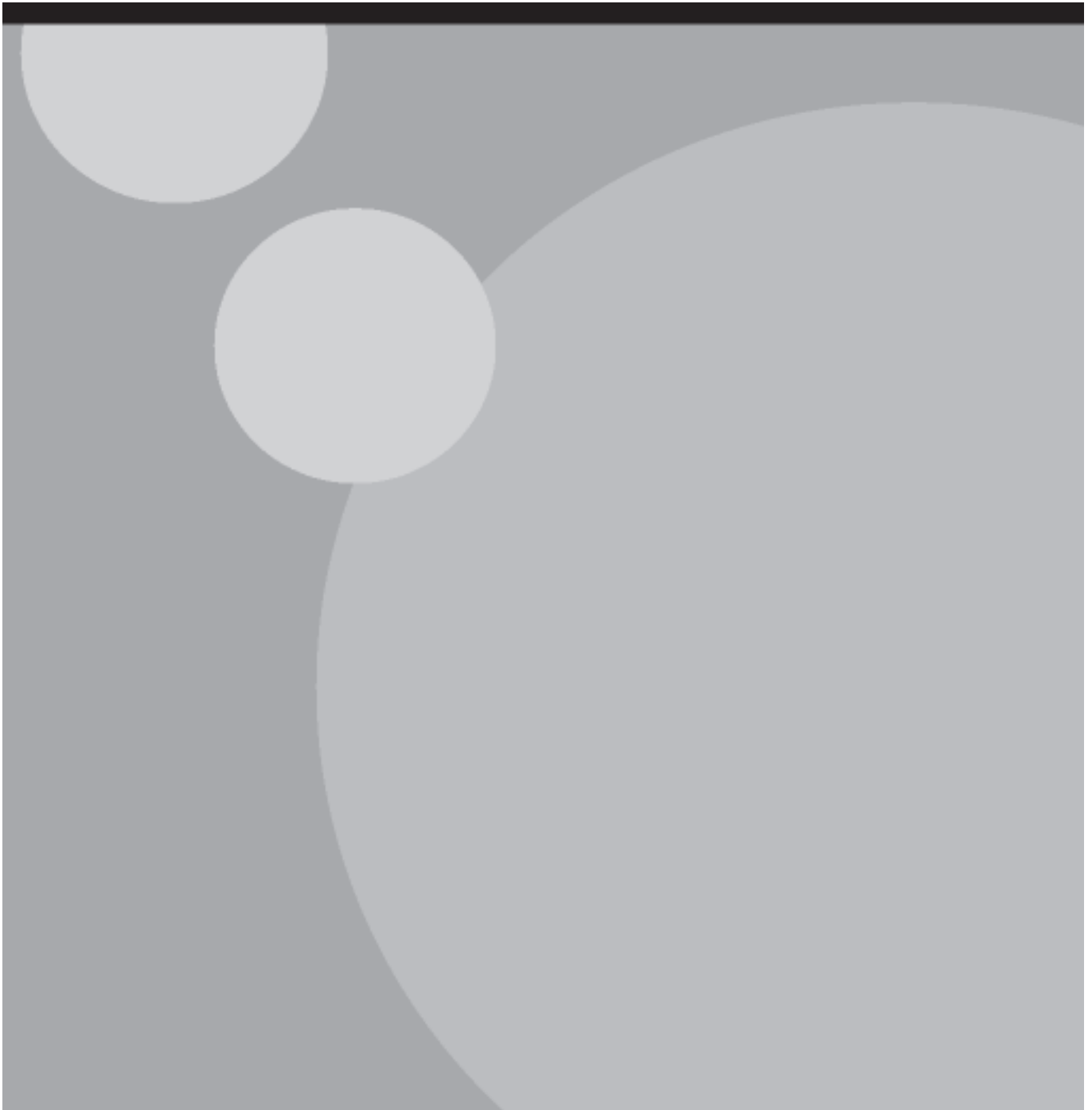




Strengthening Powers of Possession for Anti-Social Behaviour

Summary of responses to consultation and next steps





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May 2012
Department for Communities and Local Government

