



**DEPARTMENT FOR CULTURE, MEDIA AND
SPORT**

**GUIDANCE TO THE POLICE ON NEW POWERS TO
CLOSE DISORDERLY AND EXCESSIVELY NOISY
LICENSED PREMISES**

CRIMINAL JUSTICE AND POLICE ACT 2001: SECTION 17

1. Section 17 of the Criminal Justice and Police Act 2001 (“the 2001 Act”) is expected to be brought into force by Commencement Order on 1 December 2001. During the Bill’s various stages in Parliament, Home Office Ministers, who were then responsible, gave firm undertakings that they would provide guidance to the police about the use of the new powers in section 17. This Addendum to DCMS Licensing Circular 01/2001 constitutes that guidance. Police officers and other recipients of this circular should note that responsibility for Government policy on alcohol and public entertainment licensing was transferred from the Home Office to the Department for Culture, Media and Sport on 8 June.

PART A: INTRODUCTION

Summary

2. Section 17 of the 2001 Act inserts new sections 179A – 179K into the Licensing Act 1964. It provides the police with new powers to close licensed premises instantly in certain specified circumstances. Action will normally only follow where there is a serious on-going or potential danger to the public or serious disturbance to local residents.

3. This guidance has been prepared by the Secretary of State in consultation with the Association of Chief Police Officers, the Magistrates' Association, the Justices' Clerks' Society and representatives of the hospitality and leisure industry. The guidance has no binding effect on police officers who, within the terms of their force orders and the law, remain operationally independent. The guidance is provided to support and assist police officers in interpreting and implementing the new sections of the 1964 Act in the interests of public protection, the prevention of crime and disorder and the reduction of anti-social and nuisance behaviour.

4. It is recognised that this guidance cannot cater for every circumstance and that instances may arise where officers will determine the need to operate in ways which will not wholly conform with this guidance. However, at all times, senior police officers deploying the powers in question should seek to ensure that their actions are appropriate, proportionate and necessary in all the circumstances.

Other relevant legislation

5. Police officers reading this guidance would also find it beneficial to familiarise themselves with the terms of:
 - ?? Sections 172, 174 and 188 of the Licensing Act 1964;
 - ?? Part 3 of the Environmental Protection Act 1990;and
 - ?? The Noise Act 1996

6. The new powers supplement existing powers contained in these sections and do not replace them.

The duty of licensees and managers of licensed premises

7. Since 1872, the law of England and Wales has matched the right of licensees to sell and supply alcohol to the general public with firm and absolute statutory duties which cannot be side-stepped. The licensed trade has long acknowledged and understood the social responsibilities and duties which a justices' licence carries with it. Section 172 of the Licensing Act 1964, as amended by the Criminal Justice and Police Act 2001, provides that licensees and managers of licensed premises commit an offence if they permit drunkenness or any violent, quarrelsome or riotous conduct to take place in licensed premises. Similarly, it is an offence to sell alcohol to a person who is intoxicated. Licensees and managers are therefore under a duty to deny entry to drunken and potentially disorderly people and have powers under section 174 of the 1964 Act to expel such people if they do gain entry.
8. The new police powers to close disorderly or excessively noisy licensed premises underline the social responsibilities and existing statutory duties on the licensed trade; and the need to enforce the new provision of the 1964 Act will usually arise where there has been a failure to comply with the duties referred to above.

Rights of Entry

9. In order to supervise licensed premises, the police have a right to enter the premises. These statutory rights are quite separate from their existing rights under common law. They may enter:
 - ?? At any time when the premises are open
 - ?? At any time if they believe that an offence is being committed
 - ?? Within half an hour of the end of licensing hours

It is also an offence to fail to admit a constable who requires entry in these circumstances.

General Context

10. A Research Study, “Alcohol and Society”, conducted by MORI for the Portman Group and published in January 2001, revealed the level of public concern about alcohol-related crime. 19 per cent of men and 9 per cent of women claimed to have been the victim of alcohol-related violence in a pub at one time or another. The figure rises to 21 per cent for frequent drinkers and to 25 per cent for the under-35s. More than half the respondents to this survey thought that alcohol-related violence in pubs, clubs and bars was increasing. Most licensees and managers of licensed premises work hard to control disorderly behaviour in the interests of their customers and staff. But police officers will be aware that a minority of licensees and managers can behave irresponsibly and fail to take sufficient action to control drunkenness and disorderly behaviour, or to protect their neighbours from excessive noise.

Need for Guidance

11. On introducing the Bill in Parliament, and at its various stages, the Government made clear that it understood the potentially serious commercial consequences for businesses operating pubs, nightclubs and bars of the implementation of the new powers. Home Office Ministers stressed that the police could be trusted to use these tough powers responsibly in the interests of public protection and the wider community. However, the limited immunity from legal action to recover commercial losses which the Act gives to the police underlines the need for the police to be seen to act prudently, fairly and responsibly when deploying these powers. This guidance is intended to assist officers in achieving those goals and is set out in four parts:

- ?? the law
- ?? important points for consideration
- ?? good practice
- ?? a specimen closure order (Annex A)

PART B : THE LAW

Making a Closure Order

12. Section 17 of the 2001 Act inserts new sections 179A to 179K into the Licensing Act 1964. It contains the procedure for closing premises, which are licensed to sell alcohol for consumption on those premises, in cases where the police decide this is necessary due to disorder, likely disorder or disturbance.
13. **Section 179A (1)** describes the circumstances in which a senior police officer, of the rank of Inspector or above, may make a closure order. A closure order may be made for three broad reasons. 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 the premises in question, and related to those premises, and that closure is necessary in the interests of public safety, including for example, customers using the premises; or
 - ?? there is disorder already taking place in or in the vicinity of the premises, and related to those premises, and that closure is necessary in the interests of public safety; or
 - ?? 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.
14. The Act does not require the senior officer to be present at the scene. He may act on the basis of reports made to him by other officers present to form the required reasonable belief. However, it is important to understand that the senior police officer may not delegate his responsibility to meet the tests set out in the section to a junior officer. The senior police officer must personally hold the reasonable beliefs necessary to justify use of the powers.

15. **Section 179A(2)** defines what is meant by a “closure order” and “relevant licensed premises” as used in the 2001 Act. A “closure order” is an order requiring relevant licensed premises to be closed for a period not exceeding twenty-four hours beginning when the order comes into force. “Relevant licensed premises” includes all on-licensed premises within the meaning of the 1964 Act. But it does not include off-licences or non-profit making registered clubs like the Royal British Legion or a working men’s club unless they hold a justices’ on-licence. It also does not apply to premises where an occasional licence is in force. Broadly, the powers cover public houses, nightclubs, bars, licensed restaurants and other licensed premises.

The conduct of the licensee or manager of the premises

16. **Section 179A (3)** requires the 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.

17. 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 within the discretion of the senior police officer not to proceed by making a closure order, and to deal with the situation by other means. Similarly, any failures, omissions and bad practice by the licensee or manager should be considered, and may properly influence the decision to make a closure order. Part D of this circular provides relevant guidance in respect of these issues.

