



# Criminal Justice and Police Act 2001

## 2001 CHAPTER 16

### PART 1

#### PROVISIONS FOR COMBATTING CRIME AND DISORDER

### CHAPTER 1

#### ON THE SPOT PENALTIES FOR DISORDERLY BEHAVIOUR

##### Modifications etc. (not altering text)

- C1** Pt. 1 Ch. 1 extended (15.11.2003) by [Police Reform Act 2002 \(c. 30\)](#), ss. 38, 108, [Sch. 4 para. 1\(2\)\(a\)](#); S.I. 2003/2593, [art. 2\(d\)](#)
- C2** Pt. 1 Ch. 1 modified (26.12.2004) by [The Penalties for Disorderly Behaviour \(Amendment of Minimum Age\) Order 2004 \(S.I. 2004/3166\)](#), [art. 6](#)

#### *Offences to which this Chapter applies*

### 1 Offences leading to penalties on the spot

- (1) For the purposes of this Chapter “penalty offence” means an offence committed under any of the provisions mentioned in the first column of the following Table and described, in general terms, in the second column:

<i>Offence creating provision</i>	<i>Description of offence</i>
Section 12 of the Licensing Act 1872 (c.94)	Being drunk in a highway, other public place or licensed premises
Section 80 of the Explosives Act 1875 (c.17)	Throwing fireworks in a thoroughfare

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Section 31 of the Fire Services Act 1947 (c.41)	Knowingly giving a false alarm to a fire brigade
Section 55 of the British Transport Commission Act 1949 (c.xxix)	Trespassing on a railway
Section 56 of the British Transport Commission Act 1949 (c.xxix)	Throwing stones etc. at trains or other things on railways
Section 169C(3) of the Licensing Act 1964 (c.26)	Buying or attempting to buy alcohol for consumption in a bar in licensed premises by a person under 18
Section 91 of the Criminal Justice Act 1967 (c.80)	Disorderly behaviour while drunk in a public place
Section 5(2) of the Criminal Law Act 1967 (c.58)	Wasting police time or giving false report
Section 43(1)(b) of the Telecommunications Act 1984 (c.12)	Using public telecommunications system for sending message known to be false in order to cause annoyance
[ <sup>F1</sup> Section 5 of the Public Order Act 1986 (c.64)	Behaviour likely to cause harassment, alarm or distress]
Section 12 of this Act	Consumption of alcohol in designated public place

- (2) The Secretary of State may by order amend an entry in the Table or add or remove an entry.
- (3) An order under subsection (2) may make such amendment of any provision of this Chapter as the Secretary of State considers appropriate in consequence of any change in the Table made by the order.
- (4) The power conferred by subsection (2) is exercisable by statutory instrument.
- (5) No order shall be made under subsection (2) unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

#### Textual Amendments

- F1** S. 1(1) table: entry inserted (22.7.2002) by [The Criminal Justice and Police Act 2001 \(Amendment\) Order 2002 \(S.I. 2002/1934\)](#), [art. 2](#)

#### Commencement Information

- I1** S. 1 wholly in force at 12.8.2002; s. 1 not in force at Royal Assent see [s. 138](#); s. 1 in force for certain purposes at 1.3.2002 by [S.I. 2002/344](#), [art. 2](#); s. 1 in force at 12.8.2002 in so far as not already in force by [S.I. 2002/2050](#), [art. 2](#)

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## Penalty notices and penalties

VALID FROM 12/08/2002

### 2 Penalty notices

- (1) A constable who has reason to believe that a person aged 18 or over has committed a penalty offence may give him a penalty notice in respect of the offence.
- (2) Unless the notice is given in a police station, the constable giving it must be in uniform.
- (3) At a police station, a penalty notice may be given only by an authorised constable.
- (4) In this Chapter “penalty notice” means a notice offering the opportunity, by paying a penalty in accordance with this Chapter, to discharge any liability to be convicted of the offence to which the notice relates.
- (5) “Authorised constable” means a constable authorised, on behalf of the chief officer of police for the area in which the police station is situated, to give penalty notices.

### 3 Amount of penalty and form of penalty notice

- (1) The penalty payable in respect of a penalty offence is such amount as the Secretary of State may specify by order.
- (2) But the Secretary of State may not specify an amount which is more than a quarter of the amount of the maximum fine for which a person is liable on conviction of the offence.
- (3) A penalty notice must—
  - (a) be in the prescribed form;
  - (b) state the alleged offence;
  - (c) give such particulars of the circumstances alleged to constitute the offence as are necessary to provide reasonable information about it;
  - (d) specify the suspended enforcement period (as to which see section 5) and explain its effect;
  - (e) state the amount of the penalty;
  - (f) state the justices’ chief executive to whom, and the address at which, the penalty may be paid; and
  - (g) inform the person to whom it is given of his right to ask to be tried for the alleged offence and explain how that right may be exercised.
- (4) “Prescribed” means prescribed by regulations made by the Secretary of State.
- (5) The power to make regulations or an order conferred by this section is exercisable by statutory instrument.
- (6) Such an instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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VALID FROM 12/08/2002

#### **4 Effect of penalty notice**

- (1) This section applies if a penalty notice is given to a person (“A”) under section 2.
- (2) If A asks to be tried for the alleged offence, proceedings may be brought against him.
- (3) Such a request must be made by a notice given by A—
  - (a) in the manner specified in the penalty notice; and
  - (b) before the end of the period of suspended enforcement (as to which see section 5).
- (4) A request which is made in accordance with subsection (3) is referred to in this Chapter as a “request to be tried”.
- (5) If, by the end of the suspended enforcement period—
  - (a) the penalty has not been paid in accordance with this Chapter, and
  - (b) A has not made a request to be tried,
 a sum equal to one and a half times the amount of the penalty may be registered under section 8 for enforcement against A as a fine.

VALID FROM 12/08/2002

#### **5 General restriction on proceedings**

- (1) Proceedings for the offence to which a penalty notice relates may not be brought until the end of the period of 21 days beginning with the date on which the notice was given (“the suspended enforcement period”).
- (2) If the penalty is paid before the end of the suspended enforcement period, no proceedings may be brought for the offence.
- (3) Subsection (1) does not apply if the person to whom the penalty notice was given has made a request to be tried.

VALID FROM 12/08/2002

#### **6 Secretary of State’s guidance**

The Secretary of State may issue guidance—

- (a) about the exercise of the discretion given to constables by this Chapter;
- (b) about the issuing of penalty notices;
- (c) with a view to encouraging good practice in connection with the operation of provisions of this Chapter.

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VALID FROM 12/08/2002

## Procedure

### 7 Payment of penalty

- (1) If a person to whom a penalty notice is given decides to pay the penalty, he must pay it to the justices' chief executive specified in the notice.
- (2) Payment of the penalty may be made by properly addressing, pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise).
- (3) Subsection (4) applies if a person—
  - (a) claims to have made payment by that method, and
  - (b) shows that his letter was posted.
- (4) Unless the contrary is proved, payment is to be regarded as made at the time at which the letter would be delivered in the ordinary course of post.
- (5) Subsection (2) is not to be read as preventing the payment of a penalty by other means.
- (6) A letter is properly addressed for the purposes of subsection (2) if it is addressed in accordance with the requirements specified in the penalty notice.

### 8 Registration certificates

- (1) The chief officer of police may, in respect of any registrable sum, issue a certificate (a "registration certificate") stating that the sum is registrable for enforcement against the defaulter as a fine.
- (2) If that officer issues a registration certificate, he must cause it to be sent to the justices' chief executive for the petty sessions area in which the defaulter appears to that officer to reside.
- (3) A registration certificate must—
  - (a) give particulars of the offence to which the penalty notice relates, and
  - (b) state the name and last known address of the defaulter and the amount of the registrable sum.
- (4) "Registrable sum" means a sum that may be registered under this section as a result of section 4(5).
- (5) "Defaulter" means the person against whom that sum may be registered.

### 9 Registration of sums payable in default

- (1) If the justices' chief executive for a petty sessions area receives a registration certificate, he must register the registrable sum for enforcement as a fine in that area by entering it in the register of a magistrates' court acting for that area.
- (2) But if it appears to him that the defaulter does not reside in that area—
  - (a) subsection (1) does not apply to him; but

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- (b) he must cause the certificate to be sent to the person appearing to him to be the appropriate justices' chief executive.
- (3) A justices' chief executive registering a sum under this section for enforcement as a fine, must give the defaulter notice of the registration.
- (4) The notice must—
  - (a) specify the amount of the sum registered, and
  - (b) give the information with respect to the offence, and the authority for registration, which was included in the registration certificate under section 8.
- (5) If a sum is registered in a magistrates' court as a result of this section, any enactment referring (in whatever terms) to a fine imposed, or other sum adjudged to be paid, on conviction by such a court applies as if the registered sum were a fine imposed by that court on the conviction of the defaulter on the date on which the sum was registered.

## **10 Enforcement of fines**

- (1) In this section—
  - “fine” means a sum which is enforceable as a fine as a result of section 9;
  - and
  - “proceedings” means proceedings for enforcing a fine.
- (2) Subsection (3) applies if, in any proceedings, the defaulter claims that he was not the person to whom the penalty notice concerned was issued.
- (3) The court may adjourn the proceedings for a period of not more than 28 days for the purpose of allowing that claim to be investigated.
- (4) On the resumption of proceedings that have been adjourned under subsection (3), the court must accept the defaulter's claim unless it is shown, on a balance of probabilities, that he was the recipient of the penalty notice.
- (5) The court may set aside a fine in the interests of justice.
- (6) If the court does set a fine aside it must—
  - (a) give such directions for further consideration of the case as it considers appropriate; or
  - (b) direct that no further action is to be taken in respect of the allegation that gave rise to the penalty notice concerned.

VALID FROM 12/08/2002

### *Interpretation*

## **11 Interpretation of Chapter 1**

In this Chapter—

“chief officer of police” includes the Chief Constable of the British Transport Police;

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“defaulter” has the meaning given in section 8(5);  
“penalty notice” has the meaning given in section 2(4);  
“penalty offence” has the meaning given in section 1(1);  
“registrable sum” has the meaning given in section 8(4).

