

Title: New Powers to Speed up Eviction for Serious Anti-social Behaviour IA No: Lead department or agency: Department for Communities and Local Government Other departments or agencies: Proposals form part of Home Office Anti-social Behaviour Bill	Impact Assessment (IA)				
	Date: 06/12/2012				
	Stage: Consultation Stage (Pre-leg. Scrutiny)				
	Source of intervention: Domestic				
	Type of measure: Primary legislation				
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Summary: Intervention and Options	RPC Opinion: Still subject to RPC validation
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Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
£15.019m	£4.650m	£0.541m (benefit)	Yes	Out (subject to RPC validation)

What is the problem under consideration? Why is government intervention necessary?

The Government is clear that evicting tenants for anti-social behaviour should be used only exceptionally and a last resort, but the evidence suggests that where landlords do seek possession for anti-social behaviour that process can take many months and sometimes years. That can also be the case where very serious anti-social behaviour and criminality has already been proven by another court. A lengthy possession process increases costs for landlords and the courts but most importantly prolongs the suffering of victims and witnesses. The 'riot tourism' witnessed in the civil disorder summer 2011 highlighted the anomaly of excluding anti-social behaviour or criminality committed outside the locality of the property from the current grounds for possession in these circumstances.

We have concluded that a legislative change to existing statutory grounds for possession for anti-social behaviour is correspondingly required.

What are the policy objectives and the intended effects?

The key policy objectives are respectively to: a) speed up the eviction of landlords' most anti-social tenants to bring faster relief to victims and b) provide a deterrent against tenants rioting in the future and enable landlords to take possession action against those involved in rioting wherever that takes place.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

We have considered as an alternative to legislating: i) the possibility of establishing separate housing courts/tribunals similar to those available for immigration and employment ii) Prioritising anti-social behaviour cases in the county court; iii) making changes to the Civil Procedure Rules applying to possession cases for anti-social behaviour.

Discussions with the Ministry of Justice indicate that the resource implications and the impact on the courts system mean that these options could not be readily delivered.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 01/2018

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A		Non-traded: N/A

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:  Date: 12/12/2012

Summary: Analysis & Evidence

Policy Option 1

Description: Introduce the Community Remedy

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
		Low:	High:	Best Estimate: £15.019	

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	1		
High			
Best Estimate		£0.086	£0.036

Description and scale of key monetised costs by 'main affected groups'

We estimate that landlords who choose to familiarise themselves with the absolute ground for possession may incur one-off costs in year 1 of approximately £86,000, with £60,000 of those costs falling to private registered providers. Whilst we do not consider the introduction of the absolute ground will increase the total number of evictions, if, for illustrative purposes, 20% or 50 of the 250 possession claims we estimate will be brought annually under the absolute ground resulted in evictions which would not otherwise have occurred, we estimate that the additional cost to local authorities in respect of their homelessness duties could be up to £36,000 per year.

Other key non-monetised costs by 'main affected groups'

Anti-social tenants may be evicted from their homes more quickly than would have been the case had the landlord sought possession on discretionary grounds.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	1		
High			
Best Estimate		£0.000	£1.792

Description and scale of key monetised benefits by 'main affected groups'

We estimate that the savings to landlords of seeking possession on absolute grounds rather than discretionary grounds for anti-social behaviour in 250 cases each year would be approximately £1 million annually, with £550,000 of those savings falling to private registered providers and £450,000 to local authority landlords. We estimate savings to the courts of approximately £800,000 per year.

Other key non-monetised benefits by 'main affected groups'

The key non-monetised benefit will be to victims whose suffering at the hands of anti-social neighbours may be brought to an end more quickly. Social housing freed up by the eviction of anti-social tenants will be available more quickly to those in need on waiting lists.

Discount rate (%) 3.5%

Key assumptions/sensitivities/risks

How often landlords will choose to key possession using absolute rather than discretionary grounds will depend on the extent to which it delivers time and resource savings in practice. Our assumption of 250 cases annually being brought under the absolute ground may in particular prove too high if the courts routinely give substantive consideration to proportionality defences. This is a developing area of case law.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0.007	Benefits: £0.548	Net: £0.541 (benefit)	Yes	Out (subject to RPC validation)

