

<b>Council</b>	
<b>Meeting Date</b>	10 October 2018
<b>Report Title</b>	Delegation of functions under Criminal Justice and Police Act 2001
<b>Cabinet Member</b>	Cllr Mike Cosgrove, Cabinet Member for Regeneration and Licensing
<b>SMT Lead</b>	Mark Radford
<b>Head of Service</b>	Mark Radford
<b>Lead Officer</b>	Della Fackrell, Resilience & Licensing Manager
<b>Key Decision</b>	No
<b>Classification</b>	Open
<b>Recommendations</b>	<ol style="list-style-type: none"> <li>1. That authority be delegated to the Resilience and Licensing Manager to exercise all powers under sections 19 – 28 of the Criminal Justice and Police Act 2001, with all powers of prosecution and court litigation reserved to Head of Mid Kent Services Legal Partnership</li> <li>2. That the Scheme of Delegations in the Constitution be amended accordingly</li> </ol>

## 1 Purpose of Report and Executive Summary

- 1.1 The Criminal Justice and Police Act 2001 provides powers to the Police and licensing authorities to close premises where unauthorised sales of alcohol take place, due to either there being no Premises Licence in place, or where conditions attached to a Premises Licence are not being complied with. This report seeks delegated authority for the Resilience and Licensing Manager to authorise a notice under sections 19 – 28 of the 2001 Act in order for officers to use this process when enforcing against non-compliant premises.

## 2 Background

- 2.1 The Criminal Police Justice Act 2001 principally relates to provision for combating crime and disorder generally and includes matters such as penalty notices, powers of seizure for the police, terrorism, police training etc.
- 2.2 Included in the Act are powers relating to the closure of premises where there is an unauthorised sale of alcohol. The legislation makes these powers available to police officers and to duly authorised local authority officers.

- 2.3 The legislation was originally applied to the Licensing Act 1964 but was amended and re-applied to the Licensing Act 2003 when the Act came into force.
- 2.4. In this context, unauthorised sale means either the sale or supply of alcohol without a Premises Licence or Club Premises Certificate under the Licensing Act 2003, or where there is a licence or certificate in force where the conditions of the licence/certificate are not being complied with. These provisions only relate to alcohol sales or supplies and do not apply to entertainment or provision of hot food, which are also licensable activities under the Licensing Act 2003.
- 2.5 Swale's current scheme of delegation does not include the authorisation of officers to issue closure notices and so we have to rely on our police colleagues. The Resilience and Licensing Manager would like to have the ability for her officers to be able to serve these notices where appropriate, rather than as now relying on the police.
- 2.6 The police and the Council work in close co-operation with each other on licensing issues. Under the terms of the legislation both may be authorised to exercise Section 19 powers.
- 2.7 It is desirable for the Council to have the ability to use these powers where, for example, the Council can deploy resources more quickly or effectively than the police, or where the Council is already the lead agency in dealing with a particular set of premises. This would be particularly so when pro-active licensing inspections carried out by the licensing team reveal continued breaches of licensing conditions.
- 2.8 To date there has been no need to actually serve a Section 19 notice although a small number of licensees have been advised of the effect on their business that the notice would have and this has in all cases resulted in them taking immediate remedial action as required to avoid such action.

### **3 Proposals – Closure Process**

- 3.1 The closure process comprises two stages, with the service of a Closure Notice first and then an application, if necessary, to a Magistrates' Court for a Closure Order. The Closure Notice does not close the premises. It is, in effect, a notice giving warning of the possibility that the local authority may make an application to the courts for a Closure Order. Once a Closure Notice has been served, a Closure Notice does not necessarily have to be applied for, particularly if the recipient of the Notice complies with it. However, the Magistrates' Closure Order, if granted, does then result in the closure of the premises.
- 3.2 The 2001 Act stipulates that where a constable or a local authority are satisfied that any premises has, within the last 24 hours, been used for the unauthorised sale of alcohol, the Closure Notice may be served on the person having control or responsibility for the unauthorised sales.

