

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.

Section 119: Offence of causing nuisance or disturbance on NHS premises

672. This section creates a new offence of causing a nuisance or disturbance to NHS staff on NHS premises. It addresses behaviour which disrupts NHS staff in the performance of their duties and affects the delivery of healthcare.
673. *Subsection (1)* sets out the required elements of the offence. In order to commit the offence, a person must, without reasonable excuse, cause a nuisance or disturbance to an NHS staff member whilst on NHS premises.
674. A nuisance or disturbance can include any form of non-physical behaviour which breaches the peace, such as verbal aggression or intimidating gestures towards NHS staff. A person will not commit the offence if he or she has a reasonable excuse for causing the nuisance or disturbance or refusing to leave the premises. Behaviour consequential to the receipt of upsetting news or bereavement may, for example, constitute a reasonable excuse. A nuisance or disturbance must be caused to an NHS staff member, rather than any other person. At the time the nuisance or disturbance is caused, the NHS staff member must either be working at the premises or be there for

some other purpose relating to his work, such as travelling to work, walking between buildings or taking a break. The nuisance or disturbance must be caused on NHS premises.

675. If the conditions in subsection (1)(a) are satisfied, the person may be asked to leave the premises by a police constable or NHS staff member. If the person refuses to leave without reasonable excuse, then the person may commit the offence. A reasonable excuse for not leaving the premises may, for example, include a situation where a dependent is on the premises concerned and the person causing a nuisance or disturbance has a responsibility to remain on the premises with this dependent.
676. Subsection (1)(c) provides that a person who is on the premises for the purpose of obtaining medical advice, treatment or care will not be able to commit the offence. Patients and those attending for consultations, to collect medication or test results or convalescing after treatment will not be able to commit the offence.
677. *Subsection (3)* sets out the circumstances in which a person will not be regarded as legitimately on the premises for medical purposes. It provides that a person that has received medical advice, treatment or care, or who is seeking medical advice, treatment or care which he or she has been refused less than 8 hours before is not on the premises for the purpose of obtaining medical advice, treatment or care and is capable of committing the offence.
678. *Subsection (4)* outlines the scope of the offence by defining the terms “NHS premises”, “NHS staff member” and other related terms. NHS premises refers to both English and Welsh NHS premises. “English NHS premises” refers to any hospital owned or managed by an English NHS Trust, Primary Care Trust or NHS Foundation Trust and includes buildings, other structures and vehicles located on hospital grounds. “Welsh NHS premises” refers to any hospital owned or managed by a Welsh NHS Trust or Local Health Board and includes buildings, other structures and vehicles located on hospital grounds. “Vehicles” may include, for example, ambulances or air ambulances but do not fall within the definition of “NHS premises” when they are outside hospital grounds. The definition of an NHS staff member includes staff who are not directly employed by, but work for, the relevant English or Welsh NHS body. These could include agency workers, contractors, students or volunteers.

Section 120: Power to remove person causing nuisance or disturbance

679. This section provides that a police constable may remove a person reasonably suspected of committing, or having committed, the offence in section 119 from the NHS premises concerned.
680. Where NHS bodies wish to have the option to exercise the power of removal without recourse to police constables, they will need to authorise at least one member of their staff (to be known as the “authorised officer”) to exercise the powers of removal.
681. A person authorised by an English NHS Trust, Primary Care Trust or NHS Foundation Trust to exercise the power of removal may remove a person reasonably suspected of committing, or having committed, the offence in section 119 from the English NHS premises concerned and may either carry out the removal himself or herself or authorise another person working for one of these English NHS bodies to do so. A person authorised by a Welsh NHS Trust or Local Health Board to exercise the power of removal may remove a person reasonably suspected of committing, or having committed, the offence in section 119 from the Welsh premises concerned and may either carry out the removal himself or herself or authorise another person working for one of these Welsh NHS bodies to do so.
682. *Subsection (3)* provides that any person exercising the power of removal under this section may use reasonable force if necessary.

683. *Subsection (4)* sets out restrictions on the exercise of the power of removal. A person cannot be removed if the authorised officer has reason to believe that the person to be removed requires medical advice, treatment or care or that removal would endanger the person's physical or mental health. In practice, this means that if an authorised officer has any reason to believe that the person to be removed falls within one of these categories, he will need to seek advice from an appropriate medical practitioner to determine whether, in fact, the person to be removed does fall within one of these categories and whether removal can take place. This imposes a safeguard on the exercise of the power of removal to prevent the removal by the authorised officer or authorised NHS staff member of anyone who may need medical help or may be vulnerable.

