

CRIMINAL JUSTICE AND IMMIGRATION ACT 2008

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 8: Anti-social behaviour

Section 118 and Schedule 20: Closure orders: premises associated with persistent disorder or nuisance

647. This section and Schedule 20 insert a new Part 1A into the Anti-social Behaviour Act 2003, which makes provision for closure orders in respect of premises associated with persistent disorder or nuisance. The provisions are very similar to those in Part 1 of that Act, which relate to closure orders in respect of premises where Class A drugs are used unlawfully.

New Section 11A of the Anti-social Behaviour Act 2003: Part 1A closure notice

648. New section 11A(1) sets out the test which must be satisfied before a police officer not below the rank of a superintendent or a local authority can authorise the issue of a Part 1A closure notice. The officer or authority must have reasonable grounds for believing that a person has engaged in anti-social behaviour on the premises in the preceding 3 months and that the premises are associated with significant and persistent disorder or persistent serious nuisance.

649. New section 11A(2) requires that the authorising officer must be satisfied that the local authority has been consulted and that reasonable steps have been taken to identify those living on the premises or with an interest in it before the authorisation for the issue of the notice is given.

650. New section 11A(3) requires that the local authority must be satisfied that the chief officer of police for the area has been consulted and that reasonable steps have been taken to identify those living on the premises or with an interest in it before the authorisation for the issue of the notice is given.

651. New section 11A(4) states that the authorisation for the issue of a closure notice can be given initially orally or in writing, but should be confirmed in writing if given orally.

652. New section 11A(5) sets out the required contents of a Part 1A closure notice. It must give notice that an application will be made to court for a Part 1A closure order and must include details of the time and place of the court hearing and a statement that access to the premises during the period of the notice is prohibited to anyone other than someone who is usually resident in, or is the owner of, the premises. It must explain the effects of a Part 1A closure order, state that non-compliance with the notice amounts to an offence and also contain information about local advice providers of legal and housing matters.

653. New section 11A(6) and (7) set out requirements in relation to service of a Part 1A closure notice. Once authorised, a constable or an employee of the local authority must serve the notice by fixing a copy of it to at least one prominent part of the premises in question, fixing it to each normal means of access and to any outbuildings. They must also give a copy to those people identified as living in or having control of, responsibility for or an interest in the property.
654. New section 11A(8) provides that the notice must also be served on any person who occupies any other part of the building in which the premises are located if their access will be impeded should the Part 1A closure order be made. New section 11A(9) allows the server of the notice to enter any premises for the purposes of fixing the Part 1A closure notice to a prominent place, using reasonable force if necessary. New section 11A(10) enables the Secretary of State by regulations (subject to the negative resolution procedure) to exempt premises or descriptions of premises from the application of the new section 11A.

New Section 11B of the Anti-social Behaviour Act 2003: Part 1A closure order

655. New section 11B(1) provides that once a Part 1A closure notice has been issued, an application must be made to the magistrates' court for the making of a Part 1A closure order. Under new section 11B (2) the application must be made by either a constable or employee of the local authority, depending on who issued the Part 1A closure notice.
656. New section 11B(3) provides that the court must hear the application within 48 hours. The 48 hours runs from the time the Part 1A closure notice was fixed on the premises. New section 11B(4) sets out the test of which the court must be satisfied before making a Part 1A closure order. The court must be satisfied that a person has engaged in anti-social behaviour on the premises (but not necessarily within the preceding 3 months), that the use of premises is associated with significant and persistent disorder or persistent serious nuisance, and that the making of the order is necessary to prevent future disorder or nuisance of that description.
657. New section 11B(5) sets out that the effect of a Part 1A closure order is to close the premises altogether, including to owners and residents, for up to 3 months. New section 11B(6) enables the court to include provisions in the order relating to access to any part of the building or structure of which the premises forms a part.
658. New section 11B(7) allows the court to adjourn the hearing for up to 14 days to allow the occupier or the other persons mentioned to show why a Part 1A closure order should not be made, for example because the problems have ceased or the occupiers have been evicted. New section 11B(8) provides that the Part 1A closure notice continues to have effect until the end of any such adjournment. A Part 1A closure order may be made in relation to the whole or part of the premises affected by the notice (New section 11B(9)).

New Section 11C of the Anti-social Behaviour Act 2003: Part 1A closure order: enforcement

659. When a Part 1A closure order is made, a constable (or a person authorised by the chief officer of police) in respect of orders applied for by a constable or a person authorised by the local authority in respect of orders applied for by that authority may enter the premises and secure it against entry by any other person, using reasonable force if necessary. The same authorised persons may also enter the premises at any time to carry out essential maintenance or repairs.

