Communities and Local Government

A new mandatory power of possession for anti-social behaviour

Consultation

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August 2011
Department for Communities and Local Government

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Ministerial foreword

Anti-social behaviour represents one of the most serious abuses of a tenancy. No-one should have the right to make the lives of their neighbours a misery. We've done and are doing a lot to ensure that local agencies and tenants and residents have the right tools and skills to tackle anti-social behaviour head on.

We're supporting a team of expert practitioners to work with landlord and tenant groups to ensure that local responses to anti-social behaviour are effective and responsive to tenants' views.

We're providing clarity that housing association landlords have the same flexibility to use probationary tenancies as local authority landlords currently enjoy. We're supporting and encouraging their use as an important tool for tackling anti-social behaviour, by ensuring that landlords can use them alongside flexible tenancies.

The flexible tenancies we are introducing through the Localism Bill, and a more permissive regulatory framework, offer new opportunities for landlords to create incentives for tenants to behave in a way that respects their neighbours and make it easier for landlords to end tenancies when they do not.

The Home Office has recently finished consulting on proposals for a radically simplified and improved toolkit of powers which frontline practitioners can use to tackle anti-social behaviour in a way that works in the light of individual and local circumstances.

I am clear the eviction should only be pulled out of that that toolkit as a last resort. But where other remedies have been tried and failed and serious anti-social behaviour has already been proven, I am determined that seeking and obtaining possession of the property should not be the start of another long process.

Far too often I see the frustration of victims, and landlords and Parliamentary colleagues on their behalf, about a possession process that is dragging on for many months and sometimes longer. Too often the needs and rights of victims, who have sometimes had to endure intolerable behaviour for years on end, seem at the moment to be only a secondary concern.

Our proposals for a new mandatory power of possession offer a way of shortening the possession process in a way that is fair to victims and witnesses and is also fair to those at risk of losing their home. I hope that they will help to more quickly bring to an end the day to day misery that too often is inflicted for too long on those who seek simply to quietly enjoy their homes.

Rt Hon Grant Shapps MP

The consultation process and how to respond

Scope of the consultation

Topic of this consultation:	Introducing a new mandatory power of possession for anti-social behaviour
Scope of this consultation:	This consultation seeks views on the detail and practicalities of a new mandatory power of possession to enable landlords to take swifter action to evict their most anti-social tenants. The Government's intention is that the necessary legislation be introduced alongside legislative changes required following the Home Office's recent consultation on reforming tools and powers to tackle anti-social behaviour.
Geographical scope:	England

Basic information

To:	This consultation is aimed at: • those involved as front line practitioners in dealing with anti-social behaviour and the prosecution through the courts of those responsible for anti-social behaviour • the public, particularly those who themselves have been victims of anti-social behaviour or have provided evidence as a witness in court cases
Body/bodies responsible for the consultation:	This consultation is being run by the Affordable Housing Management and Standards Division within the Department for Communities and Local Government
Duration:	This consultation will run for from 3 August to 5 pm on 7 November 2011 (closing date extended to allow extra time following a change to Question 1)
Enquiries:	For all enquiries, please email: asbconsultation@communities.gsi.gov.uk or telephone 0303 444 3664
How to respond:	By email to: asbconsultation@communities.gsi.gov.uk Or by post to: ASB Consultation Communities and Local Government Zone 1/J9 Eland House Bressenden Place London SW1E 5DU

After the consultation:	A summary of the responses to this consultation will be published on the Department's website within three months of the end of the consultation period.
Compliance with the Code of Practice on Consultation:	The consultation period is in line with the Cabinet Office Code of Practice on Consultations. We have considered a longer period of consultation, since the consultation period includes the summer holidays. Given the brevity and limited scope of this consultation, we consider that 12 weeks represents an adequate period.

1. Introduction

Context

1.1 Prevention and early intervention should be at the heart of all landlords' approaches to tackling anti-social behavior. We know that up and down the country social landlords are engaged in creative and innovative work to provide diversionary activities for young people, to ensure that tenants understand the need to respect their neighbours and to nip anti-social behaviour in the bud before it becomes a problem.

1.2 We know that the large majority of complaints to social landlords are resolved through informal routes. Evidence suggests that over 75 per cent of anti-social behaviour cases are resolved through early intervention without resorting to formal tools[1]. But where anti-social behaviour persists then we expect landlords to take more formal steps to resolve the problem.

