



# Local Government (Miscellaneous Provisions) Act 1982

## 1982 CHAPTER 30

### PART IV

#### CONTROL OF REFRESHMENT PREMISES

##### *Take-away food shops*

#### **4 Closing hours for take-away food shops.**

- (1) A district council may make an order under this subsection (in this Part of this Act referred to as a “closing order”) with respect to any premises in their district where meals or refreshments are supplied for consumption off the premises, other than—
  - (a) any premises that are a late night refreshment house, as defined in section 1 of the <sup>M1</sup>Late Night Refreshment Houses Act 1969; and
  - (b) any premises that are exempt licensed premises as defined in that section, if they are satisfied that it is desirable to make such an order to prevent residents in the neighbourhood of the premises being unreasonably disturbed either by persons resorting to the premises or by the use of the premises for the supply of meals or refreshments.
- (2) A closing order shall be an order specifying individual premises and prohibiting the use of the premises for the supply of meals and refreshments to the public between such hours as may be specified in the order.
- (3) The hours specified in a closing order shall commence not earlier than midnight and finish not later than 5 o’clock in the morning.
- (4) A closing order may prohibit the use of the premises to which it relates for the supply of meals and refreshments to the public between different hours on different days of the week.

*Status: Point in time view as at 01/02/1991.*

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- (5) A district council may vary a closing order by an order under this subsection (in this Part of this Act referred to as a “variation order”).
- (6) A district council may revoke a closing order by an order under this subsection (in this Part of this Act referred to as a “revocation order”).
- (7) A variation order or a revocation order may be made on the written application of the keeper of the premises to which the closing order relates, or without such an application.
- (8) Subject to subsection (9) below, a closing order shall cease to have effect 3 years from the date on which it was made, but without prejudice to the power of the district council to make a further closing order.
- (9) Subsection (8) above shall have effect in relation to a closing order which has been varied as if the reference to the date on which it was made were a reference to the date on which it was last varied.
- (10) In this Part of this Act “the keeper”, in relation to any premises, means the person having the conduct or management of the premises.
- (11) Until section 7(1) and (2) below come into force this section shall have effect as if the following paragraph were substituted for subsection (1)(b) above—
 

“(b) a house, room, shop or building which is licensed for the sale of beer, cider, wine or spirits.”.

#### **Marginal Citations**

**M1** 1969 c. 53.

## **5 Closing orders etc.—procedure and appeals.**

- (1) A district council shall take all relevant circumstances into consideration when determining whether to make—
  - (a) a closing order; or
  - (b) a variation order which varies a closing order or a previous variation order by specifying—
    - (i) an hour later than that specified in the order which it varies as the hour at which the use of the premises for the supply of meals and refreshments to the public may begin; or
    - (ii) an hour earlier than that so specified as the hour at which their use for that purpose is to end,

but a council may not make a closing order or such a variation order unless residents in the neighbourhood of the premises to which the order, if made, would relate have complained of disturbance such as is mentioned in section 4(1) above.
- (2) If a district council propose—
  - (a) to make a closing order; or
  - (b) to make such a variation order as is mentioned in sub-section (1)(b) above,

they shall first serve a notice in accordance with subsections (12) to (15) below—

  - (i) giving their reasons for seeking to make the order; and

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- (ii) stating that within 28 days of service of the notice the keeper of the premises to which the order, if made, would relate may in writing require them to give him an opportunity to make representations to them concerning the matter.
- (3) Where a notice has been served under subsection (2) above, the district council shall not determine the matter until either—
  - (a) the keeper has made representations to them concerning it; or
  - (b) the period during which he could have required them to give him an opportunity to make representations has elapsed without his requiring them to give him such an opportunity; or
  - (c) the conditions specified in subsection (4) below are satisfied.
- (4) The conditions mentioned in subsection (3) above are—
  - (a) that the keeper has required the district council to give him an opportunity to make representations to them;
  - (b) that the council have allowed him a reasonable period for making his representations; and
  - (c) that he has failed to make them within that period.
- (5) Representations may be made, at the keeper's option, either in writing or orally.
- (6) If the keeper informs the council that he desires to make oral representations, they shall give him an opportunity of appearing before and of being heard by a committee or sub-committee of the council.
- (7) The council shall not reveal to the keeper the name or address of any person who has made a complaint concerning the premises, unless they have first obtained the consent of the person who made the complaint.
- (8) Where the keeper of any premises has applied for a variation order or a revocation order, the council shall be deemed to have refused the application if they fail to determine the matter within 8 weeks from the date on which the application was made.
- (9) When a council make an order under section 4 above, they shall serve a copy in accordance with subsections (12) to (15) below.
- (10) A closing order and any such variation order as is mentioned in subsection (1)(b) above shall come into force 21 days after the date of service.
- (11) A variation order other than a variation order such as is mentioned in subsection (1)(b) above and a revocation order shall come into force on such date as may be specified in it.
- (12) Any document required to be served under this section shall be served on the keeper of the premises to which it relates and, subject to subsection (13) below, may be served on him by post.
- (13) Service of any such document by post may only be effected by sending it in a pre-paid registered letter or by the recorded delivery service.
- (14) For the purposes of service any such document may be addressed to the keeper at the premises to which it relates.
- (15) The keeper may be addressed either by name or by the description of “the keeper” of the premises (describing them).

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- (16) An appeal—
- (a) against a closing order or a variation order; or
  - (b) against a refusal by the district council to make a variation order or a revocation order,
- may be brought to a magistrates' court by the keeper of the premises to which the order relates or would relate.
- (17) No appeal against an order may be brought after it has come into force, and if an appeal is brought against an order, the order shall not come into force until the appeal has been determined or abandoned.
- (18) No appeal against a refusal to make a variation order or a revocation order may be brought after the expiry of the period of 21 days from the date on which the keeper was notified of the refusal.
- (19) An appeal against a decision of a magistrates' court under this section may be brought to the Crown Court.
- (20) On an appeal to the magistrates' court or the Crown Court under this section relating to any premises the court may confirm an order relating to the premises made under section 4 above or set it aside or give directions to the district council as to the making of such an order relating to the premises.
- (21) Subject to subsection (22) below, it shall be the duty of the district council to comply with any directions under subsection (20) above.
- (22) The district council need not comply with any directions given by the magistrates' court if they bring an appeal against the decision of the magistrates' court to the Crown Court under subsection (19) above within 21 days of the date of the decision.

## 6 **Contraventions of closing orders.**

- (1) In the event of a contravention of any of the provisions of a closing order, whether as originally made or as varied by a variation order, the keeper of the premises to which the order relates shall be guilty of an offence.
- (2) It shall be a defence for a person charged with an offence under this section to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence by himself or by any person under his control.
- (3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding [<sup>F1</sup>level 4 on the standard scale].
- (4) Where an offence under this section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a 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 be liable to be proceeded against and punished accordingly.

### **Textual Amendments**

**F1** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), s. 46

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