- 3.3 The Closure Notice may be served on a variety of other people, as well as the person responsible for sales, including any other person having control of the activities, any other person occupying the same premises whose right of access may be affected by the closure of the premises, and any other person having an interest in the property, such as a freeholder.
- 3.4 The Closure Notice must specify what steps may be taken to ensure that the use of the premises is regularised e.g. either stopping the sale of alcohol or what needs to be done to comply with a licence condition. The Closure Notice does not physically close the premises; this only comes later with the issue of a Closure Order by the court.
- 3.5 The Closure Notice has immediate effect but, once the irregularity is put right, it can be cancelled or it can be left in place. After six months, though, no further action in respect of that notice can be taken.
- 3.6 At any time between seven days and six months after the Closure Notice has been served, provided it has not been cancelled, an application to the Magistrates' Court can be made for a Closure Order. This process includes the Court serving a summons on the persons responsible, requiring them to attend Court.
- 3.7 Where the Court is satisfied that the unauthorised activity is still going on at the time of the hearing, or that there is a reasonable likelihood that the premises will be so used in the future, the Court can issue a Closure Order. The effect of the Order is specified and may be to either close the premises completely or to stop the licensable activities. The Court may also order the person against whom the Closure Order has been made, to pay into Court a sum of money that the Court determines, which is not returned until the requirements of the Order are met.
- 3.8 Once the Closure Order has been issued, it is then posted on the premises and the police or the local authority has powers to enter the premises to enforce the Order and this may include securing the premises. Anyone obstructing an officer of the police or local authority is guilty of an offence for which they may be prosecuted. Failure to comply with the Order or opening the premises contrary to the Order, are also offences with a maximum penalty of, in the latter case, a fine of £20,000 and/or a prison sentence of up to 3 months.
- 3.9 Following a Magistrates' Court hearing, there is a right of appeal by anyone issued with a Closure Order, or by the police or local authority if the Closure Order is refused, to the Crown Court, within 21 days.
- 3.10 As stated above, this process is intended to control premises selling alcohol without a Premises Licence or Club Premises Certificate, or those failing to comply with a condition of their licence or certificate which relates to the sale of alcohol.

- 3.11 In both these situations, the offender – i.e. a person illegally selling alcohol – if they can be identified, or a licence holder breaching their licence conditions, can also be prosecuted for those activities that are, in themselves, offences. However, prosecution tends to be a longer process and may not, in practice, ensure that the problem is resolved, even where a conviction is secured. Nevertheless, where a Closure Notice has been served, or an Order applied for, the option of prosecution remains.
- 3.12 The Closure Order is only lifted once the police or authorised officer of the Council are satisfied that all matters are rectified in accordance with their requirements and the court is duly informed.

## **4 Delegations**

- 4.1 The recommended delegation will enable the authorisation of suitably trained and competent officers to exercise all or any of the powers contained under sections 19-28 of the Criminal Justice and Police Act 2001 including:
- serving and cancelling Closure Notices
  - making applications for Closure Orders
  - issuing certificates of termination of Closure Orders
  - defending applications for the discharge of Closure Orders
  - appealing against the refusal to make Closure Orders
  - enforcing Closure Orders

## **5 Alternative Options**

- 5.1 The Council can continue to rely solely on the police to issue Section 19 Notices.

## **6 Consultation Undertaken or Proposed**

- 6.1 None, as it is not necessary.

## **7 Implications**

<b>Issue</b>	<b>Implications</b>
Corporate Plan	Being able to issue S.19 Closure Notices satisfies the corporate objectives of:  Keeping Swale safe  Ensuring a strong customer focus and delivering quality frontline services
Financial,	The additional powers under the Criminal Justice and Police Act

Resource and Property	2001 are unlikely to result in additional costs unless a Closure Order is obtained from the Magistrates' Court which would require court costs to be paid. Experience from other local authorities indicates this is an unlikely scenario
Legal and Statutory	The legal requirements of this delegation are explained within the main body of the report
Crime and Disorder	<p>An essential component of the Licensing Act 2003 is the promotion of the 4 licensing objectives i.e.</p> <ul style="list-style-type: none"> <li>• Prevention of crime and disorder</li> <li>• Protection of public safety</li> <li>• Prevention of public nuisance</li> <li>• Protection of children from harm</li> </ul> <p>The Licensing Act 2003 expands the powers given to local authorities under Sections 19-28 of the Criminal Justice and Police Act 2001. The powers will place licences holders and premises supervisors, who will usually have day to day management control of the premises, under pressure to maintain order and deter disorder and nuisance behaviour. The powers have significant deterrent value in curbing disorder and public nuisance through noise as well as enabling disorder and noise nuisance to be brought to an end when they occur.</p>
Environmental Sustainability	None
Health and Wellbeing	None
Risk Management and Health and Safety	<p>This process provides an additional enforcement option in the continuum between advice and formal action. Each case will be dealt with on its own merits and in accordance with Swale's Enforcement Policy</p> <p>The process of using Closure Notices and Orders is seen as a fast, straightforward and cost effective route than prosecution to securing compliance with the law where contraventions exist. It is anticipated that the vast majority of those persons served with a Closure Notice will then comply, without an application having to be made for a Closure Order.</p> <p>The use of Closure procedures under the Criminal Justice and Police Act 2001 does not preclude subsequent prosecution and/or licence review under the Licensing Act 2003 where deemed appropriate</p>
Equality and Diversity	Closure powers will affect all licensees equally

Privacy and Data Protection	Closure Notices will be served on named persons on Premises Licences
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## 8      **Background Papers**

None