Content of a closure order

18. **Section 179A(4)** specifies the details and information a closure order must include. These are:

- ?? A description specifying the premises to be closed;
- ?? The period, up to 24 hours, for which the premises must be closed;
- ?? The grounds (reasons) for making the order, which should relate to the requirements of section 179A(1); and
- ?? The effect of sections 179B to 179E of the Act.

19. Annex A provides a specimen example of what a closure order might look like, and incorporates a statement of the effects of sections 179B to 179E of the 1964 Act.

Timing of a closure order

20. **Section 179A(5)** requires that a closure order shall come into force as soon as notice is given by a constable, who does not have to be the responsible senior police officer, to the holder of the justices' licence for the premises or a manager of the premises. This is important because the combined effect of section 179A(1), (4) and (5) is that the notice of the closure order must be served immediately after the senior police officer makes his/her decision and the effect of the order is immediate. In other words, a decision cannot be made by a senior police officer several days in advance in anticipation of an event which might give rise, for example, to public order problems. The senior officer must make a contemporaneous assessment of the public order or noise nuisance problem, and a decision to make an order must be given immediate effect. The proper course for dealing with potential disorder at future events which may be fuelled by sales of alcohol is to consider using the existing arrangements described in section 188 of the 1964 Act involving an order obtained from local justices. The definition of "manager" is given in section 179K (see below) and includes any person working in the relevant premises in a capacity which gives him or her the authority to close the premises. In addition, section 179K also makes clear that notice of a closure order must be given in writing.

Offence of opening in breach of a closure order

21. **Section 179A (6)** creates a new offence of permitting, without reasonable excuse, relevant licensed premises to be open in contravention of a closure order or any extension of that order. 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 imprisonment for up to three months, or to both. The question of what constitutes a reasonable excuse is ultimately a matter for the courts, but reasonable excuses may turn heavily on matters within and outwith the control of the licensee or manager of the premises.

Consideration of a closure order by the courts

22. **Section 179B(1)** places a statutory duty on the senior police officer who has made a closure order to notify the local justices of the closure order as soon as practicable after it comes into force. Officers may be criticised by the court if they are unable to demonstrate that they have made reasonable and best efforts to contact the court at the first opportunity.

Duties on the relevant justices

23. **Sections 179B(2) to (4)** place requirements on the relevant justices (this need not be the licensing justices and can be a single justice) to consider the effect of a police closure order as soon as practicable after they have been notified of it. The combined effect of sections 179B(1) and (2) is to ensure that the courts take over responsibility for future actions in respect of the premises with the minimum of delay. The relevant justices involved cannot abdicate this responsibility, for example, by leaving the issues to the licensing justices at a later date.

The powers of the relevant justices

24. The relevant justice(s) has the option of deciding whether:

?? to revoke the police's closure order if still in force; or

?? to extend the closure until the matter is dealt with by the licensing justices at the next licensing sessions; or

?? to make any other order as they think fit in relation to that premises.

25. The relevant justice(s) may only order the continued closure or closure (if the premises have re-opened) of the premises if closure is necessary in the interests of public safety at the time of their decision because of disorder or likely disorder related to and in or in the vicinity of the premises; or if closure is necessary to ensure that no disturbance is, or is likely to be, caused to the public by excessive noise emitted from the premises.

26. Therefore, in continuing the closure of the premises or on deciding to close the premises afresh, the justices must be satisfied that any threat to public safety or of disturbance to the public exists, and their decision must be based on current

circumstances and not those prevailing when the senior police officer took his decision. However, the events which led to closure will clearly be influential.

27. It would be open to the police to propose what course of action may be appropriate; and to the licensee or his representatives to make representations to the justices. If the senior police officer concerned believes that closure should continue for the reasons described in section 179A, the burden of satisfying the justices will fall on him/her, and he would need to be prepared to make that case to the relevant justices. However, these decisions are ultimately for the court.
28. In the case of “any other order” the justices may think fit, this could include, for example, allowing the premises to re-open but subject to restricted hours of trading. This might be because the disturbance to local residents is occurring only at later hours. Another example might be where a public house is used by rival football supporters and a sign displayed in the pub (disparaging one team or another) appears to be the root cause of the earlier disorder. It would be open to the relevant justices to allow the premises to re-open pending a hearing before the licensing justices, subject to the removal of the offending sign. Finally, if the senior police officer has cancelled the closure order (see Section 179D), and the premises have re-opened by the time of the hearing, it is within the relevant justices’ powers to order it to be re-closed if the terms of sub-section 179B(4)(a) or (b) are satisfied.
29. **Section 179B(5)** creates a new offence, which may be committed by any person who, without reasonable excuse, permits the premises to open in contravention of an order made by the justices for the closure of the premises, and provides for an offender on conviction to be liable to a fine not exceeding £20,000, or to three months imprisonment, or to both. The definition of “open” in section 179K(2) will be particularly relevant to the commission of this offence and is explained below.
30. **Section 179B(6)** creates a further offence, which may be committed by any person who, without reasonable excuse, fails to comply with or does an act in contravention of the conditions or restriction contained in any other order made

by the justices in these proceedings, and provides for an offender on conviction to be liable to a fine not exceeding level 5 (£5,000), or to three months imprisonment, or to both.

31. **Section 179B(7)** defines “relevant justices” as the licensing justices for the licensing district in which the premises are situated; or if no such justice is available within a reasonable time, justices of the peace acting for the petty sessions area in which the premises are situated. The reason for providing this flexibility is to ensure that the matter is transferred from police hands to the jurisdiction of the courts with minimum delay.
32. **Section 179B(8)** provides that in sections 179B to 179K, “responsible senior police officer” means the senior police officer who made the initial closure order, but also provides that the chief officer of police may designate another senior police officer to act in his or her stead if not available.

Extensions of closure orders by the police

33. **Section 179C** provides for the extension of closure orders by the police where a hearing before the relevant justices has not been possible for any reason.
34. **Section 179C(1)** provides that the responsible senior police officer may extend a closure order if he reasonably believes that:

?? The relevant justices will not, by the end of the period specified in the closure order or any extension of it, have considered the case under the terms of section 179B; and

?? The conditions for an extension under the Act (see paragraph 35 below) are met.

In these circumstances, the responsible senior police officer may extend the closure order for up to another 24 hours.

35. **Section 179C(2)** describes the conditions that must be met before a closure order can be extended. There are two reasons which can justify making an extension.

?? Firstly, the senior police officer must reasonably believe that closure is necessary in the interests of public safety because of disorder or likely disorder, related to the premises, and on or in the vicinity of the premises.

?? Alternatively, the officer reasonably believes closure is necessary to ensure that no disturbance is, or is likely to be, caused to the public by excessive noise emitted from the premises.

However, it is important to note that the senior police officer cannot switch horses. If the initial order was made on grounds of disorder, he or she cannot extend that order on grounds of likely noise nuisance.