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Chapter 1

Introduction

- 1.1 On 3 August the Government published a consultation paper on proposals to introduce a new mandatory power of possession to enable landlords to take swifter action to evict their most anti-social tenants. On 15 August, following the rioting and looting across England between 6 August and 10 August, the consultation was broadened to seek views on whether the existing discretionary ground for possession should be extended to include convictions for riot-related offences committed by the tenant or members of their household, wherever they took place within the United Kingdom.
- 1.2 In respect of the proposed new mandatory power, the consultation paper sought views on how this should be designed; the principles that should underpin it; in what circumstances landlords should be able to use the mandatory power; and, how often in practice they might seek possession using the mandatory power rather than on existing discretionary grounds.
- 1.3 The consultation process closed on 7 November.
- 1.4 We have now considered all the responses received. Sections 2 and 3 of this document summarise responses to the consultation. Section 4 sets out final proposals and next steps in the light of consultation responses.
- 1.5 We are grateful to the significant number of organisations across a number of sectors and individuals who took the time to respond to this consultation.
- 1.6 Copies of this document are available on the Department for Communities and Local Government website at www.communities.gov.uk
- 1.7 Enquiries about the document should be addressed to: adetokunbo.okunlola@communities.gsi.gov.uk

Chapter 2

Summary of responses

2.1 251 responses were received from local authorities, private registered providers of social housing, arms length management organisations, landlord organisations, tenant and resident organisations, the police, legal bodies including the judiciary, Councillors, a Member of Parliament, voluntary organisations, other organisations with an interest in housing and members of the public. The table below sets out the full breakdown of the origin of responses:

| Type of respondent | Number of responses |
|---------------------------------------|---------------------|
| Local Authority Landlords | 74 |
| Other Local Authorities | 18 |
| Private Registered Providers | 70 |
| Arms Length Management Organisations | 5 |
| Landlord Organisations | 3 |
| Tenant and Resident Organisations | 6 |
| Voluntary and Community Organisations | 9 |
| Other Organisations | 14 |
| MP | 1 |
| Councillors | 4 |
| Legal Bodies | 15 |
| Police | 5 |
| Members of the Public | 27 |
| | 251 |

2.2 Not all respondents replied to each question and a number of responses either did not follow the structure of the questions or expressed equivocal views. Whilst therefore we have given a broad sense of support or opposition in relation to individual questions in the consultation document, it is not possible to provide precise numbers.

Chapter 3:

Responses to 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?

3.1 There were strong reactions to this question, both for and against the proposal. Around three quarters of respondents expressed a clear view, with opinion roughly evenly divided.

3.2 A number of individual and local authority respondents in particular felt that this was an appropriate sanction for rioting and looting and would send out a clear message that this sort of behaviour would not be tolerated wherever it took place.

“Extending the scope of the discretionary ground gives a clear message that serious anti-social behaviour by our tenants or members of their household will not be tolerated, wherever it is committed” (Arms Length Management Organisation)

“Such powers would send a message to tenants that they may lose their home, regardless of where their crime was committed. This could be a powerful deterrent.” (Local Authority)

3.3 Other respondents expressed a number of concerns. Responses from landlords often argued that taking possession action against those convicted of rioting when this did not impact on their housing management function was not compatible with their landlord role. Responses from the legal profession argued similarly that a connection between the tenancy and criminal act was essential for possession action to be justified.

“Initiating possession proceedings against a tenant for acts committed anywhere else in the UK would break the fundamental connection between the tenancy of the property, the landlord of that property and the criminal act, creating complexities in the nature of our landlord role and more importantly, our tenants’ understanding of it.” (Private Registered Provider)

3.4 Some respondents also expressed concern that the proposal was discriminatory against social tenants and risked stigmatising them (though the consultation document envisaged that it should apply to

tenants in the private rented sector as well); was likely to constitute a double punishment for an offence that should be administered solely through the criminal justice system; could result in particular unfairness where children of the tenant rather than the tenant themselves had been convicted; might in practice reduce the number of defendants prepared to plead guilty to riot related offences; and could be practically hard to implement since landlords might be unaware of convictions obtained in different parts of the country.

“If the discretionary grounds were amended in this way, re-possession would cease to be a means of protecting neighbours from anti-social behaviour, and become a double punishment for particular crimes. Moreover, the punishment would be applicable only to those living in rented housing.” (Legal Body)

3.5 A number of respondents used this question to suggest that the current locality condition in the discretionary ground for possession should either be removed altogether or re-defined. Some respondents argued that locality should be defined more widely to correspond to the local authority area or local authority and neighbouring areas. Others felt that locality should be replaced with a definition that focussed on adverse impacts on the community or relied on a direct or indirect impact on the landlord’s housing management function, in a similar way to the anti-social behaviour injunction.

