

VIOLENT CRIME REDUCTION ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Alcohol-related violence and disorder

Chapter 3: Other provisions

Section 21: Power of police to require review of premises licence

154. **Section 21** inserts new sections 53A, 53B and 53C in to the Licensing Act 2003. The aim of this provision is to supplement the existing provisions in that Act which provide for conditions to be attached to licences.
155. Section 53A(1) enables a chief officer to apply for an expedited review of a premises licence where a senior police officer (of or above the rank of superintendent) certifies, to the relevant licensing authority, that he considers a licensed premises to be associated with serious crime and/or disorder.
156. Section 53A(2) requires the licensing authority, (i) within 48 hours of receipt of the certificate to consider whether it is necessary to take any of the interim steps set out at section 53B(3) pending a determination of a review of the premises licence; and (ii) within 28 days after receipt of the application, to review the premises licence and reach a determination.
157. Section 53A(3) provides that the Secretary of State must by regulations prescribe the procedure by which the licensing authority should conduct the review.
158. Section 53A(4) defines a senior police officer as being of or above the rank of superintendent. It also defines serious crime by reference to section 81 of the Regulation of Investigatory Powers Act 2000: broadly those crimes for which a sentence of imprisonment of at least three years could be imposed and offences involving violence.
159. Section 53A(5) provides that weekends and public holidays are not counted when calculating the 48 hours mentioned above.
160. Section 53B deals with the taking of interim steps by the relevant licensing authority pending determination of the review.
161. Section 53B(2) enables the relevant licensing authority to take any of the interim steps set out at subsection (3) without the licence holder having an opportunity to make representations. Section 53B(3) lists the interim steps that the relevant licensing authority must consider taking which are (a) modification of the conditions of the premises licence; (b) exclusion of the sale of alcohol by retail from the scope of the licence; (c) the removal of the designated premises supervisor from the licence; (d) the suspension of the licence. Section 53B(4) provides that the conditions of a premises licence are modified when any of them are altered or omitted or any new condition is added. A licensing authority can take one or more of the interim steps pending the review of the premises licence.

- 162. Section 53B(5) provides that any decision by the licensing authority to take an interim step(s) will take effect either immediately or at a later time specified by the authority. Notice of the decision must be given to the holder of the premises licence and the police.
- 163. Section 53B(6) provides that if the licence holder makes representations, that are not withdrawn, the licensing authority must within 48 hours of receiving them (not counting weekends and other public holidays) hold a hearing to consider them. Advance notice of the hearing must be given to the holder of the premises licence and the police.
- 164. Section 53B(8) requires the licensing authority to consider at the hearing whether the interim steps are necessary and to decide whether they should be withdrawn or modified. Section 53B(9) requires the licensing authority to have regard at any hearing to the senior police officer's certificate, any representations made by the police and any relevant representations made by the holder of the premises licence.
- 165. Section 53C deals with the procedure for conducting the determination of an application for a review made under section 53A.
- 166. By virtue of this section, the licensing authority must hold a hearing to consider and determine any application for review and any relevant representations made in respect of it. In order for representations to be 'relevant' they must have been made by the holder of the premises licence, an interested party or a responsible authority (see the definitions in section 13 of the Licensing Act 2003) and they must relate to the licensing objectives. If the representations are made by an interested party there is a further requirement that the licensing authority does not consider them to be frivolous or vexatious. If it does, the authority is to explain its decision to the person who made the representations. The section provides that as a result of this review the authority must, if it considers it necessary for the promotion of the licensing objectives, either modify the conditions of the licence, exclude a licensable activity which the premises licence covers, remove the designated supervisor, suspend the licence for a period not exceeding 3 months or revoke the licence. If the licensing authority does not consider any of the steps to be necessary for the promotion of the licensing objectives, it will leave the licence untouched.
- 167. Section 53C(10) requires the licensing authority to notify the outcome of a review and its reasons for so deciding to the licence holder, the police and any person who has made relevant representations. Section 53C(11) provides that the determination of an application for review will not take effect until any appeal has been disposed of, or if there is no appeal at the end of the period within which an appeal may be brought.

