



**Decision Session: Cabinet Member for  
Health, Housing and Adult Social Services**

25 October 2011

Report from the Assistant Director – Housing and Public Protection

**Public Consultation on a New Mandatory Power of  
Possession for Anti-Social Behaviour**

**Summary**

1. The government are consulting on proposals to strengthen the sanction social landlords have to evict tenants who have committed serious anti social behaviour (ASB). The report provides a response to the government's proposals and invites the Cabinet Member to endorse and comment on these proposals

**Background**

2. In August 2011 The Communities and Local Government Department (CLG) issued a consultation document on proposals for strengthening powers landlords have when considering the ultimate sanction of eviction for ASB. The response is due by 7<sup>th</sup> November 2011. (See appendix 1)
3. In light of the riots at the beginning of August 2011 the consultation document CLG amended the consultation document to include a broadening of the discretionary grounds for possession for ASB and criminality.
4. Ground 2 of Schedule 2 to the Housing Act 1985 and Ground 14 of Schedule 2 to the Housing Act 1988 provide, for secure tenancies and assured (including assured shorthold) tenancies respectively, that the Court may grant possession where:

*The tenant or a person residing in or visiting the dwelling-house—*

*(a) has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality, or*

*(b) has been convicted of—*

*(i) using the dwelling-house or allowing it to be used for immoral or illegal purposes, or*

*(ii) an indictable offence committed in, or in the locality of, the dwelling-house.*

In order to grant possession the Court must be satisfied that it is reasonable to do so. This is therefore discretionary.

5. Within the consultation document the government are proposing three changes.
  - An additional provision in Ground 2 of Schedule 2 to the Housing Act 1985 and Ground 14 of Schedule 2 to Housing Act 1988 so that the court may grant possession where a tenant or member of their household has been convicted of violence against property (including criminal damage and offences such as arson), violence against persons at a scene of violent disorder or theft linked to violent disorder. There would in these circumstances be no requirement that the offence had been committed within the locality of the dwelling house, subject to it being committed in the United Kingdom.
  - A new mandatory power for eviction for serious, housing related anti-social behaviour which has been proven by another court.
  - Limiting the powers of the court to suspend a possession order.

## Consultation

6. There has been consultation between Housing Services, Legal Services and Safer York Partnership and Housing Associations have been invited to comment. The ASB customer panel are to be consulted in early October.

## Options

7. To endorse the response to CLG.

## Analysis

8. The most controversial element of the proposals is the widening of the existing powers to apply for repossession on issues of ASB and criminality that has not necessarily happened in the locality of the tenants residence. There is a question as to the proportionality and the likelihood that it will be successfully challenged at court.
9. The Mandatory power is a welcome addition and the proposals to fix timescales will give greater certainty to the victims. It is important to stress that these powers will only be considered as a last resort and officers will continue to seek less punitive measure to resolve ASB (see appendix 20)

## Council Priorities

10. These proposals are linked to the priority of building strong communities.

## Implications

11.
  - (a)**Financial** None
  - (b)**Human Resources (HR)** None
  - (c)**Equalities** None however the effects of the changes may directly effect a number of vulnerable groups
  - (d)**Legal** There are concerns about proportionality

(e) **Crime and Disorder** None

(f) **Information Technology (IT)** None

(g) **Property** None

(h) **Other** None

### **Risk Management**

12. This is a consultation document therefore there are no known risks

### **Recommendations**

13. That the Cabinet Member for Health, Housing and Adult Social Services endorses the response at Annex 1 to the consultation document at Annex 2

Reason: To offer City of York Council's views on the consultation paper.

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**Report**                      **Date** 10-10-11  
**Approved**                  *yes*

Wards Affected: *List wards or tick box to indicate all*      *All tick*

**For further information please contact the author of the report**

**Background Papers:**

A new mandatory power of possession for anti-social behaviour  
CLG August 2011

**Annexes:**

Annex 1: Consultation on new mandatory power of possession  
for anti-social behaviour questions.

Annex 2: A new mandatory power of possession for anti-social  
behaviour Consultation paper.

Annex 3: Mandatory Letter.