

POWERS TO CLOSE PREMISES WHICH SELL ALCOHOL WITHOUT A LICENCE

**Summary and Background**

1. This addendum to DCMS Circular 02/2001 gives a brief description of the provisions in sections 19 to 28 of the Criminal Justice and Police Act 2001 (“the 2001 Act”), which is expected to be brought into force by commencement order on 1 December 2001.
2. These sections provide new powers for the police and the local authority to obtain court orders to close down premises which are used to sell alcohol without a justices’ licence in contravention of section 160 of the Licensing Act 1964 (“the 1964 Act”). Section 160 of the 1964 Act makes it an offence to use unlicensed premises for the sale of alcohol, and the police have the power under section 187 of the 1964 Act to confiscate the alcohol found on such premises.
3. In practice, the profits of unlicensed drinking establishments are high and the owners can often absorb the costs of police action, including the seizure of alcohol and the prosecution of staff working in such premises. This leads to rogue premises re-opening quickly having been re-stocked and re-staffed. The police regard such premises as magnets for criminals who prey on unsuspecting customers, often tourists. These new powers would prevent owners from quickly re-stocking and re-opening the premises. The provisions are modelled on provisions contained in the City of Westminster Act 1996, which allows the police and the local authority to close down unlicensed sex establishments.

**Details**

4. A brief description of the provisions in sections 19 to 28 of the 2001 Act are shown below.

Section 19: Closure notices

5. Subsections (1)-(2) empower a constable or a local authority to serve a “closure notice” on any premises where they are satisfied that the premises are being, or within the last 24 hours have been, used for the sale of alcohol for consumption on or in the vicinity of the premises without a justices’ licence in contravention of section 160 of the Licensing Act 1964.
6. Subsections (3)-(5) specify the people on whom a closure notice must or may be served. Subsection (3) provides that a notice must be served on a person who has control of, or responsibility for, the unlawful activities conducted on the premises. In many cases, it is impossible for the police or local authority to trace the owner of the premises involved. The intention is therefore to ensure that action could still be initiated despite the absence of the owner who, for example, might reside abroad.
7. Subsection (4) also requires the police or the local authority to serve the notice on any occupier of any part of the premises whose access may be impeded if the part

involved in the unlicensed sale of alcohol was to be closed. This is to ensure that any innocent person residing in the premises may be a party to any court proceedings under these provisions and have a right to challenge any action taken to close the premises. Subsection (5) provides that a closure notice could also be served on any other person having control of or an interest in the premises. This includes any owner, leaseholder or occupier of the premises.

8. Subsection (6)(a)-(c) requires that a closure notice must contain details of the circumstances in which the premises are said to have been used for the unlawful sale of alcohol; state the effect of section 20 (below) about the powers of the police and local authority to seek a closure order from the courts in respect of the premises concerned; and the steps which may be taken to end or prevent a recurrence of the alleged illegal use of the premises (e.g. to close or to stop the sale of alcohol). **Annex A provides a specimen example of what a closure notice might look like, and includes a statement about the effect of section 20.**

9. Subsections (7)-(9) empowers a constable or the local authority to withdraw a closure notice by serving another document to that effect on everyone who had previously been served with a closure notice. The police or local authority might be minded to use such a power where voluntary steps to end the unlawful sale of alcohol had been taken quickly before any further enforcement action was taken.

10. Subsection (10)(a)-(d) describes who should be regarded as being a person “having control of” or “responsibility for” the premises where the offence of selling alcohol without a liquor licence is occurring. This includes any person seeking to derive profit from or managing the activities; or any person employing people to manage such activities; or any person involved in any way in the conduct of the activities.

#### Section 20 : Applications for Closure Orders

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11. Subsections (1)-(2) enable a constable or the local authority, between 7 days and six months after the service of a closure notice, to apply for a “closure order” from magistrates in respect of the premises specified in the notice.

