

LICENSING ACT 2003: THE CONCEPT OF 'DUE DILIGENCE'

The Licensing Act contains a number of offences that allow a defence of 'due diligence'. These include (amongst others):

- Selling alcohol to someone under the age of 18 years old
- Carrying on or attempting to carry on an unauthorised licensable activities
- Exposing alcohol for unauthorised sale
- Keeping alcohol on premises for unauthorised sale

Due diligence is therefore very important and it may be what you seek to rely on if something goes wrong in the future.

So what is Due Diligence?

In brief, due diligence can be defined as the ability to show that all reasonable steps to avoid committing the offence were taken. There are two parts to this defence and they are defined in the Licensing Act as follows:

- (a) his act was due to a mistake, or to reliance on information given to him, or to an act or omission by another person, or to some other cause beyond his control, and
- (b) he took all reasonable precautions and exercised all due diligence.

Case law helps us to understand what the courts expect when a due diligence defence is offered. To satisfy the courts, case law makes clear that positive action to prevent the offence from occurring must have been taken and you must be able to demonstrate this.

What can you do?

Whilst the Licensing Act does not specifically state what the 'reasonable steps' are, it does mention that you should be looking to implement procedures to establish a person's age unless 'nobody could reasonably have suspected from the individual's appearance that he was aged under 18'.

A due diligent defence will fail when a reasonable precaution could have been taken, but was not.

Case law sets out that you should be able to demonstrate the systems and procedures you have in place. **This is why records and documents are important.**

All licensed premises selling alcohol should have in place a clear protocol on the measures that will be taken to establish a person's age. This protocol should form the basis for your staff training and a record of this training must be maintained.

Other documents and information on what may help with a due diligence defence can be found here: <https://www.middevon.gov.uk/business/licensing/alcohol-and-entertainment-licences/premises-licences/inspections-and-guidance/>.