

## Step-by-step plan

Administrative measures for  
(preparation of) drug trafficking  
in residences and premises  
(Article 14a Opium Act 1960 BES)

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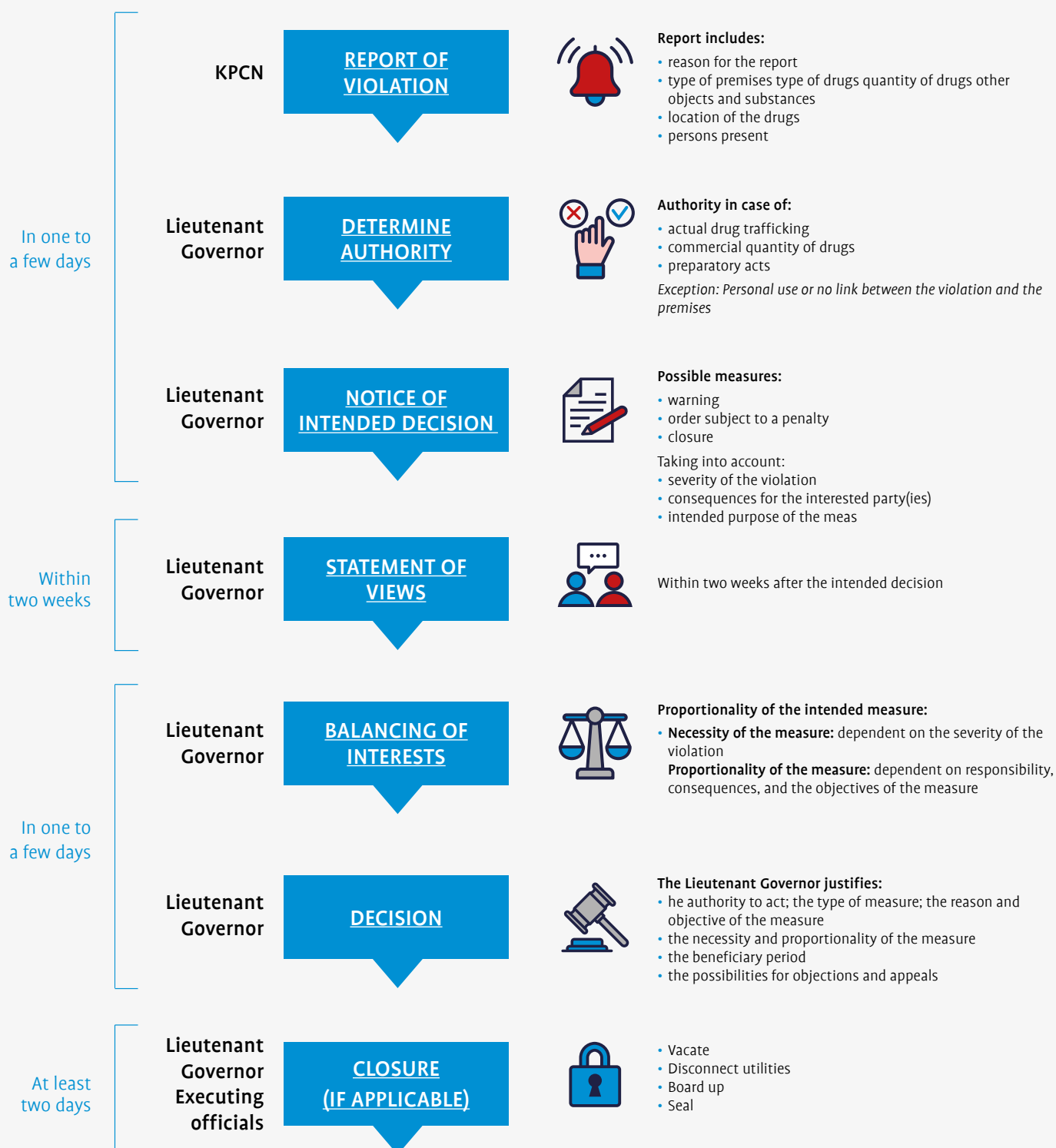
# Introduction

Article 14a of the Opium Act 1960 BES grants the Lieutenant Governor the authority to impose an administrative enforcement order in cases of drug trafficking or criminal preparatory acts occurring at residences or premises. The administrative enforcement order is a remedial sanction aimed at ending the violation and preventing its recurrence (Article 5:2(1)(b) of the General Administrative Law Act). In practice, the imposition of an administrative enforcement order under Article 14a of the Opium Act 1960 BES can lead to the physical closure of a building (home or premises) or plot, an order subject to a penalty (*last onder dwangsom*) or a warning.<sup>1</sup> This step-by-step guide is intended to support the special municipalities of Bonaire, St. Eustatius and Saba in the application of this power.

<sup>1</sup> An administrative body that is authorised to apply administrative coercion can instead impose an order subject to a penalty on the offender (Article 5:32(1) of the General Administrative Law Act). See also *Kamerstukken II 2023/2024*, 36462 no. 3.

# Visualised step-by-step plan

## Administrative measures for (preparation of) drug trafficking in residences and premises (Article 14a Opium Act 1960 BES)





## 1. Reporting a violation

If violations of the Opium Act are observed or found by the police (KPCN) in or near buildings, it is important that they report this to the Lieutenant Governor. This can be done via a formal report or a short information message. This report should include at least the following details:

- the reason for the police inspection (such as complaints and previous police observations);
- the type of property (residential or commercial);
- the type and quantity of drugs found;
- any other objects or substances found that (may) indicate drug trafficking;
- the location where the drugs were found;
- the individuals present in the building.

A [reporting format](#) used in the continental Netherlands can help with this (in Dutch).



## 2. Determining authority

Based on the information received, the Lieutenant Governor can determine if (s)he is authorized to take action under Article 14a of the Opium Act 1960 BES, and if administrative enforcement is necessary and proportionate. This provision provides two grounds for the imposition of an administrative enforcement order:

- drug trafficking (under paragraph 1(a));
- preparatory acts (under paragraph 1(b)).