## CHAPTER 2

### PROVISIONS FOR COMBATTING ALCOHOL-RELATED DISORDER

#### *Alcohol consumption in designated public places*

#### **12 Alcohol consumption in designated public places**

- (1) Subsection (2) applies if a constable reasonably believes that a person is, or has been, consuming intoxicating liquor in a designated public place or intends to consume intoxicating liquor in such a place.
- (2) The constable may require the person concerned—
  - (a) not to consume in that place anything which is, or which the constable reasonably believes to be, intoxicating liquor;
  - (b) to surrender anything in his possession which is, or which the constable reasonably believes to be, intoxicating liquor or a container for such liquor (other than a sealed container).
- (3) A constable may dispose of anything surrendered to him under subsection (2) in such manner as he considers appropriate.
- (4) A person who fails without reasonable excuse to comply with a requirement imposed on him under subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (5) A constable who imposes a requirement on a person under subsection (2) shall inform the person concerned that failing without reasonable excuse to comply with the requirement is an offence.
- (6) In section 24(2) of the 1984 Act (offences to which powers of arrest without warrant apply), after paragraph (q) there shall be inserted—
  - “(qa) an offence under section 12(4) of the Criminal Justice and Police Act 2001.”

#### **13 Designated public places**

- (1) A place is, subject to section 14, a designated public place if it is—
  - (a) a public place in the area of a local authority; and
  - (b) identified in an order made by that authority under subsection (2).
- (2) A local authority may for the purposes of subsection (1) by order identify any public place in their area if they are satisfied that—
  - (a) nuisance or annoyance to members of the public or a section of the public; or
  - (b) disorder;



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has been associated with the consumption of intoxicating liquor in that place.

- (3) The power conferred by subsection (2) includes power—
  - (a) to identify a place either specifically or by description;
  - (b) to revoke or amend orders previously made.
- (4) The Secretary of State shall by regulations prescribe the procedure to be followed in connection with the making of orders under subsection (2).
- (5) Regulations under subsection (4) shall, in particular, include provision requiring local authorities to publicise the making and effect of orders under subsection (2).
- (6) Regulations under subsection (4) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **Modifications etc. (not altering text)**

- C3** S. 13(2): functions of local authority not to be responsibility of an executive of the authority (E.) (1.9.2001) by virtue of S.I. 2000/2853, reg. 2(1), Sch. 1 (as amended by S.I. 2001/2831, reg. 10) which S.I. was revoked by S.I. 2007/806, reg. 11 and that effect continued by virtue of S.I. 2007/806, reg. 10(2)(b)

#### **Commencement Information**

- I2** S. 13 wholly in force at 1.9.2001; s. 13 not in force at Royal Assent see s. 138; s. 13 in force for certain purposes at 19.6.2001 by S.I. 2001/2223, art. 2(2)(b); s. 13 in force at 1.9.2001 by S.I. 2001/2223, art. 4(a)

## **14 Places which are not designated public places**

- (1) A place is not a designated public place or a part of such a place if it is—
  - (a) licensed premises or a registered club;
  - (b) a place within the curtilage of any licensed premises or registered club;
  - (c) a place where the sale of intoxicating liquor is for the time being authorised by an occasional permission or was so authorised within the last twenty minutes;
  - (d) a place where the sale of intoxicating liquor is not for the time being authorised by an occasional licence but was so authorised within the last twenty minutes;
  - (e) a place where facilities or activities relating to the sale or consumption of intoxicating liquor are for the time being permitted by virtue of a permission granted under section 115E of the Highways Act 1980 (c. 66) (highway related uses).
- (2) In subsection (1)—
 

“licensed premises”, “occasional licence” and “registered club” have the same meaning as in the Licensing Act 1964 (c. 26); and

“occasional permission” has the same meaning as in the Licensing (Occasional Permissions) Act 1983 (c. 24).

## **15 Effect of sections 12 to 14 on byelaws**

- (1) Subsections (2) and (3) apply to any byelaw which—



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- (a) prohibits, by the creation of an offence, the consumption in a particular public place of intoxicating liquor (including any liquor of a similar nature which falls within the byelaw); or
  - (b) makes any incidental, supplementary or consequential provision (whether relating to the seizure or control of containers or otherwise).
- (2) In so far as any byelaw to which this subsection applies would, apart from this subsection, have effect in relation to any designated public place, the byelaw—
- (a) shall cease to have effect in relation to that place; or
  - (b) where it is made after the order under section 13(2), shall not have effect in relation to that place.
- (3) In so far as any byelaw made by a local authority and to which this subsection applies still has effect at the end of the period of 5 years beginning with the day on which this subsection comes into force, it shall cease to have effect at the end of that period in relation to any public place.

## **16 Interpretation of sections 12 to 15**

- (1) In sections 12 to 15, unless the context otherwise requires—
- “designated public place” has the meaning given by section 13(1);
  - “intoxicating liquor” has the same meaning as in the Licensing Act 1964;
  - and
  - “public place” means any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.
- (2) In sections 12 to 15 “local authority” means—
- (a) in relation to England—
    - (i) a unitary authority;
    - (ii) a district council so far as they are not a unitary authority;
  - (b) in relation to Wales, a county council or a county borough council.
- (3) In subsection (2) “unitary authority” means—
- (a) the council of a county so far as they are the council for an area for which there are no district councils;
  - (b) the council of any district comprised in an area for which there is no county council;
  - (c) a London borough council;
  - (d) the Common Council of the City of London in its capacity as a local authority;
  - (e) the Council of the Isles of Scilly.

### *Closure of certain licensed premises*

## **17 Closure of certain licensed premises due to disorder or disturbance**

In Part 13 of the Licensing Act 1964 (c. 26) (miscellaneous) before section 180 there shall be inserted—

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*“ Closure of certain licensed premises due to disorder or disturbance.*

### **179A Closure order**

- (1) A senior police officer may make a closure order in relation to relevant licensed premises if he reasonably believes that—
  - (a) there is likely to be disorder on, or in the vicinity of and related to, the premises and the closure of the premises is necessary in the interests of public safety;
  - (b) there is disorder on, or in the vicinity of and related to, the premises and the closure of the premises is necessary in the interests of public safety; or
  - (c) a disturbance is being caused to the public by excessive noise emitted from the premises and the closure of the premises is necessary to prevent the disturbance.
- (2) In this section and sections 179B to 179K of this Act—
 

“closure order” means an order requiring relevant licensed premises to be closed for a period not exceeding twenty-four hours beginning with the coming into force of the order; and

“relevant licensed premises” means licensed premises other than premises for which a justices’ off-licence only or an occasional licence is in force and other than premises in respect of which a notice under section 199(c) of this Act is in force.
- (3) In determining whether to make a closure order the senior police officer shall consider, in particular, any conduct of the holder of the justices’ licence for the premises or the manager of the premises in relation to the disorder or disturbance.
- (4) A closure order shall—
  - (a) specify the premises which are to be closed;
  - (b) specify the period for which the premises are to be closed;
  - (c) specify the grounds for the making of the order; and
  - (d) state the effect of sections 179B to 179E of this Act.
- (5) A closure order shall come into force as soon as notice of the order is given by a constable to—
  - (a) the holder of the justices’ licence for the premises; or
  - (b) a manager of the premises.
- (6) A person who, without reasonable excuse, permits relevant licensed premises to be open in contravention of a closure order or any extension of it shall be guilty of an offence and shall be liable to a fine not exceeding £20,000 or to imprisonment for a term not exceeding three months or to both.

### **179B Consideration of closure order by certain justices**

- (1) The responsible senior police officer shall, as soon as reasonably practicable after the coming into force of a closure order, apply to relevant justices for them to consider under this section the order and any extension of it.

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- (2) The relevant justices shall, as soon as reasonably practicable, consider whether to exercise their powers under subsection (3) of this section in relation to the order and any extension of it.
- (3) The relevant justices may—
  - (a) revoke the order and any extension of it if the order or extension is still in force;
  - (b) order the relevant licensed premises to remain, or to be, closed until the matter is dealt with by an order of licensing justices at the next licensing sessions;
  - (c) make any other order as they think fit in relation to the premises.
- (4) In determining whether the premises will be, or will remain, closed the relevant justices shall, in particular, consider whether—
  - (a) in the case of an order made by virtue of section 179A(1)(a) or (b) of this Act, closure is necessary in the interests of public safety because of disorder or likely disorder on the premises or in the vicinity of, and related to, the premises;
  - (b) in the case of an order made by virtue of section 179A(1)(c) of this Act, 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.
- (5) A person who, without reasonable excuse, permits relevant licensed premises to be open in contravention of an order made under subsection (3)(b) of this section shall be guilty of an offence and shall be liable to a fine not exceeding £20,000 or to imprisonment for a term not exceeding three months or to both.
- (6) A person who, without reasonable excuse, fails to comply with, or does an act in contravention of, an order made under subsection (3)(c) of this section shall be guilty of an offence and shall be liable to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both.
- (7) In this section and sections 179C to 179K of this Act “relevant justices” means—
  - (a) licensing justices for the licensing district in which the premises are situated; or
  - (b) if no such justices are available within a reasonable time, justices of the peace acting for the petty sessions area in which the premises are situated.
- (8) In this section and sections 179C to 179K of this Act “the responsible senior police officer” means the senior police officer who made the closure order or, if another senior police officer is designated for this purpose by the chief officer of police for the police area in which the premises are situated, that other senior police officer.

#### 179C Extensions of closure order

- (1) If, before the end of the period for which relevant licensed premises are to be closed under a closure order or any extension of it (“the closure period”), the responsible senior police officer reasonably believes that—

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- (a) relevant justices will not have considered under section 179B of this Act the order and any extension of it by the end of the closure period; and
  - (b) the conditions for an extension under this subsection are satisfied, he may extend the closure period for a further period, not exceeding twenty-four hours, beginning with the expiry of the previous closure period.
- (2) For the purposes of subsection (1) of this section the conditions for an extension under that subsection are that—
- (a) in the case of an order made by virtue of section 179A(1)(a) or (b) of this Act, closure is necessary in the interests of public safety because of disorder or likely disorder on the premises or in the vicinity of, and related to, the premises;
  - (b) in the case of an order made by virtue of section 179A(1)(c) of this Act, 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.
- (3) An extension under subsection (1) of this section shall, subject to subsection (4) of this section, come into force as soon as notice of it has been given by a constable to—
- (a) the holder of the justices' licence for the premises; or
  - (b) a manager of the premises.
- (4) No such extension shall come into force unless the notice has been given before the end of the previous closure period.