“We suggest that the word “locality”, should be taken out of the Housing Act and enforcement action should be taken against any tenant who perpetrates an act of anti-social behaviour that impacts upon the community that they live in.” (Tenant and Resident Organisation)

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

3.6 Around 75% of respondents expressed a clear view on this question with over 80% of these in favour. The principle of introducing a new mandatory power of possession generally found support from landlords and local authorities and was opposed by the voluntary sector and the legal profession. The latter group expressed strongly the view that the discretion of the court should be retained and generally a more optimistic view that the existing discretionary ground delivered an expeditious outcome in cases of serious anti-social behaviour than landlords.

“We are in favour of a mandatory power if it would enable landlords to obtain possession orders more quickly against tenants...Residents being affected by ongoing anti-social behaviour are entitled to expect quicker resolution of the problem than they currently get.” (Local Authority)

“Taking possession of a home has serious consequences, and as a matter of principle it is essential that judicial discretion is retained except in the most exceptional circumstances.” (Legal Body)

3.7 A number of respondents highlighted that anti-social behaviour did not need to be proved a second time in court, emphasising that where facts have been proved in another court they cannot be challenged in possession proceedings. Some landlords thought that nonetheless the same issues could in practice be raised and victims might be required to give similar evidence to separate courts.

“Whilst the principle of Res Judicata should apply, it is often the case that a defence to a possession case centres around trying to dispute the issue that a court has already made a finding of fact around.” (Private Registered Provider)

3.8 Respondents both for and against the principle of a mandatory power expressed a wide range of views about the extent to which it would succeed in delivering the key policy aim of a more expeditious possession process. Almost all respondents noted that in the wake of Supreme Court judgments in *Pinnock* and *Powell, Hall & Frisby* proportionality defences were likely to be raised in possession proceedings brought under the mandatory power, but had a range of perspectives on the likely impact.

“I think that a mandatory ground for possession would be a very useful tool in our toolbox, and if it works the way you propose in your consultation then it should be effective in reducing the time that it does take to obtain possession against an individual.” (Arms Length Management Organisation)

“The introduction of the proposal will have little, if any, effect on the time frames involved in obtaining a possession order against a tenant that is guilty of serious anti-social behaviour.” (Legal Body)

3.9 A number of respondents argued that better solutions to speeding up the possession process for anti-social behaviour lay elsewhere, for example in changes to the civil procedure rules, spreading good practice and in particular in more court resources.

“The debate should focus on the practical steps that can be taken to reduce timescales in cases dealing with anti-social behaviour whilst retaining judicial discretion. A modern court estate, properly staffed and with appropriate technological support would help to achieve this.” (Legal Body)

3.10 A few respondents suggested that, rather than a mandatory power, a more practically effective solution would be to prescribe that the ground for possession would be automatically made out where serious anti-social behaviour had been proven in another court, whilst leaving the county court with discretion to consider reasonableness.

3.11 Local authority landlords largely agreed that it was right to model the mandatory power on the process for terminating introductory tenancies, which they felt were robust and well understood, though some non-landlord respondents disagreed. Housing associations generally felt that a similar non-statutory review process already used for considering decisions to terminate starter tenancies provided the right model for the mandatory power of possession in respect of their tenants. Responses from the sector emphasised that these reviews should remain non-statutory, though that view was challenged by other respondents.

“This is similar to the introductory tenancy review process which goes to a panel and needs a strong demonstration that the process has been followed and that a robust audit trail exists” (Local Authority)

“The inherent problems of the introductory tenancy procedure is that the internal process of notice and review are all too often exercised in rubber-stamping. If it [the mandatory power] is to be adopted further safeguards should be built in.” (Legal Body)

3.12 A few respondents felt that the proposed procedure could in practice prove cumbersome; others that a pre-action protocol should apply where possession was sought under the mandatory power. Most landlord respondents favoured the proposal to limit the court’s discretion to postpone or suspend a possession order but respondents from the legal profession and voluntary sectors emphasised the important role a suspended order could play in providing a last chance for tenants to turn their behaviour around.

3.13 Some respondents made the point that an internal review process was likely to be impractical for most landlords in the private rented sector and doubted that a mandatory power should be available outside the social sector. Responses from the private rented sector however strongly argued for their inclusion.

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

3.14 There was broad support that the principles that the consultation document proposed should underpin the mandatory power were the right ones. Around 70% of respondents expressed a clear view on this question with about 85% of those in favour.