### Drug trafficking (paragraph 1 (a))

Under Article 14a(1)(a) of the Opium Act 1960 BES, the Lieutenant Governor is authorised to impose an administrative enforcement order if narcotics (as defined in Articles 3 and 3a) are **'sold, delivered or provided or present for that purpose'** in or near a residence or premises (or associated property). The Lieutenant Governor must establish that this is the case. This can be demonstrated by:

- **actual drug trafficking**, which can be inferred from reports, witness statements and police observations;<sup>2</sup> or
- the presence of a **commercial quantity of drugs**. The Lieutenant Governor may then assume that the drugs are present to be sold.<sup>3</sup> To determine what a commercial quantity is, the reference is made to the guidelines of the Public Prosecution Service in the Netherlands.<sup>4</sup> A commercial quantity is considered to be more than 0.5 grams of hard drugs (or 1 'unit' or pill), five grams of soft drugs, or five cannabis plants.<sup>5</sup> This also includes a cannabis cultivation.<sup>6</sup>

<sup>2</sup> ABRvS 2 May 2023, ECLI:NL:RVS:2023:1698; ABRvS 18 July 2018, ECLI:NL:RVS:2018:2400; ABRvS 4 July 2018, ECLI:NL:RVS:2018:2222; District court of Oost-Brabant 21 October 2015, ECLI:NL:RBOBR:2015:6026; District court of The Hague 26 July 2012, ECLI:NL:RBSGR:2012:BX4316.

<sup>3</sup> ABRvS 4 October 2023, ECLI:NL:RVS:2023:3705; ABRvS 11 December 2013, ECLI:NL:RVS:2013:2362; ABRvS 5 January 2005, ECLI:NL:RVS:2005:AR8730.

<sup>4</sup> See, for example, the ABRvS 11 December 2013, ECLI:NL:RVS:2013:2362; ABRvS 5 January 2005, ECLI:NL:RVS:2005:AR8730.

<sup>5</sup> Public Prosecution Service, Guideline for Criminal Procedure Opium Act, soft drugs (2023R003), [www.om.nl/onderwerpen/beleidsregels/richtlijnen-voor-strafovordering-resultaten/richtlijn-voor-strafovordering-opiumwet-softdrugs-2023r003](https://www.om.nl/onderwerpen/beleidsregels/richtlijnen-voor-strafovordering-resultaten/richtlijn-voor-strafovordering-opiumwet-softdrugs-2023r003); Guideline for Criminal Procedure Opium Act, Hard Drugs (2019R011), <https://www.om.nl/onderwerpen/beleidsregels/richtlijnen-voor-strafovordering-resultaten/richtlijn-voor-strafovordering-opiumwet-harddrugs-2019r011>.

<sup>6</sup> ABRvS, 20 March 2024, ECLI:NL:RVS:2024:1143; ABRvS 22 March 2023, ECLI:NL:RVS:2023:1142.

In the case law on Article 13b of the Opium Act (continental Netherlands), **two exceptions to this rule** exist:

### 1. Personal use

The Lieutenant Governor lacks authority if the person concerned makes it plausible that the drugs are exclusively intended for personal use. Interested parties often argue that the drugs are for personal use, but this argument rarely succeeds.<sup>7</sup> If a commercial quantity of drugs is found, the burden of proof lies with the interested party to prove that the drugs were present for their own use. They succeed if:

- only a slight exceedance of the authorised user quantity is found;
- they have a clear and consistent argument about their own use that makes a slight exceedance plausible; and
- no other items were found in the building that indicate drug trafficking; and/or there are no other relevant facts and circumstances related to trafficking.<sup>8</sup>

### 2. No link between violation and the property

The authority is also lacking if there is no link between the violation and the building to which the administrative measure applies. This link may be missing, for example, if:

- the drugs or the trading activity are found at a **location other** than the building that the Lieutenant Governor wants to close. It must then be assessed whether there is a **direct relationship** between the trading activity (or drugs found) and the premises to be closed.<sup>9</sup>
- the property (or plot) consists of **multiple rooms or buildings** (for example, a house with a restaurant or a plot with several homes).<sup>10</sup> It must then be assessed whether the units are functionally and structurally distinguishable from one another.<sup>11</sup>
- the drugs are found with a visitor to a home or premises (e.g. a café or restaurant).<sup>12</sup>

### Preparatory acts (paragraph 1(b))

Under Article 14a(1)(b) of the Opium Act 1960 BES, the Lieutenant Governor is also authorised to impose an administrative enforcement order if objects or substances are present in a home or premises (or an associated property) of which the interested party knows or has serious reason to suspect that they are intended for, among other things, the intentional importation, exportation, sale, provision, transportation, or production of narcotics. To determine whether this is the case, it must be assessed whether the substances or objects found are intended for one of these activities; and that the interested party knew this or had serious reason to suspect this.

<sup>7</sup> ABRvS 25 October 2023, ECLI:NL:RVS:2023:3938; ABRvS 26 June 2024, ECLI:NL:RVS:2024:2593; ABRvS 4 October 2023, ECLI:NL:RVS:2023:3705; ABRvS 16 January 2019, ECLI:NL:RVS:2019:113; ABRvS 14 March 2018, ECLI:NL:RVS:2018:738.

<sup>8</sup> ABRvS 14 March 2019, ECLI:NL:RVS:2018:738; ABRvS 22 May 2019, ECLI:NL:RVS:2019:1661; ABRvS 14 March 2018, ECLI:NL:RVS:2018:738, AB 2018/213 m.nt. J.G. Brouwer & L.M. Bruijn; ABRvS 14 March 2018, ECLI:NL:RVS:2018:831.

<sup>9</sup> ABRvS 15 December 2021, ECLI:NL:RVS:2021:2826; ABRvS 20 February 2019, ECLI:NL:RVS:2019:486.

<sup>10</sup> See the rulings of the ABRvS (Continental Netherlands) on how to deal with this: [hetccv.nl/themas/georganiseerde-criminaliteit-en-ondermijning/drugscriminaliteit/juridische-uitspraken-over-de-toepassing-van-artikel-13b-opiumwet](https://hetccv.nl/themas/georganiseerde-criminaliteit-en-ondermijning/drugscriminaliteit/juridische-uitspraken-over-de-toepassing-van-artikel-13b-opiumwet).

