



# Antisocial Behaviour etc. (Scotland) Act 2004

## 2004 asp 8

### PART 4

#### CLOSURE OF 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.

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- (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) [<sup>F1</sup>or (2A)] are met, make a closure order in respect of premises.

- (2) [<sup>F2</sup>Where the application is in a case involving antisocial behaviour, the] 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.

- [<sup>F3</sup>(2A) Where the application is in a case involving an exploitation offence, the conditions are—

- (a) that it appears that—
  - (i) such an offence is being (or was recently) committed in the premises, or
  - (ii) the premises continue to be (or recently have been) used for or in connection with the commission of such an offence, and
- (b) that the making of the order is necessary to prevent the commission of such an offence 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 [<sup>F4</sup> (as the case may be)—
  - (i) engaged in antisocial behaviour which has occurred in the premises, or
  - (ii) involved in the commission of an exploitation offence in or connected with the premises.]

- [<sup>F5</sup>(3A) For the purpose of paragraph (b)(ii) of subsection (3), a person such as is mentioned in paragraph (a) of that subsection is not involved in the commission of an exploitation offence where that person is the victim of the offence.]

- (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—

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- (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.

#### Textual Amendments

- F1** Words in s. 30(1) inserted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 99\(3\)\(a\)](#), 206; S.S.I. 2010/413, [art. 2](#), Sch (with art. 6)
- F2** Words in s. 30(2) substituted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 99\(3\)\(b\)](#), 206; S.S.I. 2010/413, [art. 2](#), Sch (with art. 6)
- F3** S. 30(2A) inserted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 99\(3\)\(c\)](#), 206; S.S.I. 2010/413, [art. 2](#), Sch (with art. 6)
- F4** Words in s. 30(3)(b) substituted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 99\(3\)\(d\)](#), 206; S.S.I. 2010/413, [art. 2](#), Sch (with art. 6)
- F5** S. 30(3A) inserted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 99\(3\)\(e\)](#), 206; S.S.I. 2010/413, [art. 2](#), Sch (with art. 6)

## 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 [<sup>F6</sup>of the Police Service of Scotland].

#### Textual Amendments

- F6** Words in s. 31(4) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 24\(6\)](#); S.S.I. 2013/51, [art. 2](#) (with transitional provisions and savings in S.S.I. 2013/121)

## 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

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the period for which a closure order has effect for a period not exceeding the maximum period.

[<sup>F7</sup>(1A) The sheriff may, on the application of a senior police officer and if satisfied that it is necessary to do so to prevent the commission of an exploitation offence, make an order extending the period for which a closure order has effect for a period not exceeding the maximum period.]

(2) In [<sup>F8</sup>subsections (1) and (1A)], 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 [<sup>F9</sup>, in a case involving antisocial behaviour,] make an application under [<sup>F10</sup>subsection (1)] 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.

[<sup>F11</sup>(3A) A senior police officer may, in a case involving an exploitation offence, make an application under subsection (1A) 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 commission of an exploitation offence, and
  - (ii) is satisfied that the appropriate local authority has been consulted about the intention to make the application.]

#### Textual Amendments

- F7** S. 32(1A) inserted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 99(4)(a)**, 206; S.S.I. 2010/413, **art. 2**, Sch (with art. 6)
- F8** Words in s. 32(2) substituted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 99(4)(b)**, 206; S.S.I. 2010/413, **art. 2**, Sch (with art. 6)
- F9** Words in s. 32(3) inserted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 99(4)(c)(i)**, 206; S.S.I. 2010/413, **art. 2**, Sch (with art. 6)
- F10** Words in s. 32(3) substituted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 99(4)(c)(ii)**, 206; S.S.I. 2010/413, **art. 2**, Sch (with art. 6)
- F11** S. 32(3A) inserted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), **ss. 99(4)(d)**, 206; S.S.I. 2010/413, **art. 2**, Sch (with art. 6)

### 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 [<sup>F12</sup> (as the case may be)—

- (a) the occurrence of relevant harm, or

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(b) the commission of an exploitation offence,  
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.

#### Textual Amendments

**F12** Words in s. 33(1) substituted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 99\(5\)](#), 206; [S.S.I. 2010/413](#), [art. 2](#), Sch (with art. 6)

### 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 [<sup>F13</sup>the Scottish 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 [<sup>F14</sup>Scottish Police Authority];
    - (ii) by [<sup>F15</sup>the Scottish Police Authority], on the local authority for the area in which the premises are situated; and

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(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.

#### Textual Amendments

- F13** Words in s. 35(1) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 24\(7\)\(a\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F14** Words in s. 35(3)(a)(i) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 24\(7\)\(b\)\(i\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)
- F15** Words in s. 35(3)(a)(ii) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 24\(7\)\(b\)\(ii\)](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

## 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) [<sup>F16</sup>or (1A)].

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### Textual Amendments

**F16** Words in s. 36(5) inserted (13.12.2010) by [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#), [ss. 99\(6\)](#), 206; [S.S.I. 2010/413](#), [art. 2](#), Sch (with art. 6)

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