“A clear test, as identified, does need to be established to ensure that Housing Managers are confidently able to apply the criteria, to ensure transparency and confidence for the public” (Local Authority)

3.15 A few respondents though suggested that these principles were too restrictive and many emphasised the need to closely define what ‘serious’ and ‘housing related’ meant.

3.16 Some respondents felt the principles should include ensuring that the interests of vulnerable adults and children were properly taken into account when exercising the mandatory power or that a mandatory power should only be used when all other alternative approaches for addressing the behaviour have been tried and not been effective. More often, respondents felt that the use of the mandatory power should be governed by a consideration of the level of harm to communities and victims.

“We recommend that if the mandatory ground for possession is adopted, then the basis for it should be tied much more closely to behaviour which is causing harm and distress to neighbours. This would acknowledge the rights of, and provide protection to, people with no choice but to live in the vicinity of the perpetrator.” (Voluntary and Community Organisation)

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

3.17 Around 80% of those who expressed a clear view in relation to this question were supportive of the proposed ‘triggers’ for the mandatory power but only around 60% expressed a firm opinion. That reflected a widespread emphasis on the need for greater clarity on what the ‘triggers’ would comprise. Some noted that it was hard to form a clear view of the proposal until final Home Office proposals for the streamlined suite of anti-social behaviour tools and powers were known.

“The principles are sensible and provide a good basis for the power. There is though further work to be done to clarify the definition” (Other Organisation)

3.18 Of the three proposed triggers, respondents generally felt that a conviction for a serious housing related offence was likely to be of the least practical use as defined in the consultation document. A number of landlords noted that waiting for a conviction would result in delaying starting possession proceedings for too long in cases of serious criminality that were having an adverse effect on the local community. The severity of indictable only offences was such that they would be likely to result in significant prison sentences, which, where the offender was the tenant, would usually render obtaining possession straightforward and, where they were not, would be unlikely to prompt possession action.

“The power to end a tenancy seems almost irrelevant for the most severe offences” (Member of the Public)

3.19 Some respondents felt that the threshold for the ‘trigger’ should be set, as for the discretionary ground at indictable, rather than indictable only offences. Others felt that the threshold for this ‘trigger’ should be based on having committed a number of less serious offences rather than one more serious offence.

3.20 A significant number of respondents suggested particular or particular types of offences. Amongst those, violence or threats of violence against neighbours or members of the community were often cited with a strong focus on domestic violence and hate crime.

“Would urge that domestic abuse is included as a basis for seeking mandatory possession. In our view, there are cases of domestic abuse which necessitate such action, which need to also afford the victim and their family protection and stability” (Private Registered Provider)

3.21 There was also wide support for extending the ‘trigger’ to include some crimes against property such as burglary and serious criminal damage in the neighbourhood. A significant number of responses argued for the inclusion of drug cultivation and production as well as drug dealing, though others noted that the range of behaviours and impacts that this could cover was extremely wide.

“There is a great deal of difference between a foolish teenager with a cannabis plant on his window sill carefully hidden from his parents and an organised cannabis “factory” with hydroponic equipment” (Legal Body).

3.22 A number of responses emphasised the need to include a timeframe for allowing a conviction to trigger possession proceedings under the

mandatory power. Views though varied as to what this should be, from six months at one end of the scale to five years at the other.

- 3.23 The question of whether to include regular visitors within the trigger generated contrasting views. Some respondents felt that the 'regular' qualification should be dropped, others felt that the reference to visitors should be removed altogether.
- 3.24 The principle of linking a mandatory power to a breach of an injunction was widely supported, though a number of respondents raised issues around practicality, definition and establishing an appropriate threshold.
- 3.25 Some landlord respondents noted that they would usually seek possession before a breach of injunction had been proved. Rather than waiting for the court to find a breach and then beginning possession proceedings under the mandatory ground they suggested that a better solution would be to provide that the court could make a possession order alongside or instead of a custodial sentence.
- 3.26 A number of respondents expressed concern that where a court found that a breach had occurred but it was of a minor or technical nature then the option of pursuing possession on a mandatory ground should not be triggered. Similar concerns were expressed in relation to breaches, such as breach of an exclusion order that might not in itself constitute anti-social behaviour. Others argued that the trigger should only apply to injunctions with a power of arrest attached.

"Noting that occasionally such breaches may be minor, or even technical, to avoid accusations of disproportion, it is suggested that breaches providing a trigger for the power, should either be persistent, result in a sentence of imprisonment and/or require conduct that would amount to, at very least, a Public Order Act offence, the use or threat of violence, or serious Misuse of Drugs offences" (Legal Body)

- 3.27 The issue of which injunctions should be included, for example Anti-Social Behaviour Orders or injunctions under Section 222 of the Local Government Act 1972, as well as interim injunctions and undertakings was raised by a number of respondents with differing views.

