

CRIMINAL JUSTICE AND POLICE ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Provisions for Combatting Crime and Disorder.

Chapter 2: Provisions for combatting alcohol-related disorder (Sections 12 to 32)

Offences of permitting drunkenness and disorder in licensed premises and selling to drunken people

Section 17: Closure of certain licensed premises due to disorder or disturbance

34. **Section 17** amends the Licensing Act 1964 (“the 1964 Act”) by inserting new sections 179A, 179B, 179C, 179D, 179E, 179F, 179G, 179H, 179I, 179J and 179K into that Act.
35. New section 179A(1)(a)-(c) describes the circumstances in which a senior police officer may make a closure order in relation to relevant licensed premises. “Relevant licensed premises” does not include non-profit making registered clubs like the Royal British Legion or a working men’s club unless they hold a justices’ on-licence. For the purpose of these provisions a “senior police officer” includes any police officer of inspector rank or above. The provisions do not require the senior police officer to be present at the scene, and he may act on the basis of reports made to him by other officers present to form the reasonable belief required to make a closure order. To make a closure order, the senior police officer must reasonably believe that there is likely to be disorder in, or in the vicinity of and related to, the premises in question, and that closure is necessary in the interests of public safety, including customers; or that there is disorder already taking place in, or in the vicinity of and related to, the premises, and closure is necessary in the interests of public safety; or that he reasonably believes that a disturbance is being caused by excessive noise emitted from the premises, and that closure is necessary to prevent the disturbance. This means, for example, disturbance to local residents living in the neighbourhood of the premises concerned.
36. New section 179A(2) defines the term “closure order” and specifies that the period for which the order may be in force may not exceed 24 hours.
37. New section 179A(3) requires the senior police officer, in deciding whether to make a closure order, to take account of any conduct of the licence holder or manager of the premises in relation to the disorder and disturbance. For example, where a licensee or manager of the premises has acted promptly and correctly in attempting to maintain order and the police have been appropriately involved, it would be open to the senior police officer not to penalise them by making a closure order.
38. New section 179A(4)(a)-(d) specifies the details and information a closure order must include. The order must specify the premises to be closed, the period of closure up to 24 hours, the grounds on which the order is being made, for example, disorder or excessive noise, and explain the effect of new sections 179B-179E of the 1964 Act.

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39. New section 179A(5)(a)-(b) provides that an order shall come into force when the closure order is given by a constable to either the licensee or a manager of the premises. It is necessary to cover managers because, under licensing law, licensees are not required to be present at all times on the premises for which they hold the license.
40. New section 179A(6) creates a new offence of permitting relevant licensed premises to be open in contravention of a closure order or any extension of it. The offence may be committed by any person and on summary conviction an offender will be liable to a fine not exceeding £20,000 or to imprisonment for up to three months or to both.
41. New section 179K(2) makes clear that the premises will be deemed to be open if any person other than the licensee's family or a manager's family enters the premises and purchases or is supplied with any item of food or drink which is usually sold there.
42. New section 179B(1) places a duty on the responsible senior police officer to apply to the relevant justices to consider a closure order as soon as practicable after it comes into force. This should be read in conjunction with new section 179F(1) which requires the responsible senior police officer in question to also notify the clerk to the licensing justices that a closure order is in force if the application is made at this first hearing stage to ordinary justices who are not licensing justices.
43. New section 179B(2) places a duty on the relevant justices to consider whether to exercise their power under the next subsection after the police have notified them of the closure order. Subsection (3)(a)-(c) provides a discretion for the relevant justices to revoke the order if it is still in force and/or to order that the premises remain closed or be closed until the next licensing sessions and/or to make any order they see fit in relation to the premises. The latter option empowers them to allow premises to re-open but subject to certain new terms and conditions which they saw fit to impose.
44. New section 179B(4)(a)-(b) requires the relevant justices, when deciding whether the premises should be allowed to re-open or should remain closed, to consider whether closure of the premises is necessary in the interests of public safety to prevent disorder or is necessary to prevent disturbance. Subsection (5) creates a new offence, which may be committed by any person who permits the premises to be open in contravention of an order made by the relevant justices for the closure of the premises, and provides for an offender on summary conviction to be liable to a fine not exceeding £20,000 or for up to three months imprisonment or to both.
45. New section 179B(6) creates a further offence, which may be committed by any person who fails to comply with or does an act in contravention of any order made by the relevant justices in relation to the premises in these proceedings, and provides for an offender on summary conviction to be liable to a fine not exceeding level 5 (£5,000) or for up to three months imprisonment or to both.
46. New section 179B(7) defines what is meant in the provisions by "relevant justices". This means the licensing justices or, if they are not available, any justices of the peace acting for the petty sessions area in which the premises are situated. This is to ensure that proceedings may be taken forward as soon as possible.
47. New section 179C(1)(a)-(b) provides that the responsible senior police officer concerned may extend the order for up to 24 hours in certain circumstances. This would apply if the officer reasonably believes that the relevant justices are unable to consider the closure order before it expires, and the conditions under subsection (2) are satisfied. Subsection (2)(a)-(b) provides that the conditions to be considered by the police officer are that the closure of the premises is necessary in the interests of public safety to prevent disorder or is necessary to prevent disturbance. Such extensions could be made on an indefinite number of occasions.
48. New sections 179C(3)-(4) provides that the extension of the closure order could only come into force if a constable gives notice of the extension to the licensee or the manager of the premises before the end of the previous closure period.

