

CLG CONSULTATION PAPER – MANDATORY POWER OF POSSESSION FOR ANTISOCIAL BEHAVIOUR

QUESTIONS AND RESPONSES

Q.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?

Suggested Response – Yes, provided it is used exceptionally and proportionately.

Commentary – The Government 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. They 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.

They 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.

Q.2 – Do you agree that we should construct a new mandatory power of possession in this way?

Response – Yes, provided it is used exceptionally and proportionately.

Commentary – The Government proposed to introduce a new route to possession for serious, housing related anti-social behaviour which has already been proven by another Court (e.g. Magistrates Court). They will call this a mandatory power and propose using it for all landlords (private and public) and for ending introductory tenancies.

They propose that Local Authority tenants should have a statutory right to request to review of the decision taken and that this review should be undertaken by a Senior Officer not involved in the original decision.

They also propose that the discretion of the Court to suspend a possession order would be limited. The postponement is to be no more than 14 days after making the order, unless it appeared to the Court that exceptional hardship would be caused by requiring possession to be given up by that date. In any event postponement would be no later than 6 weeks after making of the order.

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

Response – Yes, but the test should include examining whether alternatives to eviction have been exhausted and the impact on the whole family of eviction.

Commentary – The Government feels that a new mandatory power linked to other powers will provide a route to reduce the length of time that possession processes currently take. However to enable this it feels that the power needs to be underpinned by 2 key principles:

- i) The landlord needs to be able to demonstrate that the criteria for awarding possession are met. There therefore needs to be a clear test which can be readily established.*

- ii) *It is necessary to ensure that where the test is met, it can be simply established if the anti-social behaviour is serious and housing related.*

Q.4 – Have we defined the basis for the new mandatory power correctly? If not, how could we improve the definition?

Response – The proposed basis for the new power would appear to have been defined appropriately.

Commentary – The Government are proposing that the following will be the triggers for seeking possession under a mandatory power:

- i) **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.*
- ii) **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.*
- iii) **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.*

The Government says that the landlord need not always seek mandatory possession in all of these circumstances. There will be a need for consideration of proportionality in each case.

Q.5 – As a landlord, would you anticipate seeking possession using the mandatory power in some or all of the instances where it would be available?

Response – Yes, the Council would consider using the new power where it was appropriate.

Commentary – The Government anticipate that by introducing a mandatory power of possession it will reduce pressure on Court resources, lower landlord costs and bring faster relief for communities. It also states that by linking a mandatory power of possession to a breach of an injunction and placing eviction at the end of a continuum of intervention it will act as an effective driver of improved behaviour and hopefully reduce the number of evictions that actually occur.

Q.6 – Are there other issues related to the introduction of a mandatory power for possession for ASB that we should consider?

Response – The Council supports the proposal to deal with the perpetrators of ASB swiftly and firmly but as it will also have to respond to those who find themselves homeless as a result of these powers it would also ask that the Government puts in place safeguards to ensure that these powers are not used inappropriately. It should also consider whether the law relating to homelessness needs to be amended to prevent a decision of intentionally homeless being challenged in such cases.