12. Subsection (3)(a)-(b) prohibits the constable or local authority from applying for a closure order from the court in cases where they are satisfied that there has been a cessation of the unlawful use of the premises, and in cases where they are satisfied that there is no reasonable likelihood that such unlawful use will take place in the premises in the future.

13. Subsection (4) provides that where an application has been made for a closure order, the magistrates have a discretion to issue a summons to all those on whom a closure notice had been served to attend court and answer the complaint.

14. Subsections (5) and (6) provides that when the court decides to issue a summons, they should also send to all the relevant parties a notice in writing of the date, time and place of the hearing. Subsection (7) provides that the procedure for the court hearing should be in accordance with the relevant rules in the Magistrates’ Courts Act 1980.

### Section 21: Closure orders

15. Subsection (1)(a)–(b) provides that on hearing a complaint under section 20, the court may make an order on any terms it considers appropriate against any person on whom a closure notice had been served. However, before doing so, the court should be satisfied that the closure notice was properly served, and that the unlawful use of the premises continues or that there is a reasonable likelihood that the premises will be so used in future.

16. Subsection (2)(a)-(c) provides that the magistrates may include in their order a requirement that the premises be closed immediately to the public and remain closed until a constable or the local authority issues a certificate that they are satisfied that the need for the closure order has ceased. The magistrates may also order that the use of the premises for the unlawful sale of alcohol must cease immediately. In addition, they may order any of the defendants to pay a sum, as determined by the court, into the court which will not be released back to the defendant(s) until the other requirements of the closure order have been met.

17. Subsection (3)(a)–(b) provides that where the court orders the closure of the premises, it may include such conditions as it thinks fit relating to the admission to the premises of individuals. These may, for example, include individuals required to do work to secure the premises or to deal with services or utilities connected there; persons with a legitimate interest in the property; or individuals who need to access another part of the premises for legitimate reasons.

18. Subsection (4) requires a constable or the local authority to fix a copy of the closure order to the premises in a conspicuous place as soon as possible after it is made. This is to ensure that any person going there to continue the unlawful use of the premises is aware of the consequences of their actions.

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19. Subsection (5) requires any payments into court, as a result of a court order under subsection (2) (c) above, to be paid to the chief executive of the court.

### Section 22: Termination of closure orders

20. Subsection (1) provides that where a closure order has been made, a constable or the local authority may issue a certificate to the effect that the need for the order has ceased. It is envisaged by the Government that the police, or as the case may be the local authority, should issue a certificate terminating a closure order in all cases where they are satisfied that the illegal use of the premises has ended.

21. Subsections (2)-(3) provide that the closure order shall cease to have any effect, and that any sum paid into the court will be released, when the police or local authority issue a certificate under subsection (1).

22. Subsection (4) provides that the court has the discretion to include in the closure order any appropriate terms to deal with cases where the order comes to an end after the issue of a certificate.

23. Subsections (5) and (6) provide that the police or the local authority should serve a copy of the certificate as soon as possible on the person against whom the order was made, on the chief executive of the relevant court and also on any other person who requests it. They should also affix a copy of the certificate in a conspicuous position on the relevant premises.

### Section 23: Discharge of closure orders by the court

24. Subsections (1)-(4) provide that where a closure order has been made, any person having an interest in the premises can also make a complaint to the magistrates for an order that the closure order be discharged. This will enable disputes to be decided by the court where, for example, the police and local authority are not satisfied that they should issue a certificate under section 24 which would end the effect of the order. This provision also empowers the court to issue a summons requiring the police officer or local government official who served the closure notice, in respect of which the closure order was made, to attend court for the hearing of the discharge complaint. At the same time as issuing the summons, the court is also required to send a notice of the time, date and place of the hearing to any other person on whom the closure notice was served under section 21. The court may not make an order under this section discharging the closure order unless it is satisfied that the need for the closure order has ceased (i.e. if the premises involved will not be used for the unlawful sale of alcohol if re-opened). Subsection (5) provides that the hearing of the complaint under this section shall be in accordance with the relevant procedure under the Magistrates' Courts Act 1980.

