

ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 – Closure of Premises

Section 26 – Authorisation of closure notice

68. **Section 26** gives senior police officers (that is officers of or above the rank of superintendent) power to authorise service of a closure notice. The effect of such an authorisation is that a constable will serve on the relevant premises a closure notice. A closure notice prohibits access to the premises by any person other than a person who habitually resides in the premises or the owner of the premises. Failure to comply with the notice amounts to an offence under section 37.
69. Subsection (3) sets out that the senior police officer may only authorise service of a closure notice where that officer has reasonable grounds for believing that at any time during the immediately preceding 3 months 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, which is defined at section 40 as significant and persistent disorder or significant, persistent and serious nuisance to members of the public.
70. Subsection (4) provides that an authorisation for service of a closure notice may be given orally but if so it must be confirmed in writing as soon as is practicable. Subsection (3)(b) sets out the procedural requirements which must be met before service of a closure notice can be authorised. These requirements include that the local authority must have been consulted about the proposed closure and that all reasonable steps must have been taken to establish the identity of any person who lives on, has control of, or responsibility for, or has an interest in, the premises.
71. Subsection (2) provides that the Scottish Ministers can specify by regulations premises or descriptions of premises in respect of which such authorisations may not be given. These regulations are subject to affirmative resolution procedure.

Section 27 – Service etc.

72. Subsections (2), (3) and (5) set out the form a closure notice shall take and the procedure associated with its service. As well as explaining the effects of a closure notice, the notice must contain certain information including specification of such matters about the application for the closure of premises as may be prescribed in rules of court and information about access to advice on housing and legal matters. The notice must be attached to at least one prominent place on the premises, each normal means of access to the premises and any outbuildings that appear to the constable to be used with or as part of the premises. The notice must be served on persons living in, having control of or responsibility for or having an interest in the premises. Under subsection (3), if after making reasonable enquiries the constable believes that the access of any person who

occupies any other part of the building or structure in which the premises are situated would be impeded by the making of the order, then the constable must also give a copy of the notice to that person.

73. Subsection (4) sets out that failure on the part of the constable to give a copy of the notice to any of the persons set out above shall not affect the validity of the closure notice.

Section 28 – Application to sheriff

74. Subsections (1) and (2) require that once the police have served the closure notice, a senior police officer must apply to the sheriff for a closure order to be made. Subsection (3) sets out when the police must make this application and subsection (4) contains a provision for the sheriff to allow late applications. Subsection (5) sets out what is required in an application, which must include a specification of the premises in respect of which the closure order is sought; a statement of the grounds on which the application is made; and supporting evidence.

Section 29 – Closure orders

75. Subsections (1) to (3) set out the scope of a closure order including a limitation that a closure order may be made only in respect of all or any part of the premises that are the subject of a closure notice; and a provision allowing the sheriff to rule on matters of access at the premises specified in the order. The effect of a closure order is that the premises specified in the order are closed to all persons for such period not exceeding 3 months as is specified in the order.

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.

Section 31 – Enforcement

81. Subsection (1) provides that, after a closure order is made, a constable or any other person authorised in writing by the chief constable (an authorised person) may enter the property in order either to do anything necessary to secure it against entry by any person or to carry out essential maintenance or repairs. Subsection (2) sets out that reasonable force may be used in order to facilitate these activities. Subsection (3) sets out that an authorised person seeking to enter closed premises in order to secure the premises must, if requested to do so by or on behalf of the owner, occupier or other person in charge of the premises, produce evidence of identity and authorisation.

Section 32 – Extension

82. This section provides that the sheriff may, on the application of a senior police officer and if satisfied that it is necessary to do so to prevent the occurrence of relevant harm, make an order extending a closure order for a further period not exceeding the maximum period; the maximum period for an order to be in force (it cannot exceed 6 months in total); and the conditions that must be met before an application for an extension is allowed by the sheriff. These conditions include that the local authority must first be consulted.

Section 33 – Revocation

83. Subsection (1) provides for revocation of the order, following an application, where the court is satisfied that it is no longer necessary to prevent the occurrence of relevant harm. Subsection (2) sets out who can apply to the sheriff to have the order revoked. Subsection (3) sets out that where any such application is made other than by a senior police officer the sheriff shall order service upon such senior police officer as the sheriff considers appropriate.

Section 34 – Access to other premises

84. This section provides for the court, upon the application of a person who occupies or owns any part of a building or structure in which closed premises are situated and in respect of which the closure order does not have effect, to make an order allowing appropriate access to any part of the building or structure in which the closed premises are located. The subsections set out that such an application can only be made while the closure order has effect; and that any such order may be made notwithstanding any provision made in the original closure order about access to the closed premises.

Section 35 – Reimbursement of expenditure

85. This section makes provision for the sheriff, upon application from a police authority or a local authority, to make an order for the reimbursement, by the owner of the premises that has been or was closed, of expenditure incurred by the applicant in clearing, securing or maintaining the closed premises. Subsection (2) sets out when such an application must be made and subsection (3) the persons on whom the application shall be served.

Section 36 – Appeals

86. This section provides for the making of appeals in respect of orders under Part 4. Subsection (1) sets out that a person who was a party to the proceedings in which the Part 4 order or decision was given may appeal against it. Subsection (2) sets out that appeals under this section are made to the sheriff principal and shall be made within the period of 21 days beginning with the day on which the order or decision appealed against was made. Subsection (3) sets out that on an appeal under this section the sheriff principal may make any order he or she considers appropriate and subsection (4) that any such decision is final.

Section 37 – Offences

87. Subsections (1) to (5) set out that if without reasonable excuse a person remains on or enters premises in contravention of a closure order or notice or obstructs an authorised person who has entered the premises to secure it or carry out essential repairs, they will be guilty of an offence, which could result in a fine, or imprisonment or both. While subsection (2) – setting out that it is an offence to obstruct an authorised person – applies only to an authorised person, section 41 of the Police (Scotland) Act 1967 protects constables in a similar way.

Section 38 – Offences under section 37: arrest without warrant

88. Subsection (1) sets out that where a constable reasonably believes that a person is committing or has committed an offence under section 37 then the constable may arrest that person without warrant.

Section 39– Guidance in relation to closure of premises

89. This section provides that a person (other than a court) shall, in discharging functions by virtue of Part 4 of the Act, have regard to any guidance given by the Scottish Ministers about the discharge of those functions or matters arising in connection with the discharge of those functions.

Section 40 – Interpretation of Part 4

90. Section 40 provides definitions of various expressions included in Part 4, including of “relevant harm.”