



**GUIDANCE ON
CLOSURE ORDERS:
PART 2A SEXUAL
OFFENCES ACT 2003**

Ministerial Foreword



Since the publication of the Government's Prostitution Strategy in 2006 we have made great strides towards meeting our objectives of reducing commercial sexual exploitation. We have also responded to the threat of trafficking by developing a comprehensive range of measures to help the relevant agencies work together to investigate traffickers and give support to victims.

However, we realise that we must continue to do all we can to tackle trafficking and exploitative prostitution and to protect the vulnerable people who fall victim to these appalling crimes.

A Co-ordinated Prostitution Strategy (2006) and the UK Action Plan on Human Trafficking (2007) both highlight the need to do more to tackle the demand for prostitution. This led to the Government's Tackling Demand Review, which investigated what more could be done to tackle the demand for prostitution. One of its recommendations was to introduce closure powers for premises linked to sexual exploitation, in order to allow the police and partner agencies to prohibit access to such premises for up to 6 months. Closure Orders have now been introduced in section 21 of, and Schedule 2 to, the Policing and Crime Act 2009 (which amends the Sexual Offences Act 2003). These provisions and this guidance come into force in England and Wales on 1st April 2010 (they will not come into force in Northern Ireland at this stage).

They will be a vital tool in the fight against sexual exploitation and an important addition to the powers police already have. They will allow police to close down premises they take enforcement action against in relation to certain prostitution or pornography related offences – at the moment, these premises may continue to operate soon after police action despite arrests being made by the police, unless the premises are associated with nuisance, disorder or class A drug use. Closure orders will close this gap and allow the police to disrupt the activities of those involved in sexual exploitation.

These powers are based on similar powers which we have introduced to tackle anti-social behaviour and class A drug use. Now similar action can be taken against premises associated with sexual exploitation.

Our ambition is to ensure that these new measures will be as effective as possible in tackling the sexual exploitation associated with prostitution. To this end, the statutory guidance has been drafted to help practitioners understand the use to which these powers can be put and the steps that need to be followed to make this happen.

Alan Campbell

A handwritten signature in cursive script that reads "Alan Campbell".

Parliamentary Under-Secretary of State for Crime Reduction

1st April 2010

Closure Orders: Part 2A Sexual Offences Act 2003

Contents

1. Introduction	4
2. Closure orders – General Principles	5
3. The Process of Applying for Orders	8
4. Service and Enforcement of a Closure Notice	13
5. Applying for a Closure Notice – the Magistrates’ Court	16
6. The Closure Order – the Effects	20
7. Costs and Financial Compensation	25
Annex A – Checklist	27
Annex B – Part 2A Sexual Offences Act 2003	29

1. Introduction

1.1 Section 21 of, and Schedule 2 to, the Policing and Crime Act 2009 inserted new Part 2A into the Sexual Offences Act 2003. These provisions introduce new powers for the courts to close, on a temporary basis, premises associated with certain prostitution or pornography related offences. This tool is similar in nature to the existing closure powers contained within the Anti-Social Behaviour Act 2003, although those powers target anti-social behaviour and Class A drug use, whereas the powers introduced by the Policing and Crime Act are targeted at sexual exploitation.

1.2 These powers are designed to allow police forces and local authorities, working in consultation with each other, to take **rapid and effective action** against activity that causes great harm to individuals and communities. It is an order of last resort and should only be pursued after the full range of appropriate interventions have been tried without success. Used with the proper safeguards and with judicial oversight, this measure will be a vital tool in helping police to tackle sexual exploitation.

1.3 The action to close a property should not be taken by one agency in isolation. Police are **required to consult** local authorities before any decision is taken. The closure of premises is a significant step and the persons involved may be children, or other persons who are vulnerable or at risk. It is essential that support interventions are used with enforcement measures, and that the problem is tackled holistically rather than by simply shifting the burden elsewhere. These powers present a real opportunity for multi-agency partners to act swiftly and decisively to tackle sexual exploitation.

1.4 This guidance relates to the provisions contained in Part 2A of the Sexual Offences Act 2003 as amended by the Policing and Crime Act 2009. The Policing and Crime Act 2009 received Royal Assent on 12 November 2009 and can be accessed at: http://www.uk-legislation.hmso.gov.uk/acts/acts2009/ukpga_20090026_en_1

1.5 This guidance is designed principally for:

- the courts;
- the police; and
- local authorities.

1.6 This guidance is issued by the Secretary of State for the Home Department. A person discharging a function to which this guidance relates must have regard to it in discharging the function.

2. Closure Orders – General Principles

Intention of the Closure Order powers

2.1 Closure Orders are intended to target those premises that could be considered 'high risk' and where there is evidence of exploitative or coercive practice or the involvement of children.

2.2 The Closure Order provisions are set out in sections 136A to R of the Sexual Offences Act 2003 (as amended by the Policing and Crime Act 2009). Creating such an Order was a key recommendation of the review into tackling the demand for prostitution which was published by the Home Office in November 2008. Its aim is to disrupt criminal activities which may be associated with off-street prostitution and prevent this activity from continuing.

2.3 Currently, the police have limited powers to close premises that they believe to be linked to certain exploitative sexual offences. If they have evidence that a criminal offence has been committed they have powers to arrest anyone who they have reasonable grounds for suspecting to be guilty of the offence. However, unless the premises are associated with anti-social behaviour, significant and persistent nuisance or disorder or use of class A drugs, the courts are unable to impose a closure order. This means that exploitative activities may restart at the premises as soon as the police have left. Closure orders are intended to prevent such activities from re-starting.

2.4 Closure orders will target particularly exploitative activities and will only be used where a court is satisfied that the premises have been used for activities related to one or more specified prostitution or pornography related offences. The specified offences are listed in Section 136A. They are:

- Paying for the sexual services of a child (section 47 of the Sexual Offences Act 2003 Act or Article 37 of the Sexual Offences (Northern Ireland) Order 2008)
- Causing or inciting child prostitution or pornography (section 48 of the Sexual Offences Act 2003, or Article 38 of the Sexual Offences (Northern Ireland) Order 2008)
- Controlling a child prostitute or a child involved in pornography (section 49 of the Sexual Offences Act 2003 or Article 39 of the Sexual Offences (Northern Ireland) Order 2008);
- Arranging or facilitating child prostitution or pornography (section 50 of the Sexual Offences Act 2003), or Article 40 of the Sexual Offences (Northern Ireland) Order 2008;
- Causing or inciting prostitution for gain (section 52 of the Sexual Offences Act 2003 or Article 62 of the Sexual Offences (Northern Ireland) Order 2008;

- Controlling prostitution for gain (section 53 of the Sexual Offences Act 2003 or Article 63 of the Sexual Offences (Northern Ireland) Order 2008).

2.5 Section 136A states that:

- premises are being used for activities related to a specified prostitution offence, in the case of the offence of paying for the sexual services of a child, at any time when the sexual services are being provided on that premises, and in the case of any other specified prostitution offence, at any time when the person in respect of whom the offence is committed is providing sexual services on the premises.
- Premises are being used for activities related to a specific pornography offence, at any time when the person in respect of whom the offence is committed is doing anything on the premises which enables an indecent image of himself or herself to be recorded.