36. **Sections 179C(3)-(4)** provide for the service of notice that an extension has been made. Notice must be given in writing. An extension of a closure order comes into force as soon as notice of it has been given by a constable to either the licensee or a manager of the premises. Given, in this context, means handed to the licensee or manager. But no such extension can come into force before the end of the previous closure period.

37. The Act does not set a limit on how many occasions a closure order may be extended for a further period up to twenty-four hours. But it is important to note in this context that once an initial closure order has been made, the responsible senior police officer remains under a statutory duty to apply as soon as reasonably practicable to the relevant justices for the matter to be considered; and the relevant justices are also under a statutory duty to consider the matter as soon as reasonably practicable. Moreover, the responsible senior police officer may only extend a closure order if the criteria outlined in sub-sections 179A(1)(a) – (c) continue to be met. In these circumstances, extensions of closure orders by the police should be rare.

Cancellation of a closure order by the police

38. **Section 179D(1)** provides the senior police officer with a discretion to cancel his/her closure order and any extension of it at any time after it is issued, but before it has been considered by the justices, if he/she believes that the closure is no longer necessary.
39. It is important to note that cancellation of a closure order will not end the duty of the responsible senior police officer to apply to the relevant justices to consider the matter. Similarly, if a closure order has been made and later cancelled, revocation of the justices' licence will also have to be considered by the licensing justices under the terms of section 179E described below. A closure order should therefore never be made lightly as these automatic procedures, which will impact on police resources, cannot be discontinued.
40. The effect of cancellation is that the premises will again be free to open within the terms of their justices' on-licence and licensing law until such time as the relevant justices or the licensing justices decide differently.
41. **Section 179D(2)** obliges the responsible senior police officer to cancel a closure order or any extension of it in two circumstances. He or she must cancel a closure order or any extension of it if he or she does not any longer reasonably believe that closure is necessary in the interests of public safety because of disorder or likely disorder, related to the premises, on or in the vicinity of the licensed premises. Similarly, in the case of noise nuisance, he or she must cancel the closure order or any extension of it if he or she no longer reasonably believes that closure is necessary to ensure that no disturbance is, or is likely to be, caused by excessive noise emitted from the premises.
42. **Section 179D(3)** requires the responsible senior officer to ensure that notice of a cancellation is given to the licensee or a manager of the premises. The notice must be in writing and should be handed to the licensee or manager.

Revocation proceedings following service of a closure order

43. **Section 179E** contains the procedure for reviewing the licence of the affected premises at the next licensing sessions. At that stage, under **section 179E(1)**, the licensing justices shall of their own motion consider whether to exercise their powers under section 179E(2), details of which are given below. The “next licensing sessions” is defined in section 179K of the amended 1964 Act as the first licensing sessions held not less than fourteen days after the day on which the closure order concerned was considered by the relevant justices under section 179B of the Act. There is no obligation on the licensing justices to do more than consider whether to exercise their powers under section 179E(2); and they may decide not to do so.
44. **Section 179E(2)** provides that the licensing justices may revoke the justices’ licence for the premises concerned; or attach to it such conditions as they think fit, which may include substituting new conditions for existing ones. No new condition can involve the payment of any monies, for example, a bond. It is, of course, open to the licensing justices to decide not to revoke the licence or to attach new conditions to it.
45. **Section 179E(3)** gives the licensing justices power to revoke the licence on any ground on which they might refuse to renew a justices’ licence. This means that the licensing justices may take into consideration not just the incident which gave rise to the decision to issue a closure order, but the entire licensing history associated with the premises in question.
46. **Section 179E(4)** provides that the licensing justices may only use their powers under section 179E(2) if they have given to the licence holder at least seven days notice of their intended action in general terms. Notice must specify the grounds on which it is proposed to revoke the licence or specify the conditions which are proposed to be attached to the licence and the reasons for them.
47. **Section 179E(5)** provides that having made their decision under section 179E(2), the licensing justices may also decide to extend or cancel the closure order or any extension of it made by the police or the relevant justices at the earlier hearing.

48. **Section 179E(6)** provides that having made a decision under section 179E(2) to revoke a justices' licence, the revocation does not have effect until the time given for appealing against the decision; or if the decision is appealed against, until the appeal is determined. This limitation does not apply to the imposition of any new conditions attached to the licence under the terms of section 179E(2), which would have immediate effect. But either decision gives rise to an entitlement to appeal.
49. **Section 179E(7)** provides that where the relevant justices have extended the closure of licensed premises until the hearing before the licensing justices at the next licensing sessions and the licensing justices decide to revoke the licence, the premises will remain closed until the expiry of the time limit for appealing against the decision or if an appeal is lodged, until the appeal is determined. However, the Crown Court, once seized of an appeal, may under section 179G of the Act decide to re-open the premises, if they think fit, before they determine the appeal. The Act therefore provides, where it continues to be necessary and with the consent of the courts, for a continuous period of closure from the first service of a closure order by the police to the determination of any appeal against any decision to revoke the licence.
50. **Section 179E(8)** creates an offence for a person, without reasonable excuse, to permit premises to be open in contravention of sub-section 179E(7). An individual convicted of this offence is liable to a fine not exceeding £20,000 or to imprisonment for a term not exceeding three months or to both.
51. **Section 179E(9)** gives the licensing justices a discretion, where they have decided to attach new conditions to a licence, on such terms as they think fit, to suspend the operation of those conditions (in whole or in part) pending the determination of any appeal against the decision to attach them or pending the consideration of the question of bringing such an appeal.

Procedural requirements

52. **Section 179F** contains various other rules and procedural requirements. The courts will adopt normal magistrates' courts' procedures which meet the requirements of human rights law.
53. **Section 179F(1)** provides that when applying to the relevant justices for consideration of a closure, the responsible senior police officer shall notify the chief executive to the licensing justices for the licensing district in which the licensed premises are situated that:
- ?? a closure order is in force;
 - ?? the contents of the closure order and any extension of the order; and that
 - ?? an application has been made to the relevant justices under section 179B of the Act.
54. **Section 179F(2)** provides that the powers conferred on the licensing justices by section 179B of the Act may be exercised by a single justice and may be exercised otherwise than at licensing sessions.
55. **Section 179F(3)** provides that the powers conferred on justices of the peace by section 179B of the Act are exerciseable in the place required by the Magistrates' Courts Act 1980 for the hearing of a complaint and may be exercised by a single justice.
56. **Section 179F(4)** provides that evidence given for the proceedings under sections 179B or 179E must be given on oath.
57. **Section 179F(5)** provides that the Secretary of State has the power to make regulations if it is necessary to amend the procedure for the two hearing stages under sections 179B and 179E. The Secretary of State does not intend to provide such regulations unless it proves to be necessary or unless he is so requested by the courts.