Summary: Analysis & Evidence

Policy Option 2

Description: Do nothing

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £0	High: £0	Best Estimate: £0
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low					
High					
Best Estimate					
<p>Description and scale of key monetised costs by 'main affected groups' There are no additional costs arising from the baseline, 'do nothing' option.</p>					
<p>Other key non-monetised costs by 'main affected groups'</p>					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low					
High					
Best Estimate					
<p>Description and scale of key monetised benefits by 'main affected groups' There are no additional benefits arising from the baseline, 'do nothing' option.</p>					
<p>Other key non-monetised benefits by 'main affected groups'</p>					
Key assumptions/sensitivities/risks				Discount rate (%)	3.5%

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m: £0			In scope of OIOO?	Measure qualifies as
Costs: £0	Benefits: £0	Net: £0	No	NA

Evidence Base (for summary sheets)

A. Strategic Overview

Background

Anti-social behaviour can have a negative impact on neighbourhoods and communities and is one of the major concerns of social tenants. According to the British Crime Survey for the year ending June 2012, about 15% of people in England and Wales perceive a high level of anti-social behaviour (ASB) in their local area and survey data from the Social Housing Regulator identifies ASB as one of social tenants' top concerns.

Social landlords have a key role in tackling anti-social behaviour and have a range of tools and powers available at their disposal to tackle ASB in all its forms. HouseMark benchmarking data for 2011/12 suggests over 80% of anti-social behaviour cases successfully resolved by social landlords are resolved through early interventions.

Where these sorts of interventions are not successful then social landlords may seek, as a last resort to evict tenants. Eviction for anti-social behaviour is exceptional: around 2,000 evictions a year in England in the context of approximately 4 million social homes.

Existing grounds for possession for anti-social behaviour are discretionary and require the county court, on application from the landlord for possession on an anti-social behaviour ground, to decide that the ground is made out and that it is reasonable to grant possession. They also only apply to anti-social behaviour and criminality committed in, or in the locality of, the property.

Provisions in the draft Anti-social Behaviour Bill remove the court's discretion to consider whether it would be reasonable to grant possession and enable possession to be sought for offences committed beyond the locality of the property in certain, limited, circumstances.

Groups Affected

The principal beneficiaries of these proposals will be those living next to or near tenants whose anti-social behaviour makes their lives a misery. We also anticipate that there will be a positive impact, in terms of cost and resource savings, on landlords and Her Majesty's Courts and Tribunals Service. There may correspondingly be a negative effect on perpetrators of serious anti-social behaviour and those involved in rioting in the future who are tenants.

Consultation

In assessing the relative impact of these proposals on the affected groups listed above, we have undertaken a public consultation. The proposals have been agreed collectively across Government and have in particular been the subject of detailed discussion with the Home Office and Ministry of Justice.

The proposals will be considered as part of pre-legislative scrutiny of the draft Bill ahead of introducing legislation as soon as Parliamentary time allows.

B. Rationale

We are clear that eviction for anti-social behaviour should be used only exceptionally. Available evidence however shows that where landlords decide to take possession action as a last resort in order to provide respite to communities and as a serious sanction against perpetrators, that process takes an average of over seven months from the date of application to the court for a possession order to an

outcome. This is particularly frustrating where serious anti-social behaviour or criminality has already been proven by a court. It puts pressure on court resources and creates significant costs for landlords met out of their tenants' rent.

Not only can the current possession process for anti-social behaviour take far too long, the restriction within the existing discretionary ground that the anti-social behaviour must have taken place within the locality of the property may prevent landlords acting decisively in some circumstances. The limitations of the existing discretionary ground were thrown into sharp relief by the 'riot tourism' evident in the disturbances of summer 2011.

C. Objectives

Our key objective in introducing a new absolute ground for possession for anti-social behaviour is to expedite the eviction of landlords' most anti-social tenants and bring faster relief to victims and witnesses. That should also reduce court and landlord costs. The new ground, which will be available in addition to the existing discretionary ground for possession for ASB, should mean that these cases can be determined more quickly.

Our objective is not to increase the number of evictions and we do anticipate that this will be its effect. Instead we are simply providing new flexibility for landlords to obtain possession in a way that should be faster, where evidence of serious ASB has already been established by a court. It will be entirely for landlords to decide whether to use the new absolute ground for possession rather than existing discretionary grounds in individual cases where the absolute ground is available.

Our key objectives in removing the locality requirement in relation to convictions for riot related offences are both to provide new flexibility for landlords to pursue possession where their tenants are guilty of wrecking other people's communities and send a strong signal to those who may be minded to riot in the future.