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49. New section 179D(1)(a)-(b) provides a discretion for the responsible senior police officer to cancel his closure order at any time after he has made it. This must be done before it has been considered by the relevant justices at the first hearing stage under section 179B. New section 179D(2)(a)-(b) requires the responsible senior police officer to cancel the order if he does not reasonably believe that closure of the premises is necessary in the interests of public safety to prevent disorder or is necessary to prevent disturbance. Accordingly, the order must be cancelled if the threat of disorder or disturbance has ended. New section 179D(3)(a)-(b) requires the responsible senior police officer to give notice to either the licensee or to a manager of the premises when he decides to cancel the closure order.
50. New subsection 179E(1) requires licensing justices, at the next licensing sessions, to consider whether to exercise their powers under subsection (2) for any closure orders which are brought to their attention under section 179B. Subsection (2)(a)-(b), read in conjunction with subsection (3), gives licensing justices the discretion to revoke the licence on any ground on which they might refuse to renew a justices' licence of that type or to attach to the licence any new conditions that they think fit. Subsection (4)(a)-(b) prevents the justices considering revocation of the licence, or attaching any conditions to the licence, in these circumstances unless they have given notice to the licence holder, at least seven days in advance of the proceedings, in general terms, of the grounds on which it is proposed the licence should be revoked, or of the new conditions. Subsection (5) provides that where licensing justices have decided whether to exercise their power under subsection (2), they may make any order they see fit in relation to any decision made during the first stage hearing under section 179B.
51. New section 179E(6)(a)-(b) provides that where a decision has been made to revoke the justices' licence under subsection (2), the decision shall have no effect until the expiry of the time permitted for appealing against the decision; or if an appeal is made until the appeal is disposed of. Subsection (7)(a)-(b) provides that where the relevant justices have decided to keep the premises closed at the first hearing stage under section 179B until a decision is taken on whether to revoke the licence at the second hearing stage under subsection (2), the premises shall, subject to section 179G(5), continue to remain closed until the outcome of any appeal against that decision is known, but the licence shall otherwise remain in force. This is to ensure that premises presenting a continuing threat of disorder or disturbance cannot use the appeal arrangements as a means of opening for commercial trade. Subsection (8) creates a new offence of permitting premises to be open in contravention of subsection (7), the penalty for which on summary conviction is a fine not exceeding £20,000, or imprisonment for up to three months, or both. Subsection (9) provides that where licensing justices have decided to attach conditions to the licence under subsection (2), they may suspend those conditions until any appeal against their decision is concluded.
52. The term "next licensing sessions" as used in these provisions is defined in new section 179K. It means the first licensing sessions held not less than fourteen days after the day on which the closure order was considered by the relevant justices at the first hearing stage. This period is to ensure that the persons involved and their legal representatives should have sufficient time to prepare their case.
53. New section 179F(1)(a)-(c) provides that in cases where the police bring a closure order to the attention of ordinary justices of the peace who are not the licensing justices at the first hearing stage under section 179B, they must also notify the chief executive to the licensing justices as soon as is reasonably practicable of the details of the closure order. In practice, this should not cause any problems because the chief executive to the licensing justices is normally situated in the same local magistrates court building. Subsections (2) and (3) provide that the power conferred on licensing justices and ordinary justices of the peace at the first hearing stage under section 179B may be exercised by a single such justice. Subsection (4) provides that any evidence given at the two hearing stages under sections 179B and 179E shall be given on oath. Subsection

