



Notice of meeting of

Decision Session - Cabinet Member for Crime and Community Safety

To: Councillor Fraser (Cabinet Member)

Date: Tuesday, 1 November 2011

Time: 4.30 pm

Venue: The Guildhall, York

AGENDA

Notice to Members - Calling In:

Members are reminded that, should they wish to call in any item on this agenda, notice must be given to Democracy Support Group by:

10:00 am on Monday 31 October 2011, if an item is called in *before* a decision is taken, *or*

4:00 pm on Thursday 3 November 2011, if an item is called in *after* a decision has been taken.

Items called in will be considered by the Scrutiny Management Committee.

Written representations in respect of items on this agenda should be submitted to Democratic Services by **5.00pm on Friday 28 October 2011**.

1. **Declarations of Interest**

At this point Members are asked to declare any personal or prejudicial interests they may have in the business on this agenda.

- 2. Minutes** (Pages 3 - 6)
To approve and sign the minutes of the last Decision Session held on 4 October 2011.

- 3. Public Participation - Decision Session**
At this point in the meeting, members of the public who have registered their wish to speak at the meeting can do so. The deadline for registering is **5.00pm on Monday 31 October 2011**.

Members of the public may register to speak on -:

- An item on the agenda
- An issue within the Cabinet Member's remit
- An item that has been published on the Information Log since the last session. Information reports are listed at the end of the agenda.

Please note that no items have been published on the Information Log since the last Decision Session.

- 4. Public Consultation on a New Mandatory Power of Possession for Anti-Social Behaviour** (Pages 7 - 38)
The government are consulting on proposals to strengthen the sanction social landlords have to evict tenants who have committed serious anti social behaviour. This report provides a response to the government's proposals and invites the Cabinet Member to endorse and comment on these proposals
- 5. Sales of Age Restricted Products** (Pages 39 - 50)
This report informs the Cabinet Member of the work undertaken by the council's trading standards service to prevent the illegal sales of age-restricted products. It also seeks approval for the programme of action for the next 12 months.
- 6. Urgent Business**
Any other business which the Chair considers urgent under the Local Government Act 1972.

Democracy Officer:

Name: Jill Pickering

Contact Details:

- Telephone – (01904) 552061
- Email – jill.pickering@york.gov.uk

For more information about any of the following please contact the Democracy Officer responsible for servicing this meeting

- Registering to speak
- Written Representations
- Business of the meeting
- Any special arrangements
- Copies of reports

Contact details are set out above

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The majority of councillors are not appointed to the Cabinet (39 out of 47). Any 3 non-Cabinet councillors can 'call-in' an item of business from a published Cabinet (or Cabinet Member Decision Session) agenda. The Cabinet will still discuss the 'called in' business on the published date and will set out its views for consideration by a specially convened Scrutiny Management Committee (SMC). That SMC meeting will then make its recommendations to the next scheduled Cabinet meeting in the following week, where a final decision on the 'called-in' business will be made.

Scrutiny Committees

The purpose of all scrutiny and ad-hoc scrutiny committees appointed by the Council is to:

- Monitor the performance and effectiveness of services;
- Review existing policies and assist in the development of new ones, as necessary; and
- Monitor best value continuous service improvement plans

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City of York Council

Committee Minutes

MEETING	DECISION SESSION - CABINET MEMBER FOR CRIME AND COMMUNITY SAFETY
DATE	4 OCTOBER 2011
PRESENT	COUNCILLORS FRASER (CABINET MEMBER)

11. DECLARATIONS OF INTEREST

At this point in the meeting the Cabinet Member was invited to declare any personal or prejudicial interests he might have in the business on the agenda. None were declared.

12. MINUTES

RESOLVED: That the minutes of the meeting of the Crime and Community Safety Decision Session held on 6 September 2011 be approved and signed by the Chair as a correct record.

13. PUBLIC PARTICIPATION/OTHER SPEAKERS

It was reported that there had been no registrations to speak at the meeting under the Council's Public Participation Scheme.

