

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3525 of 6th April, 2006

B. 13/06

BILL

FOR

AN ORDINANCE 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.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Ordinance may be cited as the Children and Young Persons (Alcohol, Tobacco and Gaming) Ordinance 2006 and comes into operation on the day of publication.

Interpretation.

2. In this Ordinance—

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

- (a) alcohol which is of a 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;

“gaming machine” means a machine that—

- (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;

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

“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.

Part I
Alcohol

Prohibition of sale of alcohol to persons aged under 16 years.

3.(1) A person who sells an alcoholic beverage to a person under the age of 16 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 is a defence for a person charged with the commission of an offence under subsection (1) to prove that—

- (a) he believed that the person was aged 16 or over; and
- (b) either—
 - (i) he had taken all reasonable steps to establish that person’s age, or
 - (ii) nobody could reasonably have suspected from that person’s appearance that he was aged under 16.

(3) For the purposes of subsection (2) a person is treated as having taken all reasonable steps to establish an individual's age if—

- (a) he asked the individual for evidence of his age; and
- (b) the evidence would have convinced a reasonable person.

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 16."

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 in public places.

6.(1) Where a constable has reason to believe that a person under 16 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.

Procuring alcohol.

7.(1) A person who procures alcohol for a person under the age of 16 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 16 or over; and
- (b) either—
 - (i) he had taken all reasonable steps to establish that person's age, or
 - (ii) nobody could reasonably have suspected from that person's appearance that he was aged under 16.

(3) For the purposes of subsection (2) a person is treated as having taken all reasonable steps to establish an individual's age if—

- (a) he asked the individual for evidence of his age; and
- (b) the evidence would have convinced a reasonable person.

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 16 years.

9.(1) A person who sells tobacco to a person under the age of 16 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 is a defence for a person charged with the commission of an offence under subsection (1) to prove that—

- (a) he believed that the person was aged 16 or over; and
- (b) either—
 - (i) he had taken all reasonable steps to establish that person's age, or
 - (ii) nobody could reasonably have suspected from that person's appearance that he was aged under 16.

(3) For the purposes of subsection (2) a person is treated as having taken all reasonable steps to establish an individual's age if—

- (a) he asked the individual for evidence of his age; and
- (b) the evidence would have convinced a reasonable person.

Consumption of tobacco in public places.

10.(1) Where a constable has reason to believe that a person under 16 years 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.

Procuring tobacco.

11.(1) A person who procures tobacco for a person under the age of 16 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 16 or over; and
- (b) either—
 - (i) he had taken all reasonable steps to establish that person's age, or
 - (ii) nobody could reasonably have suspected from that person's appearance that he was aged under 16.

(3) For the purposes of subsection (2) a person is treated as having taken all reasonable steps to establish an individual's age if—

- (a) he asked the individual for evidence of his age; and
- (b) the 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 16."

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 this subsection; 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 16 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 this subsection; 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 16 years obtains tobacco from an automatic vending machine in contravention of the provisions of this Ordinance, 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 Ordinance.

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 located to take such steps as may be specified in the order to prevent the further use of the vending machine by persons under 16 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 a person under the age of 18 years 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 person was aged 18 or over; and
- (b) either—
 - (i) he had taken all reasonable steps to establish that person's age, or
 - (ii) nobody could reasonably have suspected from that person's appearance that he was aged under 18.

(3) For the purposes of subsection (2) a person is treated as having taken all reasonable steps to establish an individual's age if—

- (a) he asked the individual for evidence of his age; and
- (b) the 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 this subsection; 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 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 gaming 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 IV
Repeat offenders.

Suspension, revocation of Licences.

22.(1) Where a person is convicted of a second or subsequent offence the Magistrates' Court, in addition to any other penalty it may impose under this Ordinance, must consider whether to temporarily suspend or revoke a licence issued either under the provisions of the Licensing and Fees Ordinance or the Leisure Areas (Licensing) Ordinance 2001.

(2) After hearing representations as to whether a licence issued under the Licensing and Fees Ordinance or the Leisure Areas (Licensing) Ordinance 2001 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 a licence.

Part V
Amendments and Repeals

Amendment to Tobacco Ordinance 1997.

23. After section 6(6)(f) of the Tobacco Ordinance 1997 insert the following paragraph—

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

Repeal of Section 264 Criminal Offences Ordinance.

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

EXPLANATORY MEMORANDUM

This Bill makes provision for the regulation of the sale of alcohol and tobacco to children and young persons, and restricts access to gaming machines.

Part I relates to the sale of alcohol.

Clause 3 creates the offence of selling alcohol to persons under 16 years and also provides a defence.

Clause 4 requires establishments that sell alcohol to display in a prominent place a notice that states the minimum age of the person to whom alcohol can be sold. Clause 5 creates sets out the penalty for contravening the provisions of clause 4.

Clause 6 allows a police officer to confiscate and dispose of any alcohol or alcoholic beverage from a person under 16 years. The power is exercised in public places.

Clause 7 creates the offence of procuring alcohol for a person under 16 years of age.

Clause 8 provides a defence to an offence under Part I where the conduct was pursuant to the instructions of a registered medical practitioner.

Part II relates to the sale of tobacco.

Clause 9 creates the offence of selling tobacco to persons under 16 years and also provides a defence.

Clause 10 allows a police officer to confiscate and dispose of tobacco from a person under 16 years. The power is exercised in public places.

Clause 11 creates the offence of procuring tobacco for a person under 16 years.

Clauses 12 and 13 respectively require that establishments selling tobacco display a sign stating the age requirements, and the penalties for breaches of clause 12.

Clause 14 requires a notice to be displayed on vending machines that sell tobacco. Clause 15 sets out the penalties for breaches of clause 14.

Clause 16 permits the owner or occupier of the vending machine to be prosecuted individually under clause 9 of the Bill.

Clause 17 permits the imposition of conditions by the Magistrates' Court where a complaint is made to that court, irrespective of whether the complaint is made out.

Part III relates to gaming machines.

Clause 18 creates an offence to permit the use of gaming machines to persons under the age of 18 years.

Clause 19 requires a notice to be displayed and clause 20 sets out the penalty for a breach of clause 19.

Clause 21 permits the imposition of conditions by the Magistrates' Court where a complaint is made to that court, irrespective of whether the complaint is made out.

Part IV makes provision for repeat offenders, and clause 22 requires the Magistrates' Court consider suspension or revocation of licences under the Licences and Fees Ordinance or the Leisure Areas (Licensing) Ordinance 2001.

Part V makes provision for amendments and repeal.