"We would also expect that the mandatory power would apply to serious breaches of interim orders and undertakings, given that a threshold was also introduced in relation to these."(Private Registered Provider)

- 3.28 Respondents expressed similar views in relation to timeframes and visitors as for the criminal conviction trigger.
- 3.29 Making the closure of premises under a closure order a trigger for a mandatory power generally received unqualified support from those in

favour of the broader proposal. Some respondents argued that interim closure orders should be included.

“This could be particularly effective. Delays in the court system often means the closure order expires before the landlord can take possession. The landlord therefore has to incur further expense and subject witnesses to another court application by making an application for an exclusion order” (Private Registered Provider)

“A mandatory ground once a closure order has been made is a long awaited development and will reduce Police and council costs.” (Police)

3.30 Amongst those opposed to the mandatory power in general, concern was expressed about the shift in decision making in this instance from the County Court to the Magistrates’ Court on the basis that they had less experience in fairly considering both the rights of tenants and the rights of their neighbours.

3.31 There was significant support from respondents for a fourth trigger based on lower level, persistent anti-social behaviour, in particular breach of a noise abatement notice.

“Noise nuisance can in some instances have devastating effects on the lives of those subjected to it and can also be a symptom of even more corrosive, sometimes violent behaviours. We would suggest, therefore, that further consideration is given to examining how a proven breach of a noise abatement notice (or similar) could trigger the mandatory power.” (Landlord Organisation)

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?

3.32 Around 85% of landlords indicated that they would consider using the mandatory power where it was available, but many expressed caution and almost all emphasised that they would look at whether using a mandatory power was appropriate on a case by case basis, taking account of the harm being caused to the community and the likelihood of a speedier resolution for victims.

“Would only seek to use the mandatory power as a last resort. Early intervention and prevention is key to our success of tackling anti-social behaviour and we would continue with this process” (Private Registered Provider)

“We would intend to consider each case on its merits and always ensure that parallel consideration has been given to other options such as pursuing possession using a discretionary ground.” (Local Authority)

3.33 A few landlords indicated that they would look to use the mandatory power in most of the instances where it was available, but even then recognised that it would not affect more than a handful of their cases each year.

“It would affect less than 10% of our current case load, amounting to 1 or 2 cases each year” (Local Authority)

3.34 That view on the volume of cases where the mandatory power was likely to be used found some support in other quarters, though not all respondents shared landlords’ confidence about careful consideration being given to using the mandatory power.

“I anticipate landlords using and abusing this power in situations where a tenant is desperately trying to change” (Member of the Public)

3.35 A number of landlords felt that, putting aside the number of times a mandatory power was actually used, its existence could be helpful as a deterrent and a means to change behaviour and prevent the need for possession action at a later stage. This is in line with the principle behind the introduction of the mandatory power which is to deal with the most serious cases of ASB.

“We believe that the mandatory power will provide an effective way of dealing with a small number of more significant anti-social behaviour related issues. We also believe that publicising the changes and introduction of a mandatory power has the potential to act as a deterrent.” (Local Authority)

“We can foresee a reduction in the number of evictions because this power could drive improved behaviour at an earlier stage” (Private Registered Provider)

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

3.36 Respondents used this question to raise a wide range of issues. Some reiterated their support for the proposal, others their opposition.

*“We believe that the positive impact that these proposals could have on witnesses / victims is substantial and the proposals should be progressed”
(Private Registered Provider)*

*“Welcome the opportunity for another tool to deal effectively with ASB”
(Private Registered Provider)*

*“‘Speeding up’ the possession process in this way will remove important strictures and safeguards that help to ensure the use of eviction as a last resort”
(Voluntary and Community Organisation)*

3.37 Many respondents from all groups emphasised that eviction should be a last resort and the importance of focussing on alternative interventions such as Family Intervention Projects that could help change behaviour. The need for effective joint working to make that happen was a common theme. Some respondents emphasised the need to build partnerships with landlords in the private rented sector.