Councillor Healey had stated that he was unable to be present to speak at the meeting but had submitted written comments in respect of agenda items 4 and 5 (minutes 14 and 15 refer). These comments are included as an annex to the agenda papers. The responses from the Cabinet Member are detailed under the specific items.

14. TARGET HARDENING FUND 2011-2012

The Cabinet Member considered a report that presented information on the current year's Target Hardening Fund allocations, as detailed in Annex 1 of the report. The report also contained recommendations on ways to improve the accessibility and awareness of the fund for future years.

The Cabinet Member was advised of the following correction to Annex 1 of the report: Scheme reference TH-11-08 – the allocation to Lindsey Avenue CCTV should read “£2,500”.

The Cabinet Member considered the following options:

- Option 1 – retain the current level of promotion of the fund (detailed in paragraph 9 of the report), which is restricted to ward committees and key stakeholders working with them, Safer York Partnership and North Yorkshire Police.
- Option 2 – As option 1 and in addition promote the fund internally via the council’s intranet to ensure a joined up approach across the authority.
- Option 3 – As option 2 and in addition promote the fund publicly so that residents and organisations active in the wards can make suggestions to the relevant ward committee for funding applications.

The Cabinet Member stated that, although it was important that the Council and the Safer York Partnership’s priorities were reflected in the allocation of funding, he would nevertheless welcome increased transparency in the process.

In response to Councillor’s Healey’s suggestion that the funds be split across the Ward Committees, the Cabinet Member stated that he did not support this suggestion. He drew attention to the limited funding that was available and stated that it was important that it was not diluted to an extent that allocations could not fund worthwhile projects. It was also important that the schemes reflected targets that had been set in respect of crime reduction.

The Cabinet Member stated that he was mindful that, by approving the broader approach detailed in Option 3, the scheme may become more oversubscribed which may result in residents’ aspirations not being met. For this reason he suggested that officers ascertain whether there were opportunities to obtain additional funding for future allocations. He stated that it was also important that the process was reviewed in a year’s time.

Officers were thanked for their work in administering the allocations.

- RESOLVED:
- (i) That the information on the allocation of the 2011-2012 Target Hardening Fund be noted.
 - (ii) That Option 3, as outlined in paragraph 11 of the report, be approved to publicise the scheme wider to residents and organisations active in the wards so that they can make suggestions to the relevant ward committee for funding allocations.
 - (iii) That the process be reviewed after a year.

- REASONS:
- (i) For information.
 - (ii) To ensure that the accessibility and awareness of the Target Hardening Fund is improved in a timely fashion for the financial year 2012/2013. Ensuring that access to the fund is fair and equitable and in this way improving the quality and diversity of applications to the fund.
 - (iii) To ensure that the allocation process works effectively.

15. CRIME SUMMIT 2011

The Cabinet Member considered a report that set out proposals for the development of a Crime Summit for the City of York to be held on an annual basis from 2012 onwards.

Officers explained that York and North Yorkshire Community Safety Partnerships were currently undertaking their annual Joint Strategic Intelligence Assessments in order to redefine the community safety plans for 2012-13. It would therefore be timely to link this process with a crime summit to ensure that action plans aligned to the Community Safety Plan

demonstrated a balance between meeting the priority issues identified directly by communities as well as working toward addressing the high level priorities identified through multi-agency data analysis.

The Cabinet Member was asked to consider the following options:

Option 1 – Host a one day market in Parliament Street in the format of previous Face the Public events.

Option 2 – Host an event on a Saturday aimed at attracting all age groups and involving a range of stakeholders engaged in work to reduce crime and anti-social behaviour within York.


Referring to Councillor Healey's suggestion that smaller local events should be held at the major supermarkets rather than holding an event in Parliament Street, the Cabinet Member acknowledged that events held in Parliament Street may engage with a high number of tourists and may not reflect the views of residents. Nevertheless, a commitment had been made to host a focussed and high profile event, and it was important that this took place. Such an event would not preclude other more local activities also being arranged.

RESOLVED: That Option 2 – to host an annual Crime Summit in the spring of each year aimed at attracting all age groups and involving a range of stakeholders engaged in work to reduce crime and anti-social behaviour within York, be approved.