Section 22: provisions supplemental to s. 21

- 168. **Section 22** makes a number of consequential amendments to the Licensing Act 2003.
- 169. *Subsection (2)* prevents functions relating to the taking of interim steps pending a review under section 53C, or the determination itself, being sub-delegated to officers of a licensing authority.
- 170. *Subsection (3)* provides that appeals against a determination made following an application for a review under section 53A can be made by the same persons and in the same manner as in reviews under section 51 of the Licensing Act 2003.

Section 23: Offence of persistently selling of alcohol to children

- 171. *Subsection (1)* amends the Licensing Act 2003 by inserting new sections 147A and 147B.
- 172. Section 147A(1) creates a new offence which is committed if on three or more different occasions in a period of three consecutive months alcohol is unlawfully sold on the same premises to a person aged under 18. The subsection also provides that the offence is only committed if at the time of each sale, the premises were licensed by a premises licence

issued under the Licensing Act 2003 or the premises were being used for a permitted temporary activity under the authority of a temporary event notice given under that Act. The subsection provides that the new offence is committed by the “responsible person”, who is the licence holder or premises user or (if there is more than one), every person who is one of the licence holders or premises users at the time of each unlawful sale.

173. Section 147A(2) provides that for the purposes of the offence alcohol has been sold unlawfully to a person under 18 if the person making the sale believed the individual to be under 18 or did not have reasonable grounds for believing him to be 18 or over. Section 147(3) provides that a person has reasonable grounds for so believing only if he asked the individual for evidence of his age and the evidence produced would have convinced a reasonable person; or no person could reasonably have suspected that the person was less than 18 years of age.
174. Section 147A(5) provides that the minor to whom the sales have been made may be the same individual on each of the three or more occasions, but need not be.
175. Section 147A(6) provides that the same sale may not be counted in respect of different offences for the purpose of enabling the same person to be convicted on more than one occasion of the offence in subsection (1). The same sale may also not be counted in respect of different offences for the purpose of enabling the same person to be convicted of the offence in subsection (1) and offences under sections 146 (sale of alcohol to children) or 147 (allowing the sale of alcohol to children) of the Licensing Act 2003.
176. Section 147A(7) provides that in determining whether an offence under subsection (1) has been committed the following shall be admissible evidence:
 - convictions for offences under section 146 of the Licensing Act 2003 (sale of alcohol to children);
 - cautions given in respect of such offences under Part 5 of the Police Act 1997; or
 - the payment of a fixed penalty under Part 1 of the Criminal Justice and Police Act 2001 in respect of an unlawful sale to a person under 18.
177. Section 147A(8) provides that a person guilty of the offence in subsection 147A(1) shall be liable on summary conviction to a fine not exceeding £10,000.
178. Section 147A(9) provides that the Secretary of State may by order amend subsection (8) in order to increase the maximum fine.
179. Section 147B(1) provides that on the conviction of a premises licence holder for an offence under section 147A, the court may make an order suspending the premises licence for up to 3 months insofar as it authorises sales of alcohol. This means that other licensable activities carried on at the premises, such as the provision of live music, would be unaffected. It also means that although any sales of alcohol by retail within the period of the suspension would be unlawful, sales of other goods would be unaffected. For example, it could be made unlawful for a supermarket to sell alcohol by retail for the period of the suspension but it could continue to sell other products such as vegetables.
180. Section 147B(2) provides that where more than one person is liable for an offence under section 147A, no more than one order suspending the premises licence may be made in relation to the premises in question in respect of convictions by reference to those sales.
181. Section 147B(3) provides that subject to subsections (4) and (5), an order so made by a court would come into force at the time specified by the court making the order. Subsection (4) provides that where a magistrates’ court has made such an order it may suspend the order pending an appeal. Subsection (5) provides that where an appeal has been made to the Crown Court or to the Court of Appeal (including an application for leave to appeal to the Court of Appeal) against his sentence or conviction, the Courts may suspend the order made. In addition, where an offender appeals or applies for leave

to appeal to the House of Lords or the High Court, the Court of Appeal may suspend the order.