Rights of Appeal

58. **Section 179G** provides details of the procedure for appeals 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.
59. **Section 179G(1)** provides that any person aggrieved by a decision of the relevant justices at the first hearing or by the licensing justices may appeal to the Crown Court against that decision. This means that the responsible senior police officer may also appeal to the Crown Court if dissatisfied with decisions made by these courts.
60. **Section 179G(2)** provides that notice of appeal must be given to the relevant chief executive to the justices within 21 days of the decision appealed against.
61. **Section 179G(3)** provides that where any person (who could be a police officer) appeals against a decision by the licensing justices not to revoke the justices' licence, the holder of the justices' licence will be the respondent as well as the licensing justices.
62. **Section 179G(4)** provides that where an appeal is lodged by the licence holder against a decision of the licensing justices' to revoke his licence, the Crown Court may, on such conditions as it sees fit, order that the licence shall remain in force until the determination of the appeal.
63. **Section 179G(5)** provides that where the licensee has appealed against a decision by the licensing justices to revoke the licence, and the premises are closed by virtue of section 179E(7), the Crown Court may, subject to such conditions as it sees fit, order that section 179E(7) shall not apply. Essentially, this means that the Crown Court, when seized of an appeal, may decide to allow premises that have been closed because of disorder or disturbance to re-open until the determination of the appeal subject to any terms, restrictions or conditions the Court applies. The Crown Court's discretion in these matters is therefore wholly unfettered.

Some Crown Court appeals can be protracted, and these powers allow the Court to hear as a preliminary issue a request by the licensee to re-open for the period of the appeal. However, as mentioned above, the Court's discretion is large and is not necessarily governed by the same considerations which are dictated by the Act for the lower courts.

64. **Sections 179G(6)-(8)** make it clear which parts of the normal arrangements for appealing against licensing decisions in the 1964 Act apply to these appeal procedures and which do not apply.

Enforcement

65. Section 179H 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 when the closure order has been confirmed by the justices at the first hearing stage under section 179B.
66. **Section 179H(1)** makes it clear that the enforcement powers in section 179H apply only where a closure order has been made by a senior police officer under section 179A or an order has been made by the relevant justices under section 179B(3)(b).
67. **Section 179H(2)** creates a new offence by providing that any person who fails, without reasonable excuse, to comply with such a request commits an offence, the maximum penalty for which is a level 1 fine (£200). An example of a reasonable excuse in this context might include where individuals reasonably fear leaving the premises because of a hostile mob outside.
68. **Sections 179H(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 that the constable may use reasonable force when exercising this power.

Police exemption from liability for certain damages

69. **Section 179I** provides the police with a limited immunity from liability for damages in certain types of cases when they exercise their power to close licensed premises under this Section 17 of the 2001 Act.
70. **Section 179I(1)** provides that a constable shall not be liable for any damages for anything done by him or not done by him in the performance of his duties under section 17 of the Act. This applies to damages awarded in judicial review cases, or in claims made under the civil law for negligence or for misfeasance in public office. However, the immunity does not apply if the police have acted in bad faith or if they have acted unlawfully in contravention of the Human Rights Act 1998. The immunity should not, for example, affect damages awarded for assault, false imprisonment, racial discrimination or other similar illegal acts.
71. **Section 179I(2)** provides that the chief officer of police shall not be liable for anything done by him or not done by him in the performance of his duties under section 17 of the Act; or for anything done or not done by a constable.
72. **Section 179I(3)** sets out the limitations on the immunity as described in paragraph 63 above.
73. **Section 179I(4)** contains an important technical point. It makes clear that the operation of this immunity is without prejudice to any existing exemption from liability which the police enjoy at common law or otherwise. The police already enjoy some immunity from liability, for example, in relation to some negligence actions involving the investigation and suppression of crime. It was important to establish that the existence of these immunities under common law could not be disputed by arguing that the statutory immunity provided under section 179I would have been unnecessary if they existed.
74. **Section 179I(5)** explains that “relevant damages” means damages in proceedings for judicial review or for the tort of negligence or misfeasance in public office.

Offences committed by a body corporate

75. **Section 179J(1) – (2)** provides that where an offence under section 17 of the 2001 Act has been committed by a body corporate, a director, manager, secretary or other similar officers of the body corporate may also be guilty of the offence. Both individuals and the body corporate may therefore be liable for prosecution. This is important particularly where premises are owned or operated by a business employing the licensee or manager of the premises that may seek to open the premises for commercial purposes with or without the knowledge of the licensee or manager.

Interpretation of sections 179A-179J

76. **Section 179K(1)** defines several terms used in sections 179A to 179J. These include “chief officer of police”; “closure order”; “manager”; “the next licensing sessions”; “notice” (which means notice in writing); “police area”; “relevant justices”; “relevant licensed premises”; “responsible senior police officer”; and “senior police officer”.

77. **Section 179K(2)** defines when licensed premises are to be regarded as “open” for the purposes of section 17, and is important because of its relevance to the commission of offences after a closure order has been made. For the purposes of section 17 of the 2001 Act, the premises are to be regarded as “open” if anyone other than the licensee or a manager of the premises or a member of the family of either of them enters the premises and purchases or is supplied with any item of food or drink or anything else which is usually sold on the premises.

**PART C: IMPORTANT POINTS OF CONSIDERATION IN USING THE
NEW PROVISIONS**

Section 179A(3) – Licensee’s conduct

78. As explained above new section 179A(3) provides that the senior police officer must consider, in particular, the licensee’s conduct before making a closure order. This means that if the licensee has acted incompetently, inadequately or has actually provoked or caused the problems, the officer may take that into account when deciding if to make a closure order. On the other side of the coin, if the licensee or manager has called the police in promptly and acted sensibly in his or her attempts to prevent disorder or excessive noise, that good conduct should also be taken into account.

79. In this context, it must be understood that the powers to close licensed premises are not a penalty to be imposed on the licensee. The Licensing Act 1964 contains offences of permitting drunkenness and disorder on licensed premises for which, on conviction, a court may impose an appropriate penalty on a licensee. Similarly, the Environmental Protection Act 1990 and the Noise Act 1996 provide for penalties to be imposed by the courts on those who are convicted of causing excessive noise nuisance. The powers in section 179A are, first and foremost, designed to protect the public whether a licensee or manager or any other person is at fault or not. This means that even if the licensee has done all he or she can to prevent the disorder or excessive noise, a senior police officer may on occasions still believe that closure is necessary to safeguard the public. These will be fine judgements, appropriately pitched at a senior police rank, and are discussed further in Part D of this guidance. But the police’s overriding consideration should always be the public interest.

80. However, police officers should bear in mind that decisions to close licensed premises will almost always have a seriously damaging commercial impact on the business involved, and possibly on the livelihoods of licensees, managers and members of staff. It should be noted in this context that licensed premises are legitimate commercial outlets authorised by the courts to sell and supply alcohol. Section 179A(3) therefore requires the senior police officer to consider whether

good or bad practice has been exhibited in the context of the problem being investigated. It is therefore important that not only bad practice is considered; good practice, conduct and intentions should normally weigh in favour of a decision not to proceed by compulsory closure of the premises under a police order. On occasions, other options will be available to the police. The exercise of the discretion available to the senior police officer and the other options available are also discussed further in Part D of this guidance.