REASON: To ensure the best opportunity to gain maximum attendance and ensure that residents' priorities and concerns feature within the future delivery plans of the community safety partnership. It also demonstrates recognition of the value of localism in determining community safety service provision.

CLLR S FRASER, Chair

[The meeting started at 4.30 pm and finished at 4.50 pm].

	
Decision Session: Cabinet Member for Crime and Community Safety	1 st November 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 7th November 2011. (See appendix 1)
3. In light of the riots at the beginning of August 2011 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
 - (a) **Human Resources (HR)** None
 - (b) **Equalities** None however the effects of the changes may directly effect a number of vulnerable groups
 - (c) **Legal** There are concerns about proportionality
 - (d) **Crime and Disorder** None
 - (e) **Information Technology (IT)** None
 - (f) **Property** None
 - (g) **Other** None

Risk Management

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

Recommendations

13. That the Cabinet Member for Crime and Community Safety 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.

Contact Details

Author:

Jane Mowat
Director of Safer York
Partnership
CANs
01904 669077

Chief Officer Responsible for the report:

Steve Waddington
Assistant Director – Housing and
Public Protection
Communities and Neighbourhoods
Tel: 01904 554016

Tom Brittain
Head of Housing Services
CANs
Tel No. 01904 551262

Report
Approved

✓

Date 10-10-11

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.

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Consultation on new mandatory power of possession for anti-social behaviour

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

In extreme circumstances it would be a useful additional tool. Extending the area of ASB and criminal behaviour to beyond the vicinity of the property will potentially be open to legal challenge. It is difficult to see how a Landlord could say that behaviour anywhere has an impact on a person's tenancy. There would need to be greater clarity about when it is appropriate.

The local authority would also face potential difficulty if someone was evicted on this ground, and then represented as homeless. Particularly if a family was evicted because of the actions of a non tenant within the household. The authority would struggle to argue that the family had made themselves intentionally homeless.

Proportionality needs to be considered, is it proportionate to evict someone because of an act which takes place some distance away from their or their parents tenancy.

There is a lack of equality if an owner occupier or their child is involved in rioting or criminality there is no similar sanction.

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

The guaranteed time frames that are proposed are welcome and would give victims more certainty about the process being proposed.

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

The principles are fine. The second appears to contradict the proposals contained in the discretionary power as it states that 'the anti-social behaviour is serious and housing related.' Application for extending the discretionary power for possession

can be for criminal/antisocial behaviour that is unrelated to the tenants home.

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

The definitions are clear.

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?

The authority would consider using the mandatory power, however there would need to be consideration around vulnerabilities and alternative solutions.

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

There maybe challenges when the landlord uses it for non tenants living with the tenant, for example, the adult child who commits ASB, would it be proportionate to evict the rest of the family.



A new mandatory power of possession for anti-social
behaviour
Consultation



A new mandatory power of possession for anti-social behaviour

Consultation

Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 030 3444 0000
Website: www.communities.gov.uk

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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.

A handwritten signature in black ink, appearing to read 'Grant Shapps'.

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: <ul style="list-style-type: none"> 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 tools¹. 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 behaviour².
- 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 £9,500³. 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 tenancies⁴.
- 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 order⁵.

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:

DCLG Consultation Co-ordinator
Zone 6/H10 Eland House
London SW1E 5 DU
e-mail: consultationcoordinator@communities.gsi.gov.uk



**To Leaders of Stock-holding
Local Authorities
and Chief Executives of Larger Housing
Associations**

The Rt Hon Grant Shapps MP
Minister for Housing and Local Government

**Department for Communities and Local
Government**

Eland House
Bressenden Place
London SW1E 5DU

Tel: 0303 444 3460

Fax: 020 7828 4903

E-Mail: grant.shapps@communities.gsi.gov.uk

www.communities.gov.uk

15 August 2011

Dear Leaders and Chief Executives

**EXTENDING SOCIAL LANDLORDS' POWERS TO SEEK POSSESSION FOR
CRIMINALITY AND ANTI-SOCIAL BEHAVIOUR**

Following the disgraceful looting and rioting across England in recent days, I am writing to let you know that we are today extending the scope of our consultation on strengthening the hands of landlords to effectively tackle anti-social behaviour and criminality (see www.communities.gov.uk/publications/housing/antisocialbehaviourconsult) which I announced on 3 August.

