

**THIRD SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

No. 3,814 of 7th October, 2010

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**B. 28/10**

**BILL**

**FOR**

**AN ACT** to amend the Children and Young Persons (Alcohol, Tobacco and Gaming) Act 2006.

**ENACTED** by the Legislature of Gibraltar.

**Title and commencement.**

1. This Act may be cited as the Children and Young Persons (Alcohol, Tobacco and Gaming) (Amendment) Act 2010 and comes into operation on the day of publication.

**Amendments to section 2.**

2. Section 2 of the Children and Young Persons (Alcohol, Tobacco and Gaming) Act 2006 (the “Principal Act”) is amended—

- (a) by renumbering this section as section 2(1);
- (b) in the definition of “alcohol”—
  - (i) by deleting “fermented, distilled or spirituous”,
  - (ii) by substituting “an alcoholic strength” for “a strength”;
- (c) by inserting the following definitions after the definition of “alcohol”—

“alcoholic strength” means the ratio of the volume of the ethanol contained in the liquor to the volume of the liquor expressed as a percentage;

“beer” includes ale, porter, stout and any other description of beer, and any other liquor which is made or sold as a description of beer or as a substitute of beer and which is of an alcoholic strength exceeding 0.5%;

“cider” means cider or perry of an alcoholic strength exceeding 0.5% obtained from the fermentation of apple or pear juice;

“container” includes a bottle or can”;

“EEA state” has the meaning assigned to it by section 2(1) of the Immigration, Asylum and Refugee Act;”;

(d) by inserting the following definitions after the definition of “gaming machine”–

“identity card” means–

- (a) an identity card or civilian registration card issued under the Civilians Registration Act; or
- (b) an identity card issued by an EEA state;

“licensed premises” means–

- (a) in Part I, any premises licensed to sell alcohol or intoxicating liquor under the Licensing and Fees Act, the Leisure Areas (Licensing) Act 2001 or any other Act;
- (b) in Part II, any premises licensed to sell tobacco under the Tobacco Act 1997 or any other Act,

and includes any external area included in the licence;

“liquor” means a spirituous, fermented or distilled fluid intended for human consumption containing ethanol;

“licence to sell alcohol” means a licence to sell alcohol or intoxicating liquor issued under the Licensing and Fees Act, the Leisure Areas (Licensing) Act 2001 or any other Act;

“licence to sell tobacco” means a licence to sell tobacco issued under the Tobacco Act 1997 or any other Act;

“parental responsibility” has the meaning assigned to it by section 12 of the Children Act 2009;”;

- (e) by inserting the following definitions after the definition of “premises”–

““pre-packaged” means a beverage made up in advance and placed in a securely closed container by the manufacturer of the beverage for retail sale or wholesale”;

“procure” includes to supply, purchase or obtain;”;

- (f) by substituting “;” for “.” at the end of the definition of “tobacco”;

- (g) by inserting the following definition after the definition of “tobacco”–

““wine” means any liquor which is of an alcoholic strength exceeding 0.5% and which is obtained from the alcoholic fermentation of fresh grapes or of the must of fresh grapes, whether or not the liquor is fortified with spirits or flavoured with aromatic extracts.”; and

- (h) by inserting the following subsection after subsection (1)–

“(2) For the purposes of this Act, a place is not a public place or part of such a place if it is licensed premises.”.

**Amendments to section 3.**

3. Section 3 of the Principal Act is amended—

- (a) in the heading by substituting “18” for “16”;
- (b) in subsection (1)—
  - (i) by substituting “Subject to subsection (1B), any person” for “A person”,
  - (ii) by substituting “alcohol” for “an alcoholic beverage”,
  - (iii) by substituting “18 years (the “relevant person”)” for “16 years”;

(c) By inserting the following subsections after subsection (1)—

“(1A) Without prejudice to subsection (1) and subject to subsection (1B), if alcohol is sold to a relevant person on licensed premises, the licensee of those premises is also guilty of an offence punishable in accordance with section 21A.

