

**Date: 17 November 2009**

**To: Members of the Licensing Committee**

Mrs. S. Francks (Chairman)	Mr. R. Mayne
Mr. C. G. Joyce (Vice-Chairman)	Mr. K. Morrell
Mr. P.R. Batty	Mr. K. Nichols
Mr. J. C. Bown	Mr. O. O'Shea
Mr. S. L. Bray	Mr. A.J. Smith
Mr. M. B. Cartwright	Mrs. S. Sprason
Mr. D. M Gould	Mr. B.E. Sutton
Mr. P. A. S. Hall	

Copy to all other Members of the Council

(other recipients for information)

Dear Councillor

There will be a meeting of the **LICENSING COMMITTEE** in the Council Chamber, Council Offices, Hinckley on **WEDNESDAY 25 NOVEMBER 2009 at 6.30 pm** and your attendance is required.

PLEASE NOTE THAT IMMEDIATELY FOLLOWING THIS MEETING THERE WILL BE A MEETING OF THE LICENSING (REGULATORY) COMMITTEE.

The agenda for the meeting is set out overleaf.

Yours sincerely

Pat Pitt (Mrs.)  
Corporate Governance Officer

**LICENSING COMMITTEE**  
**25 NOVEMBER 2009**  
**A G E N D A**

1. APOLOGIES AND SUBSTITUTIONS

RESOLVED 2. MINUTES

To confirm the minutes of the meeting held on 17 November 2009 - copy attached marked L8.

3. ADDITIONAL URGENT BUSINESS BY REASON OF SPECIAL CIRCUMSTANCES

To be advised of any additional items of business which the Chairman decides by reason of special circumstances shall be taken as matters of urgency at this meeting.

4. DECLARATIONS OF INTEREST

To receive verbally from members any disclosures which they are required to make in accordance with the Council's code of conduct or in pursuance of Section 106 of the Local Government Finance Act 1992. **This is in addition to the need for such disclosure to be also given when the relevant matter is reached on the Agenda.**

5. GAMBLING ACT 2005 – STATEMENT OF PRINCIPLES

Report of Director of Community and Planning Services attached marked L9 (pages 1-5)

6. DELEGATION OF FUNCTIONS UNDER THE CRIMINAL JUSTICE AND POLICE ACT 2001 - CLOSURE NOTICES AND CLOSURE ORDERS

Report of Director of Community and Planning Services attached marked L10 (pages 6-22)

To: All Members of the **Licensing Committee** with a copy to all other Members of the Council.

**NOTE: AGENDA ITEMS AGAINST WHICH THE WORD "RESOLVED" APPEARS ARE MATTERS WHICH ARE DELEGATED TO THE COMMITTEE FOR A DECISION. OTHER MATTERS ON THIS AGENDA WILL BE THE SUBJECT OF RECOMMENDATIONS TO COUNCIL.**

**HINCKLEY AND BOSWORTH BOROUGH COUNCIL**  
**LICENSING COMMITTEE**  
**17 AUGUST 2009 AT 6.30 P.M.**

**PRESENT:** MRS. S. FRANCKS - CHAIRMAN  
Mr. C.G. JOYCE - VICE-CHAIRMAN

Messrs. P.R. Batty, J.C. Bown, S. L. Bray, M.B. Cartwright, D.M. Gould, P.A.S. Hall, R. Mayne, K Nichols, L.J.P. O'Shea and A.J. Smith and Mrs. S. Sprason.

Officers in attendance: Mr. Mark Brymer, Mrs. P.I. Pitt and Mr. M. Rice.

158 **APOLOGIES**

Apologies for absence were submitted on behalf of Messrs. K. Morrell and B.E. Sutton.

159 **MINUTES (L5)**

On the motion of Mr. Bray, seconded by Mr. O'Shea it was

**RESOLVED** - the minutes of the meeting held on 9 June 2009 be confirmed and signed by the Chairman.

160 **LICENSING ACT 2003 – MINOR VARIATIONS PROPOSAL (L6)**

The Principal Licensing Officer indicated that the Licensing Act 2003 had been amended by the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 to introduce what the Government described as a simplified process for minor variations to premises licences and club premises certificates. The Principal Licensing Officer then went on to summarise the new process for dealing with applications for minor variations. Reservations were expressed by some Members that with the revised requirement that an applicant would no longer need to advertise the application in the local press or copy it to the Responsible Authorities residents would not necessarily be aware of any submission. It was emphasised by the Principal Licensing Officer that the intention was to simplify a minor process relating to minor variations and described the 5 circumstances in which the minor variation process could not be used.