Our proposals for a new mandatory power of possession for serious, housing related anti-social behaviour remain unchanged, but, as the Prime Minister indicated last week and I set out on 10 August, we are now in addition proposing that the existing discretionary ground for possession for anti-social behaviour and criminality is broadened.

I want to ensure that where social tenants or members of their family are found guilty of serious anti-social behaviour or criminality of the sort we've witnessed in recent days, that will categorically provide a ground on which a social landlord may seek possession of the property.

We know that the threat of eviction can act as a powerful driver of improved behaviour. It cannot be right for that sanction to apply only to criminal behaviour towards neighbours or in the locality of the property as it does at the moment. Where a social tenant or a member of their household decides to wreak havoc in someone else's community, social landlords should have the same scope to take action.

Responses from a number of local authorities to the recent rioting and looting have made clear that there are concerns that the scope of the current discretionary power of possession for anti-social behaviour and criminality is not wide enough. Those responding to our consultation document of 3 August are asked therefore not to respond on the basis of the original text in paragraph 2.3 or to the original Question 1 but instead to the following proposal and question which have now been incorporated into the consultation document:

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 the light of recent rioting and

looting, that a number of landlords consider that it would be helpful to extend the 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 in 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?

Our 3 August consultation document remains unchanged in all other respects, except that we are extending the consultation to Monday 7 November to allow consultees 12 weeks to respond to these further proposals.

A handwritten signature in black ink, appearing to read 'Grant Shapps', with a period at the end. The signature is written in a cursive, flowing style.

GRANT SHAPPS MP

	
Decision Session – Cabinet Member for Crime and Community Safety	1 November 2011
Report from the Assistant Director – Housing and Public Protection	

Sales of Age Restricted Products

Summary

1. To inform the Cabinet Member of the work undertaken by the council's trading standards service to prevent the illegal sales of age-restricted products.
2. To seek specific member approval for the programme of action for the next 12 months in relation to the enforcement of:-
 - i) The Children and Young Persons (Protection from Tobacco) Act 1991 in relation to cigarettes/tobacco.
 - ii) The Anti-Social Behaviour Act 2003 in relation to aerosol paint.

In relation to these two particular areas, annual approval of the plan of action is required.

Background

3. Legislation exists to help prevent a range of potentially dangerous/anti-social products being accessible to young people. The products regulated with age-restrictions include alcohol (minimum age 18), fireworks (18), certain video games (18), cigarettes (18), knives (18), aerosol paint (16) and solvents (16). In recent years trading standards officers have carried out education and enforcement work in all of these areas. Other age-restricted products that have not been part

of the trading standards work programme in recent years include films (12, 15, 18) and petrol (16).

4. At the Decision Session - Executive Member for Neighbourhoods & Housing on 21 September 2010 ('the decision session'), it was decided that the council should continue with a programme of education and enforcement, adopting a flexible approach to taking formal action against offenders. The programme of education and enforcement is as follows:

- Visits to premises to advise on legal requirements and the steps that may be taken to avoid illegal sales. The visits also include checks that legal notices are correctly displayed.
- Promotion of the 'Responsible Retailer Scheme' to off-licensed premises.
- Responding to complaints made by residents.
- Responding to intelligence from the police, other council departments and enforcement bodies about illegal sales.
- Conducting test purchases using volunteer children, under the supervision of officers, to check compliance and take appropriate action following illegal sales.
- Targeted publicity about underage sales work.

5. Test purchases are carried out in accordance with national guidelines issued by Local Government Regulation. The guidelines include that the test purchasers should not appear older than their true age, and 'for routine test purchase operations', must be told to answer any questions the seller may ask about their age truthfully.