2.6 One urban area in England has developed a classification of brothels and has identified 'risk brothels' as premises where:

- Intelligence suggests that the premises are involved in trafficking issues.
- Intelligence suggests that workers at premises are subject to violence, imprisonment, abuse, overwork, exploitation etc.
- Intelligence suggests that those involved in the running of the brothel are dangerous, or pose a serious risk to either service providers or clients.
- Intelligence suggests that premises are involved in organised crime or other unlawful purposes – e.g. money laundering, drug supply etc.
- Service providers are under 18 years
- Evidence that young children are frequenting premises (e.g. children of service providers)

2.7 The power, therefore, is designed to target those premises where exploitation of this kind is taking place. It is intended to be a vital tool to support existing police operations aimed at tackling the exploitation involved in the commission of the specified prostitution and pornography related offences.

2.8 These powers will have a significant effect on those living at the property and should only be used as a last resort, where they are necessary to prevent criminal activity, where other interventions have been used or considered and rejected for good reason, and where the implications of making an order, for example, for children or vulnerable adults staying at the premises have been carefully considered.

2.9 Proportionate use of these powers will help to ensure that they do not serve to undermine the trust between those working in brothels and the police. It is important that those in prostitution feel able to report abuse against them by clients without fear that it will result in the premises in which they work voluntarily, being closed without clear evidence of exploitation.

2.10 It is important to note that powers already exist to target premises associated with Class A drug use or anti-social behaviour and these are the appropriate powers to use to deal with such problems.

2.11 The nature of the offences listed in section 136A mean that in many cases where premises are subject to closure orders there will be one or more vulnerable victims, possibly children, whose needs will have to be taken into account as a priority. The orders are intended to be an important measure to help prevent continued abuse in such cases but in order to ensure these victims have the support they need, it will be necessary for the police to make appropriate referrals. This is not inherent within the closure orders process but will be vital if the orders are to help achieve their aims.

2.12 The police and some other public bodies are under duties to safeguard and promote the welfare of children under the Children Act 2004. Records should be made showing that consideration has been given to the rights of the individuals who will be affected by the making of a closure order, including the victim(s) and potential victims.

3. The Process of Applying for Closure Orders

Closure Notices

Circumstances in which closure notice can be issued

3.1 Before applying to a court for a closure order, a police constable must issue a closure notice. The process for issuing a closure notice is set out in section 136B.

The decision to issue a closure notice must be authorised by a senior police officer of superintendent rank or above (“the authorising officer”).

3.2 A closure notice may be authorised orally or in writing. Where oral authorisation is given it should be confirmed in writing as soon as practicable.

3.3 The authorising officer can authorise the issue of a closure notice if he has reasonable grounds for believing that the following three conditions are met:

- During the last 3 months the premises were used for activities relating to one or more of the specified prostitution or pornography offences
- A closure order is necessary to prevent the premises being used for activities related to the specified offences.
- The local authority for the area in which the premises are situated has been consulted and reasonable steps have been taken to establish the identity of any person who resides on the premises or who has control of or responsibility for or an interest in the premises.

3.4 In respect of the first condition as it relates to the prostitution offences (rather than the pornography offences), there must have been at least two people who received the sexual services, relating to the specified prostitution offences, at the premises during this period. This, therefore, would exclude from the terms of a closure order, services provided to only one client, whether or not on a single occasion (e.g. if a prostitute went to a client’s house to provide sexual services to that client, the client’s house could not be closed using these powers).

3.5 In respect of the second condition it should be noted that it is not a requirement of making a closure notice that the officer believes that any of the specified offences have been committed, simply that there are reasonable grounds for believing that activities relating to an offence will take place at the premises in the future if a closure order is not made.

3.6 The third condition requires consultation with the relevant local authority. The local authority in England will be a district council, a London borough council, a county council (for an area where there is no district council), the Common Council of the City of London (in its capacity as a local authority) or the Council of the Isles of Scilly. In Wales, the local authority will be either a county council or a county borough council. In Northern Ireland the local authority will be a district council.

3.7 The police should consult the relevant registered social landlords (RSL) where they own or manage the premises unless it would compromise their investigations.

3.8 Consultation should take place as early as possible as this provides the advantage of involving the local authority, or an RSL, in the following ways. They can:

- discuss whether the closure is appropriate given the nature of the problem identified;
- agree longer-term strategies;
- notify the police of other impending action in relation to the premises with a view to co-ordination where necessary;
- consider the peripheral factors related to the closure and how others will be affected (e.g. vulnerable people);
- obtain additional intelligence on who owns and resides at the premises; and that advice is provided by organisations to the evicted residents (for example, legal advice and homelessness advice).

3.9 Through the consultation, notification can be given to the relevant RSL and to other local authority services, such as the social work and housing services, that may need advance warning of potential demands on their resources. The local authority may often have a dedicated service or contractor essential to the process of securing and sealing the premises subject to a Closure Order. These services may not be available outside of regular hours.

3.10 For both the local authority and the RSL, the appropriate point of notification is the office of the chief executive or director of housing in the local authority. The chief executive **must** ensure that all the relevant interests within the authority are involved in the consultation, for example, with housing benefit officers and social work issues regarding children. The point of notification for the police is the appropriate chief officer for the area. Local arrangements, and operational needs, should dictate a reasonable time period in which this consultation should take place.

3.11 The full range of support and enforcement measures should be considered with appropriate parts of the local authority during this consultation. As part of a multi-agency and long-term strategic approach to sexual exploitation (rather than simply the property itself), the police, housing management teams, the local authority (including adult and children services) education providers, welfare and, where appropriate, local projects offering support to those involved in prostitution or trafficked persons should be involved in any interventions from a very early stage to tackle exploitative and dangerous practices at the earliest opportunity. Proactive engagement with specialist support projects working with those in prostitution from an early stage may be a more effective approach in dealing with such practices and police should make efforts to establish and maintain relationships with these projects. In some cases, however, it may not be possible to engage the project in relation to a specific closure order, for example where this may not be appropriate given the nature of the operation or where urgent action is required in order to safeguard children or vulnerable persons.

3.12 It is imperative that all relevant housing issues are considered during consultation with the local authority, including ensuring that, where it is appropriate, housing benefits continue to be paid. It is essential that robust contingency planning is put in place – to ensure that homelessness can be prevented for anyone who is a victim of the offences being committed in relation to the premises and would lose their home as a result of a closure order being made.

3.13 Local housing authorities have a legal duty to ensure that advice and information about homelessness and prevention of homelessness are available free of charge to everyone in their area. If someone applies to them for housing assistance and the authority has reason to believe that the person may be homeless or is likely to be homeless within 28 days, the authority must make enquiries to satisfy themselves whether any duty is owed to that person under the homelessness legislation. Where the authority is satisfied that the person is eligible for assistance, is unintentionally homeless and falls within a priority need group, the authority must ensure that suitable accommodation is available for them.

3.14 In cases where a person's homelessness is the result of a Closure Order and there is clear evidence that they have been involved in the activities associated with one of the specified offences, the local authority may decide that the applicant has become homeless intentionally (because the homelessness was the consequence of the person's deliberate behaviour).

3.15 Where people are eligible for assistance and fall within a priority need group, but are intentionally homeless, the authority must ensure that they are provided with advice and assistance to help them obtain accommodation –

the authority must also ensure that applicants have lodgings available for long enough to give them a reasonable opportunity to obtain accommodation.

3.16 Local housing authorities are referred to the *Homelessness Code of Guidance for Local Authorities* that, among other things, includes guidance on eligibility, priority need, and becoming homeless intentionally. It is available at: www.communities.gov.uk.