“In the vicinity” of licensed premises

81. Under section 179A(1)(a) and (b), a closure order may be made on grounds of disorder, related to the premises, on or in the vicinity of licensed premises. A question therefore arises as to how far from the premises incidents can take place and still fall within the term “in the vicinity of”. Whether or not an incident is “in the vicinity of” and “related to” the licensed premises are ultimately matters of fact to be decided by the courts. However, it is important to note that the provisions require a causal connection between any disorder or likely disorder and the licensed premises themselves. The senior police officer cannot close the premises unless “closure is necessary in the interests of public safety.” Accordingly, closure of those particular licensed premises must directly impact on the danger to the public being caused by the disorder, or likely disorder, taking place or expected to take place in the vicinity of the premises. The disorder and the premises must therefore be connected. This issue also arises in the context of any extension of a closure order.

82. Some licensees and managers of licensed premises may consider it unfair that they should be held accountable for incidents taking place outside their control. However, as explained elsewhere, closure orders were not designed as penalties but as a means of ensuring public protection.

83. It should also be noted that the interpretation of “in the vicinity” does not arise in the context of “excessive noise” because the Act requires that any “excessive noise” be “emitted” from licensed premises and cannot be from another source. In other words, noise from the premises itself and from the curtilage of the

premises is relevant: noise from customers in the street beyond the curtilage of the premises cannot be taken into account.

“Likely” disorder

84. A further question arises under section 179A(1)(a) as to when any future disorder is likely to take place to justify a closure order being made. Although not expressly stated, the courts are likely to require that any “likely disorder” should be imminent. As said in the geographical context, there also has to be a causal connection between the likely disorder and the particular licensed premises involved, which makes closure of those particular premises necessary in the interests of public safety. This means that the expected incident must be close in time or imminent and closure of the licensed premises should actively diminish the probability that disorder will take place in the immediate future.

“Excessive noise”

85. The Act does not define the term “excessive noise” as used in section 179(A)(1)(c). Parliament has decided not to constrain the police by providing a more restrictive definition. This means that senior police officers are required to judge reasonably whether the noise is excessive. Such judgements will inevitably have a subjective quality and officers will need to bring their experience to bear in making them. However, it is important to note that the “noise” in question must be “emitted” from the licensed premises. Noise disturbance arising solely from people in the street outside licensed premises would not be sufficient to justify the use of these powers. In addition, the power arises only where the senior police officer reasonably believes that “a disturbance is being caused to the public”. Accordingly, the senior police officer should normally have cause to believe that particular individuals in the vicinity are being annoyed by the noise from the licensed premises. Part D also discusses the question of liaison with local government enforcement officers with existing powers for controlling noise nuisance. It will ultimately be for senior police officers to decide, in the circumstances of any case, whether it is appropriate for them to deploy the powers in section 179(A)(1)(c), which could ultimately lead to the revocation of the licence for those premises, or to refer complaints from local residents to the local authority for action to be taken in the normal way.

“Open” – breaches of closure orders

86. On occasions, police officers will have to decide whether they believe that offences have been committed under sections 179A(6) or 179B(5) or 179E(8) of permitting licensed premises to be open in breach of a closure order or order of the courts. This will not always be straightforward. Whether or not an offence has been committed is ultimately a matter for the criminal courts which will have the assistance of the definition of “open” given in section 179K. This definition makes clear that the premises are open for the purposes of section 179A to 179J if any person other than the holder of the justices’ licence for the premises, a manager of the premises or any member of the family of either of them enters onto the premises and purchases, or is supplied with, any item of food or drink or any item which is usually sold on the premises. The definition is therefore very broad. Premises are to be regarded as open if anything usually sold on the premises is supplied (for free or at a price) to people outside of the licensee’s or manager’s families. The prohibition does not just address the sale or supply of alcohol. For example, the sale or supply of food, coffee or soft drink are covered if those items are usually sold on the premises. But it is important to note that the mere presence of people on the premises does not mean that the premises are “open” under this definition, and the sale or supply of relevant items must be taking place.

87. The definition does not attempt to differentiate between private areas in licensed premises and those parts which are used purely for commercial activity. It provides exemptions only for the licensee or manager and their families. Technically, this could mean that a licensee entertaining private friends in his residential accommodation who provides food and drink at a quiet dinner renders himself liable to prosecution. Similarly, a licensee who contracts a builder or electrician to undertake work at the premises could be committing an offence if he provides the individual with tea and sandwiches. Parliament has therefore relied heavily on the fact that police officers will use their experience and common sense in deciding when to initiate action leading to prosecution. The purpose of the Act is to prevent the disorder or excessive noise which might otherwise occur if the premises were allowed to continue their commercial activities. In cases of

doubt, it would be open to police officers to proceed by informally warning the licensee or manager as to his or her responsibilities under the closure order and of the liability to prosecution.

88. The Act does not define “closed” because the term does not arise in the context of any offence: the issue being whether or not the premises are open (in breach of a closure order) within the terms of the definition in section 179K.

89. Finally, it is important to note all on-licensed premises could be affected and this includes, for example, inns and hotels with guests lodging at the premises. The provision of “items” which are normally sold on the premises to these guests would amount to a breach of the closure order.

Enforcing a Closure Order

90. The Act does not require the licensee or the police to clear the premises of customers following the service of a closure order. It is assumed that normally premises would empty, there being no purpose to the presence of customers if items normally sold or supplied on the premises may no longer be sold or supplied. However, a customer commits no offence if he is not asked to leave and remains on the premises. The licensee or manager of the premises similarly commit no offence arising from the mere presence of such an individual. However, if an individual is asked to leave by the licensee or manager and then refuses to leave, he or she does become liable to prosecution under section 179H(2). Where a licensee or manager asks a police officer for assistance to remove such a customer, the officer is under a statutory duty to afford that assistance (section 179H(3)).

91. The lack of any duty on customers to leave the premises automatically following the service of a closure order is important. The police have existing powers to clear an area if disorder is taking place, and need no additional powers under the new Act to do so. However, it would be equally open to the police to propose a phased emptying of larger premises for the purpose of dispersing, for example, disorderly gangs separately or because it is in the interests of public safety to keep

law-abiding customers inside for a temporary period while troublemakers outside are dispersed by the police.

Making of closure orders outside permitted hours or any extension of those hours granted under the Licensing Act 1964

92. Some premises hold public entertainment licences which allow music and dancing and the service of non-alcoholic beverages and food to continue after the end of permitted hours or after any extension granted for the purpose of allowing sales of alcohol after permitted hours. The powers contained in section 17 of the 2001 Act have force even after the end of the time when the sale of alcohol is permitted. Accordingly, if such premises fall within the criteria described in section 179A, a closure order may be made by a senior police officer. The premises would be in breach of that order if it continued to sell or supply any item – for example, including soft drinks – which is normally sold there.

Length of Police Closure Order

93. Under the definition for “closure order” in section 179A(2), the duration of the order cannot exceed 24 hours. However, it is important to note that this does not mean that the length of the closure should automatically be set for 24 hours on every occasion. The criteria for making a closure order, which is contained in section 179A(1), places an obligation on the senior police officer to close the premises for the period he/she estimates it would take to end the threat to public safety, or as the case may be, the disturbance to local residents. In practice, therefore, closure orders could last between 30 minutes and 24 hour depending on the circumstances of each case. The same obligation to limit the closure also exists under section 179D.