6. The guidelines were amended in March 2010 to state that 'in exceptional circumstances, the Local Authority may consider whether it is appropriate to undertake test purchase operations where the young person is instructed not to answer truthfully any questions relating to their age posed by the seller. This may be considered in cases where the Local Authority has credible evidence for example from Police, Community Safety Wardens etc. that a **specific premises** is selling age restricted products to young persons AND that the action of the seller is always to ask the young person their age. Given that the test purchasers will answer truthfully, the

seller avoids making a sale whereas, had the young person not answered truthfully a different outcome may have ensued’.

7. The previous guidelines instructed children to answer questions truthfully, in all circumstances. The City of York Council’s test purchasing operations have always been carried out in accordance with that principle and at ‘the decision session’ it was decided that the policy should **not** be changed.
8. Officers observe the young volunteers at all times (either in person or by remote camera) to ensure that their welfare is not compromised and that a trader is not tricked into making a sale that they wouldn’t have made. The table in Annex 1 shows the number of attempted test purchases made and the number of sales for each product over the last 4 years.

Alcohol

9. In 2006, the trading standards service introduced a ‘Responsible Retailer Scheme’ to raise standards in ‘off-licences’ and recognise those businesses committed to tackling underage drinking. The scheme compliments the ‘Best Bar None’ scheme which is designed to raise overall standards in ‘on-licensed’ premises. There are currently 46 members of the ‘Responsible Retailer Scheme’. The criteria of the Responsible Retailer scheme are set out in Annex 2.
10. The Chief Officer of North Yorkshire Police has authorised trading standards officers to issue police fixed penalty notices where sales occur in ‘off licensed premises’ (as agreed at the Meeting for the Executive Member for Neighbourhood Services in December 2006).
11. The law allows premise licence holders to be prosecuted where two sales occur in less than three months (Section 147A Licensing Act 2003 - as amended by the Policing and Crime Act 2009).
12. There was one illegal sale of alcohol on our test purchasing visits last year which resulted in the issue of a fixed penalty notice to the seller.

Tobacco

13. Officers will continue to undertake a programme of education and enforcement in relation to illegal tobacco sales, and monitor compliance with tobacco advertising. On 6th April 2012, it will become illegal to display tobacco products except in the limited circumstances set out in the new law.
14. There was a rise in the number of underage sales of tobacco in the last year – mainly due to test purchasing from vending machines – at the request of the Department of Health who provided funding to support this activity. Legislation has been passed to ban the sale of tobacco from vending machines which will come into force on 1st October 2011.

Fireworks

15. Officers have continued to undertake a programme of education and enforcement in relation to illegal fireworks sales.
16. Traders will again be sent a guidance leaflet on all aspects of the law relating to firework sales with their registration certificate - businesses must register with the council if they wish to sell fireworks. Officers will then visit retailers to check storage conditions, check for the sale of 'banned' fireworks i.e. those not complying with noise limit requirements and those which are 'unsafe'. Verbal advice is given on preventing underage sales, and checks made to ensure the correct notices are displayed.
17. In 2010-11, funding was received from the Safer York Partnership to provide businesses with a sticker to display showing that they are registered for the supply of fireworks. This was introduced to help consumers identify legitimate retailers of fireworks, the service will again encourage retailers to display the sticker again this year. We are also planning a test purchase operation in 'firework season' to check retailers compliance with the law.

Aerosol Paint

18. Officers receive very little 'intelligence' on businesses illegally selling spray paint to children either from the public or other

sources. A small amount of test purchasing is planned in 2011-12 to help establish whether this is a problem in York.

Consultation

19. In October 2009, The Talk About Panel (Survey 33) were asked to prioritise issues for Environmental Health and Trading Standards services. The issues that they were asked about were those that the council has a discretion over the level of service it can provide (i.e. although enforcement is a duty, no minimum criteria is specified). 27% of respondents said that the top priority for the trading standards service was preventing the sale of alcohol, cigarettes and fireworks to children. This is down from 60% in the last Talk About Survey (April 2004).

Options

20. Option 1: The council should continue with the programme of education and enforcement action set out in paragraph 4 for the next 12 months.
21. Option 2: The Council may adopt a different programme of education enforcement

Analysis

22. Option 1 will permit officers to continue with a programme of enforcement activity which has resulted in a general reduction in underage sales.
23. Option 2: Any other programme will have to consider the impact it would make in reducing sales of age restricted products

Council Priorities

24. The trading standards work on tackling illegal sales of age restricted products supports the council priority of protecting vulnerable people.