(1B) Subsections (1) and (1A) shall not apply where—

- (a) the relevant person is 16 or 17 years of age;
  - (b) the alcohol is—
    - (i) beer, wine or cider and is of an alcoholic strength not exceeding 15%; or
    - (ii) sold in, or poured from, a pre-packaged container and is of an alcoholic strength not exceeding 5.5%; and
  - (c) the alcohol is sold for consumption on licensed premises.”;
- (d) in subsection (2)—

- (i) by substituting “under this section by reason of his own conduct” for “under subsection (1)”,
  - (ii) in paragraph (a) by substituting “relevant person was aged 18” for “person was aged 16”;
- (e) by substituting the following paragraphs for paragraph (b)–
- “(b) the relevant person produced as evidence of his age–
- (i) a passport;
  - (ii) an identity card; or
  - (iii) a driver’s licence; and
- (c) that evidence would have convinced a reasonable person.”;
- (f) by inserting the following subsections after subsection (2)–
- “(2A) Where a person is charged with an offence under this section by reason of the act or default of some other person, it is a defence that he exercised all due diligence to avoid committing it including the training, monitoring and supervision of staff.
- (2B) For the purposes of this section and section 3A, “licensee” means the holder of a licence to sell alcohol.”; and
- (g) by deleting subsection (3).

**Insertion of new section 3A.**

4. The Principal Act is amended by inserting the following section after section 3–

**“Prohibition of sale of alcohol to a person aged under 18 years who is drunk.**

3A.(1) Any person who sells alcohol to a person under the age of 18 years (the “relevant person”) who is drunk is guilty of an offence and liable on summary conviction to a fine up to level 5 on the standard scale.

(2) If alcohol is sold to a relevant person who is drunk on licensed premises, the licensee of those premises is also guilty of an offence punishable in accordance with section 21A.

(3) Where a person is charged with an offence under this section by reason of the act or default of some other person, it is a defence that he exercised all due diligence to avoid committing it including the training, monitoring and supervision of staff.”.

**Amendment to section 4.**

5. Section 4(1) of the Principal Act is amended by substituting “18 in circumstances prohibited by law” for “16”.

**Amendments to section 6.**

6. Section 6 of the Principal Act is amended—

- (a) in the heading by inserting “by persons under 18 years” after “alcohol”;
- (b) in subsection (1)—
  - (i) by substituting “Subject to the circumstances set out in section 7(1A), where” for “Where”,
  - (ii) by substituting “18” for “16”; and
- (c) by inserting the following subsection after subsection (2)—

“(3) A person who fails without reasonable excuse to comply with a requirement imposed on him by subsection (1) is guilty of an offence and liable on summary conviction to a fine up to level 1 on the standard scale.”.

**Insertion of new section 6A.**

7. The Principal Act is amended by inserting the following section after section 6–

**“Breach of peace in public place.**

6A.(1) Where a constable has reason to believe that any person has been consuming, or intends to consume, alcohol and–

- (a) he is causing or is likely to cause a breach of the peace;
- (b) he is intimidating any person or behaving in an intimidating manner; or
- (c) he reasonably believes that (a) or (b) may occur;

the constable may require the person concerned to surrender anything in his possession which contains, or which the constable reasonably believes to contain alcohol.

(2) A person who fails without reasonable excuse to comply with a requirement imposed on him by subsection (1) is guilty of an offence and liable on summary conviction to a fine up to level 2 on the standard scale.

(3) A constable may dispose of anything surrendered to him under subsection (1) in such manner as he considers appropriate.”.

**Amendments to section 7.**

8. Section 7 of the Principal Act is amended–

- (a) in the heading by inserting “for a person under 18 years” after “alcohol”;
- (b) in subsection (1)–

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- (i) by substituting “Subject to subsection (1A), any person” for “A person”,
  - (ii) by substituting “18 years (the “relevant person”)” for “16 years”;
- (c) by inserting the following subsection after subsection (1)–
- “(1A) Subsection (1) shall not apply where–
- (a) the relevant person is 16 or 17 years of age;
  - (b) the alcohol is–
    - (i) beer, wine or cider and is of an alcoholic strength not exceeding 15%; or
    - (ii) sold in, or poured from, a pre-packaged container and is of an alcoholic strength not exceeding 5.5%; and
  - (c) either–
    - (i) the alcohol is procured for consumption on licensed premises; or
    - (ii) the alcohol is procured for consumption by and under the supervision of a person who has parental responsibility for the relevant person (a “parent”) or is 18 years or over and has the consent of a parent.”;
- (d) In subsection (2)–
- (i) by substituting “subsection (1)” for “section (1)”,
  - (ii) in paragraph (a) by substituting “relevant person was aged 18” for “person was aged 16”,
  - (iii) by substituting the following paragraphs for paragraph (b)–