#### **179D Cancellation of closure order**

- (1) At any time—
- (a) after a closure order has been made; but
  - (b) before the order and any extension of it has been considered by relevant justices under section 179B of this Act,
- the responsible senior police officer may cancel the order and any extension of it.
- (2) The responsible senior police officer shall cancel the closure order and any extension of it if he does not reasonably believe that—
- (a) in the case of an order made by virtue of section 179A(1)(a) or (b) of this Act, closure is necessary in the interests of public safety because of disorder or likely disorder on the relevant licensed premises or in the vicinity of, and related to, the premises;
  - (b) in the case of an order made by virtue of section 179A(1)(c) of this Act, 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.
- (3) Where a closure order and any extension of it is cancelled under subsection (1) or (2) of this section, the responsible senior police officer shall ensure that notice of the cancellation is given to—
- (a) the holder of the justices' licence for the premises; or
  - (b) a manager of the premises.

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### 179E Revocation of justices' licence etc. after closure order

- (1) Where a closure order has come into force in relation to relevant licensed premises, licensing justices for the licensing district in which the premises are situated shall of their own motion consider, at the next licensing sessions, whether to exercise their powers under subsection (2) of this section.
- (2) The licensing justices may—
  - (a) revoke the justices' licence for the premises concerned; or
  - (b) attach to it such conditions as they think fit (whether in substitution for any conditions previously attached or otherwise);but no payment may be required in pursuance of a condition attached under paragraph (b) of this subsection.
- (3) The power under subsection (2) of this section to revoke a justices' licence is exercisable on any ground on which licensing justices might refuse to renew a justices' licence or a justices' licence of that description.
- (4) Licensing justices may only exercise their powers under subsection (2) of this section if, at least seven days before the commencement of the licensing sessions concerned, notice of the proposed exercise of the powers has been given to the holder of the licence specifying in general terms—
  - (a) the grounds on which it is proposed that the licence should be revoked; or
  - (b) (as the case may be) the conditions which are proposed to be attached to the licence and the reasons for them.
- (5) Where licensing justices have decided at the next licensing sessions whether to exercise their powers under subsection (2) of this section, they may also make such order as they think fit in relation to the closure order and any extension of it or any order under section 179B of this Act.
- (6) Where licensing justices have decided to revoke a justices' licence under subsection (2) of this section, the revocation shall, subject to subsection (7) of this section, not have effect—
  - (a) until the expiry of the time given for appealing against the decision; or
  - (b) if the decision is appealed against, until the appeal is disposed of.
- (7) Where the premises to which the licence relates have been closed until the making of the decision to revoke the licence by virtue of an order under section 179B(3)(b) of this Act, the premises shall, subject to section 179G(5) of this Act, remain closed (but the licence otherwise in force)—
  - (a) until the expiry of the time given for appealing against the decision to revoke; or
  - (b) if the decision is appealed against, until the appeal is disposed of.
- (8) A person who, without reasonable excuse, permits premises to be open in contravention of subsection (7) of this section shall be guilty of an offence and shall be liable to a fine not exceeding £20,000 or to imprisonment for a term not exceeding three months or to both.
- (9) Where licensing justices have decided to attach conditions to a licence under subsection (2) of this section, the licensing justices may, on such terms as they

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think fit, 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.

#### **179F Procedural requirements**

- (1) Where an application under section 179B(1) of this Act is made to justices of the peace acting for the petty sessions area in which the premises concerned are situated, the responsible senior police officer shall give notice to the chief executive to the licensing justices for the licensing district in which the relevant licensed premises are situated—
  - (a) that a closure order has come into force;
  - (b) of the contents of the order and of any extension to the order; and
  - (c) of the application under section 179B(1) of this Act.
- (2) The powers conferred on licensing justices by section 179B of this Act may be exercised by a single justice and may be exercised otherwise than at licensing sessions.
- (3) The powers conferred on justices of the peace by section 179B of this Act shall be exercisable in the place required by the Magistrates' Courts Act 1980 (c. 43) for the hearing of a complaint and may be exercised by a single justice.
- (4) Evidence given for the purpose of proceedings under section 179B or 179E of this Act shall be given on oath.
- (5) The Secretary of State may make regulations about the procedure and practice to be followed on and in connection with proceedings before licensing justices under sections 179B and 179E of this Act.

#### **179G Rights of appeal**

- (1) Any person aggrieved by a decision of relevant justices under section 179B of this Act or of licensing justices under section 179E of this Act may appeal to the Crown Court against the decision.
- (2) An appeal under subsection (1) of this section shall be commenced by notice of appeal given by the appellant to the chief executive to the licensing justices or (as the case may be) to the justices' chief executive within 21 days after the decision appealed against.
- (3) On an appeal against a decision under section 179E of this Act by licensing justices not to revoke a justices' licence, the holder of the licence shall be respondent in addition to the licensing justices.
- (4) Where the holder of a justices' licence gives notice of appeal against a decision under section 179E of this Act by licensing justices to revoke the licence, the Crown Court may, on such conditions as it thinks fit, order that the licence shall continue in force until the determination of the appeal notwithstanding that the appeal is not determined until after the date when the licence would otherwise cease to have effect.
- (5) Where—

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- (a) the holder of a justices' licence gives notice of appeal against a decision under section 179E of this Act by licensing justices to revoke the licence; and
  - (b) the premises are closed by virtue of section 179E(7) of this Act, the Crown Court may, on such conditions as it thinks fit, order that section 179E(7) of this Act shall not apply to the premises.
- (6) Sections 21 and 22(3A) of this Act (appeals) do not apply to any decision of licensing justices which is subject to a right of appeal under subsection (1) of this section or to any appeal under subsection (1) of this section.
- (7) Section 22(4), (6) and (7), section 23(3) and (4) and section 25(1) of this Act shall apply, with necessary modifications, to appeals under subsection (1) of this section against decisions of licensing justices as they apply to appeals under section 21 of this Act.
- (8) Section 23(4) of this Act shall have effect, in its application by virtue of subsection (7) of this section, as if the reference to section 21(4) of this Act were a reference to subsection (4) of this section.

#### **179H Enforcement**

- (1) This section applies where a closure order or an order under section 179B(3) (b) of this Act has been made in relation to relevant licensed premises.
- (2) Any person who without reasonable excuse fails to leave the premises when asked to do so, for the purposes of ensuring compliance with the order concerned (or with any extension of a closure order or with section 179E(7) of this Act), by the holder of the justices' licence for the premises or any manager of the premises shall be guilty of an offence and liable to a fine not exceeding level 1 on the standard scale.
- (3) A constable shall, on the request of the holder of the justices' licence or any manager of the premises or any agent or servant of either of them, help to remove from the premises any person who is required to leave the premises by virtue of subsection (2) of this section.
- (4) A constable may use such reasonable force as may be required for the purpose of giving help under subsection (3) of this section.

#### **179I Exemption from liability for certain damages**

- (1) A constable shall not be liable for relevant damages in respect of anything done or omitted to be done by him in the performance or purported performance of his functions in relation to a closure order or any extension of it.
- (2) A chief officer of police shall not be liable for relevant damages in respect of anything done or omitted to be done by a constable under his direction or control in the performance or purported performance of the constable's functions in relation to a closure order or any extension of it.
- (3) Neither subsection (1) of this section nor subsection (2) of this section applies—
  - (a) if the act or omission is shown to have been in bad faith; or



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- (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998 (c. 42).
- (4) This section is without prejudice to any other exemption from liability for damages (whether at common law or otherwise).
- (5) In this section “relevant damages” means damages in proceedings for judicial review or for the tort of negligence or misfeasance in public office.

### 179J Offences by body corporate

- (1) Where an offence under section 179A(6) or 179B(5) or (6) or 179E(8) of this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, he as well as the body corporate commits the offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) of this section applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

### 179K Interpretation of sections 179A to 179K

- (1) In sections 179A to 179J of this Act and this section—
  - “chief officer of police” has the meaning given by section 101(1) of the Police Act 1996 (c. 16);
  - “closure order” has the meaning given by section 179A(2) of this Act;
  - “manager” (except in section 179J(1) of this Act) means any person who works in relevant licensed premises in a capacity which gives him authority to close the premises;
  - “the next licensing sessions” means the first licensing sessions held not less than fourteen days after the day on which the closure order concerned was considered by relevant justices under section 179B of this Act;
  - “notice” means notice in writing;
  - “police area” means a police area provided for by section 1 of the Police Act 1996 (c. 16);
  - “relevant justices” has the meaning given by section 179B(7) of this Act;
  - “relevant licensed premises” has the meaning given by section 179A(2) of this Act;
  - “the responsible senior police officer” has the meaning given by section 179B(8) of this Act; and
  - “senior police officer” means a police officer of or above the rank of inspector.
- (2) For the purposes of sections 179A to 179J of this Act, relevant licensed premises are open if any person other than the holder of the justices’ licence

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for the premises, a manager of the premises or any member of the family of either of them—

- (a) enters onto the premises; and
- (b) purchases, or is supplied with, any item of food or drink or any item which is usually sold on the premises.

*Other”*

## **18 Amendments consequential on section 17**

- (1) In section 31(2) of the Licensing Act 1964 (c. 26) (convictions etc. to be entered in register of licences) after “enactment” there shall be inserted “, any closure order under section 179A of this Act in relation to premises, any order under section 179B(3) (b) of this Act in relation to premises”.
- (2) In section 174(2) of that Act (offence of failing to leave licensed premises when requested if drunk or disorderly etc.) after “fails” there shall be inserted “ without reasonable excuse”.
- (3) In section 196A(1) of that Act (extension to certain proceedings of section 97 of the Magistrates’ Courts Act 1980 (c. 43))—
  - (a) at the end of paragraph (a), the word “and” shall be omitted; and
  - (b) after paragraph (b) there shall be inserted “; and
  - (c) proceedings under section 179E of this Act.”
- (4) In section 197 of that Act (service of notices) after “of this Act” there shall be inserted “ or in regulations made under section 179F(5) of this Act”.
- (5) The amendment made by subsection (2) above shall not apply in relation to any request to leave made before the coming into force of that subsection.