The suggestion was made that details of any application for minor variations be sent to Members of the Licensing Committee and appropriate ward members and on the motion of Mr. Cartwright, seconded by Mr. O'Shea it was

**RESOLVED** – in order to keep Members fully acquainted details of any applications for minor variations be sent to the Licensing Committee and ward members, as necessary.

Further, it was moved by Mrs. Francks, seconded by Mr. Bray and

RECOMMENDED – the Council be requested to agree that:-

- (i) the power to grant or issue applications for minor variations of a premises licence or club premises certificate be delegated to the Director of Community and Planning Services; and
- (ii) the Principal Licensing Officer make appropriate amendments to the Constitution (delegation of functions) to take account of (i) above by adding to the delegated powers of the Director of Community and Planning Services and the Principal Licensing Officer the authority to grant or refuse minor variations under the Licensing Act 2003.

161 GAMBLING ACT 2005 – STATEMENT OF PRINCIPLES (L7)

The Principal Licensing Officer referred to the requirement under section 349 of the above legislation for the Council to review and republish its Statement of Principles every three years. This being the case the Council would, following a specific consultation process, be asked at its December meeting to agree a revised Statement of Principles prior to publication no later than 31 December 2009.

It was moved by Mr. Bray, seconded by Mr. Cartwright and

RESOLVED – the contents of the report of the Head of Planning and Community Services be noted and the revised draft of the three year Statement of Principles be approved for consultation purposes.

(The meeting closed at 6.53 p.m.)

**LICENSING COMMITTEE – 25 NOVEMBER 2009**

**REPORT OF DIRECTOR OF COMMUNITY & PLANNING SERVICES**  
**RE: GAMBLING ACT 2005 – STATEMENT OF PRINCIPLES**

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1. **PURPOSE OF REPORT**

- 1.1 To consider the Draft Gambling Policy (Statement of Principles) in light of the recent consultation exercise and for the Committee to recommend the document for adoption by the Council. A copy of the Statement of Principles is enclosed with this agenda for members of the Committee. Copies will also be deposited in the Members' Room and the document also placed on the Council's website.

2. **RECOMMENDATION**

- 2.1 That Licensing Committee agrees this Authority's Gambling Policy (Statement of Principles) for recommendation to full Council for adoption.

3. **BACKGROUND TO THE REPORT**

- 3.1 Hinckley & Bosworth Borough Council is required under section 349 of the Gambling Act 2005 to review and republish its Statement of Principles every three years.

- 3.2 When reviewing its Statement of Principles, the Council are required to consult with:-

- the chief officer of police for the authority's area,
- one or more persons who appear to the authority to represent the interests of persons carrying on gambling businesses in the authority's area, and
- one or more persons who appear to the authority to represent the interests of persons who are likely to be affected by the exercise of the authority's functions under this Act.

- 3.3 The Council must also ensure that they comply with the Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006 (S.I 636 of 2006). These regulations govern the form statements must take, the procedure to be followed in relation to the preparation, review or revision of statements and the publication of statements.

- 3.4 These regulations require that a Statement is published by being made available for a period of at least 4 weeks before the date on which it will come into effect:-

- on the Authority's website, and
- for public inspection in one or more public libraries or other premises in the Borough such as the Council Offices.