<sup>11</sup> See, for example, the ABRvS 3 August 2022, ECLI:NL:RVS:2022:2256; District court of Rotterdam 10 April 2019, ECLI:NL:RBROT:2019:3166; ABRvS 14 September 2016, ECLI:NL:RVS:2016:2456; ABRvS 27 July 2016, ECLI:NL:RVS:2016:2097.

<sup>12</sup> ABRvS 26 October 2022, ECLI:NL:RVS:2022:3078; ABRvS 5 September 2018, ECLI:NL:RVS:2018:2924.



1. The **intentional use of the substances and objects** may be inferred from the nature and quantity of the items found and/or the combination of items.<sup>13</sup> For example, the Lieutenant Governor may infer from the amount of plant nutrients, plant pots and assimilation lamps found whether a commercial quantity of hemp could be grown,<sup>14</sup> and from the amount of cocaine adulterants how much cocaine could be cut.<sup>15</sup> Another example is that the intended use can be inferred from a combination of adulterants, packaging materials, money counting machines and hidden spaces in the building.<sup>16</sup>
2. The fact that the interested party **knows or has serious reason to suspect** that the substances or objects are intended for illegal drug activities may also be apparent from the objects or substances present.<sup>17</sup> If they are unmistakably intended for illegal drug activities, this may indicate the knowledge of the person concerned (or at least that the person concerned should have serious reasons to suspect so).<sup>18</sup> If the objects or substances are less clearly intended for illegal purposes, higher requirements will be imposed on the motivation of the Lieutenant Governor. Recidivism or relevant antecedents may be relevant in this regard.<sup>19</sup>

<sup>13</sup> ABRvS 29 March 2023, ECLI:NL:RVS:2023:1251; ABRvS 1 November 2023, ECLI:NL:RVS:2023:4036; ABRvS 23 November 2022, ECLI:NL:RVS:2022:3378; ABRvS 24 February 2021, ECLI:NL:RVS:2021:368; ABRvS 26 February 2020, ECLI:NL:RVS:2020:617.

<sup>14</sup> District court of Limburg 14 June 2021, ECLI:NL:RBLIM:2021:4738; District court of Zeeland-West-Brabant 23 April 2020, ECLI:NL:RBZWB:2020:1935.

<sup>15</sup> District court of Limburg 8 March 2021, ECLI:NL:RBLIM:2021:2048.

<sup>16</sup> ABRvS 29 March 2023, ECLI:NL:RVS:2023:1251.

<sup>17</sup> ABRvS 1 November 2023, ECLI:NL:RVS:2023:4036.

<sup>18</sup> See District Court of Midden-Nederland 30 November 2020, ECLI:NL:RBMNE:2020:5184; District court of Noord-Nederland 18 November 2020, ECLI:NL:RBNNE:2020:3934; District court of Oost-Brabant 22 June 2020, ECLI:NL:RBOBR:2020:3089; District court of Zeeland-West-Brabant 23 April 2020, ECLI:NL:RBZWB:2020:1935; ABRvS 26 February 2020, ECLI:NL:RVS:2020:617;

<sup>19</sup> ABRvS 26 February 2020, ECLI:NL:RVS:2020:617; District court of Zeeland-West-Brabant 16 December 2021, ECLI:NL:RBZWB:2021:6425; District court of The Hague 13 September 2021, ECLI:NL:RBDHA:2021:10423; District court of Zeeland-West-Brabant 26 November 2020, ECLI:NL:RBZWB:2020:5901; Zeeland-West-Brabant 23 April 2020, ECLI:NL:RBZWB:2020:1935.



### 3. Notice of intended decision

If the Lieutenant Governor determines that (s)he is authorised to act and that administrative enforcement is necessary, (s)he draws up an intention to make a decision (also known as a pre-announcement). This is a letter in which the Lieutenant Governor announces his intention to impose an administrative measure. The Lieutenant Governor sends the intention to the rightful claimants and users of the home or property, such as the occupant, owner, operator and/or user of the property.

Providing an intention serves **two objectives**:

1. to inform the rightful owners and users of the dwelling or premises about the intended action of the Lieutenant Governor; and
2. to allow interested parties to respond and submit their views. Additionally, the intention may also serve as a reason to consult with the Care and Safety House and to discuss possible alternatives, such as support programs or behavioural agreements that could complement or replace an administrative measure.

Based on Article 14a of the Opium Act 1960 BES, the Lieutenant Governor may impose one of the following measures:

- a warning;
- an order subject to a penalty;
- the closure of the building.

The **purpose** of imposing one of these measures is to **end the violation and prevent its recurrence** (Article 5:2(1)(b) of the General Administrative Law Act). In continental Netherlands, many municipalities apply additional policy goals in addition to the legislative goals, especially for closing a building. For example, closure may serve to send a 'deterrent signal';<sup>20</sup> stop the influx of buyers and suppliers to the property, restore public order, and break the reputation of the building as a drug-related premises.

If a violation occurs in or near a home, the general rule is that **the closure of a home is the *ultimum remedium***. This means that, for a first offence, the home will not be closed, but that a warning or an order subject to a penalty will be issued.<sup>21</sup> However, exceptions may be made in severe cases.<sup>22</sup> In continental Netherlands, the policy goals and method of the 'tiered sanctioning' approach are often laid down in a local policy. See Annex I for examples.

The choice of the measure ultimately depends on:

- the severity of the violation;
- the consequences for the interested party(ies); and
- the intended purpose of the measure.

<sup>20</sup> See, for example, ABRvS 9 November 2022, ECLI:NL:RVS:2022:3233.

<sup>21</sup> See, for example, ABRvS 7 April 2021, ECLI:NL:RVS:2021:742.

<sup>22</sup> *Kamerstukken II 2023/2024*, 36462 no. 3.