*Closure of unlicensed premises*

## **19 Closure notices**

- (1) Where a constable is satisfied that any premises are being, or within the last 24 hours have been, used for the unlicensed sale of intoxicating liquor for consumption on, or in the vicinity of, the premises, he may serve under subsection (3) a notice in respect of the premises.
- (2) Where a local authority is satisfied that any premises in the area of the authority are being, or within the last 24 hours have been, used for the unlicensed sale of intoxicating liquor for consumption on, or in the vicinity of, the premises, the authority may serve under subsection (3) a notice in respect of the premises.
- (3) A notice under subsection (1) or (2) (“a closure notice”) shall be served by the constable or local authority concerned on a person having control of, or responsibility for, the activities carried on at the premises.
- (4) A closure notice shall also be served by the constable or local authority concerned on any person occupying another part of any building or other structure of which the premises form part if the constable or (as the case may be) the local authority concerned reasonably believes, at the time of serving notice under subsection (3), that

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the person's access to the other part of the building or other structure would be impeded if an order under section 21 providing for the closure of the premises were made.

- (5) A closure notice may also be served by a constable or the local authority concerned on—
  - (a) any other person having control of, or responsibility for, the activities carried on at the premises;
  - (b) any person who has an interest in the premises.
- (6) A closure notice shall—
  - (a) specify the alleged use of the premises and the grounds on which the constable or (as the case may be) the local authority concerned is satisfied as mentioned in subsection (1) or (as the case may be) subsection (2);
  - (b) state the effect of section 20; and
  - (c) specify the steps which may be taken to ensure that the alleged use of the premises ceases or (as the case may be) does not recur.
- (7) A closure notice served by a constable or local authority may be cancelled by a notice of cancellation served by a constable or (as the case may be) the local authority concerned.
- (8) Any such notice of cancellation shall have effect as soon as it is served by a constable or (as the case may be) the authority concerned on at least one person on whom the closure notice was served.
- (9) The constable or (as the case may be) the local authority concerned shall also serve the notice of cancellation on any other person on whom the closure notice was served.
- (10) For the purposes of subsections (3) and (5) a person having control of, or responsibility for, the activities carried on at the premises includes a person who—
  - (a) derives or seeks to derive profit from the carrying on of the activities;
  - (b) manages the activities;
  - (c) employs any person to manage the activities; or
  - (d) is involved in the conduct of the activities.

## **20 Applications for closure orders**

- (1) Where a closure notice has been served under section 19(3), a constable or (as the case may be) the local authority concerned may make a complaint to a justice of the peace acting for the petty sessions area in which the premises are situated for an order under section 21 (a "closure order").
- (2) A complaint under subsection (1) shall be made not less than seven days, and not more than six months, after the service of the closure notice under section 19(3).
- (3) No complaint shall be made under subsection (1) if the constable or (as the case may be) the local authority is satisfied that—
  - (a) the use of the premises for the unlicensed sale of intoxicating liquor for consumption on, or in the vicinity of, the premises has ceased; and
  - (b) there is no reasonable likelihood that the premises will be so used in the future.
- (4) Where a complaint has been made to a justice of the peace under subsection (1), the justice may issue a summons to answer to the complaint.

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- (5) The summons shall be directed to—
  - (a) the person on whom the closure notice was served under section 19(3); and
  - (b) any other person on whom the closure notice was served under section 19(5)
    - (a).
- (6) Where a summons is served in accordance with subsections (4) and (5), a notice stating the date, time and place at which the complaint will be heard shall be served on all persons on whom the closure notice was served under section 19(4) and (5)(b).
- (7) The procedure on a complaint for a closure order shall (except as otherwise provided) be in accordance with the Magistrates' Courts Act 1980 (c. 43).

## 21 Closure orders

- (1) On hearing a complaint made under section 20(1), the court may make such order as it considers appropriate if it is satisfied that—
  - (a) the closure notice was served under section 19(3); and
  - (b) the premises continue to be used for the unlicensed sale of intoxicating liquor for consumption on, or in the vicinity of, the premises or there is a reasonable likelihood that the premises will be so used in the future.
- (2) An order under this section may, in particular, require—
  - (a) the premises in respect of which the closure notice was served to be closed immediately to the public and to remain closed until a constable or (as the case may be) the local authority concerned makes a certificate under section 22(1);
  - (b) the use of the premises for the unlicensed sale of intoxicating liquor for consumption on, or in the vicinity of, the premises to be discontinued immediately;
  - (c) any defendant to pay into court such sum as the court determines and that the sum will not be released by the court to that person until the other requirements of the order are met.
- (3) An order of the kind mentioned in subsection (2)(a) may, in particular, include such conditions as the court considers appropriate relating to—
  - (a) the admission of persons onto the premises;
  - (b) the access by persons to another part of any building or other structure of which the premises form part.
- (4) The complainant shall, as soon as practicable after the making of an order under this section, give notice of the order by fixing a copy of it in a conspicuous position on the premises in respect of which it was made.
- (5) A sum which has been ordered to be paid into court under this section shall be paid to the justices' chief executive for the court.

## 22 Termination of closure orders by constable or local authority

- (1) Where a closure order has been made, a constable or (as the case may be) the local authority concerned may make a certificate to the effect that the constable or (as the case may be) the authority is satisfied that the need for the order has ceased.
- (2) Where such a certificate has been made, the closure order shall cease to have effect.

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- (3) Where a closure order containing provision of the kind mentioned in section 21(2)(c) ceases to have effect by virtue of the making of a certificate under subsection (1), any sum paid into court by a defendant under the order shall be released by the court.
- (4) Subject to this, a closure order may include such provision as the court considers appropriate for dealing with any consequences which would arise if the order were to cease to have effect by virtue of the making of a certificate under subsection (1).
- (5) The constable or (as the case may be) the local authority concerned shall, as soon as practicable after the making of a certificate under subsection (1)—
  - (a) serve a copy of it on the person against whom the closure order has been made and the justices' chief executive for the court which made the order; and
  - (b) fix a copy of it in a conspicuous position on the premises in respect of which the order was made.
- (6) The constable or (as the case may be) the local authority concerned shall also serve a copy of the certificate on any person who requests such a copy.

## **23 Discharge of closure orders by the court**

- (1) Where a closure order has been made—
  - (a) any person on whom the closure notice concerned was served under section 19; or
  - (b) any person who has an interest in the premises in respect of which the closure order was made but on whom no closure notice was served,
 may make a complaint to a justice of the peace acting for the petty sessions area in which the premises are situated for an order that the closure order be discharged.
- (2) The court may not make an order under subsection (1) unless it is satisfied that the need for the closure order has ceased.
- (3) Where a complaint has been made to a justice of the peace under subsection (1), the justice may issue a summons directed to such constable as he considers appropriate or (as the case may be) the local authority concerned requiring that person to appear before the magistrates' court to answer to the complaint.
- (4) Where a summons is served in accordance with subsection (3), a notice stating the date, time and place at which the complaint will be heard shall be served on all persons on whom the closure notice concerned was served under section 19 (other than the complainant).
- (5) The procedure on a complaint for an order under this section shall (except as otherwise provided) be in accordance with the Magistrates' Courts Act 1980 (c. 43).

## **24 Appeals**

- (1) An appeal against a closure order, an order under section 23(1) or a decision not to make an order under section 23(1) may be brought to the Crown Court at any time before the end of the period of 21 days beginning with the day on which the order or (as the case may be) the decision was made.
- (2) An appeal under this section against a closure order may be brought by—

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- (a) any person on whom the closure notice concerned was served under section 19; or
  - (b) any person who has an interest in the premises in respect of which the closure order was made but on whom no closure notice was so served.
- (3) On an appeal under this section the Crown Court may make such order as it considers appropriate.

## 25 Enforcement of closure orders

- (1) Where a closure order has been made, a constable or an authorised person may (if necessary using reasonable force)—
- (a) at any reasonable time enter the premises concerned; and
  - (b) having so entered the premises, do anything reasonably necessary for the purpose of securing compliance with the order.
- (2) A constable or an authorised person seeking to enter any premises in exercise of his powers under subsection (1) shall, if required by or on behalf of the owner or occupier or person in charge of the premises, produce evidence of his identity, and of his authority, before entering the premises.
- (3) Any person who intentionally obstructs a constable or an authorised person in the exercise of his powers under this section shall be guilty of an offence and shall be liable on summary conviction—
- (a) where the offence was committed in respect of a constable, to imprisonment for a term not exceeding one month or to a fine not exceeding level 5 on the standard scale or to both;
  - (b) where the offence was committed in respect of an authorised person, to a fine not exceeding level 5 on the standard scale.
- (4) A person who, without reasonable excuse, permits premises to be open in contravention of a closure order shall be guilty of an offence and shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £20,000 or to both.
- (5) A person who, without reasonable excuse, otherwise fails to comply with, or does an act in contravention of, a closure order shall be guilty of an offence and shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale or to both.
- (6) In this section “an authorised person” means a person authorised for the purposes of this section by a local authority in respect of premises situated in the area of the authority.

## 26 Offences by body corporate

- (1) Where an offence under section 25 committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, he as well as the body corporate commits the offence and shall be liable to be proceeded against and punished accordingly.

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- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

## 27 Service of notices

- (1) Any document required or authorised by virtue of sections 19 to 26 to be served on any person may be served—
- (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address;
  - (b) if the person is a body corporate other than a limited liability partnership, by serving it in accordance with paragraph (a) on the secretary of the body;
  - (c) if the person is a limited liability partnership, by serving it in accordance with paragraph (a) on a member of the partnership; or
  - (d) if the person is a partnership, by serving it in accordance with paragraph (a) on a partner or a person having the control or management of the partnership business.
- (2) For the purposes of this section and section 7 of the Interpretation Act 1978 (c. 30) (service of documents by post) in its application to this section, the proper address of any person on whom a document is to be served shall be his last known address, except that—
- (a) in the case of service on a body corporate (other than a limited liability partnership) or its secretary, it shall be the address of the registered or principal office of the body;
  - (b) in the case of service on a limited liability partnership or a member of the partnership, it shall be the address of the registered or principal office of the partnership;
  - (c) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership.
- (3) For the purposes of subsection (2) the principal office of a company constituted under the law of a country or territory outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.
- (4) Subsection (5) applies if a person to be served under sections 19 to 26 with any document by another has specified to that other an address within the United Kingdom other than his proper address (as determined under subsection (2)) as the one at which he or someone on his behalf will accept documents of the same description as that document.
- (5) In relation to that document, that address shall be treated as his proper address for the purposes of this section and section 7 of the Interpretation Act 1978 (c. 30) in its application to this section, instead of that determined under subsection (2).
- (6) Where the address of the person on whom a document is to be served under sections 19 to 26 cannot be ascertained after reasonable inquiry, the document shall be taken to be duly served if a copy of it is fixed in a conspicuous position on the premises which are alleged to have been used for the unlicensed sale of intoxicating liquor.