3.17 The police and local authorities are bound to act in compliance with the European Convention on Human Rights. The police should consider the needs of any vulnerable persons and children, before issuing of a Closure Notice.

3.18 This legislation deals with problematic premises and not individuals. Aside from the three statutory criteria, the authorising officer should therefore also take into account:

- whether the proposed actions will have the intended impact on the problem at hand;
- the circumstances of the individuals regularly visiting or residing on the premises
- the suitability of the powers to tackle the problems occurring at the premises;
- the evidence about the level of criminal behaviour, relating to the specified offences associated with the premises;
- how this action is to be followed up, ensuring that the premises do not become re-occupied for similar purposes, and how the closure can be followed up as part of the prostitution strategy for the area;
- the views of the relevant local authority;
- any other powers –that may be more suitable; and
- the availability of other powers, and supportive interventions, that can be used alongside the closure power

Consideration of other potential powers

3.19 There are a variety of investigative and other measures that can be used to address and prosecute perpetrators of the specified offences and closure orders should be considered as part of a comprehensive approach to the policing of prostitution and trafficking. Alternative interventions may be as

effective in preventing further activity, and thereby make a closure order unnecessary. For example, regular monitoring and visiting of the premises may be sufficient to prevent activities associated with the specified offences recurring or informing the landlord about the use to which the premises are being put could be enough for that landlord to take action where he is not involved in the commission of the specified offences.

3.20 The authorising officer should be able to demonstrate that he or she has considered all of these options before authorising the issue of a closure notice.

3.21 If such interventions have been tried and have been unsuccessful this will help provide evidence that a closure order is necessary in order to prevent the activities from re-occurring.

4. Service and Enforcement of a Closure Notice

4.1 The Act sets out a requirement for the police to **take reasonable steps** to identify anyone with an interest in, control of, or responsibility for the premises or who live on the premises, before the Closure Notice can be authorised. After issuing the closure notice, the police must give a copy of the notice to all the people they have managed to identify (or who appear to the constable to come within the above description).

Under section 136C a **closure notice must—**

- state that no-one other than a person who regularly resides on, or owns, the premises may enter or remain on them,
- state that failure to comply with the notice amounts to an offence,
- specify the offence or offences in respect of which the authorising officer considers that the first and second conditions in section 136B are met,
- state that an application will be made under section 136D for the closure of the premises,
- specify the date and time when, and the place at which, that application will be heard, and
- explain the effects of a closure order.

4.2 As a matter of good practice the closure notice should also:

- provide information on relevant advice providers who will be able to assist in relation to housing and legal matters. This will depend on the particular arrangements in place for the area, and should be agreed with the relevant local authority as part of the consultation. Relevant advice providers would include the local Housing Advice Centre or point of contact for applications for homelessness assistance, the Citizens Advice Bureau and the local Law Centre;
- provide information on local health services or specialist support projects

4.3 Once a closure notice is served, an application must be heard by magistrates within 48 hours of a copy of it being fixed to at least one prominent place on the premises. Contacting the courts prior to serving the notice will ensure that this requirement is met without causing undue difficulty.

4.4 It is good practice for a second officer to check the notice to ensure that it contains all of the necessary information before it is signed. Also, a checklist

should be in place for confirming that all the steps have been taken. These additional checks ensure the closure notice is properly made and served and minimise the potential for delays at court.

On whom should the Closure Notice be served?

4.5 The notice must be served by:

- fixing a copy of the notice to at least one prominent place on the premises
- fixing a copy of the notice to all normal means of access to the premises and any outbuildings used with or as part of the premises
- giving a copy of the notice to those identified as having an interest in, control of, or responsibility for the premises or who reside on the premises. The constable must take reasonable steps to ascertain who such people are before serving the notice.

This will include:

- residents (those who may not be tenants but who live there nonetheless);
- the tenant and their dependants at the property;
- the owner; and
- those with a right of access through the premises.

4.6 Identifying these persons need not delay the serving of the notice as long as the authorising officer is satisfied that reasonable steps have been taken to identify them before the closure notice is served. Normal police information resources and information requests to the local authority in the area in which the premises is situated should identify the owner or occupier. As in all such circumstances, partnership working and identification of routes of co-operation lead to the best exchange of information. If this information simply identifies a letting agent, serving notice on them is acceptable where reasonable steps to identify the owner have been taken but have proved fruitless.

4.7 Sending a notice by post is not desirable, due to the immediate effect the notice has. However, if the owner or letting agent identified is not local, posting the notice may be the only practicable means of giving the notice.

4.8 A constable must also serve a copy of the notice on any person who occupies any other part of a building or other structure in which the premises are situated if, at the time of serving the notice, the constable reasonably

believes that the person's access to the other part of the building or structure will be impeded if a closure order is made.

The welfare of those to be removed from a closed premises

4.9 There will be heightened concerns when the closure of a premises that may be home to a family, and especially children, is sought. As in any other operational setting, officers or local authority employees must be alert to their responsibilities in terms of any child's welfare when dealing with such cases. Where a child is found in circumstances where there is reason to believe that his or her welfare is at risk, officers must follow relevant procedures in relation to child protection.

4.10 In all cases relating to the closure of premises it is essential that early contact is made with social services as well as the relevant homelessness, education and housing officials in the local authority, in order to establish the potential effects of that closure and, where a closure order is made, to mitigate those effects. Contact should be made with the relevant officials as soon as possible to draw the attention of the local housing authorities to the possible need to prevent homelessness.

Non-compliance with a Closure Notice

4.11 Section 136G creates offences of remaining in or entering a property in contravention of 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 level 5 fine (currently £5,000), imprisonment for 51 weeks (or in Northern Ireland, 6 months imprisonment), or both.

5. Applying for a Closure Order - The Magistrates' Court

Time limits

5.1 Once a notice has been issued, an application for a closure order must be made to the magistrates' court by the police within 48 hours.

5.2 The maximum length of a closure order is three months, with the possibility of an extension although the total duration of the order must not be more than six months. The order should only be imposed for the period necessary to prevent activities relating to the further specified offences being committed.

The hearing

5.3 To make a Closure Order the court must be satisfied that:

- the premises were used for activities related to one or more specified prostitution or pornography offences – this does not apply if only one person obtained all of the sexual services at the premises in question (whether or not on a single occasion)
- the making of the closure order is necessary to prevent the premises being used for activities related to one or more specified prostitution or pornography offences during the period of the order.
- before the issue of the closure notice was authorised, reasonable steps were taken to establish the identity of any persons who reside on the premises or who has control of or responsibility for or an interest in the premises
- a police officer gave a copy of the closure notice to any persons identified as a person who resides on the premises or with control of or responsibility for or with an interest in the premises, or who appears to be such a person

5.4 The court is asked to decide whether the closure order is necessary to prevent the occurrence of the activities related to the specified prostitution or pornography offences. It may, therefore, wish to consider whether alternative methods of preventing these activities occurring would be more appropriate and what other action could be attempted. It may consider that there are

other powers or approaches which are more likely to prevent the relevant specified offences from taking place.

5.5 In deciding whether to exercise its discretion to make a Closure Order, the court may also have regard to:

- the ability of any person who habitually resides in the premises to find alternative accommodation; and
- any vulnerability of that person

5.6 Prior to the hearing, the police should ensure that the evidence to be presented is in good order. Support for community witnesses at the court may be necessary to enable them to give evidence.

