

Children and Young Persons (Alcohol, Tobacco and Gaming) Act 2006

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Principal Act

Act. No. 2006-11	<i>Commencement (LN.2006/089)</i>	7.7.2006
	<i>Assent</i>	24.4.2006
Amending enactments	Relevant current provisions	Commencement date
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AN ACT TO REGULATE THE SALE AND SUPPLY OF ALCOHOL AND TOBACCO TO CHILDREN AND YOUNG PERSONS AND THEIR USE OF GAMING MACHINES AND FOR MATTERS CONNECTED THERETO.

Title.

1. This Act may be cited as the Children and Young Persons (Alcohol, Tobacco and Gaming) Act 2006 and comes into operation on a date designated by the Government by notice published in the Gazette.

Interpretation.

2. (1) In this Act—

“alcohol” means spirits, wine, beer, cider or any other liquor, but does not include—

- (a) alcohol which is of an alcoholic strength not exceeding 0.5%;
- (b) perfume;
- (c) flavouring essences;
- (d) alcohol which is, or is included in, a medicinal product;
- (e) alcohol contained in liqueur confectionery;

“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;

“gaming machine” means a machine that—

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- (a) is constructed or adapted for playing a game of chance by means of the machine; and
- (b) pays out money or tokens or any other thing which may be exchanged for money;

“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;

“premises” includes any place and any vehicle, vessel, aircraft, stall or moveable structure;

“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;

“sale of alcohol” shall mean the sale either by wholesale or retail or the supply of alcohol by or on behalf of a club to or to the order of a member of the club;

“sell” includes offer for sale;

“tobacco” includes tobacco of every description whether manufactured or not;

“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.

(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.

Part I

Alcohol

Prohibition of sale of alcohol to persons aged under 18 years.

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

(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.

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(2) It is a defence for a person charged with the commission of an offence under this section by reason of his own conduct to prove that—

- (a) he believed that the relevant person was aged 18 or over; and
- (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.

(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.

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.

Notice in premises where alcohol is sold.

4.(1) A notice displaying the following statement—

“It is illegal to sell alcohol to, or procure alcohol for, anyone under the age of 18 in circumstances prohibited by law.”

shall be exhibited at every premises in which alcohol is sold, and shall be so exhibited in a prominent position where the statement is readily visible to persons at the point of sale of the alcohol.

(2) The dimensions of the notice to be exhibited in accordance with subsection (1) shall be at least 297 millimetres by 420 millimetres and the statement shall be such that no character shall be less than 36 millimetres high.

Failure to comply with section 4.

5.(1) Where—

- (a) any person carries on a business involving the sale of alcohol at any premises; and
- (b) no notice is exhibited at those premises in accordance with section 4; or
- (c) the notice exhibited does not conform with the requirements of section 4,

that person shall be guilty of an offence and liable on summary conviction to a fine up to level 4 on the standard scale.

(2) Where any such offence is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Consumption of alcohol by persons under 18 years in public places.

6.(1) Subject to the circumstances set out in section 7(1A), where a constable has reason to believe that a person under 18 years is or has been consuming, or intends to consume, alcohol in a public place, he may require the person concerned to surrender anything in his possession which contains, or which the constable reasonably believes to contain alcohol.

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

(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.

Breach of peace in public place.

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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.

Procuring alcohol for a person under 18 years.

7.(1) Subject to subsection (1A), any person who procures alcohol for a person under the age of 18 years (the “relevant person”) years is guilty of an offence and is liable on summary conviction to a fine up to level 5 on the standard scale.

(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

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- (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.

(2) It shall be a defence for a person charged with an offence under subsection (1) to prove—

- (a) he believed that the relevant person was aged 18 or over; and
- (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.

(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.

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.

Medical reasons.

8. A person shall not be guilty of an offence under this Part where he proves that his conduct was pursuant to the instructions of a registered medical practitioner.

Part II *Tobacco*

Prohibition of sale of tobacco to persons aged under 18 years.

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

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(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.

(2) It is a defence for a person charged with the commission of an offence under this section by reason of his own conduct to prove that—

- (a) he believed that the relevant person was aged 18 or over; and
- (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.

(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.

Consumption of tobacco in public places.

10.(1) Where a constable has reason to believe that any person under 18 is or has been smoking, or intends to smoke, tobacco in a public place, he may require the person concerned to surrender anything in his possession which contains, or which the constable reasonably believes to contain tobacco.

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

(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.

Access to tobacco.

10A.(1) No person operating a place of business wherein tobacco is sold or offered for sale may sell, permit to be sold or display for sale any tobacco unless it is stored for sale-

- (a) behind a counter in an area accessible only to the personnel of that business; or
- (b) in a locked container;

except where admission to the place of business is restricted to persons 18 years of age or over.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of up to level 5 on the standard scale.

Prohibition on toy or candy tobacco.

10B.(1) A person must not-

- (a) import or manufacture; or
- (b) sell or supply, display for sale or distribute,

sweets, snacks, toys and other non-tobacco items or objects in the form of tobacco, or which imitate tobacco.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of up to level 5 on the standard scale.

Procuring tobacco.

11.(1) Any person who procures tobacco for a person under the age of 18 years is guilty of an offence and is liable on summary conviction to a fine up to level 5 on the standard scale.

(2) It shall be a defence for a person charged with an offence under section (1) to prove-

- (a) he believed that the person was aged 18 or over; and
- (b) the relevant person produced as evidence of his age-
 - (i) a passport;
 - (ii) an identity card; or
 - (iii) a driver's licence; and

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

Notice in retail premises.