### Warning

A warning is issued through a formal letter, which states its validity period and the consequences of recurrence within the set period. A recidivism period of up to two years is generally considered proportionate; a longer period may lead to the warning being classified as an appealable decision. Although a warning is not considered a decision under the General Administrative Law Act (Awb), it may be treated as such if it serves as a prerequisite for a sanction (such as an order subject to a penalty or closure) and if the recidivism period creates evidentiary barriers to challenging the previously issued warning.<sup>23</sup>

### Order subject to penalty

An order subject to a penalty is intended to compel the offender to end the violation voluntarily and to prevent recurrence. It is a stricter measure than a warning but a less severe alternative to closure. The Lieutenant Governor may impose the order either on the property itself or on the offender.

- If the order is **directed at the property**, a repeated violation at or near the location will result in the penalty being forfeited.
- If the order is **directed at the offender**, the penalty will be forfeited upon any repeated violation by the offender, regardless of location.

A recidivism period of up to five years is generally considered proportionate.<sup>24</sup> If a second offence takes place within the set recidivism period, the penalty payment will automatically be forfeited.<sup>25</sup> This means that the imposed penalty may be collected without the need for a new decision. In addition, it may be decided to impose a new administrative measure, for example a higher penalty or a closure. The amount of the penalty may depend on the offence (e.g. the quantity and type of drugs found) or the estimated illegally obtained profit.<sup>26</sup> See Appendix I for examples of different sanction regimes.

### Closure

Closing a house, room or plot is the most severe measure that the Lieutenant Governor can impose under Article 14a of the Opium Act 1960 BES. As a general rule, closure is considered a last resort (*ultimum remedium*). In the case of a first violation, closure will not be imposed; instead, a warning or an order subject to a penalty will suffice. However, exceptions may be made in severe cases.<sup>27</sup>

Closures are temporary, with durations in the Continental Netherlands typically ranging from 3 to 12 months, depending on the severity of the violation. These periods are often established in local policy guidelines (see Appendix I). If a shorter closure period or a less severe measure (such as a warning or an order subject to a penalty) would also achieve the intended objectives, the principles of proportionality and subsidiarity require that the least intrusive option be chosen.

The notice of intended decision must at least include:

- the legal basis for the measure, including its justification;
- the type of measure being imposed;
- the reason and purpose of the measure;
- the period for submitting statement of views (usually two weeks).

<sup>23</sup> See ABRvS 24 January 2018, ECLI:NL:RVS:2018:249 (Opinion of Advocate General Widdershoven); District Court of Limburg 16 May 2023, ECLI:NL:RBLIM:2023:3089; District Court of Amsterdam 28 September 2021, ECLI:NL:RBAMS:2021:6718 (warning with a recidivism period of 3 years).

<sup>24</sup> ABRvS 12 December 2018, ECLI:NL:RVS:2018:4036.

<sup>25</sup> ABRvS 26 April 2022, ECLI:NL:RVS:2022:1224.

<sup>26</sup> ABRvS 2 November 2022, ECLI:NL:RVS:2022:3149; ABRvS 26 April 2022, ECLI:NL:RVS:2022:1224; ABRvS 12 June 2019, ECLI:NL:RVS:2019:1870.

<sup>27</sup> ABRvS 10 February 2021, ECLI:NL:RVS:2021:257; Division of 23 January 2019, ECLI:NL:RVS:2019:148.



#### 4. Statement of views

In response to the intention, interested parties may submit a written or oral statement of views (. If possible, a consultation meeting (or hearing) is preferred. The submitted views must be taken into account in the decision-making process, with an assessment in each case of whether the intended decision needs to be adjusted. The statement of views may lead to a different measure (e.g. an order subject to a penalty instead of closure), a less severe version of the proposed measure (shorter closure period or lower penalty) or the decision not to enforce at all.

The consultation meeting also provides an opportunity to explore suitable alternatives together with the **Care and Safety House**, such as support programs or behavioural measures or agreements, which could complement or replace an administrative measure.

If the intended decision is to close a building, the Lieutenant Governor should actively question interested parties about the consequences of the measure, especially for residents. Even if the person concerned have not put forward any personal circumstances in their statement, the Lieutenant Governor is still obliged to investigate whether there are any 'special circumstances' that make it necessary to deviate from the intended decision (see Article 4:84 Awb).<sup>28</sup> This is all the more true if the police report contains information about personal circumstances.

<sup>28</sup> ABRvS 10 October 2018, ECLI:NL:RVS:2018:3274; ABRvS 18 July 2018, ECLI:NL:RVS:2018:2419; ABRvS 26 October 2016, ECLI:NL:RVS:2016:2840.



## 5. Balancing of interests

After having heard or read the statement of views, the Lieutenant Governor has to decide whether to hold on to or deviate from his/her intention. In this assessment, (s)he must take into account all circumstances of the case in order to assess which measure is proportionate in the specific case,<sup>29</sup> even if no statement of views has been submitted.<sup>30</sup> In order to determine which measure is proportionate, the Lieutenant Governor must determine which measure is **necessary** and **balanced**.

### Necessity of the measure

The measure must be **necessary** to protect the living environment near the home and to restore public order. To determine which measure is necessary, not only the type of measure (warning, order subject to a penalty or closure) can be considered, but also the amount of the penalty or the length of the closure. To determine which measure is necessary, the seriousness and extent of the violation can be taken into account. It is generally assumed that the need to close a property is greater if:

- hard drugs were found;<sup>31</sup>
- there is a repeated offence;<sup>32</sup>
- actual drug trafficking took place;<sup>33</sup>
- the property is located in an environment that is vulnerable or known for drug crime;<sup>34</sup>
- there is a danger to public order (e.g. due to prohibited possession of weapons or risk of explosion);<sup>35</sup>
- if the drug trade or hemp cultivation has a professional or international character.<sup>36</sup>

### Balance of the measure

The measure must also be balanced in view of the impact of the measure on the interested parties and the objectives it serves. To determine whether the measure is balanced, the **accountability** of the interested parties, the **consequences** of the closure and the **objectives** of the measure must be taken into account.

<sup>29</sup> Despite the fact that the principle of proportionality has not been codified in the Caribbean Netherlands, it applies as a principle of good administration. See also Kamerstukken II 2023/2024, 36462 no. 3.

<sup>30</sup> ABRvS 10 October 2018, ECLI:NL:RVS:2018:3274; ABRvS 18 July 2018, ECLI:NL:RVS:2018:2419; ABRvS 26 October 2016, ECLI:NL:RVS:2016:2840.

