly selling alcohol to underage persons. It is addressed to the person(s) (which may include a company etc.) who hold the relevant premises licence for the premises concerned. A copy of this closure notice will be sent to the holder of the premises licence at the address for that person set out in the licence.

The premises licence holder(s) should read parts 10, 11, 12 and 13 of this notice with particular care as they contain information concerning their rights. If you have been handed this notice and are not the premises licence holder, you may wish to inform the premises licence holder(s) that this notice has been served.

1. Name and rank of the police officer (must hold the rank of superintendent or above) / name of the inspector of weights and measures <i>[delete as appropriate]</i> giving this closure notice.			
2. Name of the police, community support or trading standards officer <i>[delete as appropriate]</i> serving this closure notice. (A closure notice may be served by being handed to a person on the premises who appears to have control of or responsibility for the premises and who need not be the premises licence holder).			
3. Date on which closure notice is given.		D	D
		M	M
		Y	Y

Details of premises and premises licence holder(s).	
4. Address of premises in respect of which this notice is being given.	
5. Premises licence reference number and issuing licensing authority.	
6. Name of premises licence holder(s).	
7. Address of premises licence holder(s). (This is the address to which a copy of this closure notice will be sent).	

8. Particulars of alleged offence under section 147A of the Licensing Act 2003, including:	
<ul style="list-style-type: none"> particulars of unlawful sales made to persons under 18; dates of the sales; and the individuals making the sales (so far as known). <p>(Note: you can be liable for the offence if you were a premises licence holder at the time each unlawful sale took place on the premises).</p>	
First unlawful sale:	
Second unlawful sale:	

9. Proposed period (at least 48 hours but not more than 336 hours (14 days)) during which sales of alcohol by retail are to be prohibited (commencing not less than 14 days after this closure

GUIDANCE: PERSISTENTLY SELLING ALCOHOL TO CHILDREN

notice was served):			
From	Time:	To	Time:
	Date:		Date:

10. Effect of accepting of the proposed prohibition (closure)

If you decide to accept the proposed closure (on how to do this, see part 12 below), all sales by retail of alcohol at the premises during the period specified in part 9 of this notice will be unauthorised. An unauthorised sale is a criminal offence (see section 136 of the Licensing Act 2003). A person guilty of an offence under that section is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £20,000, or to both.

11. Right to elect to go to trial

You do not have to accept the proposed closure. As an alternative, you may elect to be tried in a court of law for the offence described in part 8 above. That right may exercised by informing the officer named in part 14 in writing or by e-mail.

12. How to accept the proposed prohibition

In order to accept the proposed closure, all premises licence holder(s) should notify the officer named in part 14 of their decision in writing or by e-mail **within 14 days** of this notice being served. Failure to notify the officer named in part 14 of acceptance of the prohibition within 14 days will be taken as a decision to elect for trial for the alleged offence described in part 8.

13. Effect of a failure by one or more of the premises licence holders to accept the proposed prohibition.

The right to be tried for the alleged offence described in part 8 of this closure notice will be taken to have been exercised unless every person who was a holder of the premises licence at the time this notice was given accepts the proposed prohibition.

14. Name of the police officer or trading standards officer to whom notice exercising the option to accept the prohibition should be given, or election to go to trial must be sent, within 14 days.

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The address of the officer in part 14.

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E-mail address of the officer in part 14.

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