12.(1) A notice displaying the following statement–

“It is illegal to sell tobacco to, or procure tobacco for, anyone under the age of 18.”

shall be exhibited at every premises at which tobacco is sold by retail, and shall be so exhibited in a prominent position where the statement is readily visible to persons at the point of sale of the tobacco.

(2) The dimensions of the notice to be exhibited in accordance with subsection (1) shall be at least 297 millimetres by 420 millimetres and the statement shall be such that no character shall be less than 36 millimetres high.

Failure to comply with section 12.

13.(1) Where–

- (a) any person carries on a business involving the sale of tobacco by retail at any premises, and
- (b) no notice is exhibited at those premises in accordance with section 12; or
- (c) the notice exhibited does not conform with the requirements of section 12,

that person shall be guilty of an offence and liable on summary conviction to a fine up to level 4 on the standard scale.

(2) Where any such offence is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Notice on vending machine.

14.(1) A notice displaying the following statement–

“This machine is only for the use of people aged 18 or over.”

shall be exhibited on every automatic machine for the sale of tobacco which is kept available for use as such at any premises, and shall be so exhibited in such a way that the statement is readily visible to persons using the machine.

(2) The dimensions of the notice to be exhibited in accordance with subsection (1) shall be at least 60 millimetres by 100 millimetres and the statement shall be such that no character shall be less than 6 millimetres high.

Failure to comply with section 14.

15.(1) Where—

- (a) a person is the owner of any such machine which is so kept or the owner or occupier of the premises at which any such machine is so kept; and
- (b) no notice is exhibited on the machine in accordance with section 14; or
- (c) the notice exhibited does not conform with the requirements of section 14,

that person shall be guilty of an offence and liable on summary conviction to a fine up to level 4 on the standard scale.

(2) Where any such offence is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Permitting use of vending machines.

16. Where a person under the age of 18 years obtains tobacco from an automatic vending machine in contravention of the provisions of this Act, the owner or occupier of the premises where the vending machine is located may each be proceeded against for the purposes of section 9 of this Act.

Court may impose conditions.

17.(1) Where a complaint is made to the Magistrates' Court in connection with section 16 regardless of whether the complaint is made out or not, the court may order the owner of the vending machine or the owner or occupier of the premises where the vending machine is

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located to take such steps as may be specified in the order to prevent the further use of the vending machine by persons under 18 years of age.

(2) In making an order under subsection (1) the court may, if it deems it appropriate, order the removal and bar from re-entry of that and any other vending machines from the premises for such periods as it deems fit.

(3) A person who does not comply with an order under this section is guilty of an offence and is liable on summary conviction to a term of imprisonment not exceeding 6 months or to a fine up to level 5 on the standard scale or both.

Part III
Gaming machines.

Permitting use of gaming machines.

18.(1) Where any person under the age of 18 years (the “relevant person”) uses a gaming machine, the owner or occupier of the premises where the gaming machine is located is guilty of an offence and is liable on summary conviction to a fine up to level 5 on the standard scale.

(2) It is a defence for a person charged with the commission of an offence under subsection (1) to prove that—

- (a) he believed that the relevant person was aged 18 or over; and
- (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.

Notice on gaming machine.

19.(1) A notice displaying the following statement—

“This machine is only for the use of people aged 18 or over.”

shall be exhibited on every gaming machine which is kept available for use at any premises, and shall be so exhibited in such a way that the statement is readily visible to persons using the machine.

(2) The dimensions of the notice to be exhibited in accordance with subsection (1) shall be at least 60 millimetres by 100 millimetres and the statement shall be such that no character shall be less than 6 millimetres high.

Failure to comply with section 19.

20.(1) Where—

- (a) a person is the owner of any such machine which is so kept or the owner or occupier of the premises at which any such machine is so kept; and
- (b) no notice is exhibited on the machine in accordance with section 19; or
- (c) the notice exhibited does not conform with the requirements of section 19,

that person shall be guilty of an offence and liable on summary conviction to a fine up to level 4 on the standard scale.

(2) Where any such offence is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Court may impose restrictions.

21.(1) Where a complaint is made to the Magistrates' Court in connection with section 18 regardless of whether the complaint is made out or not, the court may order the owner of the gaming machine or the owner or occupier of the premises where the gaming machine is located to take such steps as may be specified in the order to prevent the further use of the gaming machine by persons under 18 years of age.

(2) In making an order under subsection (1) the court may, if it deems it appropriate, order the removal and bar from re-entry of that and any other gaming machines from the premises for such periods as it deems fit.

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(3) A person who does not comply with an order under this section is guilty of an offence and is liable on summary conviction to a term of imprisonment not exceeding 6 months or to a fine up to level 5 on the standard scale or both.

Part IV

Fixed fines and repeat offenders

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.

Suspension, revocation of Licences.

22.(1) Where a person is convicted of a second offence the Magistrates' Court, in addition to any other penalty it may impose under this Act, must consider whether to temporarily suspend or revoke a licence to sell alcohol or tobacco.

(2) After hearing representations as to whether a licence ought to be temporarily suspended or revoked the Magistrate's Court may either—

- (a) suspend a licence for a specified period of time;
- (b) revoke under subsection (1) a licence.

(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.

Part V

Transitionals, amendments and Repeals

Amendment to Tobacco Act 1997.

23. After section 6(6)(f) of the Tobacco Act 1997 insert the following paragraph–

“(g) Section 9 of the Children and Young Persons (Alcohol, Tobacco and Gaming) Act 2006.”.

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 2011 (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 31st August 2011.

Repeal of Section 264 Criminal Offences Act.

24. Section 264 of the Criminal Offences Act is repealed.