<sup>31</sup> ABRvS 22 March 2023, ECLI:NL:RVS:2023:1139; ABRvS 28 August 2019, ECLI:NL:RVS:2019:2912.

<sup>32</sup> ABRvS 28 August 2019, ECLI:NL:RVS:2019:2912; ABRvS 14 March 2018, ECLI:NL:RVS:2018:851.

<sup>33</sup> ABRvS 4 December 2024, ECLI:NL:RVS:2024:4986; ABRvS 13 November 2024, ECLI:NL:RVS:2024:6412; ABRvS 28 August 2019, ECLI:NL:RVS:2019:2912.

<sup>34</sup> ABRvS 24 May 2023, ECLI:NL:RVS:2023:2005; ABRvS 27 January 2021, ECLI:NL:RVS:2021:160; ABRvS 28 August 2019, ECLI:NL:RVS:2019:2912; ABRvS 28 August 2018, ECLI:NL:RVS:2018:2857.

<sup>35</sup> ABRvS 13 November 2024, ECLI:NL:RVS:2024:6412; ABRvS 13 June 2022, ECLI:NL:RVS:2022:1654; ABRvS 2 December 2020, ECLI:NL:RVS:2020:2879; ABRvS 19 February 2020, ECLI:NL:RVS:2020:509; ABRvS 31 July 2019, ECLI:NL:RVS:2019:2611; ABRvS 27 March 2019, ECLI:NL:RVS:2019:930; ABRvS 24 October 2018, ECLI:NL:RVS:2018:3482; ABRvS 14 March 2018, ECLI:NL:RVS:2018:851.

<sup>36</sup> See, for example, the ABRvS 2 December 2020, ECLI:NL:RVS:2020:2879; ABRvS 19 February 2020, ECLI:NL:RVS:2020:509; ABRvS 31 July 2019, ECLI:NL:RVS:2019:2611; ABRvS 27 March 2019, ECLI:NL:RVS:2019:930; ABRvS 24 October 2018, ECLI:NL:RVS:2018:3482; ABRvS 14 March 2018, ECLI:NL:RVS:2018:851.

A measure may be unbalanced if it appears that the person concerned cannot be held accountable for the violation. For example, interested parties often indicate that they were not aware of the drugs found. Personal accountability for the violation is not a condition for the authority of the Lieutenant Governor, but the lack of accountability can make the administrative measure disproportionate. This may be the case, for example, if the resident(s) was/were not aware of the violation and could not have been aware of it.<sup>37</sup> The vulnerability of the resident can also lead to the judgment that there is reduced accountability.<sup>38</sup> If the interested party is the owner or landlord of the property, the lack of accountability in Continental Netherlands cannot easily be assumed. A landlord is expected to stay informed about the use of the property by conducting regular checks.<sup>39</sup>

In addition, the **consequences** of the proposed measure may lead to the conclusion that the measure is unbalanced. This will be particularly important if a closure is imposed. It is up to the Lieutenant Governor to investigate the consequences of the measure. The consequences of a home closure may include housing problems (e.g. lack of alternative housing or precarious living situation with friends or family), consequences for minor children, medical reasons for continuing to live in the home, financial consequences, and psychological and physical health.<sup>40</sup> Case law in Continental Netherlands shows that none of these possible consequences are sufficient in themselves to refrain from closure, but viewed in conjunction with the seriousness of the violation and/or the lack of accountability, it can lead to another measure (order subject to a penalty or warning), a shorter closure period or even a complete waiver of enforcement. Important considerations when closing a home include the consequences for minor children and innocent co-occupants, as well as the lack of (suitable) alternative housing.<sup>41</sup> For example, the Lieutenant Governor must take steps to prevent homelessness.<sup>42</sup>

Closure of a **commercial building or premises** can include loss of income, bankruptcy or long-term economic damage, contractual obligations, and reputational damage. However, in Continental Netherlands, this rarely leads to deviation from the intended decision.

Finally, the **purpose** of the measure is a key factor in assessing proportionality. The measure should be aimed at ending the violation and preventing recurrence. If the measure extends beyond these objectives, the measure has a punitive character.<sup>43</sup> For example, a court may rule that the duration of the closure is disproportionately long in relation to the seriousness of the violation and the objectives of the measure.<sup>44</sup> In such cases, the measure is no longer regarded as a remedial sanction, but rather as a punitive sanction, which often violates Article 6 of the European Convention on Human Rights.

<sup>37</sup> See, for example, the ABRvS 4 December 2019, ECLI:NL:RVS:2019:4083.

<sup>38</sup> ABRvS 29 January 2025, ECLI:NL:RVS:2025:314.

<sup>39</sup> ABRvS 26 June 2024, ECLI:NL:RVS:2024:2605; ABRvS, 20 March 2024, ECLI:NL:RVS:2024:1143; ABRvS 19 February 2020, ECLI:NL:RVS:2020:489; ABRvS 5 February 2020, ECLI:NL:RVS:2020:363; ABRvS 28 August 2019, ECLI:NL:RVS:2019:2912; ABRvS 17 July 2019, ECLI:NL:RVS:2019:2462.

<sup>40</sup> ABRvS 29 January 2025, ECLI:NL:RVS:2025:314; ABRvS 25 October 2023, ECLI:NL:RVS:2023:3950; ABRvS 1 March 2023, ECLI:NL:RVS:2023:823; ABRvS 30 September 2021, ECLI:NL:RVS:2021:2185.

<sup>41</sup> ABRvS 29 January 2025, ECLI:NL:RVS:2025:314; ABRvS 4 December 2024, ECLI:NL:RVS:2024:4986.

<sup>42</sup> ABRvS 16 March 2022, ECLI:NL:RVS:2022:752; ABRvS 4 December 2019, ECLI:NL:RVS:2019:4083.

<sup>43</sup> ABRvS 3 February 2016, ECLI:NL:RVS:2016:248.

<sup>44</sup> ABRvS 24 February 2021, ECLI:NL:RVS:2021:390.



