

# **ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) ACT 2004**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 4 – Closure of Premises**

##### ***Section 30 – Application: determination***

76. This section sets out the process the sheriff must go through before making a closure order in respect of premises.
77. Subsection (2) sets out the conditions that must be met before the sheriff makes an order. The sheriff must be satisfied that a person has engaged in antisocial behaviour on the premises and that the use of the premises is associated with the occurrence of relevant harm; and also that the making of an order is necessary to prevent the occurrence of such relevant harm for the period specified in the order. Relevant harm is defined in section 40 as either significant and persistent disorder or significant, persistent and serious nuisance to members of the public.
78. Subsection (3) sets out that the sheriff must also have regard to two factors in determining whether to make a closure order. First, the ability of any person who habitually resides in the premises to find alternative accommodation. And second, any vulnerability of any such person who has not been engaged in antisocial behaviour which has occurred in the premises.
79. Subsections (4) to (6) set out that the sheriff shall determine the application no later than the second court day after the day on which the application is made; make provision for the sheriff to postpone determination of the application for a period of not more than 14 days, to enable a person to show why a closure order should not be made; and set out who is entitled to attempt to show the sheriff why a closure order should not be made. Those persons are the occupier of the premises specified in the closure notice; any person who has control of or responsibility for those premises; and any other person with an interest in those premises.
80. Subsection (7) provides that where the sheriff postpones determination of an application the sheriff may order that the closure notice continues in effect until the determination of the application.