The “manager” of licensed premises

94. In section 179K(1) of the 1964 Act, the “manager of licensed premises” is defined as any person who works in the relevant licensed premises in a capacity which gives him authority to close the premises. This is particularly relevant to the arrangements for serving a closure order under sections 179A(4) and (5). It is not therefore relevant whether or not the individual has the expression “manager” in his or her job title or description. If a licensee has left any member of staff in

charge of the premises, with responsibility for compliance with the licensing laws, that person will normally have been given the authority to close the premises in compliance with permitted hours. Accordingly, the individual would have the delegated authority to close the premises and could therefore be served with notice of a closure order in respect of the premises.

Service of closure orders when a decision has been made remotely

95. Where a senior police officer makes a decision to close licensed premises in accordance with sections 179A(1)(a) – (c), notice of the closure order, providing the written details set out in section 179A(4), may be served by any constable on the licensee or the manager of the relevant licensed premises. It should be noted that there is no need for the senior police officer to sign the order. A specimen of a closure order is attached to this guidance at Annex A.

Service of closure orders generally

96. Notice of a closure order must always be given in writing. “Given”, in this context, should normally involve personal service and means therefore that the notice should normally be handed by a police officer to the licensee or the manager of the premises. If a licensee or manager of the premises refuses to accept the written notice of a closure order, the fact should be noted so that it might be made known to the relevant justice at the hearing under section 179B. The written notice should then be left in plain sight of the licensee or manager. The licensee and manager should be advised orally that the notice contains details of his rights and duties under the Act. It should be noted that if all staff on the premises deny that they have authority to close the premises, this should not prevent the police officer from serving the order on any member of staff, bearing in mind the responsibility on the licensee to ensure that there is a responsible member of staff present at all times and the definition of “manager” in section 179K(1).

PART D : GOOD PRACTICE

97. The Government intend that the new police powers contained in section 17 of the 2001 Act should place licensees and managers of licensed premises under increased pressure to maintain order on licensed premises, and thereby to deter disorder and nuisance behaviour often caused by excessive consumption of alcohol. The powers are intended to make licensees and managers of licensed premises more alive to their responsibilities to the wider community. As such the potential use by the police of these powers should itself be beneficial in terms of preventing disorder on and excessive noise nuisance from licensed premises.

Contingency planning

98. The creation of the new police powers to permit the closing of disorderly and excessively noisy pubs and nightclubs does not diminish the need for good contingency planning to deal with potential public order problems, which may be fuelled by alcohol.

99. Where public order problems are anticipated, as a result of intelligence or publicly available information, which may be fuelled by the ready availability of alcohol, the appropriate action should normally be to consider seeking an order from the courts under section 188 of the Licensing Act 1964 closing specified licensed premises, including off-licences, in the area where the problems are expected to occur. Examples of future events which might justify action by the police under section 188 of the 1964 Act could include football fixtures with a history of public order problems; and political demonstrations which are thought likely to be hijacked by extreme and violent groups. Accordingly, if a football match is taking place on Saturday, and intelligence is received on the preceding Thursday, which indicates that fans may cause disorder, a senior police officer could not make a closure order under section 179A of the 1964 Act on Thursday specifying closure of licensed premises near the football ground during the following Saturday. This is because the order must be made and served at the time the senior police officer forms his or her reasonable belief, and under section 179A(4), the order comes into force as soon as it is served.

100. Even in these circumstances, it would be good practice to establish first the scope for achieving voluntary co-operation from local licensees, thereby avoiding the need to involve the courts (see points on “voluntary co-operation” below).

101. In addition, an effective police licensing policy, promoting good crime prevention strategies and professional practice among local licensees, should result in the new powers being used minimally. Good practice should involve an effective working liaison and system of communication between the police and local licensees and managers of licensed premises. It is recognised that a great deal will depend on the willingness of licensees to involve themselves in a partnership approach, but those licensees who fail to take a socially responsible attitude will place themselves at greater risk of police action under these powers than other licensees who actively co-operate.

Relationship with local licensees and managers

102. It is therefore important that the existence of the new powers should not in any way be allowed to drive a wedge between the police and local licensees and managers. It would be damaging to the police’s capacity to control public order and drunkenness, if licensees or managers, when appropriate, were reluctant to call the police to attend when incidents are taking place because they feared that the police would close their premises. Licensees should be encouraged to give the police early warning of developing problems, where appropriate allowing police intervention before an incident is allowed to get out of hand. The Government fully supports initiatives like Pubwatch, and wishes to see them develop and thrive.

103. It is recognised that the role of the police in enforcing licensing law will vary between force areas. For all police forces, resources will be a key issue and senior officers will have to make difficult decisions about prioritisation according to the prevailing circumstances in any area. However, as a minimum, it is good practice to provide a support and advisory role for the licensed trade. Licensees should know what is expected of them by local police officers in terms of clear standards with regard to the prevention of crime and disorder, particularly with regard to alcohol-related crime and disorder. Police officers should therefore always be

willing to offer advice to licensees on problems associated with alcohol-related crime and disorder.

104. It is offence under section 172 of the Licensing Act 1964 as amended for a licensee or manager to permit drunkenness and disorder on licensed premises, and where any drunken or disorderly people refuse to leave, they are empowered to expel them from the premises. The 1964 Act also places a statutory duty on the police, when requested by the licensee, to assist him or the manager to remove any individual falling into these categories who has refused to leave. Reasonable force may be used to effect such removals. Police officers, so far as possible, should work together with licensees to reduce public drunkenness, nuisance behaviour and crime.

Voluntary Co-operation

105. The police should therefore, whenever possible, seek the voluntary co-operation of licensees and managers in resolving incidents of disorder, potential disorder and excessive noise.

106. Police officers should be aware that any decision to deploy the powers available to them under section 17 of the 2001 Act will inevitably lead, after an initial hearing before the courts, to the licensing justices considering whether or not to exercise their powers to revoke the licence in question. A decision by the justices to proceed on that basis will therefore involve police attendance at court and the preparation of material relating to the revocation proceedings. Senior police officers will only want to commit such resources if necessary and justified in the public interest.

107. If police officers are aware that any licensed premises are showing signs of problematic behaviour relating to disorder, excessive drunkenness or noise which is disturbing local residents, it is sensible to provide early reminders and warnings to licensees and managers of their responsibilities and duties under licensing law; and of police powers under section 17 of the 2001 Act. It should also be underlined that if the police are obliged to deploy their powers, the ultimate

consequences could include revocation of the liquor licence, and closure of the premises until the conclusion of any appeal proceedings before the courts.

108. Similarly, where despite warnings licensed premises exhibit problems over a period of time, but no single instance is sufficient in itself to justify action under new sections 179A – 179K, it is open to the police to pursue revocation of the liquor licence in the normal way.