New Section 11D of the Anti-social Behaviour Act 2003: Closure of premises associated with persistent disorder or nuisance: offences

660. This new section creates offences of remaining on or entering premises which are subject to a Part 1A closure notice or order without reasonable excuse. It also creates an offence of obstructing a person who is serving a Part 1A closure notice or securing

closed premises against entry. The current maximum penalty is a fine of £5000, imprisonment for 6 months or both. The maximum period of imprisonment will increase to 51 weeks on the commencement of section 281(5) of the 2003 Act.

New Section 11E of the Anti-social Behaviour Act 2003: Part 1A closure order: extension and discharge

661. This section allows the police or local authority to apply for an extension for a Part 1A closure order for which they originally applied for up to a maximum period of 6 months (including the period for which the original order had effect – see new section 11E(6)). Such an application must be authorised by a police officer not below the rank of superintendent or the local authority, who must:
- have reasonable grounds for believing that the extension of the order is necessary for the purpose of preventing the occurrence of significant and persistent disorder or persistent serious nuisance to the public; and
 - be satisfied that the police or local authority (whichever is not making the application) has been consulted about the intention to make the application.
662. New section 11E(4) provides that the justice of the peace can issue a summons directed to any person on whom the relevant Part 1A closure notice was served or anyone else who has an interest in the closed premises. If the court is satisfied that extension of the order is necessary to prevent the occurrence of significant and persistent disorder or persistent serious nuisance for a further period not exceeding 3 months it may grant the extension (new section 11E(5)).
663. New section 11E(7) allows a constable or a local authority (depending which applied for the Part 1A closure order), a person on whom the relevant Part 1A closure notice was served or anyone else with an interest in the closed premises to make a complaint to the justice of the peace for a Part 1A closure order to be discharged. On the making of such a complaint, the justice of the peace may issue a summons to a constable or to the local authority as appropriate (new section 11E(8)). New section 11E(10) sets out the persons on whom a notice (stating the date, place and time at which the complaint will be heard) must be served. New section 11E(9) states that the court may not discharge a Part 1A closure order unless it is satisfied that the order is no longer necessary to prevent the occurrence of significant and persistent disorder or persistent serious nuisance.

New Section 11F of the Anti-social Behaviour Act 2003: Part 1A closure order: appeals

664. This new section allows for appeals to the Crown Court against Part 1A closure orders by all interested parties, and against a refusal to make one by the police or local authority that made the application for the order.

New Section 11G of the Anti-social Behaviour Act 2003: Part 1A closure order: access to other premises

665. This new 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 Part 1A 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, for example, enabling him to retain the access to that part that he had before the Part 1A closure order took effect (particularly if the Part 1A closure order had rendered access to his part of the building or structure more difficult or impossible).

New Section 11H of the Anti-social Behaviour Act 2003: Part 1A closure order: reimbursement of costs

666. This new section allows the court to consider and make an order that the owner of premises in respect of which a Part 1A closure order is made must reimburse any costs incurred by the police or local authority in clearing, securing or maintaining the premises.

New Section 11I of the Anti-social Behaviour Act 2003: Part 1A closure notice or order: exemption from liability

667. This new section creates a partial exemption from liability for certain damages for the police or local authority in carrying out their functions under the new Part 1A of the 2003 Act. It does not extend to any acts in bad faith or acts which are in breach of their duties as a public authority to exercise their functions compatibly with the European Convention on Human Rights.

New Section 11J of the Anti-social Behaviour Act 2003: Part 1A closure notices and orders: compensation

668. This new section allows for compensation payments to be made to a person by the court out of central funds where it is satisfied that the person has incurred a financial loss as a result of the issue of a Part 1A closure notice or a Part 1A closure order having effect and that:
- the person is not associated with the use of the premises which gave rise to the significant and persistent disorder or persistent serious nuisance;
 - if he is the owner or occupier, that he took reasonable steps to prevent that use;
 - it is appropriate in all the circumstances to compensate the person for that loss.
669. New section 11J(3) imposes a time limit for the making of such an application for compensation.

New Section 11K of the Anti-social Behaviour Act 2003: Part 1A closure notices and orders: guidance

670. This new section allows the Secretary of State to issue guidance relating to the discharge of functions in relation to Part 1A.
671. Practitioners considering applying for a Part 1A premises closure order will be required to consider any such guidance.