182. *Subsection (2)* amends the Licensing Act 2003 by providing that the licensing authority may not institute prosecutions for the offence in new section 147A, and that the weights and measures authority may institute prosecutions for the offence. This is because the licensing authority should not have predetermined any related matters should it be required to consider an application for a review of premises licences on grounds relating to the commission of such offences.
183. *Subsection (3)* amends section 197 of the Licensing Act 2003 by providing that any order made by the Secretary of State under section 147A(9) of that Act to increase the maximum fine on conviction for the offence under section 147 of that Act would be subject to affirmative resolution procedures, except where any increase relates solely to changes in the value of money.
184. *Subsection (4)* provides that for the purposes of an offence under section 147A of the Licensing Act, no account must be taken of a sale of alcohol that took place before the commencement of section 23 of the Violent Crime Reduction Act 2006.

Section 24: Closure notices for persistently selling alcohol to children

185. *Subsection (1)* amends the Licensing Act 2003 by inserting new sections 169A and 169B.
186. New section 169A(1) provides that a relevant officer may give a closure notice applying to any premises if there is evidence that a person (“the offender”) has committed an offence under section 147A in relation to those premises; the relevant officer considers that the evidence is such that, if the offender were prosecuted for the offence, there would be a realistic prospect of conviction; and that the offender is still, at the time the notice is given, the holder, or one of the holders, of the premises licence in respect of those premises. New section 169A(11) defines a “relevant officer” as a police officer of the rank of superintendent or above; or an inspector of weights and measures appointed under section 72(1) of the Weights and Measures Act 1985.
187. New section 169A(2) defines a “closure notice” for the purposes of section 169A. It is a notice that proposes a prohibition on sales of alcohol at the premises in question for a period not exceeding 48 hours; and offers the opportunity to discharge all criminal liability in respect of the alleged offence under section 147A by the acceptance of the prohibition proposed in the notice.
188. New section 169A(3) provides that a closure notice must:
 - be in a form prescribed by the Secretary of State in regulations;
 - specify the premises to which it applies;
 - give particulars of the alleged offence;
 - specify the length of the period during which sales of alcohol would be prohibited;
 - specify when that period would begin;
 - explain the effect of the proposed prohibition and the consequences under the Licensing Act 2003 (including maximum penalties) of a sale on the premises during the period for which it is in force;
 - explain the right of every person who was one of the holders of the premises licence at the time of the alleged offence to be tried for that offence; and
 - explain how that right may be exercised and how the proposed prohibition may be accepted.

*These notes refer to the Violent Crime Reduction Act 2006
(c.38) which received Royal Assent on 8 November 2006*

