



# Antisocial Behaviour etc. (Scotland) Act 2004

2004 asp 8

## PART 4

### CLOSURE OF PREMISES

#### *Closure notices*

#### **26 Authorisation of closure notice**

- (1) Subject to subsections (2) and (3), a senior police officer may authorise the service of a notice (a “closure notice”) prohibiting access to premises by any person other than—
  - (a) a person who habitually resides in the premises; or
  - (b) the owner of the premises.
- (2) The Scottish Ministers may by regulations specify premises or descriptions of premises in respect of which an authorisation under subsection (1) may not be given.
- (3) A senior police officer may authorise the service of a closure notice only where the senior police officer—
  - (a) has reasonable grounds for believing that—
    - (i) at any time during the immediately preceding 3 months a person has engaged in antisocial behaviour on the premises; and
    - (ii) the use of the premises is associated with the occurrence of relevant harm; and
  - (b) is satisfied that—
    - (i) the local authority for the area in which the premises are situated has been consulted; and
    - (ii) reasonable steps have been taken to establish the identity of any person who lives on, has control of, has responsibility for or has an interest in the premises.
- (4) An authorisation given under subsection (1) shall, if given orally, be confirmed by the senior police officer in writing as soon as is practicable.

## **27 Service etc.**

- (1) This section applies where the service of a closure notice in respect of premises is authorised under section 26(1).
- (2) The closure notice shall be served by a constable who shall do so by—
  - (a) fixing a copy of the notice to—
    - (i) at least one prominent place on the premises;
    - (ii) each normal means of access to the premises; and
    - (iii) any outbuildings that appear to the constable to be used with or as part of the premises; and
  - (b) giving a copy of the notice to—
    - (i) each person identified in pursuance of section 26(3)(b)(ii); and
    - (ii) every other person appearing to the constable to be a person of a description mentioned in that subsection.
- (3) If after having made reasonable enquiries at the time of serving the closure notice under subsection (2) the constable believes that the access of any person who occupies —
  - (a) any other part of the building; or
  - (b) any other structure,
 in which the premises are situated would be impeded by the making of an order under section 30, the constable shall give a copy of the notice to that person.
- (4) Failure to comply with subsection (2)(b) or (3) shall not affect the validity of the closure notice.
- (5) The closure notice shall—
  - (a) specify the premises to which it relates;
  - (b) state that access to the premises by any person other than—
    - (i) a person who habitually resides in the premises; or
    - (ii) the owner of the premises,
 is prohibited;
  - (c) state that failure to comply with the notice amounts to an offence;
  - (d) state that an application is to be made under section 28 for the closure of the premises;
  - (e) specify such matters about that application as may be prescribed in rules of court;
  - (f) explain the effects of an order made under section 30; and
  - (g) give information about the names of, and means of contacting, persons who and organisations which provide advice about housing and legal matters in the locality of the premises.

### *Closure orders*

## **28 Application to sheriff**

- (1) Subsection (2) applies where paragraph (a) of section 27(2) is fulfilled in relation to a closure notice.

- (2) A senior police officer shall apply to the sheriff for a closure order in respect of the premises specified in the notice.
- (3) Subject to subsection (4), an application under subsection (2) shall be made no later than the first court day after the day on which paragraph (a) of section 27(2) is fulfilled in relation to the notice.
- (4) The sheriff may, on cause shown, allow an application which is late to proceed.
- (5) An application under subsection (2) shall—
  - (a) specify the premises in respect of which the closure order is sought;
  - (b) state the grounds on which the application is made; and
  - (c) be accompanied by such supporting evidence (whether in documentary form or otherwise) as will enable the sheriff to determine the application.

## **29 Closure orders**

- (1) A closure order is an order 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.
- (2) A closure order may be made only in respect of all or any part of premises that are the subject of a closure notice.
- (3) A closure order may include such provision as the sheriff (or, on appeal, the sheriff principal) making it considers appropriate about access to any part of the building or structure of which the premises specified in the order form part.