109. Where the police attend an incident, following complaints about disorder or disturbance to local residents, or attend at the request of the licensee, and a senior police officer of inspector rank or above reasonably believes that closure is necessary under the terms of the Act, police officers should advise the licensee or manager of the premises immediately. Wherever possible, police officers should then give the licensee or manager of the premises an opportunity to close the premises voluntarily, on police advice, for the period leading up to the end of permitted hours that day. A closure order will normally only have to be made if police advice is disputed or rejected and it becomes necessary to take action to enforce closure. When giving advice to close voluntarily, police officers should make clear that they are not engaging in a negotiation. The view of the senior police officer will be final until a court decides otherwise.

110. However, even if the licensee or manager is willing to close voluntarily, it will remain open to the senior police officer to decide to serve a closure order, if he or she judges that to be the right course of action in all the circumstances. It is recognised that circumstances could arise which necessitate such action.

111. Against this background, police officers should also note that a decision not to make a closure order, or to agree to voluntary closure, will not prevent a later decision to pursue the revocation of the liquor licence under the terms set out in the 1964 Act, if that course of action is judged appropriate.

Decisions made remotely

112. Although a senior police officer of inspector rank or above need not be present at the scene to make a decision to close licensed premises, senior police officers

should, as a matter of good practice, attempt to attend wherever possible in order to make a full and personal assessment. Parliament considered that only officers of these ranks and experience should make these decisions because of the serious potential consequences of the decision made. It is of course recognised that it will be difficult for officers, particularly in rural force areas, to attend on every occasion. Where the relevant senior officer cannot attend, it will be important that the information passed to the relevant senior officer is comprehensive and contemporaneously recorded, so that he or she can be clear about the reasons which gave rise to his or her decision under the terms of the Act when required to present them to the relevant justices.

Nearby licensed premises

113. Where disorder is taking place or is expected to take place imminently in the vicinity of several adjacent or closely situated licensed premises, there are likely to be occasions when the responsible senior police officer reasonably concludes that the closure of all the closely situated licensed premises is necessary in the interests of public safety. . However, the same course of action in the case of each of the premises should not necessarily be automatic. For example, if one of the licensees is prepared to close his premises voluntarily or has been more proactive than another in seeking to prevent disorder, the senior police officer may reasonably decide not to make a closure order in respect of those premises, while deciding to enforce the closure of others. Where several closures are pursued simultaneously, a separate closure order must be made in respect of each of the licensed premises, and each would be the subject of the court processes which automatically flow from such action.

Noise nuisance and liaison with the local authority

114. The powers include the capacity to close licensed premises to prevent disturbance to the public which is the result of excessive noise emitted from the premises. The Act does not define what constitutes “excessive noise”. Ultimately, “excessive noise” will be a matter of fact to be decided by the courts in any case. However, senior police officers will need to use their own experience and common sense to decide when noise levels reaching outside the premises have become unacceptable and “excessive”.

115. The enforcement of noise nuisance legislation is normally a matter for local government officers, sometimes working in tandem with police officers. Their powers to take quick action to resolve noise nuisance are however limited, particularly where the noise from commercial premises is caused by people rather than amplified electronic equipment. The new police powers offer a means of resolving noise nuisance problems from licensed premises quickly.
116. The Act requires that the “excessive noise” should be disturbing members of public, for example, in the street or residing locally. In practice therefore, it is likely to be that the police will usually take action under their powers in the 1964 Act following complaints made by the general public. Such complaints may, in certain circumstances, be channelled to the police by local government officers who may initially be the natural point of contact for a complainant. However, the decision as to whether the noise is excessive is a matter for the senior police officer him/herself to decide, and no formal complaint from any individual is necessary before the powers may be exercised. Given their experience of noise problems, the officer may find it helpful to consult local government enforcement officers, if available, before making a decision about the level of noise involved. On occasions, such consultation in respect of an incident which is ongoing may prove impossible without an unacceptable delay.
117. There is therefore some advantage in police forces discussing these matters generally with the local authority to draw on their experience and establish guidelines for officers about noise issues. Chief officers of police may find it valuable and helpful to agree a protocol with the local authority for the handling of noise nuisance issues associated with licensed premises. This would enable a consistent approach to be taken by the police and local government enforcement officers.
118. Where problems are noise related, there should often be scope for resolving the problem without the need to impose a closure order. In this context, police officers should consider those parts of this guidance dealing with voluntary co-operation. For example, noise problems can arise during summer months because

of doors or windows left open, or customers drinking within the curtilage of the premises. It would be open to the police to request the licensee or manager of the premises to close the doors and windows, or to require customers to drink inside. If the licensee or manager complies and the officer is then satisfied that these actions would prevent further disturbance to the public, there may be no need to make a closure order.

Duration of Closure Order

119. As mentioned in paragraph 93 above, the length of the closure should reflect the period during which the threat to public safety, or as the case may be, the disturbance is likely to last in the opinion of the relevant senior police officer. If, for example, a closure is made at 9pm on a Monday evening because of disorder caused by gangs fighting in a public house, closure might only be appropriate for up to two and a half hours (the end of the permitted hours at 11pm, plus drinking up time of 20 minutes). This could be because the senior police officer reasonably believes that there is a threat of gang members (those not arrested) returning to the premises before closing time but after the police have left. However, if the threat is expected to have subsided by closing time, it would probably not be appropriate to impose a closure for a period extending into the following day.

Enforcing a closure Order

120. In making a decision to serve a closure order, the police officers involved should also bear in mind the need to enforce the order. The premises will have to close. The licensee or manager of the premises may no longer sell or supply any item which is normally sold on the premises. There is no automatic requirement for customers to leave. But any customer who without reasonable excuse refuses to leave the premises when requested by the licensee or manager of the premises to do so will commit an offence under section 179H of the 1964 Act. The licensee and his/her staff are entitled to police assistance under section 179H(3) of the 1964 Act to expel customers who refuse to leave.

121. Although there is no automatic requirement for customers to leave, police officers will be aware that in the case of disorder, they have common law powers to clear people away from the scene so that order may be re-established.

122. The police officers involved should also recognise that closing premises will sometimes involve putting a potentially volatile and disgruntled group of customers onto the streets. In this context, if possible, it is good practice to ensure that other licensed premises nearby are warned so far as possible of the action being taken and of licensees' obligation not to admit or serve drunken or disorderly customers. Under section 174 of the 1964 Act, police officers are under a duty, when requested by a licensee or manager of licensed premises, to assist in ensuring that drunken or disorderly persons are expelled from licensed premises, and police officers should therefore offer assistance when necessary in preventing the entry of troublemakers to other licensed premises who might be seeking to cause new problems elsewhere.
123. Police officers are also reminded that, particularly where large capacity venues are involved, they may need additional police assistance to clear the resulting crowd and the availability of that assistance should be considered before any decision is made to make a closure order.

