

LICENSING ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 8: Closure of premises

General

248. **Part 8** of the Act contains provisions empowering the courts and the police to make temporary closure orders in respect of certain premises.
249. It re-enacts with some modifications the provisions to be found in sections 179A to 179K and 188 of the Licensing Act 1964. In particular the provisions of the Act are not restricted to premises licensed for the sale of alcohol, but extend to all relevant premises (see section 161(8)).

Section 160 – Order to close premises in an area experiencing disorder

250. This section sets out the power to close all premises with a premises licence, or in respect of which a temporary event notice has effect, which are located in a particular geographical area for a period not exceeding 24 hours. The power is exercisable by a magistrates' court on application from a police officer of the rank of superintendent or above. It is exercisable only where the court thinks such an order is necessary to prevent disorder. It is an offence to keep open premises that are the subject of a closure order. Section 171(2) and (3) make provision about when premises are "open" for these purposes.

Section 161 – Closure order for identified premises

251. This section provides a senior police officer with the power to close specific premises for up to 24 hours. A closure order may be made upon two grounds, the first of which is where there is actual or likely disorder to the extent that the closure of the related premises is necessary in the interests of public safety. The second ground is where closure is necessary to prevent a public nuisance, owing to the noise emanating from the premises.
252. In deciding whether to make a closure order, the police officer must have regard to the conduct of certain defined individuals at the premises. The purpose of this provision is to allow discretion in cases where, for example, it is clear that those managing the premises are treating the disorder or disturbance with sufficient gravity and are taking steps to reduce it or bring it under control.

Section 162 – Extension of closure order

253. This section empowers a senior police officer to extend, in certain limited circumstances, the period for which a closure order may have effect. Such an extension may be for a further period of 24 hours. More than one extension may be made.

Section 163 – Cancellation of closure order

254. This section empowers a senior police officer to cancel a closure order at any time before it has been considered by a magistrates' court pursuant to the latter's power in section 165. Such a cancellation must be made where the officer does not reasonably believe that closure of the premises is necessary because of disorder, likely disorder or because of noise emanating from the premises. The officer must give notice to the licence holder, designated premises supervisor, premises user or manager of the premises where it is decided to cancel a closure order.

Section 164 – Application to magistrates' court by police

255. After a closure order comes into force, the responsible senior police officer must apply to the magistrates' court as soon as possible to allow for the consideration of the order by the court. Notice of such an application and details of the order itself must also be given to the relevant licensing authority (as defined in section 171).

Section 165 – Consideration of closure order by magistrates' court

256. The relevant magistrates' court to whom an application has been made under section 164 must hold a hearing. The court can take a number of courses of action in relation to the order, including revoking the closure order, or ordering its extension until the licensing authority has conducted a review of the order under section 167. The court may also make an order determining that the premises should be, or should remain, closed until such a review has been completed.

Section 166 – Appeal from decision of magistrates' court

257. This section provides a right of appeal to the Crown Court against decisions made by a magistrates' court under section 165.

Section 167 – Review of premises licence following closure order

258. Where a licensing authority has received notice from a magistrates' court pursuant to section 165 (consideration of closure order by magistrates' court), in respect of a closure order for identified premises having effect in relation to premises, it must review any premises licence having effect in respect of those premises.
259. The licensing authority may take steps to further the licensing objectives including revocation of the licence, modification of the licence conditions, the exclusion of certain licensable activities or the removal of the designated premises supervisor. For example, where the licensing authority determines that the lack of experience or expertise of the designated premises supervisor has contributed to the level of disorder that has given rise to a closure order, it may specify that the individual concerned should be removed from that position. Similarly, it may determine that imposing a condition on the licence to the effect that additional security staff should be employed would reduce disorder.

Section 168 – Provision about decisions under section 167

260. This section makes provision for premises subject to a closure order under section 161 (closure orders of identified premises) to remain closed during any appeal against the licensing authority's decision to revoke the premises licence (although the licence would remain in force). Under Schedule 5 a magistrates' court may order the re-opening of the premises pending the appeal.

Section 171 – Interpretation of Part 8

261. This section sets out various definitions for the purposes of this Part. The section explains in what circumstances premises will be treated as "open" and states that certain

*These notes refer to the Licensing Act 2003 (c.17)
which received Royal Assent on 10 July 2003*

activities will not count for the purposes of determining whether premises are “open”.
These are –

- in a case where the premises do not have a premises licence, but have a temporary event notice, any activities (other than licensable activities) taking place outside the event period in the notice
- any use for qualifying club activities under a club premises certificate
- any supplies of hot food and drink which are not licensable activities by reason of their being supplied to members of a club or the guests of members