- 3.5 The Council must also advertise the publication of the revised Statement of Principles by publishing a notice on the Authority's website and in one or more of the following places:
- a local newspaper circulating in the area covered by the statement
  - a local newsletter, circular, or similar document circulating in the area covered by the statement,
  - a public notice board in or near the principal office of the authority,
  - a public notice board on the premises of public libraries in the area covered by the statement.
- 3.6 The Gambling Commission was set up under the Gambling Act 2005 and was formally established in October 2005. It has taken over the role previously played by the Gaming Board for Great Britain in regulating casinos, bingo, gaming machines and lotteries.
- 3.7 The Commission also has responsibility for the regulation of betting and remote gambling, as well as helping to protect children and vulnerable people from being harmed or exploited by gambling. The Commission is also responsible for advising local and central government on issues related to gambling.
- 3.8 Under the terms of the Gambling Act 2005 the Council's licensing responsibilities came into force on 1 September 2007. These included licensing any premises used for gambling, regulating the use of gaming machines, granting permits to certain types of amusement arcades, issuing Temporary Use Notices and registering small society lotteries.
- 3.9 In drafting the revised Statement of Principles consideration has been given to the following factors:
1. The original Statement of Principles contained references to arrangements for the implementation of the legislation in the transition period which no longer apply.
  2. The Guidance issued by the Gambling Commission has recently been revised and contains updated guidance on various aspects of administering the gambling legislation.
  3. There have been legal cases which have clarified various aspects of Gambling Act 2005
- 3.10 The revised draft Statement of Principles (which has been deposited in the Members' Room and placed on the Council's website) takes account of changes made to the Commission's Guidance to Licensing Authorities since the Council's last Statement of Principles was published in December 2006.

3.11 Notable changes that are reflected in the new draft policy are:-

- Removal of all text in relation to the Transitional Period in 2007
- Enforcement
- Splitting premises
- Premises “ready for gambling” (Provisional Statements)
- Temporary Use Notices

3.12 Enforcement: The section in the Policy on enforcement has been amended to reflect new guidance from the Gambling Commission on compliance and enforcement functions, including references to recent work undertaken by Business Enterprise and Regulatory Reform (BERR) and the Local Better Regulation Office (LBRO).

3.13 “Splitting” premises: Regulations determine, for example, the number of high stake (“jackpot”) gaming machines that are allowed in different types of licensed premises. This has led to the wide practice of “splitting” premises artificially, such as sub dividing single premises. Further guidance has therefore been provided by the Gambling Commission which is reflected in the Policy. The Gambling Commission’s access provisions for each premises type are reproduced in the Policy.

3.14 Provisional Statements: There have been occasions where licensing authorities have rejected applications for new premises licences because they have decided that the premises was not “ready for gambling” and therefore an application for a “Provisional Statement” should have been made. Provisional Statements are applications where a premises is not ready for gambling, because, for example, it is under construction. Further application for premises licence has to be made before premises can be used for gambling. In order to clear up confusion in this area, the Gambling Commission revised its original guidance.

3.15 Temporary Use Notice regulations had not been passed at the time of writing the original Policy so this section now includes an explanation of when Temporary Use Notices can be used and the types of games for which they are applicable (e.g. poker and cribbage).

3.16 Due to the publication and advertising requirements, Council will need to approve and publish a revised Statement of Principles no later than 31 December 2009 and therefore will need to agree the revised Statement of Principles at the Executive meeting on 9 December 2009 prior to adoption at the Council meeting on 15 December 2009.

#### 4. **FINANCIAL IMPLICATIONS [HF]**

4.1 There are no financial implications arising from this report other than the costs of publicising the policy. This can be done through the Borough Bulletin and public notice boards at the council offices and public libraries. The costs will be negligible and will be met from existing budgets.

5. **LEGAL IMPLICATIONS [MR]**

5.1 Set out in the report.

6. **CORPORATE PLAN IMPLICATIONS**

6.1 Objective 3 – Safer and Healthier Borough

6.2 To ensure that the Authority meets its statutory obligations under the Gambling Act 2005. For the most part to ensure licence holders comply with the three licensing objectives.

7. **CONSULTATION**

7.1 Consultation has been undertaken with a wide range of persons and organisations with an interest in the development and adoption of a revised Statement of Principles:-

- The Chief Officer of Police
- Persons carrying on gambling businesses within the Borough
- Groups representing vulnerable persons

7.2 The draft Statement of Principles has been published on the Council's website and comments have been sought on the proposals being made.

7.3 From the consultations carried out, no adverse representations have been received.

8. **RISK IMPLICATIONS**

8.1 The following significant risks associated with this report / decisions were identified from this assessment:

<b>Management of significant (Net Red) Risks</b>		
<b>Risk Description</b>	<b>Mitigating actions</b>	<b>Owner</b>
The Council (Licensing Authority) must prepare and publish a statement of the principles that they propose to apply in exercising its functions under the Act. This is a statutory requirement under the Act and in line with the Gambling Commissions Guidance.	Statutory requirement for the policy to be reviewed every three years following a full consultation with statutory consultees.	Mark Brymer



9. **KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS**

9.1 Groups and Responsible Authorities representing vulnerable adults and children in our Borough have been consulted as part of the review of this policy, no adverse representations were received.