D. Options

Option 1 is to legislate

The draft Anti-social Behaviour Bill includes provisions introducing a new absolute ground for possession for anti-social behaviour which landlords may choose to use in preference to the existing discretionary ground where: the tenant, member of their household or visitor to the property has been convicted of a serious housing related offence, breach of an order or notice to abate noise, or breach of a criminal behaviour order; the tenant, member of their household or visitor to the property has been found by a court to have breached an injunction to prevent nuisance or annoyance; or the tenant's property has been closed for more than 48 hours under a closure order.

The draft Bill also includes provisions to enable a landlord to apply for possession where the tenant or a person living in the tenant's property has been convicted of an offence committed during and at the scene of a riot which took place anywhere in the UK. This will enable the court to grant possession even if the anti-social behaviour did not occur in the locality of the dwelling-house.

Option 2 is the do nothing option.

Under the do nothing option, the law would remain as it currently stands. Landlords would only be able to seek possession on discretionary grounds and in relation to anti-social behaviour in the locality of the tenant's property.

E. Appraisal (Costs and Benefits)

Absolute Ground for Possession

We expect the introduction of the absolute ground for possession to generate cost savings for landlords and the courts, though those modest financial savings will be outweighed by the very real, if unquantifiable, benefits to victims of bringing the anti-social behaviour from which they are suffering to an end more quickly.

Whilst it will be entirely for landlords to decide whether to use the absolute ground for possession or not, and clearly they will not do so unless it saves them time and money, there will be some costs for landlords who wish to use the absolute ground in familiarising themselves with how it works. Whilst we do not consider that the introduction of the absolute ground will increase the total number of evictions, as opposed to speeding up the most serious cases, if the total number of evictions were to increase this would have cost implications for local authorities in particular.

Benefits

Possession proceedings for anti-social behaviour tend to consume significant court and landlord resources. An analysis carried out by the Social Landlords Crime and Nuisance Group in February 2011 of over 500 cases suggests that on average it takes over 7 months from the date of the application for a possession order to possession being granted or the claim being dismissed. In addition to the initial directions hearing, there may be multiple adjournments before the case comes to an often lengthy trial. A recent survey of social landlords suggests that on average the process takes 2.5 days of court time to reach an outcome in ASB possession cases against secure or assured tenants.

An absolute ground for possession 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 undertaking a fuller consideration of the facts of the case.

The existing process for ending introductory tenancies (for local authority tenants) and starter tenancies (for housing association tenants) provides the best proxy for the likely court time required to obtain an outcome using the absolute ground. The recent survey of social landlords referred to above indicates that it generally takes a maximum of half a day to get an outcome in these circumstances.

Savings to the Courts

Using the daily county court cost of £1,633¹ provided by the Courts Service, the approximate average cost under current discretionary grounds would therefore be £4,000 (2.5 days x £1,633).

By contrast the average cost of an ASB possession case under an absolute ground would be approximately £800 (0.5 days x £1,633)

This means that we would expect savings of £3,200 per case using the absolute ground.

Court fees for possession proceedings are fixed, so there is no reduction in revenue to the courts to offset against these savings.

Savings to Social Landlords

¹ Comprising daily cost of district judge of £1,633 (£895 judicial salary and £738 admin and overheads) per HMCTS financial planning data.

Landlords should also make significant savings where they seek possession using the absolute rather than discretionary grounds, having taken account of the circumstances of the case. Recent survey data from landlords suggests that the average cost of ASB possession proceedings against secure or assured tenants are in the region of £5,000 (excluding rent/re-let costs) and may exceed £20,000 for the most complex cases. This is broadly in line with 2005 research which estimated landlords' costs for evicting a secure or assured tenant for anti-social behaviour at between £6,500 and £9,500.

The data from landlords suggests by contrast that costs for ending an introductory or starter tenancy are on average less than £1,000. This means that seeking possession using the absolute ground rather than the discretionary ground is likely to deliver average savings of around £4,000 per case for landlords.

Costs

The absolute ground for possession builds on existing possession powers and processes and we would expect practitioners to accordingly find it straightforward to familiarise themselves with how to pursue possession on the absolute ground if they wished to do so. Given the very low rate of evictions for anti-social behaviour (approximately one per year for every 2,000 units of stock) we assume that in practice only landlords with 1,000 units or more of stock (approximately 400 housing association landlords and 174 local authority landlords) would consider using the absolute power.

Assuming a the same cost per practitioner for familiarisation as for the new Community Protection Notice and Order of £75 and assuming that two employees per landlord would need to understand how the absolute power works, that would represent a total one-off cost of approximately £86,000.

We do not consider that introducing an absolute ground for possession will increase the total number of evictions for anti-social behaviour. The absolute ground will only be available where serious anti-social behaviour or criminality has already been proven in another court and where we would expect accordingly the landlord to secure possession under discretionary grounds, albeit more slowly.

