



Absolute Ground for Possession (England)

A presentation for HLPAs on 11 May 2016

1. Introduction

1.1 Mandatory grounds for possession are not entirely alien to social landlords. Aside from the obvious examples such as reliance on a notice to quit or in cases concerning introductory or starter tenancies, a few housing associations, as an illustration, do in defined circumstances use ground 8 of Schedule 2 to the Housing Act 1988 (“the 1988 Act”) in serious rent arrears cases.

1.2 The application of such a ground to anti-social behaviour cases is however relatively recent, having been introduced by Part 5 of the Anti-social Behaviour, Crime and Policing Act 2014 (“the 2014 Act”) with effect from 20 October 2014¹.

1.3 The statutory guidance produced by the Home Office in July 2014 – Reform of anti-social behaviour powers: Statutory guidance for frontline professionals (“the Guidance”) – explains the purpose behind the introduction of the absolute ground of possession thus:

“The purpose of the new absolute ground for possession is to speed up the possession process in cases where anti-social behaviour or criminality has been already been proven by another court.

As the landlord will no longer need to prove that it is reasonable to grant possession, the court will be more likely to determine cases in a single, short hearing. This will strike a better balance between the rights of victims and perpetrators, and provide swifter relief for victims, witnesses and the community.

The new absolute ground is intended for the most serious cases of anti-social behaviour and landlords should ensure that the ground is used selectively.”

¹ With regard to Condition 1 – committal finding for breach of a section 1 Injunction – the introduction had to “wait” until section 1 of the 2014 Act came into force on 23 March 2015



1.4 This paper takes a look at the conditions of use of such powers, the defences available to a defendant tenant and the intended operation of the absolute ground “scheme”.

2 Who can use the absolute ground?

2.1 The 2014 Act makes amendments to both the Housing Act 1985 (“the 1985 Act”) and the 1988 Act so that potentially the absolute ground is available to any landlord of a secure or assured (including assured shorthold) tenant.

2.2 Given the availability of the section 21 notice requiring possession procedure however, it is not anticipated that private landlords will have much use of the absolute ground (though one wonders whether that will remain the case if the Supreme Court finds for the appellant in *McDonald v McDonald*²).

2.3 Similarly, with an introductory or starter tenancy social landlords may prefer to use the existing mandatory possession claim procedures based on the notice of proceedings (section 128 of the Housing Act 1996) or notice requiring possession (section 21 of the 1988 Act) procedure respectively.

2.4 Early indications are that, as intended by the Government, the absolute ground is rather an additional option to a social landlord seeking to deal with serious or persistent anti-social behaviour.

3 The Conditions

3.1 The 2014 Act amends both the 1985 and the 1988 Acts to identical effect in so far as the five alternative conditions for the absolute ground are concerned, and these can be found at section 84A and Ground 7A, Part 1 of Schedule 2 respectively.

² This is an appeal from the Court of Appeal – [2014] EWCA Civ 1049 – and will decide whether it is open to a court hearing an application by a private landlord under s.21(4) Housing Act 1988 for a possession order against an assured shorthold tenant to consider whether an order would infringe the tenant's rights under art.8 ECHR.



3.2 There are, as said, 5 alternative conditions which in the Appendices to these notes (see section 84A of the 1985 Act):

- i. Commission of a 'serious offence'³ - by the tenant, a member of her/his household or a visitor - in the locality of the demised premises (or was against a person residing in the locality or was against the landlord or their employees/contractors) on or after 20 October 2014: Condition 1.
- ii. Proven breach of a section 1 Injunction Order (not a requirement of such an order) at committal proceedings (see further restrictions at section 84A(4) of the 1985 Act/Ground 7A of Schedule 2 to the 1988 Act): Condition 2.
- iii. Conviction for breach of a criminal behaviour order in the locality of the premises (or the provision of the order was concerned with the locality or management of the premises): Condition 3.
- iv. Closure order and access prohibited under the order or closure notice for a continuous period of more than 48 hours: Condition 4⁴.
- v. Conviction for breach of an abatement notice or order to abate a statutory nuisance relating to (statutory) noise nuisance from the demised premises: Condition 5.

3.3 The landlord must be able to demonstrate that one of these conditions is relevant and applies to the case before the court. However, they must also be able to show that the relevant notice seeking possession has been served and (at least in cases of secure tenancies) any review process operated has been properly adhered to.