Section 121: Guidance about the power to remove etc

684. *Subsection (1)* gives the appropriate national authority a power to produce guidance to relevant NHS bodies and authorised officers about the power of removal and *subsection (2)* lists issues that may be covered in the guidance. The Secretary of State will produce guidance for English NHS bodies and their authorised officers in relation to English NHS premises, and Welsh Ministers will produce guidance for Welsh NHS bodies and their authorised officers in relation to Welsh NHS premises.
685. The guidance is expected to outline procedures for authorising NHS staff members to safely authorise and exercise the power of removal. This may include, for example, the grade and role of staff considered suitable. The guidance is likely to include reference to the type of training that these staff would be expected to have received before their authorisation; matters to be taken into account by an authorised officer in deciding whether a person has committed or is committing an offence under section 119 and whether that person can and should be removed; reference to the need for an authorised officer to consult an appropriate medical practitioner to determine whether a person requires medical advice, treatment or care or whether removal would harm his physical or mental health; reference to the degree of force that may be appropriate for authorised officers or authorised NHS staff members to use when removing an offender; and an outline of administrative procedures to be followed, for example, for informing persons using the premises of the offence and power of removal and keeping records of incidents in which the power of removal has been used.
686. *Subsection (3)* requires the Secretary of State and Welsh Ministers respectively, to consult such persons as each considers appropriate before publishing any guidance under this section.
687. *Subsection (4)* provides that English and Welsh NHS bodies and authorised officers themselves must have regard to the relevant guidance published by the appropriate national authority when exercising their functions under, or in connection with, these sections.

Section 122 and Schedule 21: Nuisance or disturbance on HSS premises

688. *Schedule 21* makes provision for Northern Ireland corresponding to that made for England by sections 119 to 121. Rather than a reference to causing a nuisance or disturbance to an NHS staff member on NHS premises, the provisions for Northern Ireland refer to staff working for Health and Social Services trusts at hospitals vested in, or managed by, such trusts.

Section 123: Review of anti-social behaviour orders etc.

689. *Subsection (1)* inserts two new sections, 1J and 1K, into Part 1 of the Crime and Disorder Act 1998. ASBOs are civil orders to protect the public from behaviour that causes or is likely to cause harassment, alarm or distress. ASBOs are issued for a minimum period of two years.

690. Section 1J creates the obligation to carry out a one year review of ASBOs issued to persons under 17 and sets out how it should be carried out.

New Section 1J of the 1998 Act

691. New section 1J(1) makes ASBOs subject to review regardless of how they were obtained (on complaint, or on conviction, or in the county court), provided that the subject was aged under 17 on the day that the order was made.
692. New section 1J(2) ensures that a review will be carried out only if the subject is still aged under 18 and requires the order to be reviewed before the end of each “review period” (see below).
693. New section 1J(3) specifies the review periods. There are two types. The first review (new section 1J(3)(a)) is to be carried out for the period covering the first year of the ASBO, but if there has been a supplemental order (see below) within that first year, that further order has the effect of re-setting the clock on the review period. The second and subsequent reviews (new section 1J(3)(b)) are to be carried out on a one yearly cycle starting from the day after the first review period. However, again, the clock can be re-set if a supplemental order is made within that second (or subsequent) review period. This will avoid a review having to be carried out when a similar process – the case review leading up to an application to vary an order or to obtain an Individual Support Order (ISO) – has already achieved the same end.
694. New section 1J(4) defines supplemental orders for the purposes of new section 1J(3). The result is that varying the ASBO, or making an ISO in relation to it, has the effect of re-setting the clock for the review period.
695. New section 1J(5) makes it clear that a review is not carried out on an ASBO if the order is discharged before the end of the review period.
696. New section 1J(6) sets out what the case review team must consider when conducting the review, including further support to the subject and possible further action to vary or discharge the ASBO.
697. New section 1J(7) requires the case review team to have regard to Home Office guidance when carrying out the review.