5.7 At the court hearing the evidence should be presented by the police or their legal representative and supported, if appropriate, by evidence from the victims and witnesses, to establish the grounds for believing that the premises are associated with specified prostitution or pornography offences.

5.8 The court operates on a civil rather than a criminal standard of proof (i.e. balance of probabilities).

Dealing with the arguments presented against closure (including powers to adjourn)

5.9 The owner or occupier of the premises, a person who has control of, or responsibility for, the premises and any other person who has an interest in the premises may contest the application to make an order.

5.10 The court may adjourn the hearing of an application for a closure order for up to 14 days to enable such representations to be made. Possible reasons for not making a closure order include the following:

- The landlord/owner or tenant has just been apprised of the situation, and can demonstrate that effective action is already being taken to deal with it.
- There is strong evidence that contradicts the evidence presented by the police.

5.11 An adjournment may be necessary to allow those who wish to oppose the application for an order to prepare their case. The court may order that a closure notice continues in effect until the end of the period of adjournment. It should be made clear by the court at the time of any adjournment whether the notice continues to take effect or not.

5.12 It is not intended that all cases should be routinely adjourned, because this would defeat a key aspect of the power, which is to allow a rapid response to a particular problem. The court must decide whether an adjournment is needed.

Disclosure

5.13 Closure Order proceedings must be conducted in the interests of fairness and in accordance with relevant legislation. It should also be remembered that the legislative intention is that applications for Closure Orders should be dealt with speedily. Accordingly:

- Police should normally serve identified interested parties with all the documents filed in support of the application at the same time as they serve the closure notice (if this is operationally possible). This will help reduce the need for adjournments.
- Measures to protect witnesses should be in place before a closure notice is served, if considered appropriate by the investigating officer.
- In contested cases it is not generally sufficient for documents to be disclosed for the first time at the effective hearing. However, this may be acceptable in appropriate instances, at the discretion of the magistrates' court.
- Where the police have not served the evidence on which they intend to rely in advance of the first hearing, it should generally be served a minimum of seven days before the adjourned hearing. However, circumstances may vary: a shorter adjournment may have been given, and the length of any adjournment remains at the magistrates' discretion.
- If adjournments under section 136E(1) of the Sexual Offences Act 2003 are necessary, the court should normally order an extension of the closure notice under section 136E(2) of that Act for the duration of the adjournment.
- The information to be served by the police should include written versions of the evidence they propose to adduce, for example, all witness statements. An overview summary statement of the police case is insufficient on its own.
- Information should be served on the interested parties in person or by post (as operationally appropriate). If neither is practicable, it could be offered for collection or inspection.

Hearsay evidence

5.14 Hearsay evidence is admissible, as these are civil proceedings.

5.15 Where a witness has good reason to remain anonymous, the court will need to agree to this and will have to consider whether it is necessary to protect the interests of the witness involved. Specific justification will need to be given as to their reasons for remaining unidentified; for example, detailed reasons for their fear of reprisal.

5.16 If the police are relying on what has been said orally to a police officer or other professional, then the officer or other professional should give evidence to the court of what was said and of the circumstances under which the allegations were made, if the person who spoke to them is unable or unwilling to give evidence themselves.

5.17 The court is likely to give less weight to hearsay evidence (and, in particular, hearsay evidence adduced by an anonymous witness) than to credible direct evidence given in court.

5.18 Consideration should always be given to putting forward other types of evidence in support of the application, in addition to or instead of hearsay – for example, CCTV, surveillance footage, observation point log books and any other records.

6. The Closure Order – the Effects

6.1 The effect of the Closure Order is that the premises in respect of which the order is made is closed to all persons (including owners and occupiers) for such period as specified in the order. The order may be made for the whole or any part of the premises. The order can also include provisions allowing access to any other part of the building or structure in which the premises are situated.

6.2 A Closure Order comes into force immediately after the court makes the order.

6.3 A Closure Order is limited to a maximum term of three months (extendable to a total of 6 months). The length of any order should reflect the length of time necessary to ensure the property does not continue to be used for the activities related to specified prostitution and pornography offences.

6.4 As soon as 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 do anything reasonably necessary to secure it against entry by any other person. The constable or other authorised person must produce evidence of his ID and authority before entering the premises, if required to do so by the owner, occupier or other person in charge of the premises. A constable or authorised person may also enter the premises at any time to carry out essential maintenance or repairs.

6.5 The process of entering to enforce the Closure Order should be treated with extreme caution. While in many cases the occupants will already have left, in others they may be resistant to leaving. It should also be borne in mind that in some cases, particularly those where the victims of the sexual offences reside on the premises, the presence of several police officers may be disconcerting and the process of entering the premises should be conducted sensitively. The operation should be undertaken following a risk assessment, and authorised persons such as local authority workers, maintenance staff, workers from utility companies or housing officers should not be present until any safety issues have been addressed and the has been property cleared.

Breach of a closure order

6.6 A breach is committed if someone enters or remains on a premises in contravention of a closure order, without reasonable excuse. A person guilty of a breach commits an offence and is liable on summary conviction to imprisonment for a period not exceeding 51 weeks, a level 5 fine (currently £5,000), or both (in England and Wales).

6.7 What constitutes a reasonable excuse is ultimately a matter for the court but consideration should be given to the circumstances in which a person breaches an order. For example, a person might be coerced into entering or remaining on the premises by a third party or may need to enter the property to deal with an emergency such as a fire or to collect medication which needs to be administered immediately. Such scenarios may constitute a reasonable excuse.

Issues during closure

6.8 It is important that, following the closure, the empty premises do not cause greater problems than before the Closure Order was made because, for example, they start to be used for other illegal activities or are vandalised.

6.9 Premises should continue to be monitored and the sealing maintained in good order.

6.10 The police may wish, following consultation, to have the Closure Order discharged prior to its expiry date. This is desirable when the problems associated with the premises have been addressed. It should be stressed that **no property should remain closed for longer than is necessary**, and where the property can be brought back under the control of a person who will ensure the property is not used for illegal purposes an application should be made for the order to be discharged. For example, if a tenant agreed to immediately give up their tenancy as a result of the order and the landlord was not involved in the activities occurring at the property and is willing to take steps to ensure the property does not fall into the same use, there may be a strong case for discharging the order.

6.11 If the tenant does not give up the tenancy voluntarily, it is expected that the landlord will begin possession proceedings, unless the landlord is not associated with the activities which have led to the closure order being made. Legislation provides specific grounds for possession where a social home is being used for immoral or illegal purposes.

Extensions, appeals against discharging of closure orders

Extension

6.12 The police can make an application to the magistrates' court to extend the Closure Order for a further period of up to 3 months. The total period for which a closure order has effect must **not exceed six months**. So, a closure order may initially be granted for three months. The court may extend the order by a further month and then a further two months but after that it will be unable to grant any further extensions.

6.13 It is not expected that the extension of a Closure Order beyond three months will be a routine occurrence. There are many disadvantages to leaving properties empty for extended periods and few advantages. Only where there are real concerns that the property will return to its former use should an extension be made.

6.14 Where an extension is necessary to prevent the illegal activities occurring at the premises, the police should engage in the same consultation process as in the application for a Closure Notice. Only an order which is still in force can be extended. **The application for an extension may be made at any time prior to the date on which the order expires.**

6.15 A police constable can make an application to extend an order. This application must be authorised by a police officer of superintendent rank or above who must be satisfied that:

- there are reasonable grounds for believing that it is necessary to extend the period of the order to prevent the premises being used for activities related to specified prostitution or pornography related offences;
- the local authority has been consulted about the application.

