

CRIMINAL JUSTICE AND POLICE ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Provisions for Combatting Crime and Disorder.

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

Alcohol consumption in designated public places

22. Much disorder and public nuisance is associated with the public consumption of alcohol. The Act gives local authorities the power to designate public areas in which it will become an offence to drink alcohol after being required by a police officer not to do so. The police will have the power to require the surrender of alcohol and containers in these circumstances, and those who fail to comply with either requirement will be liable to arrest. Only those public areas where disorder or public nuisance is associated with public drinking will be designated. Where areas are designated the provisions will replace public drinking byelaws that many local authorities have adopted for this purpose. This will create more uniform and comprehensive powers.

Closure of licensed premises

23. The police have powers under the Licensing Act 1964 (“the 1964 Act”) to enter licensed premises to deal with criminal activity taking place, including breaches of licensing law and the terms and conditions of the justices’ licence. They also have powers under common law to enter and quell disorder. In addition, under section 188 of the 1964 Act, they have powers, where any riot and tumult is happening or expected to happen in any county or borough, to seek a warrant from magistrates closing specified licensed premises for such time as the magistrates may decide. This latter power is generally regarded as applying to instances of widespread breakdowns in law and order, and not localised instances of disorder on licensed premises. Furthermore, having entered and quelled any disorder or disturbance, the police have no powers to close the premises to prevent a recurrence of the problems or to protect the general public. At present, they would have to rely on the voluntary co-operation of the licensee.
24. Subsequently, they would have to pursue the revocation of the justices’ licence in respect of the premises involved through normal procedures under the 1964 Act. The Act provides the police with powers to move swiftly to protect the public, by closing licensed premises down immediately for up to 24 hours where disorder or disturbance is taking place. At the earliest opportunity, any closure order must be considered by magistrates to determine whether the premises will remain closed or not, pending a reconsideration of the premises’ licence at the next licensing sessions. The Act also provides to the police an immunity from liability for damages in certain types of cases when they exercise their power to close licensed premises.

Closure of unlicensed premises

25. Under section 160 of the Licensing Act 1964, it is an offence to use unlicensed premises for the sale of alcohol, and alcohol on such premises may be confiscated. However, the profits of unlicensed drinking establishments are such that the owners of these premises can often absorb the costs of police raids on them, the seizure of alcohol and the prosecution of staff working in such premises. In practice therefore the premises often re-open quickly having been re-stocked and re-staffed. Such premises are regarded by the police as magnets for criminals who prey on unsuspecting customers, often tourists. The Act provides the police and local authorities with powers to obtain court orders to close down such premises. This 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.

Placing a positive duty on licensees and the staff of licensed premises not to sell alcohol unless they are reasonably sure of the age of the purchaser

26. Section 169A(2) of the 1964 Act provides a defence to the offence of selling alcohol to a person under eighteen in licensed premises if the defendant had no reason to suspect that the purchaser was under eighteen. In practice it is difficult to secure a conviction where a child looks over the age of eighteen. However, voluntary “proof of age” cards are now widely available, as are other means of establishing age and identity. The Act amends the defence which can be mounted in any prosecution for offences under section 169A of the 1964 Act by requiring a defendant to take all reasonable steps to establish the age of the purchaser.

Test purchasing

27. Sections 169A-169H of the Licensing Act 1964 make it an offence for a child under eighteen years to buy or attempt to buy alcohol in licensed premises, and for any person to send a child to purchase alcohol in licensed premises. In practice, this raises serious doubts over the lawfulness of any operation run by the police or local authority officials (i.e. inspectors of weights and measures) to send a child to purchase alcohol in licensed premises to establish if the business is abiding by the prohibition on sales to minors. The Act provides defences to the existing offences for any police officer, inspector of weights and measures or child engaged in such operations. It therefore places “test purchasing” on a statutory footing.

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

28. Section 172 of the Licensing Act 1964 makes it an offence for a licensee to permit drunkenness or disorder on licensed premises or to sell alcohol to a drunken person. These offences are limited to the licensee alone, and do not extend to staff employed on licensed premises or his agents. Current business practice can mean that the manager of licensed premises may not necessarily be the licensee, and some people working in licensed premises may not technically be employees, for example, relatives helping a licensee. Accordingly, some people working in licensed premises may be able to sell alcohol to drunken people or permit drunkenness and disorder, without committing an offence. The Act inserts new provisions into the 1964 Act to extend the existing offences to any person working in licensed premises who has the capacity to prevent the drunkenness or permit the sale.

