

ANTI-SOCIAL BEHAVIOUR ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Premises Where Drugs Used Unlawfully

9. This part grants the police the power to close down premises being used for the supply, use or production of Class A drugs where there is associated serious nuisance or disorder. Service of a notice temporarily closes the premises to all of the public except the owner or those who habitually reside there, until a magistrates' court decides whether to make a closure order. The court must consider the notice within 48 hours. If it is satisfied the relevant conditions are met, the court can make a closure order which closes the premises altogether for a period of up to 3 months, with possible extension to a maximum of 6 months.

Section 1: Closure Notice

10. *Subsection (1)* sets out the test which must be met before a police superintendent (or officer of higher rank) can authorise the issue of a closure notice. *Subsection (2)* requires that the superintendent must be satisfied that the local authority has been consulted and that reasonable steps have been taken to identify those living on the property or with an interest in it before the authority for the issue of the notice is given.
11. *Subsection (4)* sets out the contents of the closure notice. These must include details of the time and place of the court hearing in relation to a closure order and a statement that access to the property during the period of the notice is prohibited to anyone other than someone who is usually resident in or the owner of the premises. It must also contain information about local sources of housing and legal advice.
12. *Subsections (6) and (7)* set out requirements in relation to service of the notice. The notice must be attached to the building and given to people identified as living in or having an interest in the property or whose access to other premises may be adversely affected by a closure order. *Subsection (8)* makes clear that no drug specific criminal offence has to be proved before a notice can be served or an order made. *Subsection (9)* enables the Secretary of State by regulations to exempt premises or descriptions of premises from the application of this section.

Section 2: Closure Order

13. Once a closure notice has been issued, the police must apply to the magistrates' court for the making of a closure order.
14. *Subsection (2)* provides that the court must hear the application within 48 hours. The 48 hours runs from posting of the notice on the property. *Subsection (3)* sets out the test of which the court must be satisfied before making a closure order. As well as being satisfied that the premises have been used for the unlawful supply, use or production of Class A drugs, and that the use of the premises is associated with serious nuisance or disorder, the court must be satisfied that the making of the order is necessary to prevent

future disorder or serious nuisance. An order may be made in relation to part only of the property affected by the notice (*subsection (8)*).

15. *Subsection (4)* sets out that the effect of the closure order is to close the premises altogether, including to owners and residents, for up to 3 months. *Subsection (5)* provides that the order may make special provision for access to any part of the building in which the premises are included (for example, stairways or shared parts). *Subsection (6)* allows the court to adjourn the hearing for up to 14 days to allow the occupier or someone else with an interest in the property to show why an order should not be made, for example because the problems have ceased or the occupiers have been evicted. The court can order that the closure notice continues to have effect during this period (*subsection 7*).

Section 3: Closure order: enforcement

16. When a closure order is made a constable or any other person authorised by the chief officer of police for the area in which the premises are situated may enter the property and secure it against entry by any other person, using reasonable force if necessary. These persons may also enter the premises at any time to carry out essential maintenance or repairs.

Section 4: Closure of premises: offences

17. This section creates offences of remaining in or entering property subject to a closure notice or order without reasonable excuse or of obstructing a constable or authorised person carrying out certain functions under these provisions. The maximum penalty is a fine of £5000, imprisonment for 6 months or both. There is a power of arrest for a constable in uniform in relation to these offences. The maximum period of imprisonment will, in due course, be increased to 51 weeks by provisions in the Criminal Justice Act 2003.

Section 5: Extension and discharge of closure order

18. This section allows the police to apply for an extension of the period for which the order has effect up to a maximum period of 6 months (including the period for which the original order(s) had effect). Such an application must be authorised by a superintendent (or police officer of higher rank), who must:
- have reasonable grounds for believing that the extension of the order is necessary for the purpose of preventing the occurrence of disorder or serious nuisance to the public; and
 - be satisfied that the local authority has been consulted about the intention to make the application.
19. *Subsection (6)* allows a constable, the local authority, persons on whom the closure notice was served under section 1 and any other person with an interest in the closed premises to apply for the order to be discharged at any time. *Subsection (9)* sets out requirements relating to the service of notice on persons summoned to appear before the court under this section.

Section 6: Appeals

20. This section allows for appeals to the Crown Court against closure orders and against a refusal to make one by all interested parties.

Section 7: Access to other premises

21. This section ensures that a court may make an order concerning access to any part of a building or structure in which closed premises are situated, where the part itself is not affected by a closure order. Thus, a person who occupies or owns such a part of

a building or structure may apply to the court for an order enabling him to retain the access to that part that he had before the closure order took effect (particularly if the closure order had rendered access to his part of the building or structure more difficult or impossible). The court may exercise its discretion by way of variation of the original order.

Section 8: Reimbursement of costs

22. This section allows the court to make an order that the owner of the premises must reimburse any costs incurred by the police or local authority in clearing, securing or maintaining the premises.

Section 9: Exemption from liability for certain damages

23. This section creates a partial exemption from liability in damages for the police in carrying out their functions under this Part. It does not extend to any acts in bad faith or acts which are in breach of the police's duty as a public authority to exercise their functions compatibly with the European Convention on Human Rights.

Section 10: Compensation

24. This section allows for compensation payments to be made by the court out of central funds where it is satisfied that:
- a person has suffered financial loss as a result of a closure notice being issued or a closure order having effect;
 - the person had no connection with the use of the premises subject to the notice or order for the supply, use or production of Class A drugs (such use having been associated with the occurrence of disorder or serious nuisance to the public);
 - if he is the owner or occupier, that he took reasonable steps to prevent that use; and
 - it is appropriate in all the circumstances to compensate the person for that loss.

Subsection (3) deals with the time within which an application for compensation must be made.