Where the police had involved the relevant social landlord in the issue of the closure notice, they may wish to involve them again at this stage.

6.16 In the case of unoccupied buildings that have been taken over illegally then closed by order and that otherwise stand empty, there may be a risk that once they are unsealed, the illegal occupants will return. This is a decision for the court to make, but continuing emptiness through extension on the basis that there is a risk they may return to their former use is not productive. Good housing management will help premises to return to productive use. The owners should be asked to show what would happen once the property is unsealed. It may be necessary to commence compulsory purchase proceedings as soon as possible if these premises continue to pose risks of criminal activity.

Appeals

6.17 The Sexual Offences Act 2003 entitles any persons on whom a Closure Notice was served, as well as any person who has an interest in the premises but on whom the Closure Notice was not served, to appeal against the making or extension of a Closure Order or refusal to discharge such an order.

6.18 An appeal may also be brought either by a police constable or by a local authority against the refusal to make or extend an order or decision to discharge the order.

6.19 An appeal against an order or decision must be made to the Crown Court within 21 days, starting on the day on which the order or decision was made.

6.20 The Crown Court, in hearing an appeal, will judge each case on its merits. The Act does not define the grounds on which an appeal will be granted, only that the court may make such an order as it thinks appropriate.

Discharge of a closure order

6.21 The police, a local authority, a person on whom a closure notice was served or any other person with an interest in the closed premises may apply by way of complaint to a justice of the peace to have the order discharged before it expires. This is completely desirable where the order is no longer necessary to prevent the premises being used for activities related to one or more of the specified prostitution or pornography related offences. A court may not make the order unless it is satisfied that this is the case. Wherever early discharge is possible it should be encouraged. Where, for example, the tenant voluntarily surrenders the tenancy immediately, and the landlord was not involved in the activities occurring at the property and is willing to take steps to ensure the property does not fall into the same use, there may be a strong case for discharging the order. Other occupants with other housing status (such as licensees) may have their rights to occupation of the property taken away and this may be enough to prevent the premises from being used for the specified offences.

6.22 The court will wish to be reassured that the owner is prepared and able to provide the level of support needed to ensure that the same activities do not reoccur before discharging the order. Any attempt at re-letting will require strong co-operation between the police, the local authority and the landlord depending on the circumstances. It may be that the original tenant wishes to return to the premises, but this will have to be thought through very carefully. This is a matter for the court to consider in conjunction with the housing body, as discharge in these circumstances may be ill-advised without necessary support and good housing management practice.

6.23 However, where those with an interest in the property seek the discharge of the order themselves, careful consideration must be given to the likelihood of the original problems returning and to what other solutions are being pursued by the police or local authority to control the behaviour that led to those problems.

6.24 In the case of an application by private landlords or owners, the court will need to have many of the same reassurances, and in particular evidence that the private landlord will try to manage the situation more firmly. Only if the court is satisfied with their capability and willingness to get the problem under control should the order be discharged. Where the court has grounds for believing that the landlord was culpably involved in the original behaviour, this is likely to weigh heavily against discharge of the order.

Access during a Closure Order

6.25 Section 136L of the Sexual Offences Act 2003 allows a court to make an order concerning access to any part of a building or structure in which closed premises are situated, where that part itself is not affected by a Closure Order. Thus, a person who occupies, owns or otherwise has an interest in any part of a building or structure in which the closed premises are situated may apply to the court for an order enabling him or her to continue to access that part of the building through the closed premises.

6.26 The court may exercise its discretion and make such an order as it thinks appropriate.

6.27 Section 136L sets out the procedure which must be followed before such an application is granted.

7. Costs and Financial Compensation

Reimbursement of costs (Closure Orders)

7.1 A police authority or a local authority may apply to the magistrates' court for costs against the owner to pay the costs of cleaning, securing, repairing or maintaining the closed premises.

7.2 In order to recover these costs, applications must be made to the courts **within three months** of expiry of the Closure Order detailing the expenses claimed.

7.3 The application must be served on:

- the police authority for the area in which the premises are situated, if the application is made by the local authority;
- the local authority if the application is made by a police authority; and
- the owner of the premises.

7.4 On application, the court may make an order for reimbursement (in full or in part) by the owner of the premises of the expenditure as it thinks appropriate.

7.5 Consideration of the costs and compensation issues should be made when drawing up local protocols on use of the powers.

Exemption from liability (Closure Notices and Orders)

7.6 Section 136N of the Sexual Offences Act 2003 exempts the police and authorised persons from certain damages claims when carrying out their functions in relation to premises notices and orders.

Compensation (Closure Notices and Orders)

7.7 Persons who incur financial loss as a result of a Closure Notice or Order can apply for compensation to the magistrates' court that considered the application for an order (or the Crown Court if the order was made or extended by that court on appeal).

7.8 Where a closure notice but not a closure order is made, the application must be made before the end of three months, starting with:

- the day of the court's decision not to make an order; or
- if there is an appeal against that decision, the day on which the Crown Court dismissed the appeal.

7.9 Where a closure order is made, the application for compensation must be made within 3 months of the closure order ceasing to have effect.

7.10 The court has discretion in deciding whether it is appropriate to make an order for compensation from central funds. The court must not make an order unless it is satisfied:

- that the person was not associated with the use of the premises for activities related to any of the specified prostitution or pornography offences;
- if the person is the owner or occupier, that the person took reasonable steps to prevent that use;
- that the person suffered financial loss;
- that in all the circumstances it is appropriate to pay compensation.

7.11 Reasonable steps might include:

- taking steps to evict, or otherwise control the behaviour of those on the premises;
- trying to secure the property;
- co-operating with the police; and
- demonstrating good standards of tenant management, such as an understanding of the needs of tenants, securing references where possible and visiting the property regularly.

Annex A – Checklist

This checklist provides a guide to the key issues for consideration throughout the closure process. Consideration should also be given to maintaining a database with full contact details of all the individuals involved and the agencies they represent.

- Is there evidence of activities related to one or more of the specified offences taking place at the premises within the last 3 months?
- Is a closure order necessary to prevent these activities occurring?
- Are additional partners engaged?
- Have other interventions been used or considered and rejected for good reason?
- Have the local authority been consulted?
- Has this involved an exchange of information and have the views of the local authority been taken into account where appropriate?
- Has there been liaison with local specialist support services where appropriate?
- Has evidence in support of the application been collated?
- Have those who live, control, own or have responsibility for or otherwise have an interest in the premises been identified?
- Have notices been prepared to be served upon them?
- Does the closure notice contain the information required by the Act?
 - give notice of the application for a Closure Order.
 - state the date, time and place where the application for a closure order will be heard.
 - state that no-one other than a person who regularly resides on, or owns, the premises may enter or remain on them.
 - state that failure to comply with the notice is an offence.

- specify the prostitution or pornography offences in respect of which the authorising officer considers that the conditions for authorising the notice are met.

– detail the effects of a Closure Order if issued by the court.

