

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4, Chapter 3: Closure of premises associated with nuisance or disorder etc

187. The closure of premises associated with nuisance or disorder (referred to as the community protection order (closure) in the White Paper) has two stages – the closure notice and the closure order. The new power consolidates various existing closure powers relating to licensed and non-licensed premises which are causing, or are likely to cause, anti-social behaviour.
188. The two-part test for issuing a notice will be that the police or local authority reasonably believes that there is, or is likely soon to be, a public nuisance or there is, or is likely soon to be, disorder in the vicinity of, and related to the premises; and that the notice is necessary for preventing the continuation or occurrence or reoccurrence of such disorder or behaviour (section 76(1)). For example, closing a nightclub where police have intelligence to suggest that disorder is likely in the immediate vicinity on a specific night or over a specific period.
189. A notice is issued out of court, can be issued for a maximum of 48 hours, and cannot prohibit access by the owner of the premises or people who habitually live on the premises (section 76(4)). The notice can be designed to prohibit access to particular people at particular times. For example, where a property is closed in anticipation of a party publicised through social media, the family who lived there would not be prohibited, and additional people could also be exempted (such as other family members) where appropriate.
190. A notice that lasts for up to 24 hours may be issued by a police officer of at least the rank of inspector or a local authority (section 76(1)). A notice can be issued for, or extended up to, a maximum of 48 hours if agreed by a police officer of at least the rank of superintendent or someone designated by the chief executive officer of a local authority. In total, the period for which such an out-of-court closure notice is in place cannot exceed 48 hours (section 77(2) and (4)).
191. Before issuing the notice, the police or local authority must consult any person or agency they consider appropriate, and must also make reasonable efforts to inform the owner, landlord, licensee and anyone who appears to be residing in the premise (section 76(6) and (7)). The police or local authority must also take into account any special considerations arising from the presence, or likely presence, of any children or vulnerable adults on the premises. Authorised persons will have a power of entry to the premises, using reasonable force if necessary, to secure the notice to the premises (section 79(4)). The service of the notice on relevant people is required of the constable or local authority (or contractor employed by the local authority) if possible to do so (section 79(2)). Where a notice issued by a local authority requires cancellation or variation, it must be signed off by the person who originally issued the notice or, if they

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are not available, the chief executive of the local authority or a person delegated by him or her (section 78(4) and (5)). If a closure notice is no longer required the police or local authority that issued the notice must cancel the closure notice with a cancellation notice (section 78(2)).

192. When a closure notice is issued, the police or local authority must apply to the magistrates' court for a closure order (section 80(1)). The magistrates' court must hear the application for the closure order within 48 hours of the closure notice being issued (excluding Christmas Day) unless the closure notice has been cancelled by a cancellation notice (section 80(3)). The court can make a closure order for a maximum period of three months (section 80(6)) if it is satisfied that: a person has engaged in disorder, anti-social or criminal behaviour on the premises (or that such behaviour is likely if the order is not made) or the use of the premises is associated with the occurrence of disorder or serious nuisance to members of the public (or that such disorder or serious nuisance is likely if the order is not made); and that the order is necessary to prevent the continuation or occurrence or reoccurrence of such disorder or behaviour (section 80(5)). Unlike the closure notice, a closure order can prohibit access to anyone, including the landlord, owner or habitual residents (section 80(7)).
193. The court can decide to allow a short-term closure notice to continue during a period of adjournment – but not for more than 14 days (section 81). This could allow the person issued with the closure notice time to show that the order should not have been made, without increasing the risk of anti-social behaviour to those in the immediate vicinity of the premises.
194. Before the closure order expires, the police or local authority could apply to the magistrates' court for an extension of the order if this was deemed necessary. The order can be extended for up to three months and the maximum period a closure order could last for overall would be six months (section 82(7) and (8)). Section 83 allows the person who has been issued with a closure order, anyone else who has an interest in the premises, or the local authority or police officer that applied for the order to request a discharge at any time. This discharge hearing would take place in the magistrates' court.
195. Anyone who has an interest in the premises but upon whom the closure notice was not served is entitled to make an application to discharge a closure order or appeal against a closure order or a decision to extend a closure order. Interest in this context means legal and financial interests (sections 83 and 84).
196. Where a closure order, temporary order or extension of a closure order has restricted access to a part of any premises that is not subject to the order, the owner or occupier of that other part can apply to the appropriate court under section 87. The court can then make whatever order it thinks appropriate in relation to access. Where this was previously considered under section 80(8)(b) the application under section 87 can still be made if the requirements in section 87 are met.
197. If an individual on whom the closure order was served, or anyone else with an interest in the premises, believes that it was issued incorrectly, he or she can appeal to the Crown Court (section 84). This appeal must be made within 21 days of the original court order (section 84(5)).
198. For the duration of the closure order, authorised persons can enter the premises to carry out essential maintenance (section 85). This would allow access, for example, to service a boiler or fix a leak. A power of entry is provided to enable this. The body managing the closure can also make a claim for reimbursement of costs as a result of such work (section 88) and their officers are exempt from liability should there be damage as a result of the activity, unless they acted in bad faith (section 89). Section 90 allows for a compensation claim for financial loss associated with an order. However, compensation would not be available to those associated with the behaviour on the premises that caused the closure (section 90(5)).

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199. Breach of the notice or the order, without reasonable excuse, would be a criminal offence (section 86). On summary conviction, a person would be liable to an unlimited fine and/or up to three months imprisonment if in breach of a notice and up to six months imprisonment if in breach of an order (or 51 weeks following the commencement of section 281(5) of the Criminal Justice Act 2003). Organisations and businesses would be subject to an unlimited fine. A person guilty of obstructing an officer in the process of closing a property also commits an offence and is liable to a fine and/or up to three months imprisonment.
200. The Secretary of State may issue or revise guidance to the police and local authorities about the exercise of functions under Chapter 3 of Part 4 (section 91).