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- (7) Where the name of the person on whom a document is to be served under sections 19 to 26 cannot be ascertained after reasonable inquiry, the document shall be taken to be duly served if it is served in accordance with this section using an appropriate description for the person concerned.
- (8) This section does not apply to any document if rules of court make provision about its service.

## **28 Sections 19 to 27: interpretation**

- (1) In sections 19 to 27 and this section—
- “closure notice” means a notice under section 19(1) or (2);
  - “closure order” means an order under section 21;
  - “intoxicating liquor” has the same meaning as in the Licensing Act 1964 (c. 26);
  - “notice” means notice in writing;
  - “premises” includes any land or other place (whether enclosed or otherwise);
  - “sale” includes exposure for sale; and
  - “unlicensed sale” means any sale which is in contravention of section 160 of the Act of 1964 (selling liquor without licence).
- (2) In sections 19 to 27 “local authority” means—
- (a) in relation to England—
    - (i) a county council;
    - (ii) a district council;
    - (iii) a London borough council;
    - (iv) the Common Council of the City of London in its capacity as a local authority;
    - (v) the Council of the Isles of Scilly;
  - (b) in relation to Wales, a county council or a county borough council.
- (3) References in sections 19 to 27 to a person who has an interest in the premises are references to any person who is the owner, leaseholder or occupier of the premises.

*Other provisions for combatting alcohol-related disorder*

## **29 Confiscation of alcohol containers from young persons**

In section 1(1) of the Confiscation of Alcohol (Young Persons) Act 1997 (c. 33) (things to be surrendered to a constable) after “intoxicating liquor”, where it appears for the third time, there shall be inserted “ or a container for such liquor (other than a sealed container) ”.

## **30 Sale of intoxicating liquor to a person under eighteen**

- (1) In subsection (2) of section 169A of the Licensing Act 1964 (c. 26) (defence against charge of sale of intoxicating liquor to a person under eighteen) for the words from “to prove” to the end of the subsection there shall be substituted “to prove—
- (a) that he believed that the person was not under eighteen; and

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- (b) either that he had taken all reasonable steps to establish the person's age or that nobody could reasonably have suspected from his appearance that the person was under eighteen.

(2A) For the purposes of subsection (2) of this section a person shall be treated as having taken all reasonable steps to establish another person's age if he asks the other person for evidence of his age unless it is shown that the evidence was such that no reasonable person would have been convinced by it."

- (2) The amendment made by this section does not apply to any sale of intoxicating liquor made before the coming into force of this section.

### **31 Enforcement of certain offences relating to under-age drinking**

- (1) In section 169C of the Licensing Act 1964 (purchase of intoxicating liquor by a person under eighteen) after subsection (1) there shall be inserted—

“(1A) Subsection (1) of this section does not apply where the person under eighteen buys or attempts to buy the intoxicating liquor at the request of—

- (a) a constable, or
- (b) an inspector of weights and measures appointed under section 72(1) of the Weights and Measures Act 1985 (c. 72),

who is acting in the course of his duty.”

- (2) In section 169G of that Act (sending a person under eighteen to obtain intoxicating liquor) after subsection (3) there shall be inserted—

“(4) Subsection (1) of this section does not apply where the person under eighteen is sent by—

- (a) a constable, or
- (b) an inspector of weights and measures appointed under section 72(1) of the Weights and Measures Act 1985 (c. 72),

who is acting in the course of his duty.”

- (3) After section 169H of that Act there shall be inserted—

**“169I Enforcement role for weights and measures authorities in relation to certain offences**

- (1) It is the duty of every local weights and measures authority in England and Wales to enforce within their area the provisions of sections 169A and 169B of this Act.
- (2) A local weights and measures authority shall have power to make, or to authorise any person to make on their behalf, such purchases of goods as may appear expedient for the purpose of determining whether or not the provisions of section 169A or 169B of this Act are being complied with.
- (3) In this section “local weights and measures authority” has the meaning given by section 69 of the Weights and Measures Act 1985 (local weights and measures authorities).”

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## 32 Drunkenness or disorder on licensed premises

- (1) In section 172(4) of the Licensing Act 1964 (c. 26) (licence holder not to permit drunkenness etc.: offences) for “level 2” there shall be substituted “ level 3 ”.
- (2) After section 172 of that Act there shall be inserted—

### “172A Other persons in authority not to permit drunkenness etc.

- (1) A relevant person shall not permit drunkenness or any violent, quarrelsome or riotous conduct to take place in licensed premises.
  - (2) If a relevant person is charged under subsection (1) of this section with permitting drunkenness, and it is proved that any person was drunk in the licensed premises, the burden of proving that the relevant person and any persons employed by him took all reasonable steps for preventing drunkenness in the premises shall lie upon him.
  - (3) A relevant person shall not, in licensed premises, sell intoxicating liquor to a drunken person.
  - (4) If any person contravenes this section he shall be liable to a fine not exceeding level 3 on the standard scale.
  - (5) This section is without prejudice to the liability under section 172 of this Act of the holder of a justices’ licence for acts or omissions of persons other than himself.
  - (6) In this section “relevant person” means any person (other than the holder of the justices’ licence for the licensed premises concerned) who—
    - (a) in a case falling within subsection (1) of this section, works in the licensed premises in a capacity, whether paid or unpaid, which gives him authority to prevent the drunkenness or (as the case may be) conduct concerned;
    - (b) in a case falling within subsection (3) of this section, works in the licensed premises in a capacity, whether paid or unpaid, which gives him authority to sell the intoxicating liquor concerned.”
- (3) In section 174(1) of that Act (power to exclude drunkards, etc. from licensed premises)  
—
    - (a) after “justices’ licence” there shall be inserted “ or a relevant person ”; and
    - (b) for “or”, where it appears for the fourth time, there shall be substituted “ and the holder of a justices’ licence may refuse to admit to, or may expel from, the licensed premises any person ”.
  - (4) In section 174(2) of that Act (offence of failing to leave licensed premises when requested if drunk or disorderly etc.) after “servant or” there shall be inserted “ (as the case may be) the relevant person or any agent or servant of his or by ”.
  - (5) In section 174(3) of that Act (requesting assistance from constable to exclude drunkards etc.) after “servant” there shall be inserted “ or (as the case may be) a relevant person or any agent or servant of his ”.
  - (6) After section 174(3) of that Act there shall be inserted—

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“(4) In this section “relevant person” means any person who works in licensed premises in a capacity, whether paid or unpaid, which gives him authority to prevent such drunkenness or such conduct as is mentioned in section 172A(1) of this Act.”

(7) The amendment made by subsection (1) above shall not apply to offences committed before the coming into force of that subsection.

### CHAPTER 3

#### OTHER PROVISIONS FOR COMBATTING CRIME AND DISORDER

##### *Travel restrictions on drug trafficking offenders*

### 33 Power to make travel restriction orders

- (1) This section applies where—
  - (a) a person (“the offender”) has been convicted by any court of a post-commencement drug trafficking offence;
  - (b) the court has determined that it would be appropriate to impose a sentence of imprisonment for that offence; and
  - (c) the term of imprisonment which the court considers appropriate is a term of four years or more.
- (2) It shall be the duty of the court, on sentencing the offender—
  - (a) to consider whether it would be appropriate for the sentence for the offence to include the making of a travel restriction order in relation to the offender;
  - (b) if the court determines that it is so appropriate, to make such travel restriction order in relation to the offender as the court thinks suitable in all the circumstances (including any other convictions of the offender for post-commencement drug trafficking offences in respect of which the court is also passing sentence); and
  - (c) if the court determines that it is not so appropriate, to state its reasons for not making a travel restriction order.
- (3) A travel restriction order is an order that prohibits the offender from leaving the United Kingdom at any time in the period which—
  - (a) begins with the offender’s release from custody; and
  - (b) continues after that time for such period of not less than two years as may be specified in the order.
- (4) A travel restriction order may contain a direction to the offender to deliver up, or cause to be delivered up, to the court any UK passport held by him; and where such a direction is given, the court shall send any passport delivered up in pursuance of the direction to the Secretary of State at such address as the Secretary of State may determine.
- (5) Where the offender’s passport is held by the Secretary of State by reason of the making of any direction contained in a travel restriction order, the Secretary of State (without prejudice to any other power or duty of his to retain the passport)—

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- (a) may retain it for so long as the prohibition imposed by the order applies to the offender, and is not for the time being suspended; and
  - (b) shall not return the passport after the prohibition has ceased to apply, or when it is suspended, except where the passport has not expired and an application for its return is made to him by the offender.
- (6) In this section “post-commencement”—
- (a) except in relation to an offence that is a drug trafficking offence by virtue of an order under section 34(1)(c), means committed after the coming into force of this section; and
  - (b) in relation to an offence that is a drug trafficking offence by virtue of such an order, means committed after the coming into force of that order.
- (7) References in this section to the offender’s release from custody are references to his first release from custody after the imposition of the travel restriction order which is neither—
- (a) a release on bail; nor
  - (b) a temporary release for a fixed period.
- (8) In this section “UK passport” means a United Kingdom passport within the meaning of the Immigration Act 1971 (c. 77).

### **34 Meaning of “drug trafficking offence”**

- (1) In section 33 “drug trafficking offence” means any of the following offences (including one committed by aiding, abetting, counselling or procuring)—
- (a) an offence under section 4(2) or (3) of the Misuse of Drugs Act 1971 (c. 38) (production and supply of controlled drugs);
  - (b) an offence under section 20 of that Act (assisting in or inducing commission outside United Kingdom of an offence punishable under a corresponding law);
  - (c) any such other offence under that Act as may be designated by order made by the Secretary of State;
  - (d) an offence under—
    - (i) section 50(2) or (3) of the Customs and Excise Management Act 1979 (c. 2) (improper importation),
    - (ii) section 68(2) of that Act (exportation), or
    - (iii) section 170 of that Act (fraudulent evasion),in connection with a prohibition or restriction on importation or exportation having effect by virtue of section 3 of the Misuse of Drugs Act 1971 (c. 38);
  - (e) an offence under section 1 of the Criminal Law Act 1977 (c. 45) or Article 9 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 (S.I. 1983 1120 (N.I. 13)), or in Scotland at common law, of conspiracy to commit any of the offences in paragraphs (a) to (d) above;
  - (f) an offence under section 1 of the Criminal Attempts Act 1981 (c. 47) or Article 3 of the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983, or in Scotland at common law, of attempting to commit any of those offences; and
  - (g) an offence under section 19 of the Misuse of Drugs Act 1971 (c. 38) or at common law of inciting another person to commit any of those offences.