- Have you provided information to those being served with the notice on how to contact advice providers such as housing or legal advisors or organisations?
- Has an application for a closure order been made to the magistrates' court and a hearing been secured for no later than 48 hours after the intended date and time of service of the closure notice?
- Has appropriate back-up been provided and have other policing tactics to be used alongside this action been considered?
- Has the nature of the premises been considered?
- Have any vulnerable persons or children living at the premises been identified and their needs considered?
- Have the appropriate services been notified of the potential demand upon them by these groups where appropriate?
- Has the Secretary of State granted any exemption to certain types of premises?

Annex B – Part 2A Sexual Offences Act 2003

Closure orders

Basic definitions

136A Meaning of specified prostitution offence etc.

- (1) This section applies for the purposes of this Part.
- (2) The specified prostitution offences are—
 - (a) an offence under section 47 of this Act or Article 37 of the Sexual Offences (Northern Ireland) Order 2008 (“the Northern Ireland Order”);
 - (b) an offence under section 48 of this Act, or Article 38 of the Northern Ireland Order, committed by causing or inciting a child to become a prostitute;
 - (c) an offence under section 49 of this Act, or Article 39 of the Northern Ireland Order, committed by controlling the activities of a child relating to the child’s prostitution;
 - (d) an offence under section 50 of this Act, or Article 40 of the Northern Ireland Order, committed by arranging or facilitating a child’s prostitution;
 - (e) an offence under section 52 of this Act or Article 62 of the Northern Ireland Order;
 - (f) an offence under section 53 of this Act or Article 63 of the Northern Ireland Order.
- (3) The specified pornography offences are—
 - (a) an offence under section 48 of this Act, or Article 38 of the Northern Ireland Order, committed by causing or inciting a child to be involved in pornography;
 - (b) an offence under section 49 of this Act, or Article 39 of the Northern Ireland Order, committed by controlling the activities of a child relating to the child’s involvement in pornography;
 - (c) an offence under section 50 of this Act, or Article 40 of the Northern Ireland Order, committed by arranging or facilitating a child’s involvement in pornography.
- (4) Premises are being used for activities related to a specified prostitution offence—
 - (a) in the case of an offence under section 47 of this Act or Article 37 of the Northern Ireland Order, at any time when the sexual services mentioned in subsection (1)(a) of that section or, as the case may be, paragraph (1)(a) of that Article are being provided on the premises, and

(b) in the case of any other specified prostitution offence, at any time when the person in respect of whom the offence is committed is providing sexual services as a prostitute on the premises.

(5) Premises are being used for activities related to a specified pornography offence at any time when the person in respect of whom the offence is committed is doing anything on the premises which enables an indecent image of himself or herself to be recorded.

(6) Any reference to an offence under this Act includes a reference to—

(a) an offence under section 70 of the Army Act 1955, section 70 of the Air Force Act 1955 or section 42 of the Naval Discipline Act 1957 of which the corresponding civil offence (within the meaning of the Act in question) is such an offence;

(b) an offence under section 42 of the Armed Forces Act 2006 as respects which the corresponding offence under the law of England and Wales (within the meaning given by that section) is such an offence.

Closure notices

136B Power to authorise issue of closure notice

(1) A member of a police force not below the rank of superintendent (“the authorising officer”) may authorise the issue of a closure notice in respect of any premises if three conditions are met.

(2) The first condition is that the officer has reasonable grounds for believing that either subsection (3) or (4) (or both) applies.

(3) This subsection applies if, during the relevant period, the premises were used for activities related to one or more specified prostitution offences.

But this subsection does not apply if only one person obtained all of the sexual services in question (whether or not on a single occasion).

(4) This subsection applies if, during the relevant period, the premises were used for activities related to one or more specified pornography offences.

(5) In subsections (3) and (4), “the relevant period” means the period of 3 months ending with the day on which the officer is considering whether to authorise the issue of the notice.

(6) The second condition is that the officer has reasonable grounds for believing that the making of a closure order under section 136D is necessary to prevent the premises being used for activities related to one or more specified prostitution or pornography offences.

(7) The third condition is that the officer is satisfied—

(a) that the local authority for the area in which the premises are situated has been consulted, and

(b) that reasonable steps have been taken to establish the identity of any person who resides on the premises or who has control of or responsibility for or an interest in the premises.

(8) For the purposes of the second condition, it does not matter whether the officer believes that the offence or offences in question have been committed or that they will be committed (or will be committed unless a closure order is made).

(9) An authorisation under subsection (1) may be given orally or in writing, but if it is given orally the authorising officer must confirm it in writing as soon as it is practicable.

(10) The issue of a closure notice may be authorised whether or not a person has been convicted of any specified prostitution or pornography offence that the authorising officer believes has been committed.

(11) The Secretary of State may by regulations specify premises or descriptions of premises to which this section does not apply.

136C Contents and service of closure notice

(1) A closure notice must—

(a) state that no-one other than a person who regularly resides on, or owns, the premises may enter or remain on them,

(b) state that failure to comply with the notice amounts to an offence,

(c) specify the offence or offences in respect of which the authorising officer considers that the first and second conditions in section 136B are met,

(d) state that an application will be made under section 136D for the closure of the premises,

(e) specify the date and time when, and the place at which, that application will be heard, and

(f) explain the effects of an order under section 136D.

(2) A closure notice must be served by a constable.

(3) Service is effected by—

(a) fixing a copy of the notice to at least one prominent place on the premises,

(b) fixing a copy of the notice to each normal means of access to the premises,

(c) fixing a copy of the notice to any outbuildings which appear to the constable to be used with or as part of the premises, and

(d) giving a copy of the notice to the persons identified in pursuance of section 136B(7)(b) and to any other person appearing to the constable to be a person of a description mentioned in that provision.

(4) A constable must also serve a copy of the notice on any person who occupies any other part of a building or other structure in which the premises are situated if, at the time of acting under subsection (3), the constable reasonably believes that the person's access to the other part of the building or structure will be impeded if a closure order is made.

(5) Subsection (3)(d) or (4) does not require a constable to serve a copy of the notice on a person if it is not reasonably practicable to do so.

(6) A constable acting under subsection (3) may enter any premises, using reasonable force if necessary, for the purpose of complying with subsection (3)(a) to (c).

(7) A closure notice has effect until an application for a closure order is determined under section 136D.

(8) But, if the hearing of an application for a closure order is adjourned, the closure notice ceases to have effect unless the court makes an order under section 136E(2).

Closure orders

136D Power to make a closure order

(1) If a closure notice has been issued, a constable must apply under this section to a magistrates' court for a closure order.

(2) A closure order is an order that the premises in respect of which the order is made are closed to all persons for such period not exceeding 3 months as is specified in the order.

(3) The application must be heard by the magistrates' court not later than 48 hours after the notice was served in pursuance of section 136C(3)(a).

(4) The magistrates' court may make a closure order if three conditions are met.

(5) The first condition is that the court is satisfied that either subsection (6) or subsection (7) (or both) applies.

(6) This subsection applies if, during the relevant period, the premises were used for activities related to one or more specified prostitution offences.

But this subsection does not apply if only one person obtained all of the sexual services in question (whether or not on a single occasion).

(7) This subsection applies if, during the relevant period, the premises were used for activities related to one or more specified pornography offences.

(8) In subsections (6) and (7), "the relevant period" means the period of 3 months ending with the day on which the issue of the closure notice was authorised.

(9) The second condition is that the court is satisfied that the making of the closure order is necessary to prevent the premises being used for activities related to one or more specified prostitution or pornography offences during the period to be specified in the order.

