

POLICE POWERS OF CLOSURE

Following the introduction of the Licensing Act 2003, the police have new and increased inspection and enforcement powers in relation to licensed premises. There is now growing evidence that these are being widely and creatively used, and we can expect to see them deployed over the Christmas trading period.

It is important that operators and, more importantly, their staff are aware of these powers and the ramifications of them. This note summarises the three main powers available to the police, highlights the differences between them and any restrictions on their use. It concludes by providing a checklist for DPS and managers setting out how best to respond in order to avoid exposing the business to unnecessary or undue risk.

Overview

The Licensing Act 2003 replaced and expanded the powers of the police to close licensed premises. Theoretically, the powers are not designed to be used to penalise licensees but rather to act as a deterrent to encourage them to maintain order on their premises and to protect public safety. They underline the social responsibilities of the licensee.

However, reference to the ability to close a licensed premises on-the-spot is increasingly being made during the course of licensing inspections. It is clear that it is being used as a threat to push through operational changes which the police would like to see made. The police only have the power to close premises immediately in specific circumstances, and staff need to be aware of which threats are real and when evasive action can avoid closure – they can only do so by carefully checking the specific section of the Act being quoted.

It is also worth noting that the powers apply to outlets covered by a Premises Licence and operating under a Temporary Event Notice. Moreover, although these powers are normally deployed by the police, they do not only relate to disorder, violence or criminal matters. They can also be used to tackle noise nuisance and operating in breach of licensing conditions. Licensing officers and other bodies may also refer to them in inspections.

Emergency or contingency planning

Under Section 160 of the Licensing Act 2003, the police have the power to require the closure of all premises in a given area for up to 24 hours. This power is only to be used where they have specific intelligence which leads them to anticipate severe public order problems likely to be fuelled by alcohol eg football fixtures or potentially New Year's Eve.

This power is exercisable through the Courts and a request is made by a superintendent. The court may not make such an order unless it is satisfied that it is absolutely necessary to prevent disorder. The burden of proof is on the police to satisfy the court. The police should initially seek voluntary agreement to closure.

Example: the police receive intelligence on a Monday that there will be gang-related violence in or around a specific outlet on Saturday evening. They should initially talk to the premises in question but the threat of serious disorder may lead to a general closure order being sought for neighbouring premises.

Immediate Closure Identified Premises

Operators will more normally be on the receiving end of closure orders issued under Section 161 of the Licensing Act 2003, which result in instant closure and are issued without court involvement. These are directed at individual premises.

This power is used where disorder is actually taking place, is likely to break out or is imminent – it should not be used where disorder could have been readily anticipated nor can it be used as a penalty for disorder which has occurred in the past. The disorder must relate to a specific identified premises, and be occurring on or in its vicinity. It will be for the courts to decide after the event whether these tests were met.

A section 161 order is made by an inspector on the basis of operational information from officers on the ground – those making regular licensing inspections, beat patrols or attending the premises at the request of the licensee or following a complaint – but it should only be used where absolutely necessary in order to protect public safety.

The closure order will come into force as soon as it is served and can last up to 24 hours. It may, however, be used for shorter periods of time but the police can also apply to the courts for an extension beyond 24 hours if they feel it is necessary.

The police are directed to seek voluntary cooperation of the licensee, manager or DPS before resorting to closure. They should initially warn them that the incident is serious enough to trigger the powers and advise them to close to allow customer to disperse. They should only move to compulsory closure if the advice is disputed or rejected. Cooperation is vital to protect the liquor licence. A Section 161 order automatically results in a **review of the full licence** - with the potential for stringent conditions to be applied eg cutting of hours or capacity or even full revocation. This is not the case with voluntary closure.

Police are also directed to take into account the conduct of staff when deciding whether to move to formal closure. This means that if the manager or DPS has acted incompetently, or fails to cooperate, then a closure order is more likely to be made. Equally, an outlet with a history of trouble will be more likely to be closed.

It is important to note that a closure order only requires the cessation of licensable activities not the immediate and actual closure of the outlet. Indeed it may be helpful for the outlet to remain open to allow for a gradual dispersal of customers. There is no obligation on staff to clear the premises and no offence is committed if customers remain on site and continue to consume. Again, this may help to protect law abiding customers while the police deal with troublemakers and is sensible if closure has been negotiated for a short period of time.

Example: a fight breaks out which escalates when door-staff become involved. Someone calls the police who arrive to find a brawl involving at least 10 people, including known troublemakers. The police are fearful that if these customers are ejected then further violence will erupt outside the premises. The manager is not in control and CCTV is not operational. The police voluntarily ask the DPS to close for the rest of the evening in order to allow them to disperse the troublemakers. When this is refused a closure order is issued for a full 24 hours. A review hearing is scheduled immediately and results in a 3 month restriction in hours.