Section 12: Alcohol consumption in designated public places

29. **Section 12** is intended to reduce the incidence of disorder and public nuisance arising from alcohol consumption in public places. By virtue of section 13, local authorities will be able to designate areas in which it will become an offence for any person to drink alcohol after being required by a police officer not to do so. The police will also

have the power to confiscate and dispose of any alcohol and containers in the person's possession. It will be an arrestable offence to fail, without a reasonable excuse, to comply with the police officer's request.

Section 13: Designated public places

30. Local authorities will be able to designate areas, for this purpose, in which there are problems arising from public drinking. Regulations concerning the procedures for local authorities to follow in order to designate a public place will be set out in a statutory instrument.

Section 14: Places which are not designated public places

31. The restriction on public drinking will not apply to any premises or area covered by a licence allowing the consumption of alcohol, for example, the premises of licensed houses, clubs or restaurants.

Section 15: Effect of sections 12 to 14 on byelaws

32. Many local authorities have byelaws in place to restrict public drinking and to allow for confiscation of alcohol. These will cease to have effect when the area is designated for the purposes of the Act and the provisions in this Act will then replace the byelaws. Any local authority byelaws which remain in force once these provisions come into effect, and which apply to areas which could be designated for this purpose, will lapse after 5 years.

Section 16: Interpretation of sections 13 to 15

33. This provides definitions of the terms used in this part of the Act, including the meaning of the term "local authority" for this purpose.

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

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

*These notes refer to the Criminal Justice and Police Act
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order and the police have been appropriately involved, it would be open to the senior police officer not to penalise them by making a closure order.

38. New section 179A(4)(a)-(d) specifies the details and information a closure order must include. The order must specify the premises to be closed, the period of closure up to 24 hours, the grounds on which the order is being made, for example, disorder or excessive noise, and explain the effect of new sections 179B-179E of the 1964 Act.
39. New section 179A(5)(a)-(b) provides that an order shall come into force when the closure order is given by a constable to either the licensee or a manager of the premises. It is necessary to cover managers because, under licensing law, licensees are not required to be present at all times on the premises for which they hold the license.
40. New section 179A(6) creates a new offence of permitting relevant licensed premises to be open in contravention of a closure order or any extension of it. The offence may be committed by any person and on summary conviction an offender will be liable to a fine not exceeding £20,000 or to imprisonment for up to three months or to both.
41. New section 179K(2) makes clear that the premises will be deemed to be open if any person other than the licensee's family or a manager's family enters the premises and purchases or is supplied with any item of food or drink which is usually sold there.
42. New section 179B(1) places a duty on the responsible senior police officer to apply to the relevant justices to consider a closure order as soon as practicable after it comes into force. This should be read in conjunction with new section 179F(1) which requires the responsible senior police officer in question to also notify the clerk to the licensing justices that a closure order is in force if the application is made at this first hearing stage to ordinary justices who are not licensing justices.
43. New section 179B(2) places a duty on the relevant justices to consider whether to exercise their power under the next subsection after the police have notified them of the closure order. Subsection (3)(a)-(c) provides a discretion for the relevant justices to revoke the order if it is still in force and/or to order that the premises remain closed or be closed until the next licensing sessions and/or to make any order they see fit in relation to the premises. The latter option empowers them to allow premises to re-open but subject to certain new terms and conditions which they saw fit to impose.
44. New section 179B(4)(a)-(b) requires the relevant justices, when deciding whether the premises should be allowed to re-open or should remain closed, to consider whether closure of the premises is necessary in the interests of public safety to prevent disorder or is necessary to prevent disturbance. Subsection (5) creates a new offence, which may be committed by any person who permits the premises to be open in contravention of an order made by the relevant justices for the closure of the premises, and provides for an offender on summary conviction to be liable to a fine not exceeding £20,000 or for up to three months imprisonment or to both.
45. New section 179B(6) creates a further offence, which may be committed by any person who fails to comply with or does an act in contravention of any order made by the relevant justices in relation to the premises in these proceedings, and provides for an offender on summary conviction to be liable to a fine not exceeding level 5 (£5,000) or for up to three months imprisonment or to both.
46. New section 179B(7) defines what is meant in the provisions by "relevant justices". This means the licensing justices or, if they are not available, any justices of the peace acting for the petty sessions area in which the premises are situated. This is to ensure that proceedings may be taken forward as soon as possible.
47. New section 179C(1)(a)-(b) provides that the responsible senior police officer concerned may extend the order for up to 24 hours in certain circumstances. This would apply if the officer reasonably believes that the relevant justices are unable to consider the closure order before it expires, and the conditions under subsection (2) are satisfied.