(10) The third condition is that the court is satisfied that—

(a) before the issue of the closure notice was authorised, reasonable steps were taken to establish the identity of any person of a description mentioned in section 136B(7)(b), and

(b) a constable complied with section 136C(3)(d) in relation to the persons so identified.

(11) For the purposes of the second condition, it does not matter whether the court is satisfied that the offence or offences in question have been committed or that they will be committed (or will be committed unless a closure order is made).

(12) A closure order may be made whether or not a person has been convicted of any specified prostitution or pornography offence that the court is satisfied has been committed.

136E Making of closure orders: supplementary provision

(1) The magistrates' court may adjourn the hearing of an application for a closure order for a period of not more than 14 days to enable any of the following to show why a closure order should not be made—

- (a) an occupier of the premises;
- (b) a person who has control of or responsibility for the premises;
- (c) any other person with an interest in the premises.

(2) If the court adjourns the hearing, it may order that the closure notice continues in effect until the end of the period of the adjournment.

(3) A closure order may include such provision as the court thinks appropriate relating to access to any other part of a building or other structure in which the premises are situated.

(4) A closure order may be made in respect of the whole or any part of the premises in respect of which the closure notice was issued.

Enforcement

136F Closure order: enforcement

(1) This section applies if a closure order is made.

(2) A constable or an authorised person may—

- (a) enter the premises in respect of which the order is made;
- (b) do anything reasonably necessary to secure the premises against entry by any person.

(3) A constable or an authorised person seeking to enter premises for the purposes of subsection (2) must, if required to do so by or on behalf of the owner, occupier or other person in charge of the premises, produce evidence of the constable's or (as the case may be) the authorised person's identity and authority before entering the premises.

(4) A constable or an authorised person may also enter the premises at any time while the order has effect for the purpose of carrying out essential maintenance of, or repairs to, the premises.

(5) A constable or an authorised person acting under subsection (2) or (4) may use reasonable force.

(6) In this section "authorised person"—

(a) in the application of this section to England and Wales, means a person authorised by the chief officer of police for the area in which the premises are situated;

(b) in the application of this section to Northern Ireland, means a person authorised by the Chief Constable of the Police Service of Northern Ireland.

136G Closure of premises: offences

(1) A person who remains on or enters premises in contravention of a closure notice commits an offence.

(2) A person who remains on or enters premises in contravention of a closure order commits an offence.

(3) A person does not commit an offence under subsection (1) or (2) if the person has a reasonable excuse for remaining on or entering the premises.

(4) A person who obstructs a constable or an authorised person acting under section 136C(3) or (4) or 136F(2) or (4) commits an offence.

(5) A person guilty of an offence under this section is liable on summary conviction—

(a) to imprisonment for a period not exceeding 51 weeks, or

(b) to a fine not exceeding level 5 on the standard scale,

or to both.

(6) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, the reference in subsection

(7) In the application of this section to Northern Ireland—

(a) the reference in subsection (5)(a) to 51 weeks is to be read as a reference to 6 months, and

(b) subsection (6) is omitted.

(8) In this section “authorised person” has the same meaning as in section 136F.

Extension and discharge of closure orders

136H Applications for extension of closure order

(1) At any time before the end of the period for which a closure order is made or extended a constable may make a complaint to the appropriate judicial officer for an extension or further extension of the period for which it has effect.

(2) A complaint may not be made under subsection (1) unless it is authorised by a member of a police force not below the rank of superintendent.

(3) Authorisation may be given under subsection (2) if two conditions are met.

(4) The first condition is that the officer has reasonable grounds for believing that it is necessary to extend the period for which the order has effect to

prevent the premises being used for activities related to any of the specified prostitution or pornography offences in respect of which section 136D(9) applied.

(5) The second condition is that the officer is satisfied that the local authority has been consulted about the intention to make a complaint.

(6) If a complaint is made under subsection (1) the appropriate judicial officer may issue a summons directed to—

(a) any person on whom the closure notice relating to the closed premises was served under section 136C(3)(d) or (4), or

(b) any other person who appears to the judicial officer to have an interest in the closed premises but on whom the closure notice was not served,

requiring such person to appear before the magistrates' court to answer to the complaint.

(7) If a summons is issued in accordance with subsection (6), a notice stating the date and time when, and the place at which, the complaint will be heard must be served on—

(a) the persons to whom the summons is directed,

(b) such constable as the judicial officer thinks appropriate (unless the complainant is a constable), and

(c) the local authority.

(8) In this section "the appropriate judicial officer" means—

(a) in the application of this section to England and Wales, a justice of the peace;

(b) in the application of this section to Northern Ireland, a lay magistrate.

136I Orders extending closure orders

(1) This section applies where a complaint is made under section 136H.

(2) The court may make an order extending the period for which the closure order has effect by a period specified in the order if the court is satisfied that the extension is necessary to prevent the premises being used for activities related to any of the specified prostitution or pornography offences in respect of which section 136D(9) applied.

(3) The period specified in the order may not exceed 3 months.

(4) The total period for which a closure order has effect may not exceed 6 months.

(5) An order under this section may include such provision as the court thinks appropriate relating to access to any other part of a building or other structure in which the premises are situated.

136J Discharge of closure order

(1) Any of the following persons may make a complaint to an appropriate judicial officer for an order that a closure order be discharged—

(a) a constable;

(b) the local authority;

(c) a person on whom the closure notice relating to the closed premises was served under section 136C(3)(d) or (4);

(d) any other person who has an interest in the closed premises but on whom the closure notice was not served.

(2) If a complaint is made under subsection (1) by a person other than a constable the judicial officer may issue a summons directed to such constable as the judicial officer thinks appropriate requiring the constable to appear before the magistrates' court to answer to the complaint.

(3) The court may not make an order discharging a closure order unless it is satisfied that the order is no longer necessary to prevent the premises being used for activities related to any of the specified prostitution or pornography offences in respect of which section 136D(9) applied.

(4) If a complaint is made under subsection (1), a notice stating the date and time when, and the place at which, the complaint will be heard must be served on—

(a) the persons mentioned in subsection (1)(c) and (d) (other than the complainant),

(b) a constable (unless a constable is the complainant), and

(c) the local authority (unless it is the complainant).

(5) In this section “appropriate judicial authority” has the same meaning as in section 136H.

Appeals against closure orders etc.

136K Appeals

(1) An appeal against an order under section 136D or 136I, or an appeal against a decision not to be made an order under section 136J, may be made to the appropriate appeal court by—

(a) a person on whom the closure notice relating to the closed premises was served under section 136C(3)(d), or

(b) any other person who has an interest in the closed premises but on whom the closure notice was not served.

(2) An appeal against a decision of a court not to make an order under section 136D or 136I, or an appeal against an order under section 136J, may be made to the appropriate appeal court by—

(a) a constable, or

(b) the local authority.

(3) An appeal under subsection (1) or (2) must be made before the end of the period of 21 days beginning with the day on which the order or decision is made.

(4) On an appeal under this section the court may make such order as it thinks appropriate.

(5) In this section “the appropriate appeal court” means—

(a) in the application of this section to England and Wales, the Crown Court;

(b) in the application of this section to Northern Ireland, a county court.

Access to other premises

136L Access to other premises

(1) This section applies to any person who occupies or has an interest in any part of a building or other structure—

(a) in which closed premises are situated, and

(b) in respect of which the closure order does not have effect.