“Instead of measures which have the potential to increase the use of eviction and risk homelessness, we would instead prefer a focus on prevention and early intervention and in supporting people to comply with the conditions of their order.” (Voluntary and Community Organisation)

“In serious cases of anti social behaviour the offer of a Family Intervention Tenancy may be more appropriate. This will not only tackle the underlying causes of anti social behaviour but take steps in breaking the cycle rather than displacing the issue” (Private Registered Provider)

3.38 A number of respondents expressed concern about possible impacts on homelessness, particularly where households were vulnerable or had children. Some suggested the introduction of additional protections such as a pre-action protocol for possession proceedings brought under a mandatory power. Others argued for additional guidance for landlords or the judiciary on its application.

*“It is hard to conceive of how the process suggested as a mandatory power could adequately assess the risk of a defendant ending up as homeless.”
(Voluntary and Community Organisation)*

3.39 Some respondents noted that the introduction of a mandatory power could have knock on consequences for the use of other tools, potentially increasing the use of injunctions and premises closure powers and reducing the number of possession proceedings and undertakings.

3.40 A number of respondents emphasised the importance of managing local expectations about the use of the mandatory power given its limited applicability, but others felt its introduction would send an important message.

*“We are mindful that the public’s expectations in connection with these proposals needs to be managed appropriately both nationally and locally.”
(Local Authority)*

*“A big impact, publicity campaign at the launch of these powers will greatly help to create confidence and put would-be perpetrators on notice that a tough new approach is available to Landlords and that it will be used.”
(Local Authority)*

3.41 As well as more general points about the need for additional court resources and sharing good practice to deliver faster outcomes, respondents made a number of suggestions about how the possession process could be speeded up in addition to or instead of the introduction of a mandatory power. These included amendments to timescales in the civil procedure rules; making the grant of possession one of the sanctions available to the courts for breach of an injunction and, combining the grant of a possession order with the grant of a warrant of eviction.

3.42 Some respondents noted the importance of monitoring the use and impact of the mandatory power and reviewing the policy in the light of that information.

Chapter 4

Next Steps

4.1 We intend, in the light of consultation responses, to introduce provisions to extend the existing discretionary ground for possession for anti-social behaviour and criminality and provide landlords with the option of seeking possession using a mandatory power or ground rather than discretionary grounds in some instances. We plan to legislate, within a Home Office Bill, as soon as parliamentary time allows.

Extending the Discretionary Ground for Possession

4.2 We intend, in line with our consultation proposals, to extend the existing discretionary ground for possession to cover convictions of tenants or members of their household for offences committed at the scene of a riot wherever that took place in the United Kingdom.

4.3 We propose that the removal of the locality requirement from the discretionary ground for possession will apply only to offences committed at the scene of a riot. Whilst we recognise that a number of respondents felt a wider relaxation of the locality requirement would be helpful, at least to include a larger geographical area, we think that definitions based on administrative boundaries are likely to prove arbitrary and do not consider that the scope of our consultation provides a basis for wider change.

A New Mandatory Power or Ground for Possession

Process

4.4 We intend to introduce for local authority landlords and tenants, as proposed in the consultation document, a possession process under a mandatory power closely modelled on the possession process for introductory tenancies. The landlord would serve notice of proceedings setting out their intention to apply for a possession order under the mandatory power and setting out their reasons for doing at least four weeks (or if the tenancy period is longer, at least one tenancy period) before the proposed date for the application to the court. Local authority

tenants would have statutory right to request a review of landlord's decision to seek possession within seven days of notice being served. The review would be undertaken and result communicated to the tenant prior to the date for the start of proceedings.

4.5 We think that this process should provide an appropriate balance between ensuring matters are determined swiftly and providing a proper opportunity for challenge by tenants. We do not for this reason intend that the court, as is the case for possession sought on other grounds, should be able to dispense with the notice requirement where the mandatory power is used.

4.6 For landlords and tenants of private registered providers and in the private rented sector, we intend to introduce new mandatory ground¹ for possession for anti-social behaviour, which we think will sit comfortably alongside existing mandatory grounds for possession in Part 1 of Schedule 2 to the Housing Act 1988.

4.7 We intend that the notice period be the same as that applicable to local authority tenants and landlords and similarly that the court should not be able to dispense with the notice period. We do not however intend to make statutory provision for any review process since we consider this is only appropriate for public bodies. We would in practice expect private registered providers, and responses indicate that would be the case, to undertake reviews that are similar to those undertaken by local authority landlords and closely based on existing procedures in relation to starter tenancies.