Subsection (2)(a)-(b) provides that the conditions to be considered by the police officer are that the closure of the premises is necessary in the interests of public safety to prevent disorder or is necessary to prevent disturbance. Such extensions could be made on an indefinite number of occasions.

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

the licensing justices as soon as is reasonably practicable of the details of the closure order. In practice, this should not cause any problems because the chief executive to the licensing justices is normally situated in the same local magistrates court building. Subsections (2) and (3) provide that the power conferred on licensing justices and ordinary justices of the peace at the first hearing stage under section 179B may be exercised by a single such justice. Subsection (4) provides that any evidence given at the two hearing stages under sections 179B and 179E shall be given on oath. Subsection (5) provides that the Secretary of State may make additional regulations (if necessary) about the procedure for the two hearing stages under sections 179B and 179E.

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

for negligence or for misfeasance in public office. The immunity under this section should not, for example, affect damages awarded for assault, unlawful arrest, racial discrimination or other similar illegal acts.

60. New section 179J(1) provides that where an offence of, for example, failing to comply with a closure order or any other court order under these provisions has been committed by a body corporate, a director, manager, secretary or other similar officer of the body corporate may also be guilty of the offence. Both the individual officer and the body corporate may also be guilty of the offence. New section 179J(2) also provides that where the affairs of a body corporate are managed by its members, and there has been any act or default of the kind described in the preceding subsection by any member, the liability to prosecution and punishment will extend to that member as if he were a director of the body corporate.
61. New section 179K(1) defines several terms used in sections 179A to 179J. These include “chief officer of police”, “closure order”, “manager”, “notice”, “relevant justices”, “relevant licensed premises”, “responsible senior police officer” and “senior police officer”. Subsection (2) provides that for the purposes of sections 179A to 179I, the relevant licensed premises are open if any person other than the licence holder or manager, or a member of their family, enters to buy or is supplied with any food or drink usually sold on those premises.

Section 18: Amendments consequential on section 17

62. This section provides for a number of consequential amendments to be made to other parts of the 1964 Licensing Act.

Section 19: Closure notices

63. 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 liquor licence in contravention of section 160 of the Licensing Act 1964.
64. 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. 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 can 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.
65. 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; 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).
66. 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.

67. 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: Application for closure orders

68. 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.
69. Subsection (3)(a)-(b) prohibits the constable or local authority from applying for a closure order from the court where they are satisfied that there has been a cessation of the unlawful use of the premises and where they are satisfied that there is no reasonable likelihood that such unlawful use will take place in the premises in the future.
70. 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.
71. Subsections (5) and (6) provides that when the court decides to issue a summons, they should 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

72. Subsection (1)(a)–(b) provides that on hearing a complaint under section 22, 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 unlawful use of the premises continues or that there is a reasonable likelihood that the premises will be so used in future.
73. Subsection (2)(a)-(c) provides that the magistrates may include in an 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.
74. 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.
75. 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.
76. Subsection (5) requires the payments into court to be paid to the chief executive of the court.

Section 22: Termination of certain closure orders

77. 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. 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). 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. 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

78. 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

79. 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.
80. Subsection (3) empowers the Crown Court on appeal to make any order it considers appropriate.

Section 25: Enforcement

81. 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.
82. 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.

83. 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.
84. 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

85. 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

86. 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.

Section 28: Sections 19-27: interpretation

87. Subsections (1)-(3) define certain terms used in the sections dealing with the closure of unlicensed premises. These include “closure notice”, “closure order”, “intoxicating liquor”, “notice”, “local authority”, “premises”, “sale”, “unlicensed sale” and “a person having an interest in the premises”.

Section 29: Confiscation of alcohol containers from young persons

88. Section 29 makes a minor amendment to the Confiscation of Alcohol (Young Persons) Act 1997 to ensure consistency between the powers of confiscation set out in this Act and those contained in the earlier Act.