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- (2) The power to make an order under subsection (1)(c) shall be exercisable by statutory instrument; and no such order shall be made unless a draft of it has been laid before Parliament and approved by a resolution of each House.
- (3) An order under subsection (1)(c) may provide, in relation to any offence designated by such an order, that it is to be treated as so designated only—
  - (a) for such purposes, and
  - (b) in cases where it was committed in such manner or in such circumstances, as may be described in the order.

**Modifications etc. (not altering text)**

- C4 S. 34(1)(g) modified (E.W. N.I.) (prosp.) [Serious Crime Act 2007 \(c. 27\)](#), ss. 63(1)(2), 94, [Sch. 6 para. 41](#)

### 35 Revocation and suspension of a travel restriction order

- (1) Subject to the following provisions of this section, the court by which a travel restriction order has been made in relation to any person under section 33 may—
  - (a) on an application made by that person at any time which is—
    - (i) after the end of the minimum period, and
    - (ii) is not within three months after the making of any previous application for the revocation of the prohibition,
 revoke the prohibition imposed by the order with effect from such date as the court may determine; or
  - (b) on an application made by that person at any time after the making of the order, suspend the prohibition imposed by the order for such period as the court may determine.
- (2) A court to which an application for the revocation of the prohibition imposed on any person by a travel restriction order is made shall not revoke that prohibition unless it considers that it is appropriate to do so in all the circumstances of the case and having regard, in particular, to—
  - (a) that person's character;
  - (b) his conduct since the making of the order; and
  - (c) the offences of which he was convicted on the occasion on which the order was made.
- (3) A court shall not suspend the prohibition imposed on any person by a travel restriction order for any period unless it is satisfied that there are exceptional circumstances, in that person's case, that justify the suspension on compassionate grounds of that prohibition for that period.
- (4) In making any determination on an application for the suspension of the prohibition imposed on any person by a travel restriction order, a court (in addition to considering the matters mentioned in subsection (3)) shall have regard to—
  - (a) that person's character;
  - (b) his conduct since the making of the order;
  - (c) the offences of which he was convicted on the occasion on which the order was made; and

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- (d) any other circumstances of the case that the court considers relevant.
- (5) Where the prohibition imposed on any person by a travel restriction order is suspended, it shall be the duty of that person—
  - (a) to be in the United Kingdom when the period of the suspension ends; and
  - (b) if the order contains a direction under section 33(4), to surrender, before the end of that period, any passport returned or issued to that person, in respect of the suspension, by the Secretary of State;and a passport that is required to be surrendered under paragraph (b) shall be surrendered to the Secretary of State in such manner or by being sent to such address as the Secretary of State may direct at the time when he returns or issues it.
- (6) Where the prohibition imposed on any person by a travel restriction order is suspended for any period under this section, the end of the period of the prohibition imposed by the order shall be treated (except for the purposes of subsection (7)) as postponed (or, if there has been one or more previous suspensions, further postponed) by the length of the period of suspension.
- (7) In this section “the minimum period”—
  - (a) in the case of a travel restriction order imposing a prohibition for a period of four years or less, means the period of two years beginning at the time when the period of the prohibition began;
  - (b) in the case of a travel restriction order imposing a prohibition of more than four years but less than ten years, means the period of four years beginning at that time; and
  - (c) in any other case, means the period of five years beginning at that time.

### 36 Offences of contravening orders

- (1) A person who leaves the United Kingdom at a time when he is prohibited from leaving it by a travel restriction order is guilty of an offence and liable—
  - (a) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.
- (2) A person who is not in the United Kingdom at the end of a period during which a prohibition imposed on him by a travel restriction order has been suspended shall be guilty of an offence and liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.
- (3) A person who fails to comply with—
  - (a) a direction contained in a travel restriction order to deliver up a passport to a court, or to cause such a passport to be delivered up, or
  - (b) any duty imposed on him by section 35(5)(b) to surrender a passport to the Secretary of State,shall be guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.



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(4) This section has effect subject to section 37(3).

### **37 Saving for powers to remove a person from the United Kingdom**

- (1) A travel restriction order made in relation to any person shall not prevent the exercise in relation to that person of any prescribed removal power.
- (2) A travel restriction order made in relation to any person shall remain in force, notwithstanding the exercise of any prescribed removal power in relation to that person, except in so far as either—
  - (a) the Secretary of State by order otherwise provides; or
  - (b) the travel restriction order is suspended or revoked under section 35.
- (3) No person shall be guilty of an offence under section 36 in respect of any act or omission required of him by an obligation imposed in the exercise of a prescribed removal power.
- (4) In this section “a prescribed removal power” means any such power conferred by or under any enactment as—
  - (a) consists in a power to order or direct the removal of a person from the United Kingdom; and
  - (b) is designated for the purposes of this section by an order made by the Secretary of State.
- (5) An order under subsection (2)(a) or (4) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) An order under subsection (2)(a)—
  - (a) may make different provision for different cases; and
  - (b) may contain such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit.
- (7) References in this section to a person’s removal from the United Kingdom include references to his deportation, extradition, repatriation, delivery up or other transfer to a place outside the United Kingdom.

#### **Commencement Information**

**I3** S. 37 wholly in force at 1.4.2002; s. 37 not in force at Royal Assent see s. 138; s. 37 in force for certain purposes at 19.6.2001 by S.I. 2001/2223, art. 2(2)(b); s. 37 in force at 1.4.2002 insofar as not already in force by S.I. 2002/344, art. 3 (with art. 4)

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VALID FROM 01/09/2005

### *Use of controlled drugs*

#### **38 Permitting use of controlled drugs on premises**

For paragraph (d) of section 8 of the Misuse of Drugs Act 1971 (c. 38) (offence of knowingly permitting cannabis, cannabis resin or prepared opium to be smoked on premises) there shall be substituted—

“(d) administering or using a controlled drug which is unlawfully in any person’s possession at or immediately before the time when it is administered or used.”

*Intimidating, harming and threatening witnesses etc.*

#### **39 Intimidation of witnesses**

- (1) A person commits an offence if—
    - (a) he does an act which intimidates, and is intended to intimidate, another person (“the victim”);
    - (b) he does the act—
      - (i) knowing or believing that the victim is or may be a witness in any relevant proceedings; and
      - (ii) intending, by his act, to cause the course of justice to be obstructed, perverted or interfered with;and
  - (c) the act is done after the commencement of those proceedings.
- (2) For the purposes of subsection (1) it is immaterial—
    - (a) whether or not the act that is done is done in the presence of the victim;
    - (b) whether that act is done to the victim himself or to another person; and
    - (c) whether or not the intention to cause the course of justice to be obstructed, perverted or interfered with is the predominating intention of the person doing the act in question.
  - (3) If, in proceedings against a person for an offence under this section, it is proved—
    - (a) that he did any act that intimidated, and was intended to intimidate, another person, and
    - (b) that he did that act knowing or believing that that other person was or might be a witness in any relevant proceedings that had already commenced,he shall be presumed, unless the contrary is shown, to have done the act with the intention of causing the course of justice to be obstructed, perverted or interfered with.
  - (4) A person guilty of an offence under this section shall be liable—
    - (a) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both;
    - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both.

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- (5) References in this section to a witness, in relation to any proceedings, include references to a person who provides, or is able to provide, any information or any document or other thing which might be used as evidence in those proceedings or which (whether or not admissible as evidence in those proceedings)—
- (a) might tend to confirm evidence which will be or might be admitted in those proceedings;
  - (b) might be referred to in evidence given in those proceedings by another witness; or
  - (c) might be used as the basis for any cross examination in the course of those proceedings.
- (6) References in this section to doing an act include references to issuing any threat (whether against a person or his finances or property or otherwise), or making any other statement.
- (7) This section is in addition to, and not in derogation of, any offence subsisting at common law.

#### **40 Harming witnesses etc.**

- (1) A person commits an offence if, in circumstances falling within subsection (2)—
- (a) he does an act which harms, and is intended to harm, another person; or
  - (b) intending to cause another person to fear harm, he threatens to do an act which would harm that other person.
- (2) The circumstances fall within this subsection if—
- (a) the person doing or threatening to do the act does so knowing or believing that some person (whether or not the person harmed or threatened or the person against whom harm is threatened) has been a witness in relevant proceedings; and
  - (b) he does or threatens to do that act because of that knowledge or belief.
- (3) If, in proceedings against a person for an offence under this section, it is proved that, within the relevant period—
- (a) he did an act which harmed, and was intended to harm, another person, or
  - (b) intending to cause another person to fear harm, he threatened to do an act which would harm that other person,
- and that he did the act, or (as the case may be) threatened to do the act, with the knowledge or belief required by paragraph (a) of subsection (2), he shall be presumed, unless the contrary is shown, to have done the act, or (as the case may be) threatened to do the act, because of that knowledge or belief.
- (4) For the purposes of this section it is immaterial—
- (a) whether or not the act that is done or threatened, or the threat that is made, is or would be done or is made in the presence of the person who is or would be harmed or of the person who is threatened;
  - (b) whether or not the motive mentioned in subsection (2)(b) is the predominating motive for the act or threat; and
  - (c) whether the harm that is done or threatened is physical or financial or is harm to a person or to his property.
- (5) A person guilty of an offence under this section shall be liable—

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- (a) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both;
  - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both.
- (6) In this section “the relevant period”, in relation to an act done, or threat made, with the knowledge or belief that a person has been a witness in any relevant proceedings, means the period that begins with the commencement of those proceedings and ends one year after they are finally concluded.
- (7) References in this section to a witness, in relation to any proceedings, include references to a person who has provided any information or any document or other thing which was or might have been used as evidence in those proceedings or which (whether or not it was admissible as evidence in those proceedings)—
- (a) tended to confirm or might have tended to confirm any evidence which was or could have been given in those proceedings;
  - (b) was or might have been referred to in evidence given in those proceedings by another witness; or
  - (c) was or might have been used as the basis for any cross examination in the course of those proceedings.
- (8) This section is in addition to, and not in derogation of, any offence subsisting at common law.