1.3 The Home Office has set out and consulted on proposals for a radically simplified and streamlined toolkit of powers for social landlords and other agencies to tackle anti-social behaviour. We expect these to be used in a proportionate way with eviction a last resort in all but the most exceptional cases. The wider review of anti-social behaviour tools and powers though provides a good opportunity to look again at the interaction of the final sanction of eviction with other formal interventions which we want to encourage landlords to use before seeking possession.

The possession process for anti-social behaviour

1.4 The evidence suggests that social landlords use possession proceedings for anti-social behaviour sparingly. There are nearly four million social households in England but we estimate that there are only approximately 3,000 eviction orders made by the Courts annually against social tenants for anti-social behaviour[2].

1.5 It is clearly right that eviction for anti-social behaviour should remain exceptional: the loss of one's home is a serious sanction and eviction may simply displace the problem elsewhere rather than providing a long term solution. It is important that landlords work with other local agencies to provide support or interventions at the earliest opportunity when difficult or

[1] HouseMark anti-social behaviour benchmarking service: analysis of results 2010-11

[2] No data is available for local authority landlords or private registered providers with less than 1,000 units of stock but Regulatory and Statistical Return data shows that private registered providers with 1,000 units of stock or more evicted 1,523 tenants for reasons including anti-social behaviour in 2009-10. Assuming local authority landlords evict tenants for anti-social behaviour in roughly the same proportion to their total stock, that gives a figure of about 3,000 pa.

disruptive behaviour is identified, particularly where households with children are concerned. We know that this type of joined-up working effectively addresses these problems and helps remove the need for evictions. Effective interventions, such as Family Intervention Projects for example, delivered through partnerships between social housing providers and children's services, have been shown to be successful at reducing housing-related anti-social behaviour, and well as the number of possession notices issued by landlords.

1.6 But where landlords turn to possession as a last resort in order to provide respite to communities and as a serious sanction against perpetrators that process can take far too long.

1.7 Survey data from 61 landlords in England covering over 500 recent anti-social behaviour possession cases indicates that on average it took over seven months from the date of application to the court for a possession order to an outcome (the award of a possession order or the claim being dismissed). Multiple adjournments, for example because defendants don't turn up or turn up unrepresented, or because further evidence is required, or there are difficulties in finding court time for a trial which may last over a day, emerge as key drivers of delay. This is particularly frustrating in cases where housing related anti-social behaviour has been previously proved in another court but a full review of the facts is again undertaken.

1.8 Added to the period between application to the court for a possession order and the award of possession will be a notice period to the tenant prior to applying to the court for a possession order and, after the award of possession, probably another application to the court for a warrant for possession if the tenant does not vacate the property in accordance with the order made. The possession process itself is likely to come after many months and sometimes years during which neighbours and communities have suffered from anti-social behaviour as other interventions, such as warning letters, acceptable behaviour contracts and injunctions to tackle the perpetrator's behaviour have been tried and have failed.

1.9 The length of the possession process for anti-social behaviour puts pressure on court resources and creates significant costs for landlords met out of their tenants' rent. Research from 2005 suggested that those costs were in the region of £6,500 to £9,500[3]. For the most complex cases they may exceed £20,000.

1.10 Most importantly though lengthy possession proceedings mean that the suffering of victims is further extended. Where vulnerable or intimidated witnesses are needed to testify it may be particularly hard to keep them on

[3] ODPM (2005), *Possession actions and evictions by social landlords*

board over many months. We need to give victims and witnesses the confidence that their landlords are able to act quickly and decisively to protect them.

Speeding up the anti-social behaviour possession process

1.11 We need to speed up the anti-social behaviour possession process in a way that properly and fairly considers both the rights of victims and witnesses and the rights of those at risk of losing their home.

1.12 We wish to do so in a way which, in keeping with our localist agenda, provides new flexibility for, rather than any new requirement on, landlords. We know that in some parts of the country, current arrangements work well and applications for possession are determined expeditiously. In those areas we would not anticipate any change.

1.13 Our objective is not to increase the number of evictions for anti-social behaviour and nor do we expect it to do so. We are seeking to facilitate faster outcomes not different ones.

1.14 We propose to do so by introducing a new, additional mandatory power of possession, which landlords may choose to use where serious housing related anti-social behaviour has already been proven. We propose to model this new route to possession on the process for bringing introductory tenancies to an end.

1.15 That new power would be available to private as well as social landlords, though in practice we would expect it to be used only very rarely by the former, given the availability of 'no fault' possession under section 21 of the Housing Act 1988. The next section sets out the details of those proposals and seeks the views of consultees.

2. A new mandatory power of possession for anti-social behaviour

The current legislative framework

2.1 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.