Section 30: Sale of intoxicating liquor to a person under eighteen

89. Section 30 amends the defences available to persons charged with offences under section 169A of the Licensing Act 1964, involving the sale of alcohol to persons under eighteen years, by requiring the defendant to prove that he believed that the customer was not under eighteen and that either he took all reasonable steps to establish the customer’s age or that nobody could reasonably have suspected from the customer’s appearance that he was under eighteen. The defendant will be deemed to have taken “all reasonable steps” if he asked the customer for evidence of his age. However, if it is proved by the prosecution that the evidence of age was such that no reasonable person would have been convinced by it, the defence would fail. The intention is to ensure that licensees and their staff seek proof of age before making sales. For example, proof of age is available through a variety of voluntary proof of age cards, photo-driving licences and passports. Subsection (2) provides that this particular provision does not apply to any sale of alcohol made before the coming into force of this amendment.

Section 31: Enforcement of certain offences relating to underage drinking

90. Subsection (1) adds a new subsection (1A) to section 169C of the Licensing Act 1964. It provides a defence for a person under 18 (a minor) who is sent by a police officer or an inspector of weights and measures, acting in the course of their duty, to purchase or attempt to purchase alcohol from licensed premises, to the offence contained in section 169C(1). That section makes it an offence for any minor to buy or attempt to buy intoxicating liquor in licensed premises. The new subsection enables the officers to seek the assistance of persons under eighteen years to conduct test purchasing operations for the purpose of establishing if licensees and other staff working in licensed premises are abiding by the prohibition on sales to minors contained in section 169A of the Licensing Act 1964.
91. Subsection (2) adds a new subsection (4) to section 169G of the 1964 Act. This provides a defence for the police and inspectors of weights and measures who are engaged in “test purchasing” operations to the offence set out in section 169G. That section makes it an offence knowingly to send a person under 18 to obtain alcohol sold in licensed premises. The defence only applies where a relevant officer is acting in the course of his duty.
92. Subsection (3) adds a new section 169I to the 1964 Act. This new section provides that every local weights and measures authority in England and Wales (which in practice means local councils) has a duty to enforce the offences contained in sections 169A and 169B of that Act (i.e. prohibition on sale of alcohol to minors on licensed premises). This also provides an express power to those authorities for using any person (including minors) to conduct test purchase operations.

Section 32: Drunkenness or disorder on licensed premises

93. Subsection (1) increases the maximum penalty for the offences under section 172 of the Licensing Act 1964 (“the 1964 Act”) to a fine at level 3 (£1,000), to make this consistent with new section 172A. The previous penalty was a level 2 fine (£500).
94. Subsection (2) inserts a new section 172A into the 1964 Act which makes it an offence for anyone (described and defined as a “relevant person”) who works in licensed premises to permit drunkenness or any violent, quarrelsome or riotous conduct to take place on the premises. If a relevant person is charged with permitting drunkenness, the onus is on the defendant to prove that he or she took all reasonable steps to prevent the drunkenness. It is also an offence for the relevant person to sell intoxicating liquor to a drunken person. “Relevant person” is defined as any person, other than the licence holder, who works in a capacity (whether paid or unpaid) which gives him or her the authority to prevent the relevant drunkenness or disorder, or the sale of the alcohol.
95. Currently, under section 172(1) and (3) of the 1964 Act, only the licensee can commit these offences, and he is liable for the actions of employees or other agents acting on his behalf. Permitting drunkenness does not necessarily involve a sale of alcohol to a person who is drunk. The current offence includes the act of allowing any drunken person to remain on licensed premises. The new section ensures that any manager or agent supervising licensed premises on behalf of a licensee, for example the licensee’s spouse, cannot evade responsibility for the prevention of drunkenness and disorder, or the sale of alcohol to a drunkard, during the licensee’s absence for any reason.
96. Subsections (3)-(6) amend section 174 of the 1964 Act by providing that not only the licensee but also a “relevant person” has the right to refuse to admit or to expel from the licensed premises any person who is drunken, violent, quarrelsome or disorderly. The use of this power will enable the “relevant person” to take action to prevent the commission of the offences under the new section 172A.

*These notes refer to the Criminal Justice and Police Act
2001 (c.16) which received Royal Assent on 11th May 2001*

97. Subsection (7) provides that the amendment made to the penalty for the offences under section 172 of the 1964 Act should not apply to offences committed before the coming into force of this amendment.