New Section 1K of the 1998 Act

698. New section 1K sets out which agencies are responsible for carrying out and participating in the review.
699. New section 1K(1) requires the applicant agency to carry out the review of any ASBO that it applied for.
700. New section 1K(2) requires that for ASBOs obtained on conviction (where the applicant may be the CPS, or the order may be made by the Court itself), the police are to carry out the review, unless the ASBO specifies otherwise.
701. New section 1K(3) and (4) require the police and the local authority to co-operate with each other’s reviews. New section 1K(5) obliges other applicant agencies (eg. registered social landlords) to co-operate with the police and local authority, and similarly both the police and the local authority are duty bound to co-operate with, for example, a registered social landlord’s review.
702. New section 1K(6) enables the agency carrying out the review to invite another person or body (eg. the local youth offending team) to participate in the review, distinct from those already obliged to do so.

703. New section 1K(7) gives the definition of police and local authority for the purposes of this section, ie. the police or local authority where the subject resides or appears to reside.
704. *Subsection (2)* amends section 1(1A) of the 1998 Act, which sets out the definition of a relevant authority, to extend that definition to cover these provisions.
705. *Subsection (3)* enables an agency other than the police (the default option set out in new section 1K(2)) to be specified as the agency responsible for carrying out the yearly review of an order obtained on conviction. The means for doing so is through a designation by the Court, either at the time the ASBO is made or subsequently when it is varied by a further Court order.
706. *Paragraph 23* of Schedule 27 to the Act (transitional etc. provisions) sets the timing criteria for ASBOs to be subject to the new review requirement. In addition to all the requirements set out above, to qualify for a review, an ASBO must:
- be less than nine months old when these provisions come into force; or
 - have been varied nine months (or less) before the requirement comes into force.

Section 124: Individual support orders

707. Individual support orders (ISOs) are civil orders that can be attached to stand-alone ASBOs for 10-17 year olds.
708. ISOs last for up to 6 months and impose positive conditions designed to tackle the underlying causes of a young person's anti-social behaviour. The support will be tailored to the individual's needs and can require a young person to attend up to two sessions a week. For example, the young person may be required to attend an anger management course.
709. *Subsection (1)* of section 124 inserts new subsections into section 1AA of the 1998 Act, which deals with ISOs. The new subsections will allow ISOs to be made more than once, and to be made subsequent to the making of the original ASBO, provided that the Court is satisfied that the other conditions for doing so have been met: that it is on application from the original applicant agency; that the subject is still under 18; that his ASBO is still in force; and that it will help prevent further anti-social behaviour on his part.
710. *Subsection (2)* extends the first condition for an ISO so that an order can also be made if it is desirable in the interests of preventing repetition of anti-social behaviour which led to a variation. *Subsection (3)* makes a corresponding amendment to section 1AA(5) (which sets out the requirements that may be specified in an ISO).
711. *Subsection (4)* applies the definition of relevant authority in section 1(1A) of the 1998 Act to the ISO provisions in section 1AA.
712. *Subsection (5)* sets a time limit on any ISO subsequent to the original hearing, so that it cannot be made to last beyond the lifetime of the ASBO.
713. *Subsection (6)* allows ISOs to be made in the county court, should the ASBO be made as a result of proceedings there, either at the time or subsequently.
714. *Subsection (7)* allows ISOs to be made for ASBOs obtained on conviction, provided that the other criteria for doing so are met; and also allows whoever is carrying out the annual review to make an ISO application.
715. *Paragraph 23* of Schedule 27 to the Act sets the timing criteria for ISOs, so that they may be applied for only when the ASBO:
- is less than nine months old when the provisions come into force;

- or has been varied nine months (or less) before the provisions come into force.

Section 125: Parenting contracts and parenting orders: local authorities

716. *Subsection (2)* amends the definition of a local authority in section 29(1) of the Anti-social Behaviour Act 2003 so as to include district councils as well as county councils within the list of councils which may enter into a parenting contract or apply for a parenting order. The effect of the current definition is that a district council is not included where there is also a county council (i.e. in a “two tier” area).
717. *Subsection (3)* inserts a new subsection (8A) into section 26B of the Anti-social Behaviour Act 2003. This specifies that if a child lives in a district council area, within a county council area, both local authorities should be consulted by the registered social landlord before applying for the parenting order.
718. *Subsection (4)* amends section 27 of the Anti-social Behaviour Act 2003 by substituting a new subsection (3A) and inserting a new subsection (3B). The effect of the new subsection (3A) is that breach proceedings have to be brought by the local authority that applied for the order unless either the child or young person, or the person alleged to be in breach of the order (i.e. the parent or guardian), is living in the area of another local authority – in which case proceedings can instead be taken by that authority. The effect of new subsection (3B) is that, where there is both a district council and a county council (i.e. in a “two tier” area), either council can take breach proceedings.