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Licensing and Registration of Clubs (Amendment) Bill: Closure Powers

1 Introduction

The Committee for Social Development received evidence from the Police Service of Northern Ireland (PSNI) as part of the Committee Stage of the Licensing and Registration of Clubs (Amendment) Bill. Whilst the PSNI have broadly welcomed the new closure powers, it expressed some concern in relation to the grounds in which a senior police officer (i.e. Inspector or above) can make a closure order for identified licensed premises. The PSNI maintain that when it was previously consulted on these proposals, they contained three grounds on which a single licensed premises could be directed to close – i.e. “actual disorder”, “imminent disorder” and “noise nuisance”.

The PSNI are concerned that in its present form, the Licensing and Registration of Clubs (Amendment) Bill does not contain two of these three grounds, i.e. “imminent disorder” and “noise nuisance”¹. However, in evidence to the Committee, officials from

¹ Northern Ireland Assembly Official Report. PSNI Oral Evidence to the Social Development Committee on the Licensing and Registration of Clubs (Amendment) Bill. 30 September 2010.

www.niassembly.gov.uk/record/committees2010/SocialDevelopment/100930LicensingRegistrationofClubsPSNI.htm

the Department highlighted that these grounds, particularly with regard to imminent disorder, were not included in the current Bill because of the difficulties surrounding their 'subjective' nature².

To assist the Committee for Social Development in its deliberation of closure powers in general, this briefing paper provides:

- an overview of initial closure power proposals contained within the proposed draft Licensing and Registration of Clubs (Amendment) Order 2007 (initiated under Direct Rule)³ in comparison to the closure provisions currently contained within the Licensing and Registration of Clubs (Amendment) Bill;
- a comparison of the current provisions in the Bill with closure powers in England and Wales under the Licensing Act 2003, and in Scotland under the Licensing (Scotland) Act 2005; and
- For illustrative purposes, some general background information on the operation of police closure powers in England and Wales.

Further information on closure powers including illustrative examples of how these powers operate in England and Wales are included in the Research and Library Service Paper on the [Licensing and Registration of Clubs Amendment Bill](#).

2 Closure Powers in the Licensing and Registration of Clubs (Amendment) Bill

In short, Clause 1 of the Licensing and Registration of Clubs (Amendment) Bill contains the following powers in relation to the closure of licensed premises⁴:

Article 69A – Orders to close licensed premises in districts experiencing disorder

Empowers a Magistrates' Court within a district that is experiencing, or is likely to experience, disorder to make a closure order in respect of licensed premises at or near the place where the disorder is occurring or imminent. An application for closure order must be made by a police officer of the rank of Superintendent or above.

² Northern Ireland Assembly Official Report. Department for Social Development Evidence to the Social Development Committee, 30 September 2010.

www.niassembly.gov.uk/record/committees2010/SocialDevelopment/100930LicensingRegistrationofClubs.htm

³ A consultation on the draft Licensing and Registration of Clubs (Amendment) (Northern Ireland) Order 2007 was published in December 2006 under the Direct Rule Minister David Hanson, MP. However, the draft Order did not become law as the responsibility for liquor licensing passed to the Northern Ireland Executive upon restoration of devolved government.

⁴ Licensing and Registration of Clubs (Amendment) Bill, Financial and Explanatory Memorandum.

Article 69B – Closure orders for identified licensed premises

Allows a police officer of the rank of inspector or above to make a closure order in relation to identified licensed premises if it is believed that there is public disorder on or near and related to the premises and closure would be in the interests of public safety.

Clause 5 of the Bill contains provisions in relation to the closure of registered clubs which are largely identical to that outlined above.

The Proposed Draft Licensing and Registration of Clubs (Amendment) Order 2007

In December 2006, the Department for Social Development, under the Direct Rule Minister (David Hanson, MP) published a [consultation](#) on the *proposal for a draft Licensing and Registration of Clubs (Amendment) Order 2006*⁵. In comparison to the current Bill, the *proposed draft Order* (which was never enacted due to restoration of the Northern Ireland Assembly) does contain a variations in relation to the grounds in which the police could close individual licensed premises. That is in addition to actual disorder, the proposed draft *Order*, contains the additional grounds of imminent disorder and public nuisance caused by noise. For comparative purposes, the table below outlines the wording of **Article 69B(1)** in both the *proposed draft 2007 Order* and the current Bill. The variation in the grounds in which the police could close licensed premises are outlined in red.