## **30 Application: determination**

- (1) On an application under section 28, the sheriff may, if satisfied that the conditions mentioned in subsection (2) are met, make a closure order in respect of premises.
- (2) Those conditions are—
  - (a) that a person has engaged in antisocial behaviour on the premises;
  - (b) that the use of the premises is associated with the occurrence of relevant harm; and
  - (c) that the making of the order is necessary to prevent the occurrence of such relevant harm for the period specified in the order.
- (3) The sheriff shall, in determining whether to make a closure order in respect of premises, have regard to—
  - (a) the ability of any person who habitually resides in the premises to find alternative accommodation; and
  - (b) any vulnerability of any person such as is mentioned in paragraph (a) who has not been engaged in antisocial behaviour which has occurred in the premises.
- (4) Subject to subsection (5), the sheriff shall determine an application under section 28 no later than the second court day after the day on which the application is made.
- (5) The sheriff may postpone determination of the application for a period of not more than 14 days to enable a person mentioned in subsection (6) to show why a closure order should not be made.
- (6) Those persons are—

- (a) the occupier of the premises specified in the closure notice upon which the application proceeds;
  - (b) any person who has control of or responsibility for those premises;
  - (c) any other person with an interest in those premises.
- (7) Where, under subsection (5), the sheriff postpones determination of an application, the sheriff may order that the closure notice upon which the application proceeds shall continue in effect until the determination of the application.

### **31 Enforcement**

- (1) Subject to subsection (3), a constable or an authorised person may—
- (a) do anything necessary to secure closed premises against entry by any person;
  - (b) carry out essential maintenance or repairs to closed premises; and
  - (c) enter the premises for the purposes of paragraph (a) or (b).
- (2) A constable or an authorised person acting under subsection (1) may use reasonable force.
- (3) An authorised person seeking to enter closed premises under paragraph (c) of subsection (1) for the purpose of paragraph (a) of that subsection shall, 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.
- (4) In this section, “authorised person” means a person authorised in writing by the chief constable for the area in which the premises are situated.

### **32 Extension**

- (1) 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 the period for which a closure order has effect for a period not exceeding the maximum period.
- (2) In subsection (1), the “maximum period” is the period of 6 months less—
- (a) the period specified in the order when it was made; and
  - (b) if the order has previously been extended, the total period for which it was previously extended.
- (3) A senior police officer may make an application under this section only if—
- (a) it is made while the closure order has effect; and
  - (b) the senior police officer—
    - (i) has reasonable grounds for believing that it is necessary to extend the period for which the closure order has effect for the purpose of preventing the occurrence of relevant harm; and
    - (ii) is satisfied that the appropriate local authority has been consulted about the intention to make the application.

### **33 Revocation**

- (1) On the application of a person mentioned in subsection (2), the sheriff may if satisfied that a closure order is no longer necessary to prevent the occurrence of relevant harm, revoke the order.
- (2) Those persons are—
  - (a) a senior police officer;
  - (b) the appropriate local authority;
  - (c) a person on whom the closure notice relating to the premises in respect of which the closure order has effect was served under section 27(2)(b) or (3); and
  - (d) a person who has an interest in those premises but on whom the closure notice was not served.
- (3) Where an application under this section is made other than by a senior police officer the sheriff shall order service upon such senior police officer as the sheriff considers appropriate.

### **34 Access to other premises**

- (1) The sheriff may, on the application of a person who occupies or owns any part of a building or structure—
  - (a) in which closed premises are situated; and
  - (b) in respect of which the closure order does not have effect,make an order making such provision as the sheriff considers appropriate in relation to access to any part of the building or structure in which the premises in respect of which the closure order has effect are situated.
- (2) An application under subsection (1) may be made only while the closure order has effect.
- (3) An order under subsection (1) may be made notwithstanding any provision made as mentioned in section 29(3).