189. New section 169A(4) provides that the period of the prohibition on sales of alcohol must not exceed 48 hours. It also provides that the time specified as the time from which the period of the prohibition would begin must not be less than 14 days after the date on which the closure notice was served.
190. New section 169A(5) provides that the notice must explain how the right to be tried for the alleged offence under section 147A may be exercised and how the proposed prohibition may be accepted. The closure notice must:
- provide a means of identifying a police officer or trading standards officer to whom notice exercising the option accepting the prohibition may be given;
 - set out particulars of where and how that notice may be given;
 - require the notice to be given within 14 days after the date on which the closure notice was served; and
 - explain the right to be tried for the alleged offence will be taken to have been exercised unless every person who was a holder of the premises licence at the time the notice was given accepts the proposed prohibition.
191. New section 169A(6) disapplies section 184 of the Licensing Act 2003 (giving of notices) to the arrangements for giving closure notices; and provides that a closure notice must be served on the premises to which it applies.
192. New section 169A(7) provides that a closure notice may be served only at a time when it appears to a constable or trading standards officer that licensable activities are being carried on there, for example, when the premises are open for sales of alcohol. It also provides that a closure notice may only be given by being handed by a constable or trading standards officer to a person on the premises who appears to the constable or trading standards officer to have control of or responsibility for the premises.
193. New section 169A(8) provides that a copy of every closure notice given must be sent to the holder of the premises licence for the relevant premises at whatever address for that person is given on the premises licence itself.
194. New section 169A(9) provides that a closure notice must not be given more than 3 months after the time of the last of the three unlawful sales described in section 147A(1).
195. New section 169A(10) provides that no more than one closure notice may be given in respect of offences relating to the same sales; and that a closure notice may not be given in respect of an offence in respect of which a prosecution has already been brought.
196. New section 169B, to be inserted into the Licensing Act 2003, applies where a closure notice is given under section 169A in respect of an alleged offence under section 147A. New section 169B(2) provides that no proceedings may be brought for an alleged offence at any time before the time when the prohibition proposed by the closure notice would take effect.
197. New section 169B(3) provides that if before that time every holder of the premises licence has agreed to accept the proposed prohibition in the manner specified in the notice then:
- the prohibition takes effect at the time specified in the closure notice at the premises in question; and
 - no proceedings may be subsequently brought for the alleged offence against the holders of the premises licence or any related offence. New section 169B(5) provides that any related offence would include any offences under sections 146 and 147 of the Licensing Act 2003 to which the alleged offence under section 147A relates.

198. New section 169B(4) provides that where the prohibition takes effect, the premises licence is suspended for the period specified in the closure notice insofar as it authorises the sale by retail of alcohol. This means that any sales of alcohol which took place during the period when the premises licence was temporarily suspended would be unauthorised under the terms of the Licensing Act 2003. Under section 136 of the Licensing Act 2003 a person commits an offence if he carries on or attempts to carry on any licensable activity on or from any premises otherwise than under or in accordance with an authorisation; or he knowingly allows a licensable activity to be so carried on. A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £20,000, or to both.
199. New section 169B(6) provides that the operation of section 169B is not affected by any contravention of new section 169A(8), which is the requirement to send a copy of every closure notice to the holder of the premises licence for the premises in question.
200. *Sub-sections (2) and (3)* of section 24 amend section 170 of the Licensing Act 2003 by extending the exemption for the police from liabilities for damages to their functions in respect of closure notices and by providing a similar exemption for trading standards officers. *Subsection (4)* also amends section 170 of the 2003 Act to extend the exemption to the actions of community support officers in serving closure notices.
201. *Subsection (5)* amends section 171(5) of the Licensing Act 2003 (interpretation of Part 8) by providing definitions of “trading standards officer” and “weights and measures authority” and “closure notice”. “Closure notice” is defined by reference to section 169A. A trading standards officer is defined as a person authorised by a local weights and measures authority to act in the area where the premises in question are situated in relation to proposed prohibitions contained in closure notices. “Weights and measures authority” is given the same meaning as is given to it by section 69 of the Weights and Measures Act 1985.
202. *Subsection (6)* amends Part 1 of Schedule 4 to the Police Reform Act 2002 (powers of community support officers). It provides that a community support officer shall have the capacity of a constable to serve a closure notice.

Section 25: Mandatory premises licence conditions: door supervision

203. Section 21 of the Licensing Act 2003 imposes mandatory conditions on premises licenses in certain circumstances.
204. As unamended section 21 provides that where the premises licence is to include a condition that one or more individuals must be present at the premises at particular times to carry out a “security activity” the premises licence must include a condition that the individuals carrying out that activity must be authorised to do so by a licence from the Security Industry Authority (SIA) under the Private Security Industry Act 2001. “Security activity” in this context means an activity to which paragraph 2(1)(a) of Schedule 2 to the 2001 Act applies (manned guarding activities).
205. The amendment to section 21 will ensure that the requirement for SIA authorisation in the mandatory condition will only apply in cases where the individuals in question are required to have a licence under the 2001 Act. So if, for example, individuals are exempted under section 4 of the 2001 Act the mandatory condition will not apply so as to require them to be SIA-licensed. This will ensure that the scope of the requirement for SIA licensing for door supervision under mandatory conditions in the Licensing Act 2003 is not greater than the scope of the requirement under the original SIA legislation (the 2001 Act).