It is possible though that some evictions will be secured where under possession proceedings brought under the discretionary ground, possession would for example have been suspended or postponed. Extrapolating from court service data on possession claims by social landlords and evictions data from the Business Plan Statistical Appendix and Regulatory Statistical Return suggests that somewhere between 50% and 60% of possession claims for anti-social behaviour do not result in an eviction.

Securing an eviction is unlikely to result in additional costs to the landlord – the immediate costs of obtaining a warrant of possession from the court and associated staff time will almost certainly be offset over time by savings from ongoing anti-social interventions foregone. There will however be a cost to the local authority if the evicted tenant presents to them as homeless. The limited evidence we have suggests that this doesn't happen in many cases – the ex-tenant finds new accommodation with friends or family or in the private rented sector.

Those evicted for anti-social behaviour will almost certainly be intentionally homeless, but there may be costs associated with the provision of advice and making a decision on a homelessness application. There may also be costs in providing temporary accommodation whilst the local authority establishes whether the tenant is in priority need, and if so has a duty to provide a further period of temporary accommodation. We estimate those costs at approximately £375 and £350 respectively² or £725 in total.

Use of the Absolute Ground for Possession

² Data from *Value for money in housing options and homelessness services*; Acclaim consulting and Shelter, 2012. The temporary accommodation figure reflects the cost to the local authority not covered by local housing allowance for approximately 8 weeks.

The net benefit/cost of introducing an absolute ground for possession will clearly depend on how often it is used.

Available data shows that a total of 2,610 anti-social behaviour injunctions were obtained by social landlords in 2010/11, along with 115 Anti-Social Behaviour Orders (housing association landlords only). Although we don't have national data on ASBI breaches, a recent survey of landlords indicates that breach rates are significantly lower than for ASBOs and in the region of 10% to 15%. Assuming landlords obtain the proposed Injunction to Prevent Nuisance and Annoyance in similar numbers and allowing a small (10%) uplift for those obtained by other agencies that relate sufficiently closely to the tenant's occupancy of their property or the landlord's housing management function for possession action to be a realistic possibility, and assuming a breach rate of 12.5%, the absolute ground would be available in respect of breach of an Injunction to Prevent Nuisance and Annoyance in around 400 cases a year.

Available data suggests that around 500 closure orders are obtained each year. Assuming that these numbers remain constant in the future and that 50% of all closure orders are in respect of social rented property (we know that closure orders in owner occupied property are very exceptional, and we assume where orders are made in respect of private rented and socially rented properties in roughly proportionate numbers) then the absolute ground would be available in respect of this trigger in around 250 cases per year.

According to data available from the Chartered Institute of Environmental Health, there were 104 convictions for breaches of Noise Abatement Notice in 2009/10. We don't have data on conviction for breach by tenure, but assuming that 40% of those convicted were social tenants (roughly double their representation in the general population), then the absolute ground would be available in respect of this trigger in around 40 cases per year.

Around 85% of the 127 landlords who responded to the consultation indicated that they would consider using the absolute ground. We would not however expect landlords to routinely use the absolute ground even when one of the triggers applied and over 90% of landlords suggested that they would use the absolute ground only exceptionally. Consultation responses provide a strong indication that landlords would consider on a case by case basis whether seeking possession on absolute rather than discretionary grounds was appropriate.

Taking the above considerations into account we assume, in very broad terms, that social landlords would seek possession using the absolute ground in 40% of cases where premises are closed under a Closure Order, where support for use this route was most general in the responses to the consultation on the proposals, and in 20% of cases where the court has found a breach of an Injunction to Prevent Nuisance and Annoyance or a tenant has been convicted of breach of a Noise Abatement Notice. We assume that relevant criminal convictions and convictions for breaches of Criminal Behaviour Orders will only, of themselves, trigger possession proceedings on the absolute ground in a much smaller percentage of cases. We assume for these purposes a total figure of 50 cases a year.

Applying those figures (and assuming that, all possession proceedings where an absolute ground could apply result, because of the seriousness of the anti-social behaviour, in an eviction) provides an estimate of 250 evictions annually for anti-social behaviour using the absolute ground rather than discretionary grounds.

Extending the Discretionary Ground for Possession

The provisions in the draft Anti-social Bill extending the discretionary grounds for possession apply only where a tenant or member of their household are convicted of an offence during and at the scene of a riot in the future. The prime aim of these measures is to send a clear and strong message that tenants should not expect to benefit from subsidised housing while at the same time taking part in (or supporting)

lawless behaviour which threatens the safety of others or which causes damage to other people's property.