### Section 24: Appeals

25. Subsections (1)-(2) provide that an appeal against a closure order can be made to the Crown Court by any person upon whom a closure notice was served, or by any other person who has an interest in the premises but on whom the closure notice was not served. Subsection (1) also permits appeals to the Crown Court in relation to

discharge orders. All appeals are required to be lodged within 21 days of the closure order or relevant decision being made. There are no restrictions on the grounds for which the appeal can be made.

26. Subsection (3) empowers the Crown Court on appeal to make any order it considers appropriate.

#### Section 25: Enforcement

27. Subsection (1)(a)-(b) empowers a constable, or any authorised person, to enter the premises at any reasonable time, and to do such things as are reasonably necessary to secure that the requirements of the closure order are met. This could include, for example, boarding up the premises to prevent unauthorised persons gaining access to breach the order. “Authorised persons” in this context may include workers tasked to board up such premises.

28. Subsections (2)-(3) require the constable or any authorised person to produce evidence of his authority to enter and also his identity before entering the premises, if asked to do so by the owner, or the occupier or the person in charge of the premises. An offence of intentionally obstructing a constable or an authorised person in the exercise of his powers under the Act is also created. The maximum penalty on summary conviction for this offence would be a fine not exceeding level 5 (£5,000) if committed against an authorised person, or if committed against a constable, imprisonment for up to one month, or a fine of up to level 5 (£5,000), or both.

29. Subsection (4) creates a new offence of opening the premises, without reasonable excuse, in contravention of a closure order. The maximum penalty on summary conviction would be a fine not exceeding £20,000, or imprisonment for a term not exceeding three months, or to both. Subsection (5) creates a further offence of failing to comply with any other terms of the closure order, the maximum penalty for which is a fine not exceeding level 5 (£5,000), or imprisonment for up to three months, or to both.

30. Subsection (6) defines an “authorised person” for the purposes of this section as a person authorised by the local authority in respect of premises situated in the area of the local authority.

#### Section 26: Offences by body corporate

31. Subsections (1)-(2) provide that where the offences mentioned in section 25 are committed by a body corporate, the directors, managers, secretaries or other officers of that body corporate (including, in certain cases, its members) will also be liable for prosecution if it is proved that they had given their consent to the offences, or had connived in their commission, or failed to prevent them by neglecting appropriate duties.

#### Section 27: Service of notices

32. Subsections (1)–(8) describe the procedures for serving notices and documents referred to in sections 19 to 25, including arrangements when the person is a body

corporate, a partnership, or a limited liability partnership, and when either the address or the name of the person to be served cannot be ascertained.

33. The main requirement is that the notice or document must be served by either handing it to the relevant person, or by leaving it at his proper address, or by sending it by post to him at that address. The proper address would be the relevant person's last known address; or if it is a body corporate or a partnership of any kind, the registered or principle office of that firm.

34. In cases where the proper address of the relevant person cannot be ascertained after a reasonable inquiry, the notice or the document would be taken to be served if a copy of it is fixed in a conspicuous position on the relevant premises.

35. In cases where the name of the relevant person cannot be ascertained after a reasonable enquiry, the notice or document would be duly served if an appropriate description of that person is given on the notice or document and (as above) it is handed, or left at the premises, or posted to the premises, or is fixed in a conspicuous position at the premises.

Section 28: Interpretation of terms used in sections 19-27

36. Subsections (1)-(3) define certain terms used in sections 19 to 27 of the Act. These include :

“intoxicating liquor” – has the same meaning as in section 201 of the 1964 Act.

“notice” – means notice in writing.

“premises” – includes any land or other place, whether enclosed or otherwise.

“sale” – includes exposure for sale.