10. **CORPORATE IMPLICATIONS**

By submitting this report, the report author has taken the following into account:

- Community Safety implications
- Environmental implications
- ICT implications
- Asset Management implications
- Human Resources implications
- Planning Implications
- Voluntary Sector

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Background papers: Gambling Act 2005

Gambling Commission Guidance to Licensing Authorities 3<sup>rd</sup> Edition  
Gambling Act 2005 (Licensing Authority Policy Statement) (England and Wales) Regulations 2006 (S.I 636 of 2006)

Contact Officer: Mark Brymer ext 5645

**LICENSING COMMITTEE – 25 NOVEMBER 2009**

**REPORT OF DIRECTOR OF COMMUNITY & PLANNING SERVICES**  
**RE: DELEGATION OF FUNCTIONS UNDER THE CRIMINAL JUSTICE AND POLICE**  
**ACT 2001 – CLOSURE NOTICES AND CLOSURE ORDERS**

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**1. PURPOSE OF REPORT**

- 1.1 To consider making a recommendation to the Council to approve the giving of delegated powers to the Principal Licensing Officer and Licensing Officer in respect of certain functions under the Criminal Justice and Police Act 2001.

**2. RECOMMENDATION**

- 2.1 That the Council delegate its functions under Section 19-28 of the Criminal Justice and Police Act 2001 to the Principal Licensing Officer and Licensing Officer, and
- 2.2 That the Council amends the Constitution (Responsibility for Functions) to take account of the above recommendation by adding to the delegated powers of the Principal Licensing Officer and Licensing Officer to serve closure notices and apply for closure orders under Sections 19 and 20 of the Criminal Justice and Police Act 2001.

**3. BACKGROUND TO THE REPORT**

- 3.1 The Criminal Justice and Police Act 2001 originally gave the Police powers to close down any premises, which did not hold alcohol licences. The Licensing Act 2003 expanded these powers to allow the Police and the Local Authority to put premises operating in breach of their licensing conditions on notice that they may be closed unless the illegal behaviour is stopped. The powers apply where any premises are being, or within the last 24 hours have been, used for the unauthorised sale of alcohol from a premises or club in breach of a licensable activity or licence conditions, for example, where sales are taking place but CCTV cameras, required as a condition of the licence, are not operating or installed.
- 3.2 The powers under Sections 19-28 of the Criminal Justice and Police Act 2001 may be invoked by either the Police or the Local Authority.
- 3.3 The use of this power will normally follow a licensing inspection. The notice is most likely to be used where a licensee has been given advice and has not rectified the issue within the agreed time period and is uncooperative or unwilling to comply with a condition of licence. The notice of closure is a last chance for the licensee to take action before closure or licence review.

- 3.4 Closure is a two-stage process involving firstly the service of a “Closure Notice” indicating the breach of licence condition, which has been identified. The notice requires the recipient to take action to cure the breach. If action is not taken within 7 days of the notice being issued, then the Local Authority can apply to the Magistrates Court for an order to close the premises at any time in the following 6 months. It will then be for the Court to decide whether the premises should be closed and whether any further action should be taken.
- 3.5 In essence, the notice puts the premises on probation and allows the licensee to put his house in order. It does not necessarily follow that the issue of a closure notice will lead to the seeking of a closure order; it is envisaged the issue of a closure notice will achieve the desired effect of correcting any breach of conditions.
- 3.6 It is vitally important that the Licensing Authority ensures it has the full range of regulatory powers at its disposal when undertaking its compliance / enforcement functions.
- 3.7 As is the case with the other Leicestershire Licensing Authorities this Authority has not yet made use of the Closure Notice powers. Enforcement measures at present have been undertaken using the possibility of prosecution if licence holders do not comply with licence conditions.
- 3.8 Officers suggest that the above powers will be a useful tool to have available, and if used, will assist to ensure that premises operate according to the conditions of their licence. The mere issue of the initial closure notice will no doubt assist in focusing the minds of operators to comply with the law.
- 3.9 It should not automatically follow that a closure notice will be issued when premises are found to be operating in breach of its conditions. The initial threat of a Closure Notice will probably have the desired effect. In addition, based on other Local Authorities experiences, Officers think it is unlikely that many applications will need to be made to the Magistrates Court for a Closure Order.
- 3.10 Not to introduce a scheme of delegation for the powers under the Criminal Justice and Police Act 2001 will limit the Authority’s ability to undertake enforcement and compliance action.
- 3.11 If a Closure Order is made by the Magistrates Court the order may require:
- (a) the premises to be closed immediately until a Police Constable or the Local Authority makes a certificate terminating the order;
  - (b) the use of the premises for the unauthorised sale of alcohol to be discontinued immediately;
  - (c) the payment of any sum of money to the Court pending compliance with the Order.