We anticipate that the main impact will therefore to be to act as a deterrent and we expect the impact on the number of evictions over time to be marginal. DCLG does not collect data on the number of tenants evicted in the wake of the summer 2011 riots for rioting in the locality of their property, but a recent (November 2012) report from the Guardian newspaper indicated that 14 tenants had been evicted.

Even assuming that enabling landlords to seek possession against tenants involved in rioting beyond the locality of their property might double that figure in the event of equally widespread rioting in the future, the effect on evictions on an annual basis is likely be very small. We do not accordingly think the costs and benefits can be sensibly quantified although we anticipate that any marginal increase in county court and landlord costs would in practice be likely to be more than offset by wider savings to the criminal justice system from the deterrent effect to rioting created.

F. Risks

Option 1: Legislate to introduce a new absolute ground of possession and allow landlords to seek possession for riot related offences committed outside the locality of the property

We consider that the risk of these proposals increasing the total number of evictions for anti-social behaviour is small. Responses to our public consultation indicated that landlords would use the absolute ground selectively having considered the circumstances of the case carefully. Based on data on evictions following the 2011 riots we consider that the annual impact on evictions of allowing landlords to seek possession more widely in relation to convictions for riot related offences in the future will be marginal.

More uncertainty attaches to how often the absolute ground for possession will be used in preference to discretionary grounds. Our assumption of 250 cases annually being brought under the absolute ground may in particular prove too high if the courts routinely give substantive consideration to proportionality defences. This is a developing area of case law.

Option 2 Do nothing.

Good practice locally might deliver some improvements locally but increasing pressure on court time is likely to mean that the timescale for obtaining possession for serious anti-social behaviour and criminality increases.

Housing sanctions would not be available as a deterrent to rioting away from as well as in the locality of the property in the event of future civil disturbances

G. Enforcement

Possession will be sought by landlords through the county court as currently.

H. Summary and Recommendations

1) The table below outlines the costs and benefits of the proposed changes.

Table H.1 Costs and Benefits		
Option	Costs	Benefits

2	£0.394 million (present value)	£15.414 million (present value)
	<p>One-off costs for landlords to familiarise themselves with the new powers available to them.</p> <p>Potentially some additional costs to local authorities in respect of their homelessness duties if there is any increase in the total number of evictions.</p>	<p>Savings to landlords and the court from a faster, less resource intensive possession process.</p> <p>Unquantified benefits to victims from having the anti-social behaviour from which they are suffering brought to an end more quickly.</p>

I. Implementation

Once the Home Affairs Select Committee has reported on the draft ASB Bill, we will look to legislate as soon as Parliamentary time allows.

J. Monitoring and Evaluation

We will work with organisations in the sector to understand how often these new powers are being used and in what circumstances. We will look to collect data, through the Housing Strategy Statistical Appendix for local authority landlords and Statistical Data Return for private registered providers of social housing, that enables us to identify the number of evictions for anti-social behaviour on both absolute and discretionary grounds

K. Feedback

The process of pre-legislative scrutiny and the subsequent passage of the Bill through Parliament will provide an opportunity for external organisations to further scrutinise and provide feedback on the proposals.

L. Specific Impact Tests

2) See Annex 1.

Annex 1. Specific Impact Tests

1 Statutory Equality Duties

These proposals form part of a Policy Equality Statement covering proposals in the draft Anti-social Bill prepared by the Home Office.

2 Economic Impacts

Competition Assessment

We do not anticipate any competition impacts as a result of these proposals.

Small Firms Impact Test

We do not anticipate any small firms impacts as a result of these proposals. Small landlords will be free to use or not use these new powers as they choose.

3 Environmental Impacts

Greenhouse gas impacts

We do not anticipate any greenhouse gas impacts as a result of these proposals.

Wider Environmental Issues

We do not anticipate any environmental impacts as a result of these proposals.

4 Social Impacts

Health and Well-being

We do not anticipate any direct health impact from the proposals, although bringing to an end the serious anti-social behaviour that victims are experiencing more quickly is likely to have a very significant effect positive effect on their well-being.

Human Rights

These proposals are compatible with the Human Rights Act 1998.

Justice

The justice impacts of these proposals have been outlined in the main body of this impact assessment.

Rural Proofing

We do not anticipate any specific or different impact in rural areas as a result of these proposals.

5 Sustainability

Sustainable Development

These proposals are consistent with the principles of sustainable development.