“unlicensed sale” – means any sale which contravenes section 160 of the 1964 Act (selling liquor without a licence).

“a person having an interest in the premises” – any person who is the owner, leaseholder or occupier of the premises.

**Department for Culture, Media and Sport  
October 2001**

CLOSURE NOTICE MADE UNDER SECTION 19 OF THE CRIMINAL JUSTICE  
AND POLICE ACT 2001

[SPECIMEN]

Date and Time of the Closure Notice: \_\_\_\_\_

Police Force or Local Authority : \_\_\_\_\_

Person making the Notice: \_\_\_\_\_ Signature \_\_\_\_\_

Name (if applicable) and Address of the affected Premises:

\_\_\_\_\_  
\_\_\_\_\_

Alleged unlicensed use of the Premises:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Steps which may taken to end the alleged unlicensed use of the Premises, or to prevent it from re-occurring :

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Person (if applicable) on whom the closure notice has been served:

Name \_\_\_\_\_ Signature \_\_\_\_\_

**Notes:**

1. A police officer, or an authorised officer from the local authority, has decided to issue this closure notice under the terms of section 19 of the Criminal Justice and Police Act 2001 (“the 2001 Act”). The notice alleges that the said premises has been operating illegally without a justices’ licence to sell intoxicating liquor in contravention of section 160 of the Licensing Act 1964 (“the 1964 Act”). It also mentions the actions which may be taken by the owner or manager of the premises to end the unlicensed sale of intoxicating liquor, or to prevent it from re-occurring.

Section 20 of the 2001 Act – Closure Orders

2. **Your attention is drawn to section 20 of the 2001 Act. This provides that the police, or as the case may be the local authority, can take action against the said premises by applying to a justice of the peace at the local magistrates’ court for a closure order if the unlicensed sale of intoxicating liquor (as alleged in this closure notice) is continuing, or there is a reasonable likelihood that the premises will be so used in the future. The application for a closure order must be made not less than 7 days, and not more than 6 months, after the date on which this closure notice was served.**

3. **After an application for a closure order is made, the justice of the peace may issue a summons requiring the applicant, and also the person or persons on whom the closure notice was served, to attend a hearing at the court on a specified date and time. At the hearing the court will consider the applicant’s complaint against the said premises and decide whether a closure order should or should not be made.**

4. **In accordance with the Magistrates’ Courts Act 1980, and under the law on human rights, you are entitled to be legally represented at the hearing and to make representations to the court before any decision is taken.**

Appeals – Section 24 of the 2001 Act

5. An appeal against a decision by the magistrates’ court to grant a closure order, or a decision to refuse an application for a closure order, can be made by an affected person to the Crown Court within 21 days.

Enforcement Powers and Offences – Section 25 of the 2001 Act

6. **It is an offence for a person, without reasonable excuse, to permit a premises to be open in contravention of a closure order made by the magistrates court. Any person found guilty of such an offence will be liable to a fine not exceeding £20,000, or to imprisonment for a term not exceeding three months, or to both.**

7. **It is also an offence for a person who, without reasonable excuse, fails to comply with any other terms of a closure order made by the court, or does an act which contravenes those other terms. Any person convicted of this offence is**

**liable to a fine not exceeding £5,000, or to three months imprisonment, or to both.**

**8. Police officers and authorised officers from the local authority have the power to enter the said premises at “any reasonable time”, and do anything reasonably necessary to secure compliance with the closure order (for example, to board up the premises). However, when exercising this power, the constable or the officer must produce evidence of his authority to enter and also his identity before entering the premises, if asked to do so by the owner (or the occupier or the person in charge of the premises).**

**9. It is an offence for a person to intentionally obstruct police officers or authorised local authority officers from exercising these powers. Any person convicted of obstructing a police officer is liable to a fine not exceeding £5,000, or to one month’s imprisonment, or to both. Any person convicted of obstructing an authorised local authority officer is liable to a fine not exceeding £5,000.**