(2) A person to whom this section applies may at any time while a closure order has effect apply to—

(a) the magistrates' court in respect of an order made under section 136D or 136I, or

(b) the appropriate appeal court in respect of an order made by that court under section 136K.

(3) If an application is made under this section notice of the date and time when, and the place at which, the hearing to consider the application will take place must be given to—

(a) a constable,

(b) the local authority.

(c) each person on whom the closure notice relating to the closed premises was served under section 136C(3)(d) or (4), and

(d) any other person who appears to the court to have an interest in the closed premises but on whom the closure notice was not served.

(4) On an application under this section the court may make such order as it thinks appropriate in relation to access to any other part of a building or other structure in which the closed premises are situated.

(5) It is immaterial whether any provision has been made as mentioned in section 136E(3) or 136I(5).

(6) In this section “appropriate appeal court” has the same meaning as in section 136K.

Reimbursement of costs, compensation etc.

136M Reimbursement of costs

- (1) A police authority or a local authority which incurs expenditure for the purpose of clearing, securing, repairing or maintaining closed premises may apply to the court which made the closure order for an order under this section.
- (2) On an application under this section, the court may make such order as it thinks appropriate in the circumstances for the reimbursement (in full or in part) by the owner of the premises of the expenditure mentioned in subsection (1).
- (3) An application under this section must not be entertained unless it is made before the end of the period of three months beginning with the day the closure order ceases to have effect.
- (4) An application under this section must be served on—
 - (a) the police authority for the area in which the premises are situated, if the application is made by the local authority,
 - (b) the local authority, if the application is made by a police authority, and
 - (c) the owner of the premises.
- (5) In the application of this section to Northern Ireland references to the police authority are to be read as references to the Northern Ireland Policing Board.

136N Exemption from liability for certain damages

- (1) A constable is not liable for relevant damages in respect of anything done or omitted to be done by the constable in the performance or purported performance of the constable's functions under this Part.
- (2) A chief officer of police who has direction or control of a constable is not liable for relevant damages in respect of anything done or omitted to be done by the constable in the performance or purported performance of the constable's functions under this Part.
- (3) An authorised person is not liable for relevant damages in respect of anything done or omitted to be done by the authorised person in the performance or purported performance of the authorised person's functions under this Part.
- (4) No person is vicariously liable for anything done or omitted to be done by an authorised person as mentioned in subsection (3).
- (5) Subsections (1) to (4) do not apply—
 - (a) if the act or omission is shown to have been in bad faith;
 - (b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful by virtue of section 6(1) of the Human Rights Act 1998.
- (6) This section does not affect any other exemption from liability for damages (whether at common law or otherwise).

(7) In this section—

- (a) “authorised person” has the same meaning as in section 136F;
- (b) “relevant damages” means damages in proceedings for judicial review or for the tort of negligence or misfeasance in public office.

(8) In the application of this section to Northern Ireland, the reference in subsection (2) to the chief officer of police is to be read as a reference to the Chief Constable of the Police Service of Northern Ireland.

136O Compensation

(1) A person who claims to have incurred financial loss in consequence of a closure notice or closure order may apply for compensation.

(2) The application must be made—

- (a) to the appropriate appeal court, if the closure order was made or extended by an order of that court on an appeal under section 136K;
- (b) in any other case, to the magistrates' court which considered the application for a closure order.

(3) In a case where a closure notice is issued but a closure order is not made, the application must not be entertained unless it is made before the end of the period of three months beginning with—

- (a) the day the magistrates' court decides not to make a closure order, or
- (b) if there is an appeal against that decision, the day the appropriate appeal court dismisses that appeal.

(4) In a case where a closure order is made, the application must not be entertained unless it is made before the end of the period of three months beginning with the day the closure order ceases to have effect.

(5) The court which hears the application may order the payment of compensation out of central funds if it is satisfied—

- (a) that the person was not associated with the use of the premises for the activities in relation to which the first condition in section 136B was met,
- (b) if the person is the owner or occupier of the premises, that the person took reasonable steps to prevent that use,
- (c) that the person has incurred financial loss as mentioned in subsection (1), and
- (d) having regard to all the circumstances it is appropriate to order payment of compensation in respect of that loss.

(6) In this section—

- (a) “appropriate appeal court” has the same meaning as in section 136K;
- (b) “central funds” has the same meaning as in enactments providing for the payment of costs.

(7) In the application of this section to Northern Ireland—

- (a) the reference in subsection (5) to “central funds” is to be read as a reference to monies provided by Parliament, and
- (b) subsection (6)(b) is omitted.

General

136P Guidance

- (1) The Secretary of State may issue guidance relating to the discharge of any functions under or for the purposes of this Part by a constable or by an authorised person (within the meaning of section 136F).
- (2) A person discharging a function to which guidance under this section relates must have regard to the guidance in discharging the function.

136Q Issue of closure notices by persons other than police officers

- (1) The Secretary of State may by order amend this Part so as to extend the power to authorise the issue of a closure notice to persons other than members of police forces.
- (2) An order under subsection (1) may make such further amendments of this Part as the Secretary of State thinks appropriate in consequence of the extension of that power to persons other than members of police forces.

136R Interpretation

- (1) This section applies for the purposes of this Part.
- (2) “A closure notice” means a notice issued under section 136B.
- (3) “A closure order” means—
 - (a) an order made under section 136D;
 - (b) an order extended under section 136I;
 - (c) an order made or extended under section 136K which has the like effect as an order made or extended under section 136D or 136I (as the case may be).
- (4) “Closed premises” means premises in respect of which a closure order has effect.
- (5) “Local authority”, in relation to England, means—
 - (a) a district council;
 - (b) a London borough council;
 - (c) a county council for an area for which there is no district council;
 - (d) the Common Council of the City of London in its capacity as a local authority;
 - (e) the Council of the Isles of Scilly.
- (6) “Local authority”, in relation to Wales, means—

(a) a county council;

(b) a county borough council.

(7) “Local authority”, in relation to Northern Ireland, means a district council.

(8) In the application of this Part to England and Wales, references to the local authority in relation to—

(a) any premises,

(b) a closure notice relating to any premises, or

(c) a closure order relating to any premises,

are references to the local authority for the area in which the premises are situated.

(9) In the application of this Part to Northern Ireland, references to the local authority in relation to—

(a) any premises,

(b) a closure notice relating to any premises, or

(c) a closure order relating to any premises,

are references to the council for the district in which the premises are situated.

(10) In the application of this Part to Northern Ireland, the reference in section 136B(7)(a) to the area is to be read as a reference to the district.

(11) “The owner”, in relation to premises, means—

(a) a person who, whether alone or jointly with another person, is for the time being entitled to dispose of the fee simple in the premises, whether in possession or in reversion (apart from a mortgagee not in possession);

(b) a person who, whether alone or jointly with another person, holds or is entitled to the rents and profits of the premises under a lease which (when granted) was for a term of not less than 3 years.

(12) “Premises” includes—

(a) any land or other place (whether enclosed or not);

(b) any outbuildings which are, or are used as, part of the premises.

(13) “Specified prostitution offence” means an offence listed in section 136A(2).

(14) “Specified pornography offence” means an offence listed in section 136A(3).”

2 In section 138 of that Act (orders and regulations), in subsection (2) for “or section 130” substitute “, section 130 or section 136Q(1)”.

3 In section 142 of that Act (extent), in subsection (2)(c) for “Part 2” substitute “Parts 2 and 2A”.