Threatened Closure

There is increasing anecdotal evidence to suggest that the threat of closure is being used by both the police and local authority eg “I could have you closed down for that”. If staff are threatened with closure during the course of a licensing inspection, then it is not likely to be under one of the above emergency powers, but more likely to be under Section 19 of the Criminal Justice and Police Act 2001.

The Criminal Justice and Police Act originally gave the police powers to close unlicensed premises. The Licensing Act 2003 extended this to allow them and local authority staff to put outlets operating in breach of their licensing conditions on notice that they will be closed unless the illegal behaviour is stopped. It is designed to be used for serious illegal behaviour eg trading beyond normal permitted hours or providing entertainment not included in an operating schedule. However, it appears to be being used in practice for relatively minor technical breaches of conditions rather than illegal trading per se.

The use of this power will normally follow a licensing inspection or police visit. Again it is most likely to be used where the licensee appears to be uncooperative or unwilling to accept police ‘advice’ during or after the inspection itself. The notice of closure is a last chance for the licensee to take action before closure or licence review.

The notice of closure can be authorised by an inspector and will highlight the breach of the licence which has been identified and the action to be taken to rectify it. If action is not taken within 7 days of the notice being issued, then the police can apply to the courts for an order to close the premises at any time in the following 6 months. It will then be for the courts to decide whether closure is appropriate for the alleged breach, the length of closure and what further action should be taken.

In essence, the notice of closure puts the premises on probation and allows the licensee to put their own house in order. It is a threat to close which can be used for a wide range of issues but it cannot be carried out immediately and cannot be used to close down a premises on the spot. In practice, it is being used as a large stick to force through changes that the police would like to see eg CCTV upgrades.

As it is a threat which can only be carried out after full consideration before the courts, the issuing of a notice of closure does not automatically result in a review of the full licence in the same way that a Section 161 closure order does. However, the police are not prevented from requesting a review and the action will be recorded against the premises.

Example: during routine police and licensing visits, observations are made about the age and condition of CCTV equipment and crime prevention advice is given. No action is taken in response to this and several incidents are reported at the venue. Following a formal inspection, a letter is sent by the police identifying a number of concerns. Most are dealt with by way of warning, but because of previous concerns about CCTV, the police issue a notice of closure stating that the premises is in breach of the condition requiring them to install and *maintain* CCTV systems and requiring them to take action within 7 days or face closure. The premises is subject to subsequent visits to ensure that the CCTV system is upgraded in the following 6 months.

Additional Powers

- **Noise:** Section 161 orders can be made to close premises causing a noise nuisance, but powers to prosecute under the Environmental Protection Act 1990 and Noise Act 1996 as well as on the spot fines and confiscation of equipment are more likely.
- **Drugs:** under the Anti-Social Behaviour Act 2003, police have powers to close premises being used for the production, supply or use of class A drugs
- **Under age:** the new Violent Crime and Disorder Act gives police the power to ban sales of alcohol from premises for up to 48 hours for persistent selling to children. These powers have yet to be enacted
- **Other agencies:** only the police have the power of instantaneous closure. Both the police and licensing authority have the power to apply to the courts to close a premises which is operating illegally. Other authorities may refer to closure, but they cannot act independently. They can only apply to the police or licensing authority to act under Section 19 of the Criminal Justice and Police Act if they identify concerns.

IMPLICATIONS FOR OPERATORS

It is clear that, with the growing formalisation of police powers and the politicisation of the licensing process, operators can no longer rely solely on establishing good operational relationships between managers and individual police officers. Because of the potentially serious commercial implications which can arise when this relationship breaks down, it is advisable to formalise relationships with the police

Although these powers are used in very different circumstances and to deal with specific problems, it is clear that they are interlinked. The police can also request a review of the licence if no single incident warrants closure but there is a history of advice being ignored or inaction. You are at greatest risk of closure and exposure of the licence to review if you do not actively cooperate and engage positively. You should ensure staff are fully briefed on the consequences of failing to respond to police 'advice'.

- **Section 19:** this is often used where previous advice has been ignored. It is possible that managers may not have realised that comments were recommendations. It is advisable to record comments made during licensing inspections in writing. Verbal and written warnings and advice should be passed immediately to head office. It is also advisable to communicate planned actions to police to ensure that they know advice is not being ignored. In the CCTV example above, an upgrade may have been scheduled in the budget in 6 months time as part of a refurb. The police may not have issued a Section 19 notice had they been aware of this.
- **Section 161:** all threats of closure need reporting to head office immediately. Staff should be encouraged to challenge the police and other officers and ask which power is being quoted as enabling closure to allow the risk to be assessed. A repeated threat of closure represents a greater risk to the licence – it means that there is a history to be taken into account in determining whether to press for compulsory closure and it is more likely to lead to a request for a review of the licence even if closure is not enacted. Staff should be empowered to respond proactively when Section 161 orders are mentioned and in particular to volunteer a short period of closure to pre-empt compulsory closure and licence review. When disorder breaks out they should mentally prepare their response, highlighting what they have done and preparing solutions.