### **35 Reimbursement of expenditure**

- (1) The sheriff may, on the application of a police authority or a local authority, make such order as the sheriff considers appropriate for the reimbursement by a relevant person of relevant expenditure.
- (2) An application under this section may not be made after the expiry of the period of 3 months beginning with the day on which the closure order ceases to have effect.
- (3) An application under this section shall be served—
  - (a) where the application is made—
    - (i) by a local authority, on the police authority for the area in which the premises are situated;
    - (ii) by a police authority, on the local authority for the area in which the premises are situated; and
  - (b) on the relevant person.
- (4) In this section—

“relevant person” means the owner of the premises in respect of which the order has (or had) effect; and

“relevant expenditure” means expenditure incurred by the applicant for the purpose of clearing, securing or maintaining the premises in respect of which the closure order has (or had) effect.

### **36 Appeals**

- (1) A person who was a party to the proceedings in which the order or decision (as the case may be) was given may appeal against—
  - (a) a closure order;
  - (b) an order extending a closure order;
  - (c) a decision to refuse to make—
    - (i) a closure order; or
    - (ii) an order extending a closure order;
  - (d) a decision to revoke a closure order;
  - (e) a decision to refuse to revoke a closure order;
  - (f) an order under section 34(1);
  - (g) a decision to refuse to make an order under section 34(1);
  - (h) an order under section 35(1); or
  - (i) a decision to refuse to make an order under section 35(1).
- (2) An appeal under this section shall be 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.
- (3) On an appeal under this section, the sheriff principal may make any order the sheriff principal considers appropriate.
- (4) The decision of the sheriff principal on an appeal under this section shall be final.
- (5) In subsection (1), “order extending a closure order” means an order made under section 32(1).

### *General*

### **37 Offences**

- (1) If without reasonable excuse a person remains on or enters premises—
  - (a) in contravention of a closure notice; or
  - (b) in respect of which a closure order has effect,
 the person shall be guilty of an offence.
- (2) If a person obstructs an authorised person acting in pursuance of section 31(1) the person shall be guilty of an offence.
- (3) In subsection (2), “authorised person” has the meaning given by section 31(4).
- (4) A person guilty of an offence under subsection (1) or (2) (a “relevant offence”) shall be liable on summary conviction—

- (a) where the person has not, within the relevant period, been convicted of a previous offence under the same subsection—
    - (i) to a fine not exceeding level 4 on the standard scale; or
    - (ii) to imprisonment for a term not exceeding 3 months,or to both;
  - (b) where the person has, within the relevant period, been convicted of a previous offence under the same subsection—
    - (i) to a fine not exceeding the statutory maximum; or
    - (ii) to imprisonment for a term not exceeding 9 months,or to both.
- (5) In subsection (4), “relevant period” means the period of 2 years ending with the day on which the relevant offence was committed.

### **38 Offences under section 37: arrest without warrant**

- (1) Where a constable reasonably believes that a person is committing or has committed an offence under section 37(1) or (2), the constable may arrest the person without warrant.
- (2) Subsection (1) is without prejudice to any power of arrest conferred by law apart from that subsection.

### **39 Guidance in relation to closure of premises**

A person (other than a court) shall, in discharging functions by virtue of this Part, have regard to any guidance given by the Scottish Ministers about—

- (a) the discharge of those functions; or
- (b) matters arising in connection with the discharge of those functions.

### *Interpretation*

### **40 Interpretation of Part 4**

In this Part—

“appropriate local authority” means the local authority for the area in which the premises in respect of which the closure order has effect are situated;

“closure notice” has the meaning given by section 26(1);

“closure order” has the meaning given by section 29(1);

“closed premises” means premises in respect of which a closure order has effect;

“court day” means a day which is not—

- (a) a Saturday or Sunday; or
- (b) a day which, by virtue of an order made under section 17(1)(b) of the Sheriff Courts (Scotland) Act 1971 (c. 58) (as extended by section 8(2) of the Criminal Procedure (Scotland) Act 1995 (c. 46)), is a court holiday in respect of criminal business in the sheriff court in question;

“premises” includes—

- (a) any land or other place (whether enclosed or not); and
- (b) any outbuildings which are or are used as part of the premises; and

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*Status: This is the original version (as it was originally enacted).*

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“relevant harm” means—

- (a) significant and persistent disorder; or
- (b) significant, persistent and serious nuisance to members of the public.