- 3.12 Section 136 of the Licensing Act 2003 makes it an offence to carry on or attempt to carry on a licensable activity otherwise than under and in accordance with an authorisation. Therefore there is also the option of instituting formal prosecution proceedings for the breach of a licence condition.
- 3.13 Appendix A of this Report details the law under the Criminal Justice and Police Act 2001 and an example of a Closure Notice is shown at Appendix B.
- 3.14 The powers under the Criminal Justice and Police Act 2001 will need to be used in accordance with the Regulators' Compliance Code and the Council's own Enforcement Policy. In particular the Council's intention should be to improve regulatory outcomes without imposing unnecessary burdens. For this reason procedures and guidelines will be put in place to ensure that the use of Closure Notices is proportionate to the risks in each case.
- 3.15 The Licensing Authority must ensure that its decisions can withstand scrutiny by reference to the principle of proportionality, i.e. is the decision / action proportionate to what it wishes to achieve. The Human Rights Act 1998 places general obligations on enforcement bodies to ensure fair treatment for all and to prevent any form of prejudice.

#### **4. FINANCIAL IMPLICATIONS [ HF]**

- 4.1 It is possible that if an application made to the Magistrates Court for a Closure Order is turned down, costs may be awarded against the Council. The risk of this happening is deemed to be low given that obtaining a Closure Order is the final stage in the enforcement process.

#### **5. LEGAL IMPLICATIONS [ MR]**

- 5.1 Section 101 Local Government Act 1972 empowers the Council to delegate the carrying out of this function to officers. Other legal implications are set out in the report.

#### **6. CORPORATE PLAN IMPLICATIONS**

- 6.1 Objective 3 – Safer and Healthier Borough. The compliance / enforcement role of the Council is important in improving the health, safety, security and welfare of the Boroughs residents, visitors and business community.

#### **7. CONSULTATION**

- 7.1 Not applicable.

#### **8. RISK IMPLICATIONS**

It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

The following significant risks associated with this report / decisions were identified from this assessment:

<b>Management of significant (Net Red) Risks</b>		
<b>Risk Description</b>	<b>Mitigating actions</b>	<b>Owner</b>
Legal - There is a theoretical risk of civil action against the Council if it is found not to have exercised due diligence in licensing matters.	Procedures and guidelines will be put in place to ensure that the use of Closure Notices is proportionate to the risks in each case.	Mark Brymer

9. **KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS**

9.1 The application of this additional enforcement power will be applied across the whole Borough and its communities in a proportionate, equitable and fair manner.

10. **CORPORATE IMPLICATIONS**

By submitting this report, the report author has taken the following into account:

- Community Safety implications -  
All Local Authorities must fulfil their obligations under Section 17 of the Crime and Disorder Act 1988 when carrying out their functions as licensing authorities. Section 17 places a duty on Local Authorities to do all they reasonably can to prevent crime and disorder in their area.

Background papers:

Criminal Justice and Police Act 2001  
The Practical Guide For Preventing and Dealing With Alcohol Related Problems What You Need To Know – The Home Office

Contact Officer: Mark Brymer ext 5645

## **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 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.

## APPENDIX A

- (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.
- (5) The summons shall be directed to—

## APPENDIX A

- (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.



## APPENDIX A

- (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.
- (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

## APPENDIX A

- (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—
  - (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.

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### **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

## APPENDIX A

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) 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.

## APPENDIX A

- (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.
- (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;

## APPENDIX A

- (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.

### **Criminal Justice and Police Act 2001 (c. 16)**

#### **119 The Criminal Justice and Police Act 2001 is amended as follows.**

120 In section 1(1) (offences leading to penalties on the spot), at the end of the Table insert—

“Section 149(4) of the Licensing Act 2003 Buying or attempting to buy alcohol for consumption on licensed premises, etc. by child”

121 In section 12 (alcohol consumption in designated public place)—

- (a) in subsections (1) and (2), for “intoxicating liquor”, in each place it occurs, substitute “alcohol”, and
- (b) in subsection (2) for “such liquor” substitute “alcohol”.