## 6. Decision

Once the Lieutenant Governor has balanced all interests, it is important to motivate the decision in writing. In the decision, the Lieutenant Governor shall at least motivate:

- the authority to act on the basis of Article 14a of the Opium Act 1960 BES;
- the type of measure (including the amount of the penalty payment or the duration of the measure);
- the reason and purpose of the measure;
- the necessity of the measure;
- the balance of the measure;
- the beneficiary period\*;
- and the possibilities for objection and appeal.

In the event of closure, the exact closure period must also be included with the starting date and end date. In addition, any cost recovery must be mentioned. The costs of closure (including boarding, lock replacement and sealing) can be recovered in whole or in part from the offender on the basis of Article 5:25(1) of the General Administrative Law Act. The costs can be recovered by means of a writ of execution (Article 5:25 Awb).

*\*A beneficiary period is the period between the decision and the actual closure. This enables the interested parties to vacate the building and to carry out the closure themselves and to save the costs associated with closure by the government (Article 5:32a paragraph 2 Awb). In Continental Netherlands, the length of the beneficiary period varies from two days to four weeks. In urgent cases, the closure may be carried out immediately (art. 5:31 Awb) (see the information about emergency closure below).*



## 7. Actual closure (if relevant)

An employee of the public entity and a police officer will be present at the actual closure of a building. In addition, a contractor, a representative of the utilities and an employee of Public Health or a local healthcare institution can be involved.

The building should be evacuated, utilities shut off, and doors and windows boarded up if necessary. Sealing the property is also recommended, as breaking a seal constitutes a criminal offense under Article 199 of the Criminal Code.

To publicize the closure and serve as a deterrent, a closure order can be posted on the building. In Continental Netherlands, municipalities sometimes use posters or signs, send letters to residents, or issue a press release.

### Reopen

After the end of the closing period, the occupants of the property will in principle return (except if, for example, the lease has been dissolved). If it turns out that drug trafficking and/or its preparation is taking place again after the reopening of a building, the mayor can again impose a measure on the basis of Article 14a of the Opium Act 1960 BES.



# Exception: Emergency closure

In an **urgent situation**, the Lieutenant Governor may immediately proceed with a closure without a beneficiary period. This is also known as an **emergency administrative enforcement** (Article 5:31 of the General Administrative Law Act, Awb). The Lieutenant Governor does issue a decision, but there is no time gap between the decision and the actual closure. Additionally, it is possible to omit the opportunity to submit a statement of views if “the required urgency precludes” such statement (Article 4:8 in conjunction with Article 4:11 Awb).

Emergency administrative enforcement is permissible when there is a serious danger to public order, health, or safety that requires **immediate action**, such as in cases of:

- fire or explosion hazards (e.g., cannabis farms);<sup>45</sup>
- harmful substances or toxic fumes/gases that may endanger residents;
- the presence of large quantities of drugs or weapons;
- immediate risks related to criminal drug networks;<sup>46</sup>
- international or large-scale drug trafficking.<sup>47</sup>

There is also a more extreme form called **highly urgent administrative enforcement** (Article 5:31, paragraph 2, Awb), which means that there is no time to issue a decision before carrying out the closure. This typically applies to crisis situations.

## Decision on emergency closure

1. **Authority:** The Lieutenant Governor has to justify that the situation is so dangerous that emergency administrative enforcement is required to resolve it and that it is not possible to achieve the same outcome through a regular closure (which includes a statement of views and a beneficiary period).

If the Lieutenant Governor applies emergency administrative enforcement without proper justification, a court may rule that (s)he was not entitled to make this decision. In that case, the closure would be deemed unlawful, and the decision would be entirely annulled. This could have consequences for cost recovery, as there would be no legal basis for it. Moreover, the offender may be entitled to compensation.

2. **Balancing of Interests:**

- a. The Lieutenant Governor has to justify that omitting the beneficiary period is proportionate and necessary. In other words, the authority must explain why a regular closure would not suffice.
- b. The duration of the emergency closure should also be necessary and proportionate. The Lieutenant Governor may impose a short-term emergency closure of a few days or weeks while awaiting further investigation. Based on this investigation, the Lieutenant Governor can decide if there is reason to impose a regular closure for a longer period.<sup>48</sup>

<sup>45</sup> ABRvS 19 February 2020, ECLI:NL:RVS:2020:509.

<sup>46</sup> District Court Gelderland 19 May 2023, ECLI:NL:RBGEL:2023:2825.

<sup>47</sup> ABRvS 8 November 2023, ECLI:NL:RVS:2023:4117; ABRvS 19 February 2020, ECLI:NL:RVS:2020:509; ABRvS 31 July 2019, ECLI:NL:RVS:2019:2611; ABRvS 11 april 2018, ECLI:NL:RVS:2018:1193; ABRvS 4 July 2018, ECLI:NL:RVS:2018:2222.

<sup>48</sup> District Court Noord-Holland 4 June 2024, ECLI:NL:RBNHO:2024:5465 (emergency closure is unlawful); District Court Midden-Nederland 22 December 2023, ECLI:NL:RBMNE:2023:6977 (Emergency closure for 3 weeks is lawful).

**Important considerations:**

- When closing a dwelling, courts are more likely to find an emergency closure disproportionate compared to the closure of a commercial property.
  - The Lieutenant Governor must act swiftly. If too much time passes between detecting the violation and enforcing the closure, a court may rule that the situation was not truly urgent, meaning that the opportunity to submit a statement of views and a beneficiary period should not have been omitted.<sup>49</sup> If there is a delay of several days between detecting the violation and the emergency closure, the authority must justify why the situation is still urgent:
    - Waiting two days before applying highly urgent administrative enforcement was acceptable (ECLI:NL:RVS:2015:3550).
    - Waiting five days before applying emergency administrative enforcement was acceptable (ECLI:NL:RVS:2015:1458).
    - Waiting six days was considered too long (ECLI:NL:RVS:2007:BA2669).
    - A period of nine days was deemed excessive (ECLI:NL:RVS:2016:1044).
- A period of fifteen days was completely unacceptable (ECLI:NL:RVS:2018:209).