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

2.3 We propose that this discretionary ground for possession for anti-social behaviour and criminality should remain available in all circumstances, including where a mandatory power is available. We are aware however, particularly in light of recent rioting and looting, that a number of landlords consider it would be helpful to extend the current scope of the discretionary ground, so that serious anti-social behaviour and criminality beyond the immediate neighbourhood of the property can clearly be taken into account.

We are therefore proposing to include additional provisions in Ground 2 of Schedule 2 to the Housing Act 1985 and Ground 14 of Schedule 2 to the 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.

Question 1: Do you agree that we should extend the scope of the current discretionary ground for possession for anti-social behaviour and criminality in this way?

A new mandatory power

2.4 We have looked at adding a new additional mandatory ground for possession for anti-social behaviour into Schedule 2 of the Housing Act 1985 and Schedule 2 of the Housing Act 1988. We consider however that in practice the distinction with the existing discretionary ground would be insufficiently clear. Instead we propose to introduce a new, clearly defined, route to possession for serious, housing-related anti-social behaviour which has already been proven by another court, which we have termed a 'mandatory power'. We propose to base this, for all landlords, on the process for ending introductory tenancies[4].

2.5 To exercise the mandatory power, the landlord would need to serve a notice of proceedings on the tenant, setting out the reasons why they are seeking possession, and advise the tenant of the date after which possession proceedings may be begun. The court would have to grant an order for possession on application by the landlord provided the correct procedure had been followed.

2.6 We think this provides a robust process for a mandatory power of possession for anti-social behaviour. The recent Supreme Court judgments in *Pinnock* and *Powell, Hall & Frisby* confirm that a human rights defence, based on the proportionality of the landlord's decision, is available in proceedings brought by a public authority under the current statutory provisions on which we propose to model the mandatory power.

2.7 We propose that local authority tenants should have a statutory right to request a review of the landlord's decision to seek possession under the mandatory power, by a more senior officer not involved in the original decision, and that housing association tenants should be able to request a similar review through their landlord's established complaints procedure. Making this review procedure available to the tenant, prior to the landlord seeking a possession order provides a further safeguard for the tenant.

2.8 We also propose that the discretion of the court to suspend a possession order would be limited. The giving up of possession could not be postponed to a date later than fourteen days after the making of the order,

[4] Sections 127 to 129, Housing Act 1996

unless it appeared to the court that exceptional hardship would be caused by requiring possession to be given up by that date; and could not in any event be postponed to a date later than six weeks after the making of the order[5].

Question 2: Do you agree that we should construct a new mandatory power of possession in this way?

The need for a new mandatory power

2.9 We think that a mandatory power, properly defined and closely linked to the new streamlined suite of anti-social behaviour powers that will be available to landlords, provides a route to significantly reduce the length of the possession process for serious anti-social behaviour and provide faster relief for victims and witnesses.

2.10 Clearly, tenants faced with losing their home must be provided with a proper opportunity to defend themselves, but we think that where the same facts have already been considered by another court, then the anti-social behaviour should not have to be proved a second time. Creating a mandatory power that carries over the earlier court decision into the possession proceedings, would provide the opportunity to shortcut that process.

2.11 Instead of a potentially lengthy trial, perhaps, following adjournments, many months after an initial directions hearing, a mandatory power should significantly increase the chance that the case can be determined quickly in a single hearing. The court will only need to establish that the criteria for awarding possession are met rather than needing to reconsider all the facts of the case.

[5] We propose to make an amendment to Section 89 of the Housing Act 1980 to extend its application to secure and assured tenancies in these cases only, not where possession is sought using a Ground.

Principles for a mandatory power

2.12 To ensure as far as possible that possession proceedings brought under the new mandatory power can be dealt with and resolved expeditiously by the courts, we need to ensure that that the mandatory power is underpinned by two key principles.

2.13 Firstly, we need to ensure that the landlord seeking possession can easily demonstrate to the court that the criteria for awarding possession are met. The mandatory power needs as far as possible to be based on a clear test which can be readily established.

2.14 Secondly, we need to ensure that where that test is met, it can be simply established that the anti-social behaviour is serious and housing related. Unless the court is in a position to dismiss quickly arguments that the landlord's action is not proportionate, a full facts based review is likely to be required and the practical advantages of seeking possession through a mandatory power rather than on discretionary grounds are likely to be lost.

Question 3: Are these the right principles which should underpin a mandatory power of possession for anti-social behaviour?