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- (5) provides that the Secretary of State may make additional regulations (if necessary) about the procedure for the two hearing stages under sections 179B and 179E.
54. New section 179G(1)-(3) provides details of the rights of appeal against any decisions made by the justices at the two hearing stages under sections 179B and 179E. The appeal would be to the Crown Court, and must be submitted within 21 days of the decision. Subsection (4) provides that in cases where the licence holder gives notice of appeal against a decision to revoke the licence made at the second hearing stage, the Crown Court has the discretion to order that the licence continues in force until the conclusion of the appeal even though it might otherwise have expired. Subsection (5) provides that in cases where the licence holder appeals against the decision to revoke the licence and the relevant premises remains closed by virtue of section 179E(7), the Crown Court has the discretion to order that the premises may re-open subject to any conditions it thinks fit. Subsections (6) to (8) provide that the normal rules on appeals under sections 21, 22 and 23 of the Act (the Licensing Act 1964) have been modified for the purpose of this measure.
55. New section 179H(1)-(4) provides powers to deal with persons who fail to leave licensed premises at the request of the licence holder or manager in cases where a closure order has been made or extended, or when the closure order has been confirmed by the justices at the first hearing stage under section 179B, or where the premises remain closed under section 179E(7). Any person who without reasonable excuse fails to comply with such a request commits an offence, the maximum penalty for which on summary conviction is a level 1 fine (£200). Subsections (3)-(4) also provide that a constable is required to help remove from the premises any such person at the request of the licence holder or manager, and the constable may use reasonable force when exercising this power.
56. New section 179I provides the police with an immunity from liability for damages in certain types of cases when they exercise their power to close licensed premises under these provisions.
57. Subsection (1) provides that a constable (which in practice means any police officer) should not be liable for any “relevant damages” claimed by another person which results from any action the constable takes or omits to take while performing his functions in making and executing a closure order in accordance with the provisions of sections 179A to 179H. The term “relevant damages” is defined in subsection (5) below.
58. Subsection (2) provides the same immunity from liability as in subsection (1) for chief officers of police. This relates to their vicarious responsibility for the actions of constables who are under their direction or control while the constables are exercising the power to make and execute a closure order.
59. Subsection (3) provides that the immunity from liability under this section does not apply if the act or omission of the constable is shown to have been in bad faith. It also provides that the immunity does not apply to an award of damages made where the act or omission of the constable is found to be unlawful under the provisions of section 6(1) of the Human Rights Act 1998. This refers to any act which is not compatible with any of the rights under the European Convention of Human Rights. Subsection (4) provides that the immunity from liability under this section does not affect any other exemption from liability for damages, for example under common law (e.g. case law). Subsection (5) defines the term “chief officer of police”. It also defines the term “relevant damages” as damages awarded in judicial review cases, or in claims made under the civil law for negligence or for misfeasance in public office. The immunity under this section should not, for example, affect damages awarded for assault, unlawful arrest, racial discrimination or other similar illegal acts.
60. New section 179J(1) provides that where an offence of, for example, failing to comply with a closure order or any other court order under these provisions has been committed by a body corporate, a director, manager, secretary or other similar officer of the body

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corporate may also be guilty of the offence. Both the individual officer and the body corporate may also be guilty of the offence. New section 179J(2) also provides that where the affairs of a body corporate are managed by its members, and there has been any act or default of the kind described in the preceding subsection by any member, the liability to prosecution and punishment will extend to that member as if he were a director of the body corporate.

61. New section 179K(1) defines several terms used in sections 179A to 179J. These include “chief officer of police”, “closure order”, “manager”, “notice”, “relevant justices”, “relevant licensed premises”, “responsible senior police officer” and “senior police officer”. Subsection (2) provides that for the purposes of sections 179A to 179I, the relevant licensed premises are open if any person other than the licence holder or manager, or a member of their family, enters to buy or is supplied with any food or drink usually sold on those premises.