4.8 We recognise that these proposals for a mandatory power of possession take place in a period where the practical implications of recent Supreme Court judgments are still being worked through. In particular, the judgments in *Pinnock* and *Powell, Hall & Frisby* clarify that the County Courts must, where the tenant of a public authority raises a proportionality defence, consider whether proportionality is seriously arguable and where it is, consider that defence, even where the landlord has an unqualified right of possession in domestic law. Whilst we recognise that creates some inevitable uncertainty about how County Courts may deal with possession claims brought under the mandatory power, we note that the Supreme Court has emphasised that the threshold for a proportionality defence being seriously arguable is a high one.

4.9 We remain of the view therefore that, where landlords consider carefully which possession claims they should bring under a mandatory power, those claims may be determined more expeditiously than where a discretionary ground is used.

¹ Where for the sake of brevity this document subsequently refers to a 'mandatory power' it should be taken to include this new mandatory ground for possession.

4.10 We intend, in line with our consultation proposal, to limit the discretion of the court to suspend or postpone a possession order, where possession has been granted under the mandatory power. Consultation responses indicate majority support for this proposal and we consider that this is an important part of our key aim of reducing the timescale from possession claim to eviction in the most serious cases of anti-social behaviour and criminality.

‘Triggers’ for the Mandatory Power

4.11 We intend that the serious offences for which conviction would provide a ‘trigger’ for the use of the mandatory power should encompass a broad range of violent offences where another person may be physically or psychologically harmed or put in fear of such harm (including murder, manslaughter, kidnapping, false imprisonment, weapons offences, some road traffic offences, sexual offences, hate crime and domestic violence; some offences against property (including burglary, arson and criminal damage); drug dealing; or drug production with intent to supply. The trigger would only apply where the offence was indictable.

4.12 This list reflects views expressed by consultees, in particular that we should focus on offences that caused most harm to the local community or individuals within it.

4.13 We intend, to ensure that the crime for which a conviction has been obtained is linked to harm being caused to the community, that this trigger for possession under a mandatory power should only be available where the conviction had been obtained within twelve months of the notice of proceedings being issued, or in the event of an appeal within that time, within twelve months of the final appeal being determined. Only offences committed after the mandatory power came in force would be caught. We intend that serious crimes by visitors should fall within the trigger, recognising that in practice there may be no clear distinction between a household member and someone who spends much of their time in the property.

4.14 We intend to provide that for this ‘trigger’ for the mandatory power to be available the offence must be committed in the locality of the dwelling house. We think that the simplicity of continuing to apply the same, well understood, test as for the existing discretionary ground for possession on balance outweighs the case for changing the test to one which relies on whether there is a direct or indirect impact on the landlord’s housing management function.

4.15 We intend to provide that where a court has determined that a crime prevention injunction obtained by or in consultation with the landlord has been breached, by a tenant, member of their household or visitor to the property this would provide a trigger for a mandatory power of possession. The mandatory power would only be available were the

landlord issued a notice of proceedings within twelve months of the court finding a breach of a crime prevention injunction, or in the event of an appeal within that time, within twelve months of the final appeal being determined

- 4.16 We have considered, in the light of consultation responses, whether it would be possible for the purposes of the mandatory power to distinguish between minor and more substantive breaches of a crime prevention injunction or crime prevention injunctions granted for anti-social behaviour or criminality of a greater or lesser degree of severity. We do not think however we can do so without creating significant complexity. Responses from landlords suggest strongly that they would only consider using the mandatory power in relation to substantive breaches of crime prevention injunctions relating to serious anti-social behaviour or criminality.
- 4.17 We do not intend that breaches of positive requirements within crime prevention injunctions should provide a trigger for the mandatory power, since we do not consider these are likely to have adverse impacts on local communities or individuals in the same way.
- 4.18 Nor are we proposing that breaches of other injunctions, undertakings or interim injunctions should provide a trigger for a mandatory power. In practice we anticipate that landlords would, in the very large majority of instances, use a crime prevention injunction rather than other injunctive powers and want to emphasise the link between the mandatory power and the new streamlined suite of anti-social behaviour tools and powers. We think that the comparative informality of undertakings means that these should not be linked to a mandatory power. We would expect interim injunctions to be quickly superseded by a full injunction rendering any link to a mandatory power unnecessary, and, given the likelihood of such injunctions being obtained on an *ex parte* basis, do not consider it appropriate for them to trigger the mandatory power.
- 4.19 We intend to provide that where a premises has been closed following a court order being obtained as a result of drug-related activity or anti-social behaviour on the premises under a Community Protection Order (closure), this would provide a trigger for a mandatory power of possession. The mandatory power would only be available where the landlord had issued notice of proceedings within the later of three months of the closure order being issued or, if the order was appealed, twenty-eight days of the date of the final appeal decision.
- 4.20 We propose that this trigger should only apply where a court has agreed that a premises should be closed for more than 48 hours on the basis that a person has engaged in disorder, anti-social or criminal behaviour on the premises; the use of the premises is associated with disorder or serious nuisance to the public; and that the order is necessary in the interests of preventing the occurrence or reoccurrence of such disorder or behaviour,