Implications

- **Financial:**

25. There are no financial implications associated with this report, other than the additional funding referred to in paragraph 12.

- **Human Resources (HR):**

26. There are no HR implications associated with this report.

- **Equalities**

27. There are no equalities implications associated with this report

- **Legal:**

28. The Council are legally obliged to consider its activities in relation to tackling underage sales of alcohol, spray paint and cigarettes each year. The Cabinet Member is being asked to make a decision on enforcement action.

29. Legislation gives officers the power to undertake test purchase operations so there are no issues surrounding 'entrapment'.

- **Crime and Disorder**

30. The links to tackling crime and disorder have been highlighted earlier in this report.

- **Information Technology (IT)**

31. There are no IT implications associated with this report.

Property

32. There are no property implications associated with this report.

- **Other**

33. There are no other implications to consider.

Risk Management

34. There is a risk of carrying out test purchasing operations in 'on-licensed' premises if the support of North Yorkshire police is withdrawn. Their services are required to respond to any breach of the peace that may arise.
35. The safety / welfare of the test purchasers involved is fully risk assessed and appropriate control measures are put in place.

Recommendations

36. That the Cabinet Member notes the report and adopts the programme of enforcement action for the next 12 months set out in paragraph 20.

Reason: So that the council can meet its legal obligations.

Contact Details

Author:	Chief Officer Responsible for the report:		
Matt Boxall	Steve Waddington		
Trading Standards Manager	Assistant Director – Housing & Public Protection		
Ext 1528	Report Approved	<input checked="" type="checkbox"/>	Date 12/9/2011
Specialist Implications Officer(s) None			
Wards Affected: <i>List wards or tick box to indicate all</i>		All	<input checked="" type="checkbox"/>
For further information please contact the author of the report			

Background Papers:

Decision Session – Executive Member for Neighbourhood Services 21 September 2010.

Enforcement Policy for Environmental Health, Trading Standards and Licensing Services, 19 March 2008.

Annexes

Annex 1 – The results of test purchasing activity 2004-2011

Annex 2 – Responsible Retailer Scheme – Qualifying Criteria

Annex 1

The Results of Test Purchasing Activity 2007-2011

Product	2007/8		2008/9	
	Number of visits	Illegal Sales	Number of visits	Illegal Sales
Alcohol	291	23 (8%)	71	6 (8.5%)
Tobacco	11	0 (0%)	61	11 (18%)
Fireworks	13	2 (15%)	10	0
Spray Paint	1	0 (0%)	0	0
Computer Games	0	0	0	0
Knives	0	0	25	1 (4%)

Product	2009/10		2010/11	
	Number of visits	Illegal Sales	Number of visits	Illegal Sales
Alcohol	35	1 (2.9%)	26	1 (3.9%)
Tobacco	18	1 (5.6%)	41	5 (12.2%)
Fireworks	9	0	6	0
Spray Paint	0	0	0	0
Computer Games	7	0	0	0
Knives	25	2 (8%)	0	0

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Responsible Retailer Scheme – Qualifying Criteria

- The retailer must display a sign stating that it is illegal to sell alcohol to persons under 18.
- The retailer and staff always ask young people their age. If anyone appears to be under the age of 21 they will ask for proof of age.
- The retailer and staff will only accept proof of age with a 'PASS' logo, passport or a new style driving licence before they sell alcohol.
- The retailer's customers confirm that they have not seen any illegal sales in my shop by signing a petition (50 for a small enterprise, 150 for a medium and 300 for a large).
- The retailer will train staff on our policy regarding under age sales when they commence employment at regular intervals thereafter.
- The retailer will maintain records of staff training and produce it to trading standards staff on request.
- The retailer and staff maintain a refusals note book and monitor entries taking appropriate action where appropriate (such as re-training members of staff).
- The retailer will display customer/staff posters as appropriate
- The retailer will accept that trading standards officers may check that the retailer is complying with the scheme and if not the membership could be cancelled.

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