Basis for a mandatory power

2.15 We are proposing therefore that landlords will be able to apply for possession for anti-social behaviour under a mandatory power where anti-social behaviour or criminal behaviour has already been proven by another court. We will further define the 'triggers' for seeking possession under a mandatory power in the light of final Home Office proposals on new tools and powers to be published in due course. Broadly however we propose these are as follows:

- **Conviction for a serious housing related offence** – to apply to offences committed by tenants, members of their household or regular visitors which take place in the locality of the property or between neighbours away from it. The type of offences we propose to capture include violence against neighbours; serious criminal damage with violence; drug dealing or cultivation in the property; murder; and rape. We think that 'indictable only' offences should broadly capture these.
- **Breach of an injunction for anti-social behaviour** - given the persistent and/or serious nature of anti-social behaviour which is likely to lead to a court granting an injunction we think it is appropriate that a

breach by a tenant, member of their household or regular visitor should provide a trigger for a mandatory power of possession. We propose, to ensure that the anti-social behaviour is housing related, that the mandatory power should only be available where a social landlord has either obtained or is party to the injunction.

- **Closure of premises under a closure order** - we think that where a court has determined that activity taking place within a property is so serious to merit its closure, it is appropriate that a landlord can seek possession against the tenant using a mandatory power.

2.16 Clearly that does not mean that a landlord should always seek possession in these circumstances. We would expect, for example, a landlord to focus on re-housing a vulnerable tenant whose property had been taken over by a drug gang and in consequence been subject to a premises closure order.

2.17 Nor does it mean that a landlord should always seek possession using the mandatory power rather than discretionary grounds when these conditions are met. Whilst we think these 'triggers' as far as possible ring-fence the mandatory power to serious, housing-related anti-social behaviour, and should create a strong presumption in favour of possession, landlords will still need to consider whether proportionality is easily demonstrated in each case.

2.18 It is likely, for example, that if a landlord were to seek possession using the mandatory power on the basis that a regular visitor to the property had a conviction for a serious offence in the neighbourhood from several years previously, a more detailed consideration of proportionality would be needed.

Question 4: Have we defined the basis for the new mandatory power correctly? If not, how could we improve the definition?

Using a mandatory power

2.19 We anticipate that introducing a mandatory power of possession for anti-social behaviour will reduce pressure on court resources, lower landlord costs and most importantly bring faster relief for communities. The extent of that impact though will depend on how widely landlords make use of this new flexibility.

2.20 In linking a mandatory power of possession to breach of an injunction, we intend both to place eviction clearly at the end of a continuum of interventions of increasing severity and provide a clearer line of sight to the threat of eviction, as an effective driver of improved behaviour at an earlier stage. We hope that this should in both regards tend to reduce the number of evictions that actually occur.

Question 5: As a landlord, would you anticipate seeking possession using the mandatory power in some or all of the instances where this would be available?

Question 6: Are there other issues related the introduction of a mandatory power for possession for anti-social behaviour that we should consider?

3. Next steps

3.1 We intend to publish our final proposals for a mandatory power of possession in the light of responses to this consultation and proposals for the final suite of new anti-social behaviour tools and powers. We intend to bring forward the necessary legislation alongside legislative changes required for those new anti-social behaviour tools and powers.

4. Summary of consultation questions

Question 1: Do you agree that we should extend the scope of the current discretionary ground for possession for anti-social behaviour and criminality in this way?

Question 2: Do you agree that we should construct a new mandatory power of possession in this way?

Question 3: Are these the right principles which should underpin a mandatory power of possession for anti-social behaviour?

Question 4: Have we defined the basis for new mandatory power correctly? If not, how could we improve the definition?

Question 5: As a landlord, would you anticipate seeking possession using the mandatory power in some or all of the instances where this would be available?

Question 6: Are there other issues related the introduction of a mandatory power for possession for anti-social behaviour that we should consider?

5. Consultation criteria

5.1 The Government has a code of practice on consultations. The criteria below apply to all UK public consultations on the basis of a document in electronic or printed form, and will often be relevant to other sorts of consultation.

Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements, the instructions below should otherwise generally be regarded as binding on UK departments and their agencies, unless ministers conclude that exceptional circumstances require a departure.

1. Formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

5.2 Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

5.3 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

5.4 If you want the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act 2000, there is a statutory code of practice with which public authorities must comply and

which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

5.5 The Department for Communities and Local Government will process your personal data in accordance with the Data Protection Act 1998 and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

5.6 Individual responses will not be acknowledged unless specifically requested.

5.7 Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

5.8 Are you satisfied that this consultation has followed these criteria? If not or you have any other observations about how we can improve the process please contact:

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