- 4.21 We also intend, in the light of strong representations made by respondents to the consultation, to provide that conviction by a court of a tenant, a member of their household or a visitor for breach of a noise abatement notice in respect of the tenant's residential property, should provide a trigger for a mandatory power of possession.
- 4.22 We recognise that individual instances of noise nuisance will not be as serious as the sort of anti-social behaviour and criminality that provide the basis for other triggers for the mandatory power. We think though that the cumulative impact of persistent noise nuisance may well cause greater harm and distress to neighbours than less persistent, though individually more serious, incidents of anti-social behaviour and criminality.
- 4.23 We think these triggers as defined provide a good basis for as far as possible ensuring that the mandatory power of possession is ring-fenced to serious proven anti-social behaviour or crime that is causing harm to the local community or individuals within it.

Using the new powers

- 4.24 We would emphasise that it will be entirely for landlords locally to decide whether they wish to make use of the new mandatory power or the extended discretionary ground in the circumstances in which we intend they will be available.
- 4.25 Responses to this consultation suggest that landlords will look closely at the specific characteristics of individual cases before determining whether using these new powers are appropriate. Clearly they will not be available in many instances where landlords decide that possession action is required and, whilst we would expect that proportion to be higher as a percentage of cases that currently result in eviction, we would expect, on the basis of consultation responses, the significant majority of evictions would still follow proceedings on discretionary grounds.
- 4.26 A common theme running through consultation responses was the need to use possession as a last resort to be used exceptionally and where other interventions to tackle anti-social behaviour have been tried and failed. We recognise that whilst eviction may be necessary to protect neighbours and communities from the harm that is being caused by anti-social behaviour, it may simply move the problem elsewhere. Eviction may be particularly disruptive for families with children.²

² Where tenants have been evicted for anti-social behaviour is very likely that they will be deemed to have made themselves intentionally homeless and therefore the local authority will not owe them a duty to provide new settled accommodation. Where tenants are in priority need, for example because they have children, then the local authority will need to provide temporary

- 4.27 We would reiterate that the intention of these proposals is not to increase the number of evictions, rather to speed up the process to better protect victims in the most serious cases of anti-social behaviour and criminality.
- 4.28 Consultation responses received from landlords, support the view that the number of possession proceedings or evictions for anti-social behaviour will not increase as a result of our proposed changes and that the availability of a faster, more visible sanction may have a positive effect on changing behaviour.
- 4.29 The evidence suggests the social landlords turn to possession proceedings and eviction as means of tackling anti-social behaviour sparingly. Recently published data³ on evictions of local authority tenants for anti-social behaviour shows that our estimate in the consultation document of 3,000 evictions each year across all social landlords should be revised down to 2,000.
- 4.30 We will monitor how the number of evictions for anti-social behaviour, including the number of evictions under the mandatory power⁴, changes over time and review the policy in the light of that data.
- 4.31 We recognise the concerns of some respondents about reduced protections for more vulnerable tenants under the mandatory power for possession. Our proposals importantly reflect a concern to focus more strongly on the needs and rights of victims, but we think that by closely defining the triggers for the mandatory power and tying those to a prior decision by a court, and the availability of a proportionality defence in the county court means that appropriate protections will remain in place for alleged perpetrators.
- 4.32 Consultation responses have provided us with a rich source of ideas based on wide experience. We will consider how some of these could be taken forward on a non-statutory basis to ensure that any possession proceedings for anti-social behaviour can be taken forward as expeditiously and fairly as possible in the future.

accommodation, but only for a sufficient period (so typically 28 days) to give them a reasonable opportunity to find their own alternative accommodation.

³ See <http://www.communities.gov.uk/publications/corporate/statistics/lahousing201011>. The apparently relatively higher figure for private registered providers is explained very largely by their significant provision of supported housing, where relative rates of eviction are much higher.

⁴ We propose that this information is collected through the Housing Strategy Statistical Appendix for local authority landlords and (on a voluntary basis) through the Social Housing Regulator's data collection for Private Registered Providers.