**To summarise:**

'Normale' sluiting	Spoedsluiting	Zeer spoedsluiting
1. Constatering overtreding 2. Voornemen 3. Zienswijze 4. Besluit 5. Begunstigingstermijn 6. Feitelijke sluiting	1. Constatering overtreding 2. Besluit en feitelijke sluiting 3. Eventueel: besluit met nadere motivering	1. Constatering en onmiddellijke sluiting 2. Besluit

**Alternative options:**

- The Lieutenant Governor may also choose to impose an emergency closure without a compliance period, but still allow the opportunity to submit a statement of views.
- The Lieutenant Governor may also opt for a regular closure with a short compliance period, for example, two days.<sup>50</sup>

<sup>49</sup> Zie o.a. ABRvS 4 april 2018, ECLI:NL:RVS:2018:1131. Zie ook Rb. Amsterdam 11 december 2015, AMS 14/7255, JG 2016/4, m.nt. L.M. Bruijn & M. Vols.

<sup>50</sup> ABRvS 9 januari 2013, ECLI:NL:RVS:2013:BY8013.

# Legal Remedies

A decision taken on the basis of Article 14a of the Opwiumwet 1960 BES is a decision within the meaning of Article 3 of the WarBES. This decision may be objected to, appealed to the Court of First Instance of Bonaire, Sint Eustatius and Saba, as well as appealed to the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba. In addition, a request can be made for a preliminary injunction after the submission of an objection or an early reopening of the home or premises. If the court grants the preliminary injunction, this means that the Lieutenant Governor may not implement the decision pending the decision on the objection.

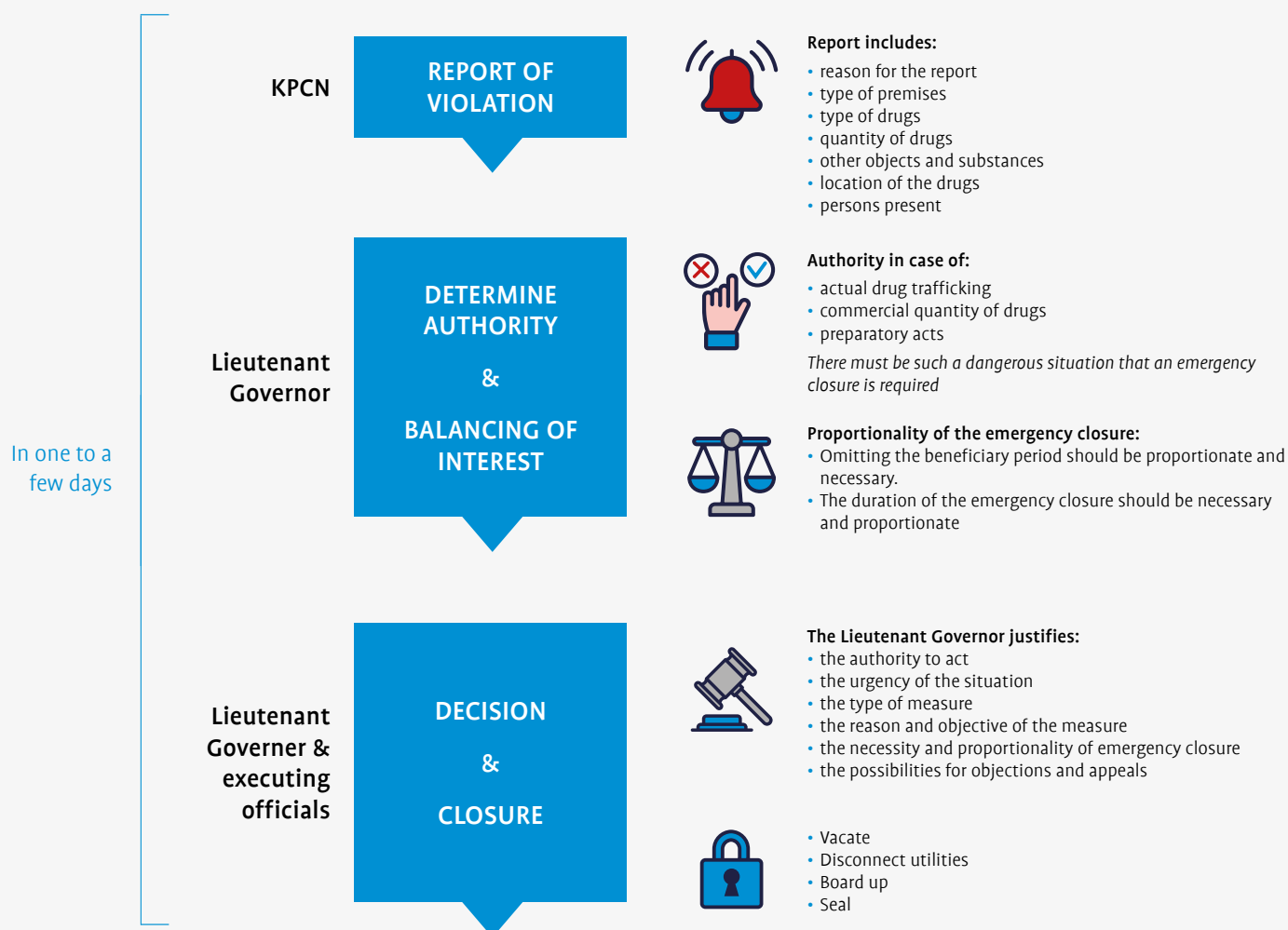
## Early termination of closure

An interested party may submit a written request to the Lieutenant Governor for the closure to be lifted early. In assessing such a request, the Lieutenant Governor will consider, among other factors, whether the objectives of the closure have been met.