“(b) the relevant person produced as evidence of his age–

- (i) a passport;
- (ii) an identity card; or
- (iii) a driver’s licence; and

(c) that evidence would have convinced a reasonable person.”;

(e) by inserting the following subsection after subsection (2)–

“(2A) Where a person is charged with an offence under this section by reason of not having the consent of a parent, it is a defence that he believed he would have the parent’s consent if that parent knew he was procuring alcohol for the relevant person and that belief was in all the circumstances reasonably held.”; and

(f) by deleting subsection (3).

**Insertion of new section 7A.**

9. The Principal Act is amended by inserting the following section after section 7–

**“Procuring alcohol for a person aged under 18 years who is drunk.**

7A. Any person who procures alcohol for a person under the age of 18 years who is drunk is guilty of an offence and liable on summary conviction to a fine up to level 5 on the standard scale.”.

**Amendments to section 9.**

10. Section 9 of the Principal Act is amended–

(a) in the heading by substituting “18” for “16”;

- (b) in subsection (1)–
  - (i) by substituting “Any person” for “A person”,
  - (ii) by substituting “18 years (the “relevant person”)” for “16 years”;
- (c) by inserting the following subsection after subsection (1)–

“(1A) Without prejudice to subsection (1), if tobacco is sold to a relevant person on licensed premises, the licensee of those premises is also guilty of an offence punishable in accordance with section 21A.”;
- (d) in subsection (2)–
  - (i) by substituting “under this section by reason of his own conduct” for “under subsection (1)”,
  - (ii) in paragraph (a) by substituting “relevant person was aged 18” for “person was aged 16”;
- (e) by substituting the following paragraphs for paragraph (b)–

“(b) the relevant person produced as evidence of his age–

  - (i) a passport;
  - (ii) an identity card; or
  - (iii) a driver’s licence; and

(c) that evidence would have convinced a reasonable person.”;
- (f) by inserting the following subsections after subsection (2)–

“(2A) Where a person is charged with an offence under this section by reason of the act or default of some other person, it is a defence that he exercised all due diligence to avoid

committing it including the training, monitoring and supervision of staff.

(2B) For the purposes of this section, “licensee” means the holder of a licence to sell tobacco.”; and

- (g) by deleting subsection (3).

**Amendments to section 10.**

11. Section 10 of the Principal Act is amended–

- (a) in subsection (1) by substituting “any person under 18” for “a person under 16”; and
- (b) by inserting the following subsection after subsection (2)–

“(3) A person who fails without reasonable excuse to comply with a requirement imposed on him by subsection (1) is guilty of an offence and is liable on summary conviction to a fine up to level 1 on the standard scale.”.

**Amendments to section 11.**

12. Section 11 of the Principal Act is amended–

- (a) in subsection (1)–
- (i) by substituting “Any person” for “A person”,
- (ii) by substituting “18” for “16”;
- (b) In subsection (2)–
- (i) in paragraph (a) by substituting “18” for “16”,
- (ii) by substituting the following paragraphs for paragraph (b)–

- “(b) the relevant person produced as evidence of his age–
- (i) a passport;
  - (ii) an identity card; or
  - (iii) a driver’s licence; and
- (c) that evidence would have convinced a reasonable person.”; and

- (c) by deleting subsection (3).