Licensing and Registration of Clubs (Amendment) Bill

“Closure orders for identified licensed premises

69B. – (1) A senior police officer may make a closure order in relation to any licensed premises if that officer reasonably believes that there is disorder on, or in the vicinity of and related to, the premises and their closure is necessary in the interests of public safety....”

Proposed Draft Licensing and Registration of Clubs Amendment Order 2007

“Closure orders for identified licensed premises

69B. – (1) A senior police officer may make a closure order in relation to any licensed premises if he reasonably believes that-

- (a) There is, **or is likely imminently to be**, disorder on, or in the vicinity of and related to, the premises and their closure is necessary in the interests of public safety; or
- (b) **A public nuisance is being caused by noise coming from the premises and the closure of the premises is necessary to prevent that nuisance.....”**

⁵ See www.dsdni.gov.uk/index/consultations/archived-consultations/consultations-licensing_and_registration_clubs.htm

3 Closure Powers in England, Wales and Scotland

Part 8 of the [Licensing Act 2003](#) significantly extended the existing powers of the police in England and Wales to (a) seek court orders to close licensed premises in a geographical area that is experiencing or likely to experience disorder and (b) to close down instantly individual licensed premises. These powers are in relation to premises licensed for the provision of regulated entertainment and late night refreshment, and premises for which a temporary event notice has effect. On 6 April 2007, the Violent Crime Reduction Act 2006 amended Part 8 of the 2003 Act to insert a new offence of persistently selling alcohol to children and related closure powers where there is good evidence that a premises licence holder has committed this offence⁶.

As this extract from the 2003 Act highlights, the grounds for closure of individual premises in England and Wales is *identical* to that in the proposed draft 2007 NI Order, i.e. the grounds for closure are actual disorder, likely disorder and public noise nuisance:

Part 8 – Licensing Act 2003

“161. Closure orders for identified premises

- (1) A senior police officer may make a closure order in relation to any relevant premises if he reasonably believes that –
 - (a) There is, or is likely imminently to be, disorder on, or in the vicinity of and related to, the premises and their closure is necessary in the interests of public safety, or
 - (b) A public nuisance is being caused by noise coming from the premises and the closure of the premises is necessary to prevent that nuisance....”

In Scotland, the closure powers of police, under the [Licensing \(Scotland\) Act 2005](#), appears to include the grounds of actual disorder, likely imminent disorder but do not explicitly state that closure orders are permitted on the grounds of public noise nuisance:

Part 7 – Licensing (Scotland) Act 2005

“97. Closure orders

- (2) A senior police officer may, if the officer reasonably believes that—
 - (a) there is, or is likely imminently to be, disorder on, or in the vicinity of, any licensed premises,
 - (b) closure of the premises is necessary in the interests of public safety, and
 - (c) the risk to public safety is such that it is necessary to do so immediately and without making an application under subsection (1),
 make a closure order in relation to the premises.....”

⁶ Department for Culture, Media and Sport (2007) Police Powers to Close Licensed Premises under the Licensing Act 2003. www.culture.gov.uk/images/publications/Policeclosurepowersguidance.pdf

Other variations between the proposed closure powers in the NI Bill and police closure powers in jurisdictions

This section provides examples of two other variations between the proposed closure powers for Northern Ireland in comparison to those in England, Wales and Scotland. The first difference is in relation to the penalties applicable for contravening a closure order or any extension of it in relation to the closure of identified licensed premises. The second is in relation to the review of a premises licence following a closure order coming into force. Please note that the purpose of the paper is merely to highlight the differences, it does not provide an analysis of the pros and cons of the different legislative approaches.

Penalties

As evident from the table below, the penalty applicable for breach of a closure order with respect to *identified licensed premises* is greater in financial terms in England, Wales and Scotland (up to £20,000) than that proposed in the Northern Ireland Bill (up to £5,000). However, the maximum term of imprisonment for a breach is higher in the Northern Ireland Bill (up to 6 months) than in England, Wales and Scotland (up to 3 months).

Penalties for breach of closure orders for identified licensed premises

NI Licensing and Registration of Clubs (Amendment) Bill	Licensing Act 2003 (England & Wales)	Licensing (Scotland) Act 2005
Level 5 on the Standard Scale (£5,000) or imprisonment not exceeding 6 months, or both.	Imprisonment for a term not exceeding 3 months or to a fine not exceeding £20,000, or both.	Imprisonment for a term not exceeding 3 months, a fine not exceeding £20,000, or both.

