

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 5: Recovery of possession of dwelling-houses: anti-social behaviour grounds

Section 94: New ground for serious offences or breach of prohibitions etc

201. Under the provisions of the Housing Act 1985 (“the 1985 Act”) the county court may only make an order for possession of a secure tenancy if it considers it reasonable to do so and/or suitable alternative accommodation is available and one of the grounds in Schedule 2 to that Act is met. Under ground 2 of Schedule 2 to that Act, the court may grant possession for anti-social behaviour if it considers it reasonable to do so.
202. This section introduces a new absolute ground for possession of a dwelling that is the subject of a secure tenancy (in general, most secure tenants are local authority tenants although other social landlords, such as private registered providers of social housing (“PRPs”) in England and registered social landlords (“RSLs”) in Wales may have secure tenants). This new ground is an addition to the existing discretionary grounds for possession in Schedule 2 to the 1985 Act.
203. *Subsection (1)* inserts a new section 84A into the 1985 Act which provides that the court will be required to grant possession if any one of five conditions is met, the notice requirements have been met, and, where relevant, the review procedures have been followed. (New section 84A(1) clarifies that this is subject to any available defence based upon the tenant’s Convention rights, within the meaning of the Human Rights Act 1998. This is a statement of the law as established by *Manchester City Council v Pinnock* [2010] UKSC 45, which held that tenants of public authorities have the right to raise proportionality as a defence to possession proceedings.)
204. The five conditions in new section 84A relate to anti-social behaviour by the tenant, a member of the tenant’s household or a visitor to the property.
205. Condition 1, 2 or 3 will be met if the tenant, a member of the tenant’s household or a person visiting the property has been:
 - a. convicted of a serious offence (which is one of the offences set out in new Schedule 2A to the 1985 Act as inserted by *subsection (2)* of section 94 and Schedule 3 to the Act);
 - b. found by a court to have breached an injunction obtained under section 1 of the Act; or
 - c. convicted for breach of a criminal behaviour order obtained under section 22 of the Act.
206. The offence or anti-social conduct must have been committed in the dwelling-house or in the locality of the dwelling-house, affected a person with a right to live in the locality

These notes refer to the Anti-Social Behaviour, Crime and Policing Act 2014 (c.12) which received Royal Assent on 13 March 2014

of the dwelling-house or affected the landlord or a person connected with the landlord's housing management functions.

207. Condition 4 will be met if the tenant's property has been closed under a closure order obtained under section 80 of the Act as a result of anti-social behaviour in or near the property and the total period of closure (under the order or under a preceding closure notice) was more than 48 hours.
208. Condition 5 will be met if the tenant, a member of the tenant's household or a person visiting the property has been convicted for breach of a notice or order to abate noise in relation to the tenant's property under the Environmental Protection Act 1990.
209. New section 84A(10) and (11) confers power on the Secretary of State in relation to England and the Welsh Ministers in relation to Wales to amend new Schedule 2A to the 1985 Act by order (subject to the affirmative resolution procedure) by adding an indictable offence or removing an offence.

Section 95: Notice requirements for new ground

210. This section inserts a new section 83ZA into the 1985 Act which sets out the notice requirements where a landlord of a secure tenant wishes to seek possession for anti-social behaviour on the absolute ground or the absolute ground alongside one or more of the discretionary grounds. The new section prescribes the minimum notice that the landlord must give to a tenant and the time limits in which possession proceedings must begin. In the notice, landlords must also give the reason for applying for possession and the condition, or conditions, on which they propose to rely and let the tenants know where and how they can seek advice. Landlords whose tenants have a statutory right to request a review of the decision must also inform their tenants about this right.
211. New section 83ZA also sets out the time limits within which a notice must be served following a conviction, finding of the court, closure of premises, or the conclusion of any appeal process.