#### **41 Relevant proceedings**

- (1) A reference in section 39 or 40 to relevant proceedings is a reference to any proceedings in or before the Court of Appeal, the High Court, the Crown Court or any county court or magistrates’ court which—
- (a) are not proceedings for an offence; and
  - (b) were commenced after the coming into force of that section.
- (2) For the purposes of any reference in section 39 or 40 or this section to the commencement of any proceedings relevant proceedings are commenced (subject to subsection (5)) at the earliest time at which one of the following occurs—
- (a) an information is laid or application, claim form, complaint, petition, summons or other process made or issued for the purpose of commencing the proceedings;
  - (b) any other step is taken by means of which the subject matter of the proceedings is brought for the first time (whether as part of the proceedings or in anticipation of them) before the court.
- (3) For the purposes of any reference in section 39 or 40 to the time when any proceedings are finally concluded, relevant proceedings are finally concluded (subject to subsection (4))—
- (a) if proceedings for an appeal against, or an application for a review of, those proceedings or of any decision taken in those proceedings are brought or is made, at the time when proceedings on that appeal or application are finally concluded;
  - (b) if the proceedings are withdrawn or discontinued, at the time when they are withdrawn or discontinued; and

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- (c) in any other case, when the court in or before which the proceedings are brought finally disposes of all the matters arising in those proceedings.
- (4) Relevant proceedings shall not be taken to be finally concluded by virtue of subsection (3)(a) where—
- (a) the matters to which the appeal or application relate are such that the proceedings in respect of which it is brought or made continue or resume after the making of any determination on that appeal or application; or
  - (b) a determination made on that appeal or application requires those proceedings to continue or to be resumed.
- (5) Where, after having appeared to be finally concluded, any relevant proceedings continue by reason of—
- (a) the giving of permission to bring an appeal after a fixed time for appealing has expired,
  - (b) the lifting of any stay in the proceedings,
  - (c) the setting aside, without an appeal, of any judgment or order, or
  - (d) the revival of any discontinued proceedings,
- sections 39 and 40 and this section shall have effect as if the proceedings had concluded when they appeared to, but as if the giving of permission, the lifting of the stay, the setting aside of the judgment or order or, as the case may be, the revival of the discontinued proceedings were the commencement of new relevant proceedings.

*Further provision about intimidation etc.*

## **42 Police directions stopping the harassment etc of a person in his home**

- (1) Subject to the following provisions of this section, a constable who is at the scene may give a direction under this section to any person if—
- (a) that person is present outside or in the vicinity of any premises that are used by any individual (“the resident”) as his dwelling;
  - (b) that constable believes, on reasonable grounds, that that person is present there for the purpose (by his presence or otherwise) of representing to the resident or another individual (whether or not one who uses the premises as his dwelling), or of persuading the resident or such another individual—
    - (i) that he should not do something that he is entitled or required to do; or
    - (ii) that he should do something that he is not under any obligation to do;
 and
  - (c) that constable also believes, on reasonable grounds, that the presence of that person (either alone or together with that of any other persons who are also present)—
    - (i) amounts to, or is likely to result in, the harassment of the resident; or
    - (ii) is likely to cause alarm or distress to the resident.
- (2) A direction under this section is a direction requiring the person to whom it is given to do all such things as the constable giving it may specify as the things he considers necessary to prevent one or both of the following—
- (a) the harassment of the resident; or
  - (b) the causing of any alarm or distress to the resident.

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- (3) A direction under this section may be given orally; and where a constable is entitled to give a direction under this section to each of several persons outside, or in the vicinity of, any premises, he may give that direction to those persons by notifying them of his requirements either individually or all together.
- (4) The requirements that may be imposed by a direction under this section include a requirement to leave the vicinity of the premises in question (either immediately or after a specified period of time).
- (5) A direction under this section may make exceptions to any requirement imposed by the direction, and may make any such exception subject to such conditions as the constable giving the direction thinks fit; and those conditions may include—
  - (a) conditions as to the distance from the premises in question at which, or otherwise as to the location where, persons who do not leave their vicinity must remain; and
  - (b) conditions as to the number or identity of the persons who are authorised by the exception to remain in the vicinity of those premises.
- (6) The power of a constable to give a direction under this section shall not include—
  - (a) any power to give a direction at any time when there is a more senior-ranking police officer at the scene; or
  - (b) any power to direct a person to refrain from conduct that is lawful under section 220 of the Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) (right peacefully to picket a work place);but it shall include power to vary or withdraw a direction previously given under this section.
- (7) Any person who knowingly contravenes a direction given to him under this section shall be guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 4 on the standard scale, or to both.
- (8) A constable in uniform may arrest without warrant any person he reasonably suspects is committing an offence under this section.
- (9) In this section “dwelling” has the same meaning as in Part 1 of the Public Order Act 1986 (c. 64).

VALID FROM 01/07/2005

#### **[<sup>F2</sup>42A Offence of harassment etc. of a person in his home**

- (1) A person commits an offence if—
  - (a) that person is present outside or in the vicinity of any premises that are used by any individual (“the resident”) as his dwelling;
  - (b) that person is present there for the purpose (by his presence or otherwise) of representing to the resident or another individual (whether or not one who uses the premises as his dwelling), or of persuading the resident or such another individual—
    - (i) that he should not do something that he is entitled or required to do;or

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- (ii) that he should do something that he is not under any obligation to do;
  - (c) that person—
    - (i) intends his presence to amount to the harassment of, or to cause alarm or distress to, the resident; or
    - (ii) knows or ought to know that his presence is likely to result in the harassment of, or to cause alarm or distress to, the resident; and
  - (d) the presence of that person—
    - (i) amounts to the harassment of, or causes alarm or distress to, any person falling within subsection (2); or
    - (ii) is likely to result in the harassment of, or to cause alarm or distress to, any such person.
- (2) A person falls within this subsection if he is—
- (a) the resident,
  - (b) a person in the resident's dwelling, or
  - (c) a person in another dwelling in the vicinity of the resident's dwelling.
- (3) The references in subsection (1)(c) and (d) to a person's presence are references to his presence either alone or together with that of any other persons who are also present.
- (4) For the purposes of this section a person (A) ought to know that his presence is likely to result in the harassment of, or to cause alarm or distress to, a resident if a reasonable person in possession of the same information would think that A's presence was likely to have that effect.
- (5) A person guilty of an offence under this section shall be liable, on summary conviction, to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 4 on the standard scale, or to both.
- (6) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for summary offences), the reference in subsection (5) to 51 weeks is to be read as a reference to 6 months.
- (7) In this section “dwelling” has the same meaning as in Part 1 of the Public Order Act 1986.]

#### Textual Amendments

- F2** S. 42A inserted (1.7.2005) by [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **ss. 126(1)**, 178; [S.I. 2005/1521](#), **art. 3(1)(m)** (subject to [art. 3\(4\)\(5\)](#))

## 43 Malicious communications

- (1) In subsection (1) of section 1 of the Malicious Communications Act 1988 (c. 27) (offence of sending letters and other articles with intent to cause distress or anxiety)—
- (a) in paragraph (a), for “letter or other article” there shall be substituted “ letter, electronic communication or article of any description ”; and
  - (b) in paragraph (b), for the word “other article” there shall be substituted “ article or electronic communication ”.

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- (2) In subsection (2) of that section (defence of making a threat in the belief that it was a proper way of reinforcing a demand and that there were reasonable grounds for making that demand)—
  - (a) in paragraph (a), for “which he believed he had reasonable grounds for making” there shall be substituted “made by him on reasonable grounds”; and
  - (b) in paragraph (b), after “believed” there shall be inserted “, and had reasonable grounds for believing,”.
- (3) After that subsection there shall be inserted—

“(2A) In this section “electronic communication” includes—

  - (a) any oral or other communication by means of a telecommunication system (within the meaning of the Telecommunications Act 1984 (c. 12)); and
  - (b) any communication (however sent) that is in electronic form.”
- (4) In subsection (3) of that section (definition of “send”)—
  - (a) after “delivering” there shall be inserted “ or transmitting ”; and
  - (b) for “or delivered” there shall be substituted “, delivered or transmitted ”.
- (5) In subsection (5) of that section (penalty for offence), for “a fine not exceeding level 4 on the standard scale” there shall be substituted “ imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both ”.
- (6) Subsection (5) does not affect the penalty for an offence committed before the day on which this Act is passed.

#### **44 Collective harrassment**

- (1) In section 7 of the Protection from Harassment Act 1997 (c. 40) (interpretation of sections 1 to 5), there shall be inserted the following subsection—

“(3A) A person’s conduct on any occasion shall be taken, if aided, abetted, counselled or procured by another—

  - (a) to be conduct on that occasion of the other (as well as conduct of the person whose conduct it is); and
  - (b) to be conduct in relation to which the other’s knowledge and purpose, and what he ought to have known, are the same as they were in relation to what was contemplated or reasonably foreseeable at the time of the aiding, abetting, counselling or procuring.”
- (2) This section has effect in relation to any aiding, abetting, counselling or procuring that takes place after the coming into force of this section.

#### **45 Addresses of directors and secretaries of companies**

- (1) The Companies Act 1985 (c. 6) shall be amended as follows.
- (2) After section 723A there shall be inserted—



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### **“723B Confidentiality orders**

- (1) Subject to the provisions of this section, an individual may make an application under this section to the Secretary of State where the condition in subsection (2) is satisfied.
- (2) That condition is that the individual—
  - (a) is or proposes to become a director, secretary or permanent representative of a relevant company; and
  - (b) considers that the availability for inspection by members of the public of particulars of his usual residential address creates, or (if an order is not made under this section) is likely to create, a serious risk that he or a person who lives with him will be subjected to violence or intimidation.
- (3) Where, on an application made by an individual under this section, the Secretary of State is satisfied that the availability for inspection by members of the public of particulars of the individual’s usual residential address creates, or (if an order is not made under this section) is likely to create, a serious risk that the individual, or a person who lives with him, will be subjected to violence or intimidation, he shall make an order under this section (“a confidentiality order”) in relation to him.
- (4) Otherwise, he shall dismiss the application.
- (5) An application under this section shall specify, in relation to each company of which the individual is a director, secretary or permanent representative, an address satisfying such conditions as may be prescribed.
- (6) The Secretary of State shall give the applicant notice of his decision under subsection (3) or (4); and a notice under this subsection shall be given within the prescribed period after the making of the decision and contain such information as may be prescribed.
- (7) Regulations may make provision about applications for confidentiality orders; and the regulations may in particular—
  - (a) require the payment, on the making of an application, of such fees as may be specified in the regulations;
  - (b) make provision about the form and manner in which applications are to be made;
  - (c) provide that applications shall contain such information, and be accompanied by such evidence, as the Secretary of State may from time to time direct.
- (8) Regulations may make provision—
  - (a) about the manner in which determinations are to be made under subsection (3) or (4);
  - (b) for questions to be referred to such persons as the Secretary of State thinks fit for the purposes of such determinations;
  - (c) about the review of such determinations;
  - (d) about the period for which confidentiality orders shall remain in force and the renewal of confidentiality orders.