Review of a licence by a Licensing Authority

In England, Wales and Scotland, where a closure order has come into force, in respect to a closure order for identified licensed premises, and the order has been granted by a Magistrates' Court (or licensing authority in Scotland), the appropriate *local licensing authority* must conduct a *review* of the premises licence. This could involve, for example:

- the revocation of the licence,
- modification of the licensing conditions,
- the exclusion of certain licensable activities; and/or
- the removal of a designated premises supervisor.

Where the licensing authority determines that the lack of experience or expertise of the designated premises supervisor has contributed to the level of disorder that has given

rise to the closure order, it may specify that the individual concerned should be removed from that position. Similarly, it may also determine imposing an addition on the licence requiring that additional security staff be employed⁷. However, guidance issued in England, Wales and Scotland strongly stipulates that in the first instance police should seek the voluntary co-operation of licensees in resolving incidents of disorder to avoid the issuing of closure orders and subsequent licensing reviews.

However, the Department has highlighted that there are a number of steps a Magistrate's Court can take during the consideration of a closure order. For example, it could revoke the closure order; order premises to close or to remain closed for up to 28 days; revoke, modify or make the continuance of an order for additional permitted hours (subject to such terms and conditions as the court thinks fit); and revoke any occasional licences granted and order that no further occasional licences are granted to that premise⁸.

3 Further Background Information on the Operation of Closure Powers in Other Jurisdictions

This section provides some illustrative information on how closure powers are intended to operate in *England and Wales*. This information has been largely extracted from Government guidance on '[Police Powers to Close Licensed Premises under the Licensing Act 2003](#)'⁹. Although the guidance has no binding effect on police officers it is aimed at providing support and assistance in interpreting and implementing the closure powers. Similar [guidance](#) is also available to both police and licensing authorities in Scotland¹⁰ and it is anticipated that guidance will also be developed for Northern Ireland.

What does a closure order look like?

See example in Appendix 1.

What information should it contain?

A closure order must contain:

- Details of the premises which are to be closed;

⁷ Licensing Act 2003, Explanatory Memorandum.

⁸ Northern Ireland Assembly Official Report. Department for Social Development Evidence to the Social Development Committee, 30 September 2010.

www.niassembly.gov.uk/record/committees2010/SocialDevelopment/100930LicensingRegistrationofClubs.htm

⁹ For England and Wales see Department for Culture, Media and Sport (2007) Police Powers to Close Premises under the Licensing Act 2003 www.culture.gov.uk/images/publications/Policeclosurepowersguidance.pdf

¹⁰ For Scotland see Scottish Executive (2007) Licensing (Scotland) Act 2005 – Guidance for Licensing Authorities. www.scotland.gov.uk/Resource/Doc/175487/0049459.pdf

- The period for which the order is requiring them to be closed (for up to 24 hours);
- The grounds or reasons for the decision; and
- The effects of sections 162 to 168 of the 2003 Act.

It is open to police forces to take their own legal advice as to what the statement should contain. However, guidance stresses that licence holders (and managers, designated supervisors etc) fully understand the consequences of committing the offences associated with failure to comply with a closure order by the police and extended by the police or the courts.

Who can serve a closure order?

The closure order, providing the required details, may be served by any constable or any other officer (i.e. the closure order does not have to be served by the senior officer who authorised it).

Does a closure order have to be made in writing?

Yes, notice of a closure order must be given in writing.

How is it served?

'Given' means the delivery of the notice to the individual. This should normally involve personal service and should be handed by a police officer to the relevant person (e.g. licensee, designated supervisor etc). The written notice should be left in plain sight of the relevant person on whom it is being served. They should be advised orally that the notice contains details of their rights and obligations under the legislation.

What if a licensed holder/manager/designated supervisor etc refuses to physically accept the closure order?

If the licensee, designated supervisor etc refuses to accept the written notice of a closure order, the fact should be noted so that it might be known to the magistrates' court at the hearing that will follow. The written notice should then be left in plain sight of the relevant person on whom it is served. They should be advised orally that the notice contains the details of their rights and duties under the legislation.

Does the closure order have to last for a full 24 hours?

No, the criteria for making a closure order places an obligation on the senior police officer to close the premises for the period they estimate it would take to tend the threat to public safety, or nuisance to the public. In practice, closure orders could last between 30 minutes and 24 hours depending upon the circumstances of each case.

Does the closure order automatically mean that the premises must be emptied?

The 2003 Act does not require the licence holder or the police to clear the premises of customers following the service of a closure order. It is assumed that normally premises would empty, there being no purpose to the presence of customers if licensed activities or facilities may no longer be sold, supplied or provided. However, a customer commits no offence if they are not asked to leave or remain on the premises. The licence holder or manager etc similarly commits no offence arising from the mere presence of such an individual.