Stating the Effects of Sections 179B to 179E

124. A closure order must contain details of the premises which are to be closed; the period for which the order is requiring them to be closed for up to 24 hours; the grounds or reasons for the decision; and the effect of sections 179B to 179E of the Licensing Act 1964. Annex A to this guidance provides a specimen of what a closure order should look like, and provides a statement of the effect of sections 179B to 179E of the 1964 Act. It is open to the police forces to take their own legal advice as to what the statement should include. However, it is important that it covers the crucial areas shown in Annex A, and in particular that licensees fully understand the consequences of committing the offences associated with failure to comply with a closure order made by the police and extended by the police or the courts.

Monitoring and Review

125. All police forces should monitor their use of these powers, and review their practice on a regular basis. Initially, this should be on a six monthly basis. The

Department of Culture, Media and Sport's Alcohol and Entertainment Licensing Branch should be advised of any particular problems forces are experiencing in deploying the new powers, and would also welcome information about good and effective practice. Such information should be sent to:

Naim Siddiqui
Alcohol and Entertainment Licensing Branch
Tourism Division
Department of Culture, Media and Sport
3rd Floor
2-4 Cockspur Street
London SW1Y 5DH

SIMON BROADLEY
On behalf of the Secretary
of State for Culture,
Media and Sport

Any enquiries about the terms or any interpretation of this guidance should be directed to:

Adrian Smith

Alcohol and Entertainment Licensing Branch

Tourism Division

Department of Culture, Media and Sport

3rd Floor

2-4 Cockspur Street

London SW1Y 5DH

Telephone : 0207 211 6358

e-mail: adrian.smith@culture.gsi.gov.uk

**CLOSURE ORDER MADE UNDER SECTION 179A OF THE
LICENSING ACT 1964**

[SPECIMEN]

Date and Time: _____

Police Force: _____

Name of Senior Police Officer making the Order: _____

Premises to be closed:

Length of Closure (until – time and date):

Reason (grounds) for Closure:

Name of Person on whom the order has been served:

Signature of Person on whom the order has been served:

Notes:

A senior police has decided to make this closure order under the terms of Section 179A of the Licensing Act 1964, requiring the licensed premises specified in the order to be closed for the period of time specified in the order.

Your attention is drawn to sub-section 179A(6) of the 1964 Act. This makes it an offence for a person, without reasonable excuse, to permit licensed premises to be open in contravention of this closure order or any extension of it, and any person found guilty of such an offence shall be liable to a fine not exceeding £20,000 or to imprisonment for a term not exceeding three months or to both.

Under Section 179K(2) of the 1964 Act relevant licensed premises are to be regarded as open, for the purposes of the above offence, if any person other than the holder of the justices' licence for the premises, a manager of the premises or any member of the family of either of them, enters the premises and purchases, or is supplied with, any item of food or drink or any item usually sold on the premises.

You will also wish to note that it is an offence for any person, without reasonable excuse, to fail to leave the premises when asked to do so, for the purpose of ensuring compliance with this closure order, by the holder of the justices' licence for the premises or by any manager of the premises. A person found guilty of this offence would be liable to a fine of up to £200.

Sections 179B – 179E of the Licensing Act 1964

This part of the closure order now explains the effects of sections 179B – 179E of the 1964 Act as required by section 179A(4)(d) of that Act.

Initial hearing

- ?? The senior police officer who made the closure order is under a statutory duty to apply to the relevant justices for them to consider a closure order, or any extension of it, as soon as reasonably practicable after it comes into force.
- ?? A magistrate must consider a closure order made by a senior police officer as soon as practicable after it comes into force.
- ?? Under law on human rights, you are entitled to attend the hearing, to be legally represented, and to make representations to the court before any decision is taken. The Chief Executive to the licensing justices will be able to advise you about the details of the procedures which apply in your area.
- ?? A discretion is provided 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 last of these powers would enable the court to allow premises to re-open but subject to certain new terms and conditions which they may decide to impose.

- ?? When deciding whether the premises should be allowed to re-open or remain closed, the court must consider whether closure of the premises is necessary in the interests of public safety to prevent disorder or disturbance.
- ?? **It is an offence for any person who permits the premises to open in contravention of an order made by the magistrates for the closure of the premises, and provides for an offender on conviction to be liable to a fine not exceeding £20,000 or to three months imprisonment or to both.**
- ?? **It is an offence for any person who fails to comply with or does an act in contravention of any order made by the magistrates in relation to the premises in these proceedings, and provides for an offender on conviction to be liable to a fine not exceeding £5,000 or to three months imprisonment or to both.**
- ?? Where, for whatever reason, the courts are unable to consider a closure order before it expires, the senior police officer concerned may extend the order for up to another period of 24 hours if certain circumstances obtain. These are that the officer reasonably believes that the closure of the premises continues to be necessary in the interests of public safety to prevent disorder or to prevent further disturbance. Such extensions can be made on an indefinite number of occasions.
- ?? The senior police is required to give notice to the licensee or the manager of the premises of such extensions of the closure order.
- ?? The senior police officer may cancel his closure order at any time after he has issued it, but before it has been considered by the court. If he does so, the court must still consider the closure order originally served, and the licensing justices will still be obliged to consider the revocation of the justices' on-licence.
- ?? The senior police officer is required to cancel the order if he reasonably believes that closure of the premises is no longer necessary in the interests of public safety to prevent disorder or disturbance; and is required to give notice to the person on whom he had previously served the closure order when he decides to cancel it.
- ?? The licensing justices must consider revocation of the justices' licence in respect of the premises at the next licensing sessions. They are empowered to revoke the licence on any ground on which they might refuse to renew a justices' licence of that type. **Their consideration is not confined solely to the incident which gave rise to the service of the closure order. They may examine any issues which would normally be relevant to the consideration of revoking a licence.**
- ?? Unless they have given notice to the licence holder at least seven days in advance of the proceedings of the general terms of the grounds on which they propose to revoke the licence, the licensing justices are prevented from considering revocation of the licence.

- ?? Where a decision has been made to revoke the justices' licence, the decision has no effect until the expiry of the time permitted for appealing against the decision; and if an appeal is made until the appeal is determined by the Crown Court. But the licence will in all other respects be treated as if revoked.
- ?? Under section 21 of the Licensing Act 1964 appeals against revocation decisions may be made to the Crown Court, and must be made within 21 days of the decision in question.
- ?? "Next licensing sessions" in these provisions of the 1964 Act 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.
- ?? Where the premises have been kept closed by the court at the initial hearing, and the licensing justices subsequently decide to revoke the licence, the premises must remain closed until the expiry of the time given for appealing against the revocation decision; or if the decision is appealed against until the appeal has been determined by the Crown Court. But, once the Crown Court, is seized of the appeal, it may permit the premises to re-open until the appeal is determined, if it considers it right in all the circumstances, and subject to any conditions it thinks fit.
- ?? **Where the relevant justices have ordered the premises to remain closed pending a hearing before the licensing justices, and the licensing justices have revoked the licence, and the Crown Court has not permitted the premises to re-open, it is an offence for any person, without reasonable excuse, to permit premises to be open, and if found guilty of such an offence, they would be liable to a fine not exceeding £20,000 or to three months imprisonment or to both.**