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- (9) The Secretary of State may at any time revoke a confidentiality order if he is satisfied that such conditions as may be prescribed are satisfied.
- (10) Regulations may make provision about the manner in which a determination under subsection (9) is to be made and notified to the individual concerned.

### **723C Effect of confidentiality orders**

- (1) At any time when a confidentiality order is in force in relation to an individual—
  - (a) section 709(1) shall not apply to so much of any record kept by the registrar as contains information which is recorded as particulars of the individual’s usual residential address that were contained in a document delivered to the registrar after the order came into force;
  - (b) section 364 shall have effect in relation to each affected company of which the individual is a director or secretary as if the reference in subsection (4)(a) of that section to the individual’s usual residential address were a reference to the address for the time being specified by the individual in relation to that company under section 723B(5) or subsection (7) below.
- (2) Regulations may make provision about the inspection and copying of confidential records, and such provision may include—
  - (a) provision as to the persons by whom, and the circumstances in which, confidential records may be inspected or copies taken of such records;
  - (b) provision under which the registrar may be required to provide certified copies of, or of extracts from, such records.
- (3) Provision under subsection (2) may include provision—
  - (a) for persons of a prescribed description to be entitled to apply to the court for authority to inspect or take copies of confidential records;
  - (b) as to the criteria to be used by the court in determining whether an authorisation should be given.
- (4) Regulations may make provision for restricting the persons to whom, and the purposes for which, relevant information may be disclosed.
- (5) In subsection (4) “relevant information” means information, relating to the usual residential address of an individual in relation to whom a confidentiality order is in force, which has been obtained in prescribed circumstances.
- (6) Regulations may—
  - (a) provide that, where a confidentiality order is in force in relation to an individual who is a director or secretary of a company, subsections (3) and (5) of section 288 shall not apply in relation to so much of the register kept by the company under that section as contains particulars of the usual residential address of that individual (“the protected part of the register”); and
  - (b) make provision as to the persons by whom the protected part of the register may be inspected and the conditions (which may include conditions as to the payment of a fee) on which they may inspect it.
- (7) Regulations may make provision—

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- (a) requiring any individual in relation to whom a confidentiality order is in force to specify in the prescribed manner, in relation to each company of which he becomes a director, secretary or permanent representative at a time when the order is in force, an address satisfying such conditions as may be prescribed;
  - (b) as to the manner in which the address specified in relation to a company under section 723B(5) or this subsection may be changed.
- (8) A company is an affected company for the purposes of subsection (1) if—
- (a) it is required to deliver annual returns in accordance with section 363; and
  - (b) the individual has specified an address in relation to it under section 723B(5) or subsection (7) above.

### **723D Construction of sections 723B and 723C**

- (1) In section 723B “relevant company” means—
  - (a) a company formed and registered under this Act or an existing company; or
  - (b) an overseas company.
- (2) For the purposes of sections 723B and 723C, an individual is a permanent representative of a company if—
  - (a) the company is a company to which section 690A applies; and
  - (b) he is authorised to represent the company as a permanent representative of the company for the business of one or more of its branches in Great Britain.
- (3) In section 723C “confidential records” means so much of any records kept by the registrar for the purposes of the Companies Acts as contains information—
  - (a) which relates to an individual in relation to whom a confidentiality order is in force; and
  - (b) is recorded as particulars of the individual’s usual residential address that were contained in a document delivered to the registrar after the order came into force.
- (4) In sections 723B and 723C—
  - “confidentiality order” means an order under section 723B;
  - “the court” means such court as may be specified in regulations;
  - “director” and “secretary”, in relation to an overseas company, have the same meanings as in Chapter 1 of Part 23 of this Act;
  - “document” has the same meaning as in Part 24 of this Act;
  - “prescribed” means prescribed by regulations.
- (5) Section 715A(2) applies in relation to sections 723B and 723C as it applies in relation to Part 24 of this Act.
- (6) Regulations may provide that in determining for the purposes of sections 723B and 723C whether a document has been delivered after the coming into force of a confidentiality order, any document delivered to the registrar after the latest time permitted for the delivery of that document shall be deemed to have been delivered at that time.

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- (7) For the purposes of section 723B(2)(a) and subsection (2) above it is immaterial whether or not the company in question has already been incorporated or become a relevant company or a company to which section 690A applies at the time of the application under section 723B.
- (8) For the purposes of section 723C(1) and subsection (3) above, it is immaterial whether the record in question consists in the original document concerned.

### **723E Sections 723B and 723C: offences**

- (1) Regulations may provide—
  - (a) that any person who in an application under section 723B makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular, shall be guilty of an offence;
  - (b) that any person who discloses information in contravention of regulations under section 723C(4) shall be guilty of an offence.
- (2) Regulations may provide that a person guilty of an offence under subsection (1) shall be liable—
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both; and
  - (b) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum, or to both.

### **723F Regulations under sections 723B to 723E**

- (1) In sections 723B to 723E “regulations” means regulations made by the Secretary of State.
  - (2) Any power of the Secretary of State to make regulations under any of those sections shall be exercisable by statutory instrument.
  - (3) Regulations under sections 723B to 723E—
    - (a) may make different provision for different cases;
    - (b) may contain such incidental, supplemental, consequential and transitional provision, as the Secretary of State thinks fit.
  - (4) The provision that may be made by virtue of subsection (3)(b) includes provision repealing or modifying any enactment.
  - (5) No regulations shall be made under any of sections 723B to 723E unless a draft of the instrument containing them has been laid before Parliament and approved by a resolution of each House.”
- (3) In section 288 (register of directors and secretaries), after subsection (6) there shall be inserted—
- “(7) Subsections (3) and (5) are subject to section 723B.”
- (4) In section 709(1) (inspection, etc of records kept by the registrar), at the beginning there shall be inserted “ Subject to section 723B, ”.

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#### **Commencement Information**

- I4** S. 45 wholly in force at 2.4.2002; s. 45 not in force at Royal Assent see s. 138; s. 45 in force for certain purposes at 19.6.2001 by S.I. 2001/2223, art. 2(2)(c); s. 45 in force at 2.4.2002 insofar as not already in force by S.I. 2002/533, art. 3

### *Advertisements relating to prostitution*

#### **46 Placing of advertisement relating to prostitution**

- (1) A person commits an offence if—
  - (a) he places on, or in the immediate vicinity of, a public telephone an advertisement relating to prostitution, and
  - (b) he does so with the intention that the advertisement should come to the attention of any other person or persons.
- (2) For the purposes of this section, an advertisement is an advertisement relating to prostitution if it—
  - (a) is for the services of a prostitute, whether male or female; or
  - (b) indicates that premises are premises at which such services are offered.
- (3) In any proceedings for an offence under this section, any advertisement which a reasonable person would consider to be an advertisement relating to prostitution shall be presumed to be such an advertisement unless it is shown not to be.
- (4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or both.
- (5) In this section—
 

“public telephone” means—

  - (a) any telephone which is located in a public place and made available for use by the public, or a section of the public, and
  - (b) where such a telephone is located in or on, or attached to, a kiosk, booth, acoustic hood, shelter or other structure, that structure; and

“public place” means any place to which the public have or are permitted to have access, whether on payment or otherwise, other than—

  - (a) any place to which children under the age of 16 years are not permitted to have access, whether by law or otherwise, and
  - (b) any premises which are wholly or mainly used for residential purposes.
- (6) In section 24 of the Police and Criminal Evidence Act 1984 (c. 60) (arrest without warrant for arrestable offences), in subsection (2) (offences which are arrestable offences), after paragraph (c) insert-
  - “(ca) an offence under section 46 of the Criminal Justice and Police Act 2001;”.

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#### **47 Application of section 46 by order to public structures**

- (1) The Secretary of State may, by order, provide for section 46 to apply in relation to any public structure of a description specified in the order as it applies in relation to a public telephone.
- (2) In this section—
  - “public structure” means any structure that—
    - (a) is provided as an amenity for the use of the public or a section of the public, and
    - (b) is located in a public place; and
  - “public place” and “public telephone” have the same meaning as in section 46.
- (3) At any time when an order under this section has effect, the reference in section 24(2) of the Police and Criminal Evidence Act 1984 (c. 60) to an offence under section 46 of this Act shall be construed as including an offence under that section by virtue of the order.
- (4) The power to make an order under this section is exercisable by statutory instrument.
- (5) No order may be made under this section unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.

#### *Local child curfew schemes*

#### **48 Extension to older children**

In section 14(2) of the Crime and Disorder Act 1998 (c. 37) (maximum age of children to be subject to local child curfew schemes) for “under 10” there shall be substituted “under 16”.

#### **49 Power for police to make schemes**

- (1) Section 14 of the Crime and Disorder Act 1998 (local child curfew schemes) shall be amended as follows.
- (2) In subsection (1) (power to make schemes)—
  - (a) after “local authority” there shall be inserted “or a chief officer of police”; and
  - (b) after “the authority”, in each place where it appears, there shall be inserted “or (as the case may be) the officer”.
- (3) After subsection (3) there shall be inserted—

“(3A) Before making a local child curfew scheme, a chief officer of police shall consult—

  - (a) every local authority any part of whose area lies within the area to be specified; and
  - (b) such other persons or bodies as he considers appropriate.”
- (4) For subsection (4) there shall be substituted—

“(4) A local child curfew scheme shall, if made by a local authority, be made under the common seal of the authority.

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(4A) A local child curfew scheme shall not have effect until it is confirmed by the Secretary of State.”

(5) In subsection (7)(b) after “authority” there shall be inserted “ or (as the case may be) the chief officer of police ”.

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