Section 96: Review requirements for new ground

212. This section, which inserts a new section 85ZA into the 1985 Act, provides secure tenants of local housing authorities and housing action trusts with a right to request a review of the landlord's decision to seek possession on the absolute ground. The landlord must review the decision, if the tenant requests it. New section 85ZA specifies how requests should be made, the time limits that apply to the review procedure and how the outcome of the review should be communicated to the tenant.
213. New sections 85ZA(7) and (8) confer a power on the Secretary of State in relation to England and the Welsh Ministers in relation to Wales to make regulations (subject to the negative resolution procedure) setting out the procedure for carrying out such reviews.

Section 97: Corresponding new ground and notice requirements for assured tenancies

214. Most tenants in the private sector and most tenants of PRPs and RSLs have assured tenancies. With assured tenancies, the court must grant the landlord possession if a ground in Part 1 of Schedule 2 to the Housing Act 1988 ("the Housing Act") is met and may grant possession if one of the grounds in Part 2 of Schedule 2 to that Act is met and it is reasonable to grant possession. Under ground 14 of Schedule 2, the court may grant possession on the grounds of anti-social behaviour if it considers it reasonable to do so.
215. **Section 97** inserts a new ground for possession of a dwelling that is the subject of an assured tenancy into Part 1 of Schedule 2 to the Housing Act.
216. *Subsection (1)* amends Schedule 2 to the Housing Act so that the court will be required to grant possession under the new ground (ground 7A) if any of one of the five

conditions in that ground, which are identical to those in the new section 84A of the 1985 Act (as inserted by section 94), is met.

217. Section 7(3) of the Housing Act, as amended by paragraph 18 of Schedule 11 to the Act, clarifies that the grounds in Part 1 of Schedule 2 to that Act (including new ground 7A) are subject to any available defence based upon the tenant's Convention rights. Since this reflects the position already, following the judgments in *Manchester City Council v Pinnock* [2010] UKSC 45 and *London Borough of Hounslow v Powell* [2011] UKSC 8 (where the court found that landlords who are public authorities must consider the proportionality of their decisions), this amendment is merely clarificatory and has no substantive legal effect.
218. *Subsection (2)* amends section 8 of the Housing Act to modify the notice requirements for possession under assured tenancies to take account of the new ground 7A. It sets the time limits within which notices under ground 7A must be served.

Section 98: Conduct causing nuisance to landlords etc

219. This section amends the existing discretionary grounds for possession for anti-social behaviour (ground 2 in Schedule 2 to the 1985 Act and ground 14 in Schedule 2 to the Housing Act) so that they also apply where anti-social behaviour occurs outside the locality of the dwelling-house. The amendments allow a landlord to apply for possession of a secure or assured tenant's property where the tenant or a person living in or visiting the tenant's property has been guilty of conduct that is likely to cause nuisance or annoyance to the landlord, or a person employed in connection with the exercise of the landlord's housing management functions.

Section 99: Offences connected with riot

220. This section adds a new discretionary ground for possession into Schedule 2 to the 1985 Act (*subsection (1)*) and Schedule 2 to the Housing Act (*subsection (2)*) so that a landlord can apply for possession of a secure or assured tenant's property where the tenant or an adult living in the tenant's property has been convicted of an indictable offence committed at the scene of a riot which took place anywhere in the UK. This section applies only to dwelling houses in England.

Section 100: Restrictions where new possession proceedings in progress etc

221. *Subsection (1)* amends section 138 of the 1985 Act so that, as with the existing ground for possession for anti-social behaviour, if proceedings on the absolute or the new discretionary ground of possession for anti-social behaviour are pending before any court, the landlord has no duty to convey the freehold or grant a lease to a tenant who has applied to exercise the right to buy.
222. The amendments made by section 100 will also mean that a landlord may also refuse to allow a tenant to take part in mutual exchange under the 1985 Act (which applies to secure tenants) (*subsection (2)*) or a transfer of tenancy under the Localism Act 2011 (which applies to certain secure and assured tenants) (*subsection (3)*). Landlords may already withhold consent where possession is being sought on the existing discretionary ground for anti-social behaviour.