**Amendment to section 12.**

13. Section 12(1) of the Principal Act is amended by substituting “18” for “16”.

**Amendment to section 14.**

14. Section 14(1) of the Principal Act is amended by substituting “18” for “16”.

**Amendment to section 16.**

15. Section 16 of the Principal Act is amended by substituting “18” for “16”.

**Amendment to section 17.**

16. Section 17(1) of the Principal Act is amended by substituting “18” for “16”.

**Amendments to section 18.**

17. Section 18 of the Principal Act is amended–

- (a) In subsection (1)–

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- (i) by substituting “any person” for “a person”,
  - (ii) by inserting “(the “relevant person”)” after “18 years”;
- (b) In subsection (2)–
- (i) in paragraph (a) by inserting “relevant” before “person”,
  - (ii) by substituting the following paragraphs for paragraph (b)–
    - “(b) the relevant person produced as evidence of his age–
      - (i) a passport;
      - (ii) an identity card; or
      - (iii) a driver’s licence; and
  - (c) that evidence would have convinced a reasonable person.”; and
- (c) by deleting subsection (3).

**Amendment to the heading of Part IV.**

18. The heading of Part IV of the Principal Act is amended by substituting “Fixed fines and repeat offenders” for “Repeat offenders”.

**Insertion of new section 21A.**

19. The Principal Act is amended by inserting the following section after section 21 and below the heading of Part IV of the Principal Act–

**“Fixed fines for licensees.**

21A.(1) A licensee convicted of an offence under section 3(1A), 3A(2) or 9(1A) is liable on summary conviction—

- (a) in respect of a first offence, to a fine fixed at £5000;
- (b) in respect of a second offence, to a fine fixed at £10,000; and
- (c) in respect of a third or subsequent offence, to a fine fixed at £20,000.”.

**Amendments to section 22.**

20.(1) Section 22 of the Principal Act is amended—

- (a) in subsection (1)—
  - (i) by deleting “or subsequent”.
  - (ii) by substituting “licence to sell alcohol or tobacco” for “issued under the provisions of the Licensing and Fees Act or the Leisure Areas (Licensing) Act 2001”;
- (b) In subsection (2)—
  - (i) by deleting “issued under the provisions of the Licensing and Fees Act or the Leisure Areas (Licensing) Act 2001”;
  - (ii) by inserting “under subsection (1)” after “revoked”;  
and
- (c) by inserting the following subsection after subsection (2)—

“(3) Where a person is convicted of a third or subsequent offence the Magistrates’ Court, in addition to any other penalty it may impose under this Act, must—

- (a) suspend a licence for a specified period of time; or
- (b) revoke a licence.”.

**Amendment to the heading of Part V.**

21. The heading of Part V of the Principal Act is amended by substituting “Transitionals, amendments” for “Amendments”.

**Insertion of new section 23A.**

22. The Principal Act is amended by inserting the following section after section 23–

**“Saving and transitional provisions.**

23A.(1) In respect of the sale of alcohol or tobacco to a person who on the relevant date is 16 or 17 years of age, the provisions of sections 3 and 9 shall have effect as if sections 3 and 10 of the Children and Young Persons (Alcohol, Tobacco and Gaming) (Amendment) Act 2010 (the “amending Act”) had not come into force.

(2) In respect of the procurement of alcohol or tobacco for a person who on the relevant date is 16 or 17 years of age, sections 7 and 11 shall have effect as if sections 8 and 12 of the amending Act had not come into force.

(3) In relation to a person who on the relevant date is 16 or 17 years of age, sections 6 and 10 shall have effect as if sections 6 and 11 of the amending Act had not come into force.

(4) In relation to a person who on the relevant date is 16 or 17 years of age, the provisions of section 16 shall have effect as if section 15 of the amending Act had not come into force.

(5) In this section, the “relevant date” means the 1<sup>st</sup> April 2011.”.

**EXPLANATORY MEMORANDUM**

This Bill amends the Children and Young Persons (Alcohol, Tobacco and Gaming) Act 2006 by increasing the age limit for the sale and procurement of alcohol and tobacco from 16 years to 18 years with certain exceptions in respect of alcohol. It also introduces a fixed fine regime for first second or subsequent offences for licensees and creates a number of new offences.

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**Printed by the Gibraltar Chronicle Limited  
Printing Office, 2, Library Gardens,  
Government Printers for Gibraltar,  
Copies may be purchased at 6, Convent Place, Price £0.80p**