Section 26: Designated public places

206. This section amends section 14 of the Criminal Justice and Police Act 2001 regarding places which cannot be designated public places. Designated public places are places

where a restriction on public drinking can be applied by means of a designated public place order, or DPPO.

- 207. *Subsection (2)(a) and (b)* amends section 14(1) to ensure that premises that have a premises licence or club premises certificate as defined under the Licensing Act 2003 for the sale or supply of alcohol cannot be designated by a DPPO. This continues the existing position that licensed premises should not be subject to DPPOs, as they are already subject to the requirements of the licensing regime in the 2003 Act.
- 208. *Subsection (3)* inserts new subsections (1A), (1B) and (1C) into section 14 which deal with the special case of premises for which local authorities are responsible. The amendments will ensure that where a local authority holds a premises licence, or premises for which there is a premises licence are occupied or managed by or on behalf of the Authority. A DPPO will only be excluded from applying to those premises at times when alcohol is actually being sold or supplied and for another 30 minutes thereafter. *Subsection (2)(c)* replaces the previous 20 minutes' grace or wind-down period for all licensed premises with the slightly longer period of 30 minutes. Henceforth, the wind-down period will be the same for all premises, regardless of whether they are occupied or managed by a local authority: an existing DPPO will become operative once this period has elapsed.

Section 27: Directions to individuals who represent a risk of disorder

- 209. This section provides the police with a power to issue a direction to an individual to leave a locality to minimise the risk of alcohol related crime or disorder arising and/or taking place.
- 210. *Subsection (1)* provides a constable in uniform with a new power to issue a direction to leave a locality to an individual aged at least 16 who is in a public place. The direction will prohibit their return to the locality for up to 48 hours. *Subsection (2)* sets out the test which must be satisfied for a direction to be given. A direction can only be given if the presence of an individual in the relevant locality is likely, in all the circumstances, to cause or contribute to the occurrence of alcohol-related crime or disorder in that locality, or to a repetition or continuance thereof of such crime or disorder. The constable also has to be satisfied that such a direction is necessary for the purpose of removing or reducing the likelihood of there being such crime or disorder in that locality during the period for which the direction has effect, or of there being a repetition or continuance in that locality during that period of such crime or disorder.
- 211. *Subsection (3)* specifies matters relating to the form and content of a direction. A direction must be given in writing and may take effect either immediately or at a later time specified by the constable, for example if an immediate departure from the locality is for some reason not practicable. The direction must clearly identify the locality to which it relates and the period for which the individual is prohibited from returning. A constable can impose requirements as to how the individual leaves the locality and the route that must be taken. A direction can be varied or withdrawn by any constable but the period for which the direction applies may not be extended beyond 48 hours.
- 212. *Subsection (4)* contains safeguards to ensure that a direction may not be given where it prevents an individual from having access to a place where he resides; where he needs to attend for employment purposes; education; medical treatment; or as a result of an enactment or court order.
- 213. *Subsection (5)* requires a constable giving a direction to make a record of the key components of the direction.
- 214. *Subsection (6)* provides that an individual who fails to comply with a direction will be guilty of an offence and would be liable on summary conviction to a fine not exceeding level 4 on the standard scale (currently £2,500).

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(c.38) which received Royal Assent on 8 November 2006*

- 215. *Subsection (7)* amends section 64A of the Police and Criminal Evidence Act 1984 to allow the police to photograph the subject of a direction, with or without his consent, elsewhere than at a police station.
- 216. *Subsection (8)* sets out the definition of a public place for the purposes of the direction to leave the locality.