122 In section 13 (designated public places), in subsection (2) for “intoxicating liquor” substitute “alcohol”.

123 (1) Section 14 (places which are not designated public places) is amended as follows.

(2) In subsection (1)—

(a) for paragraphs (a) to (d) substitute—

“(a) premises in respect of which a premises licence or club premises certificate, within the meaning of the Licensing Act 2003, has effect;

(b) a place within the curtilage of premises within paragraph (a);

(c) premises which by virtue of Part 5 of the Licensing Act 2003 may for the time being be used for the supply of alcohol or which, by virtue of that Part, could have been so used within the last 20 minutes;”, and

## APPENDIX A

(b) in paragraph (e), for “intoxicating liquor” substitute “alcohol”.

(3) Omit subsection (2).

124 In section 15(1)(a) (byelaw prohibiting consumption of alcohol), for “intoxicating liquor” substitute “alcohol”.

125 In section 16(1) (interpretation of sections 12 to 15)—

(a) before the definition of “designated public place” insert—

““alcohol” has the same meaning as in the Licensing Act 2003;”,

(b) omit the definition of “intoxicating liquor”, and the word “and” immediately following it, and

(c) after the definition of “public place” insert “; and

“supply of alcohol” has the meaning given by section 14 of the Licensing Act 2003”.

**126 In each of the following provisions, for “unlicensed sale of intoxicating liquor” substitute “unauthorised sale of alcohol”—**

**(a) section 19(1) and (2) (service of closure notice by constable or local authority),**

**(b) section 20(3)(a) (no application for closure order where unauthorised sale of alcohol has ceased),**

**(c) section 21(1)(b) and (2)(b) (closure order),**

**(d) section 27(6) (fixing notice on premises where personal service cannot be effected).**

127 In section 28 (interpretation of provisions relating to closure of unlicensed premises)—

(a) before the definition of “closure notice” insert—

““**alcohol**” has the same meaning as in the Licensing Act 2003;”,

(b) omit the definition of “intoxicating liquor”, and

(c) for the definition of “unlicensed sale” substitute—

APPENDIX A

“**unauthorised sale**”, in relation to any alcohol, means any supply of the alcohol (within the meaning of section 14 of the Licensing Act 2003) which—

- (a) is a licensable activity within the meaning of that Act, but
- (b) is made otherwise than under and in accordance with an authorisation (within the meaning of section 136 of that Act).”

128 In Schedule 1 (powers of seizure)—

- (a) at the end of Part 1 insert—

“Licensing Act 2003

74. The power of seizure conferred by section 90 of the Licensing Act 2003 (seizure of documents relating to club).”, and

- (b) at the end of Part 3 insert—

“Licensing Act 2003

110. The power of seizure conferred by section 90 of the Licensing Act 2003 (seizure of documents relating to club).”





Hinckley & Bosworth  
Borough Council

*A Borough to be proud of*

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

No:

Date and Time of the Closure Notice:
Person making the Notice:
Signature:

Name (if applicable) and Address of the Affected Premises:
--

Alleged unauthorised use of the Premises:
---

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

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



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## EXPLANATORY NOTES

A police officer, or an authorised officer from the local authority, has decided to issue this closure notice under the terms of section 19 of the Criminal Justice and Police Act 2001 ("the 2001 Act").

### **Section 19 of the 2001 Act – Closure Notices**

Where a police officer, or an authorised officer from the local authority, is satisfied that any premises are being, or within the last 24 hours have been used for the unlicensed sale of alcohol, including being in breach of its licence conditions, he may serve under subsection (3) a notice in respect of the premises.

### **Section 20 of the 2001 Act – Closure Orders**

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

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

### **Appeals – Section 24 of the 2001 Act**

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

### **Enforcement Powers and Offences – Section 25 of the 2001 Act**

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

It is also an offence for a person who, without reasonable excuse, fails to comply with any other terms of a closure order made by the court, or does an act which contravenes those other terms. Any person convicted of this offence is liable to a fine not exceeding £5,000, or to three months imprisonment, or to both.

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

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

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