# Visualised step-by-step plan

## Visualised emergency closure

### Administrative measures for (preparation of) drug trafficking in residences and premises (Article 14a Opium Act 1960 BES)



# Annex I

## Examples of sanction regimes for municipalities in continental Netherlands

### Municipality of Almere

#### Premises and associated yard

Observation	Soft drugs and/or related criminal preparatory acts	Hard drugs and/or related criminal preparatory acts
First offense	Closure for a period of three months	Closure for a period of six months
Second offense within three years	Closure for a period of six months	Closure for a period of twelve months
Third offense within three years	Closure for a period of twelve months	Closure for a period of 24 months

#### Inhabited houses and associated yard

Observation	Soft drugs and/or related criminal preparatory acts	Hard drugs and/or related criminal preparatory acts
First offense	Order subject to penalty For the amount of the penalty: see below under B1 to B3	Closure for a period of three months
Second offense within three years	Collection of penalty and closure for a period of three months	Closure for a period of six months
Third offense within three years	Closure for a period of six months	Closure for a period of twelve months

The amount of the penalty is determined by the number of hemp plants found:

Quantity	Highly Eyed Dwangsom
From 6 to 50 plants	€12,500
From 50 to 200 plants	€ 25,000
From 200 to 750 plants	€50,000
From 750 plants	€ 75.000

The amount of the penalty is determined by the number of grams of soft drugs found:

Quantity	Highly Eyed Dwangsom
5-30 grams	€1,275.00
30-50 grams	€3,500.00
50-100 grams	€ 7.000,00
100-150 gram	€10,500.00
150-200 gram	€ 14.000,00
200 gram – 6 kilogram	€ 25.000,00
6 kilograms – 22.5 kilograms	€ 50.000,00
From 22.5 kilograms	€ 75.000,00

### Municipality of Rotterdam

#### **Closing period**

For both homes and premises (whether publicly accessible or not), a closure period of three months is generally applied. This period is deemed necessary to restore public order and achieve the other objectives of the closure. If the severity and nature of the circumstances warrant it, the mayor may extend the closure to a maximum of six months.

#### **Relapses**

If a similar situation occurs within three years of the police discovery at the same property, as outlined in Section 13b of the Opium Act, the building will generally be closed for six months. This allows for a tailored response based on the seriousness of the situation.

#### **Power to deviate**

Under the inherent power to derogate, as stipulated in Article 4:84 of the General Administrative Law Act, deviations from this policy may be made.

### Municipality of Groningen

Established violation	First offense	Second offense	Third offense
Commercial quantity of soft drugs (up to 500 grams)	Closure three months	Closure six months < three years after first detection	Closure for an indefinite period < three years after second offense After two years have elapsed, a request for dissolution can be submitted.
Commercial quantity of soft drugs (more than 500 grams)	Closure six months	Closure twelve months < three years after first detection	Closure for an indefinite period < three years after second offense After two years have elapsed, a request for dissolution can be submitted.
Finding a hemp farm, with a quantity of hemp plants other than for personal use, as well as in the case of preparatory treatments as referred to in Article 11a of the Opium Act	Closure three months	Closure six months < three years after first detection	Closure for an indefinite period < three years after second offense After two years have elapsed, a request for dissolution can be submitted.
Trafficking in hard drugs / presence of hard drugs in the premises (including catering premises), as well as in the case of preparatory treatments as referred to in Section 11a of the Opium Act	Closure six months	Closure twelve months < three years after first detection	Closure for an indefinite period < three years after second offense After two years have elapsed, a request for dissolution can be submitted.

### Gemeente Voorst

#### **Drug trafficking in a home or an associated yard:**

Observation	First offense	Second offense within three years of previous offense	Third and subsequent violations within three years of previous violation
Soft drugs	Warning	Closure for a period of three months	Closure for a period of six months
Hard drugs	Closure for a period of three months	Closure for a period of six months	Closure for a period of twelve months

#### **Drugshandel in een lokaal of een daarbij behorend erf:**

Observation	First offense	Second offense within three years of previous offense	Third and subsequent violations within three years of previous violation
Softdrugs	Closure for a period of three months	Closure for a period of six months	Closure for a period of twelve months
Harddrugs	Closure for a period of six months	Closure for a period of twelve months	Closure for an indefinite period

#### **Preparatory acts in a home or an associated yard:**

Observation	Possession of means of production for soft drugs (Article 11a)	Objects or substances that are available as means of production for hard drugs (Article 10a, paragraph 1, sub 3)
First offense	Order subject to a penalty, aimed at the removal of goods	Closure for a period of three months
Second offense within three years of previous offense	Closure for a period of three months	Closure for a period of six months
Third offense within three years of previous offense	Closure for six months	Closure for a period of twelve months



**Preparatory acts in a room or an associated yard:**

Observation	Possession of means of production for soft drugs (Article 11a)	Objects or substances that are available as means of production for hard drugs (Article 10a, paragraph 1, sub 3)
First offense	Closure for a period of three months	Closure for a period of six months
Second offense within three years of previous offense	Closure for a period of six months	Closure for a period of twelve months
Third offense within three years of previous offense	Closure for twelve months	Closure for an indefinite period

**Municipality of Goes****Premises:**

Observation	First offense	Second offense (within five years)	Third offense (within five years)
Sale of or presence of a commercial quantity of soft drugs in a room and/or on an associated property	Closure for a period of three months	Closure for a period of six months	Closure for a period of twelve months
Sale of or presence of a commercial quantity of hard drugs in a room and/or on an associated property	Closure for a period of six months	Closure for a period of twelve months	Closure for a period of 24 months
Possession of object(s) and/or substance(s) pursuant to Article 10a and/or 11a of the Opium Act	The measure is based on the predicate offence		

## Homes

Observation	First offense	Second offense (within five years)	Third offense (within five years)	Fourth offense (within five years)
Sale of or presence of a small commercial quantity* (less than 20 plants or less than 30 grams) of soft drugs	Written warning	Closure for a period of three months	Closure for a period of six months	Closure for a period of twelve months
Sale of or presence of more than a small commercial quantity* of soft drugs	Closure for a period of three months	Closure for a period of six months	Closure for a period of nine months	Closure for a period of twelve months
Sale of or presence of a commercial quantity of hard drugs	Closure for a period of three months	Closure for a period of six months	Closure for a period of twelve months	Closure for a period of 24 months
Possession of object(s) and/or substance(s) pursuant to Article 10a and/or 11a of the Opium Act	The measure is based on the predicate offence.			

*\*The possession of 6 to 30 grams of hemp or 6 to 20 hemp plants as mentioned on list II Opium Act is considered a 'small trade commercial' in the context of this policy.*



## CCV Colophon

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