However, if an individual is drunk or disorderly and is asked to leave by a constable, licence holder or others then refuses to leave, they become liable to prosecution. Where a police officer is asked to remove such a customer, the officer is under a statutory duty to afford that assistance.

The lack of any duty on customers to leave premises automatically following a closure order may be important, for example, for a phased emptying of the premises.

Does the senior police officer need to be in attendance to witness the disorder/noise nuisance before a closure notice is issued?

The senior police officer does not have to be present at the premises to authorise the service of an order and may make a decision on the basis of information supplied by other police officers. However, in this case the senior police officer, remains accountable for the decision. The guidance states that this form of 'remote' decision making is particularly important in rural areas where an inspector might otherwise need to make a lengthy trip to consider making an order, thus allowing an unreasonable period to pass during which public safety might be at risk. However, the guidance also states that senior police officers should, as a matter of good practice, attempt to attend wherever possible in order to make a full and personal assessment.

What does 'likely to be imminent' disorder mean?

The 2003 Act requires that disorder should 'be likely to be imminent'. There also has to be a reasonable belief related to the particular licensed premises involved, which makes closure of those particular premises necessary in the interests of public safety. This means that the expected incident must be happening or be imminent, in which

case closure of the licensed premises should actively diminish the probability that disorder will take place in the immediate future.

What does ‘the the vicinity of’ licensed premises mean?

A closure order may be made on the grounds of disorder on or ‘in the vicinity’ of and related to the premises. Whether or not an incident is ‘in the vicinity of’ and “related to” the licensed premises are ultimately matters of fact to be decided by the courts. However, the senior police officer making the closure order must have a reasonable belief that disorder in the vicinity of the premises is related to the premises and that closure must be “necessary in the interests of public safety”.

It should be noted that the interpretation of “in the vicinity” does not arise in the context of “nuisance caused by noise coming from the premises” because the legislation requires that the noise is emanating from the premises itself rather than any other source. In other words, noise from the premises itself is relevant, noise from customers in the street beyond the premises cannot be taken into account.

Where disorder is taking place or expected to take place imminently in the vicinity of several adjacent or closely situated premises, there may be occasions where the senior officer reasonably concludes that closure of all closely situated licensed premises is necessary in the interests of public safety. Where several closures are pursued simultaneously, a separate closure order must be made for each of the licensed premises.

How does a senior police officer determine that a noise nuisance warrants a closure order?

The 2003 Act does not define the term ‘public nuisance’. Parliament has decided not to constrain the interpretation of the term by providing a more restrictive definition. Whether or not there is ‘public nuisance’ will depend upon the circumstances of the particular case. Ultimately any interpretation will be decided by the courts. This means that senior police officers are required to judge reasonably whether the noise is causing a nuisance.

The ‘noise’ in question must be emitted from the licensed premises (this may include a beer garden, courtyard, or street terrace if they are designated as part of that premises). Noise solely from people in the street outside the perimeter of the licensed premises would not be sufficient to justify the use of closure powers, even if those making the noise occasionally enter the licensed premises to purchase alcohol etc.

The senior police officer should only use the closure powers where they reasonably believe that a nuisance is being caused to the public (e.g. by assessing complaints made by the general public).

How should police liaise with local authority enforcement officers with regards to noise nuisance from licensed premises?

Given their local authority enforcement officers experience of noise nuisance, the guidance states that senior officers may find it helpful to consult them about the noise problem before making a decision. The guidance states that there is some advantage in police forces discussing these matters generally with local authorities to draw on their experience and establishing guidelines for officers about noise nuisance. The guidance further states that senior officers may find it valuable to agreed a protocol with the local authority for the handling of noise nuisance associated with license premises or premises operating temporary event notices. Thereby enabling a consistent approach to be taken by both the police and local authorities.

Appendix 1: Specimen - Section 161 Closure Order¹¹**ANNEX**

[SPECIMEN]

**CLOSURE ORDER MADE UNDER SECTION 161 OF THE LICENSING ACT
2003**

Date and Time: _____

Police Force: _____

Name and rank of Senior Police Officer making the order:

Premises to be closed:

Period of closure (until – time and date):

Reason (grounds) for Closure:

Attention is drawn to the attached Notes which form part of this order.

1 Name of person to whom notice of the order has been given and his or her
capacity in relation to the premises:

Signature of Person to whom notice of the order has been
given: _____

¹¹ Extracted from Department for Culture, Media and Sport (2007) Police Powers to Close Premises under the Licensing Act 2003