³ Defined in Schedule 2A to the 1985 Act

⁴ See *Poplar HARCA v Byrne* [2012] EWCA Civ 832; [2012] HLR 33 where pre-Act the landlord had to go through the discretionary possession procedure despite the Police having previously obtained a closure order (and extension) over a court process lasting 14 days



4 The Notice seeking Possession

4.1 The requirement for a notice is of course not unusual but regard must be had to three factors in particular in absolute ground cases:

- i. The notice should be in prescribed form – the latest notice coming into force, in respect of assured tenancies, on 6 April 2016⁵. There is no statutory form of notice for absolute grounds under the 1985 Act but see 3A-362.4 of “Civil Procedure” (Volume 1 – 2016) for suggested matters to include (including reasons for the landlord’s decision to apply for the order)⁶.
- ii. Whereas in discretionary anti-social behaviour cases proceedings can begin at the date the notice is served⁷, if an absolute ground is relied upon (whether on its own or with other grounds) then proceedings cannot be issued prior to the date the tenancy could be brought to an end by a notice to quit, or one month after service in a fixed term tenancy scenario⁸.
- iii. As with a Ground 8 case for assured tenancies, the Court has no power under either the 1985 or 1988 Act to dispense with the requirement of a notice⁹.

4.2 Amendments to the notice provisions of both the 1985 and the 1988 Act also provide that where the landlords seeks to rely on a “conviction ground” – that is Conditions 1, 3 or 5 – then the notice must be issued within 12 months of the conviction (or time when any appeal is determined, abandoned or withdrawn)¹⁰.

⁵ Assured Tenancies and Agricultural Occupancies (Forms) (England) (Amendment) Regulations 2016 (SI No. 2016/443) – a notice may survive minor or technical errors: *Mountain v Hastings* (1993) 25 HLR 427

⁶ e.g. order being sought under section 84A, reasons for this and right to request a review, details of grounds and need to comply with time limits, reference to CAB, etc. See section 83ZA(3) of the 1985 Act

⁷ Section 83(3) of the 1985 Act/Section 8(4) of the 1988 Act

⁸ Section 83ZA(10) of the 1985 Act/Section 8(3A) of the 1988 Act

⁹ Section 83ZA(2) of the 1985 Act/Section 8(5) of the 1988 Act

¹⁰ Section 83ZA(5) of the 1985 Act/Section 8(4D) of the 1988 Act



4.3 Similarly with Condition 2, the notice must be served within 12 months of the finding of breach (or time when any appeal is determined, abandoned or withdrawn)¹¹, and with Condition 4 it must be served within 3 months from when the closure order is made (or appeal, etc.)¹².

5 The Review

5.1 As with demoted tenancies, the requirement to review the decision to seek possession is only placed on local authorities and housing action trusts¹³, though in reality (and following the practice with starter tenancies and expectation in the Guidance) most housing associations have instituted non-statutory review processes for absolute ground cases to mirror those imposed under the 1985 Act.

5.2 The process can be seen at section 85ZA of the 1985 Act, and in the Absolute Ground for Possession for Anti-social Behaviour (Review Procedure) (England) Regulations 2014 (SI No. 2014/2554), and the most salient features are:

- i. The tenant has 7 days from service of the notice to (in writing) seek a review, and can ask that it be an oral hearing.
- ii. Where no oral hearing is requested the tenant must be invited to make written representations (and be given at least 5 days' notice to so do).
- iii. If there is an oral hearing the tenant must be given at least 5 days' notice of it and has the right to make oral representations (and to be represented). They can also call and question witnesses, as can the original decision-maker.

¹¹ Section 83ZA(6) of the 1985 Act/Section 8(4E) of the 1988 Act

¹² Section 83ZA(7) of the 1985 Act/Section 8(4F) of the 1988 Act

¹³ Section 85ZA(1) of the 1985 Act



- iv. If the review is carried out internally (whether written or oral) then the officer making the decision must be senior to the person who made the original decision (and not previously involved in the making of that earlier decision).
- v. The tenant must be notified of the outcome in writing, and reasons must be given if the original decision is confirmed.
- vi. The tenant must be advised of the decision prior to the date provided for in the notice seeking possession as the date after which possession may be sought.

5.3 A failure to conclude the review within the required period may not necessarily be fatal however: *R (on the application of Chelfat) v Tower Hamlets LBC* [2006] EWHC 313 (Admin) (in the context of introductory tenancies).

5.4 Again in the context of introductory tenancy review, Mr Justice Jackson (as he then was) allowed a claimant's application in *R (on the application of McDonagh) v Salisbury DC* [2001] EWHC Admin 567, QBD ¶¶25-30 because the review board focussed on the wrong question – i.e. was the housing officer's decision to apply for possession Wednesday reasonable rather than considering afresh the appropriateness of bringing possession proceedings.

5.5 Interestingly, in that case Mr Justice Jackson found that the authority could rely on a valid second review they had undertaken post-issue of proceedings¹⁴:

“60. I have come to the conclusion that Mr Straker's submissions on this issue are correct. I reach this conclusion for four reasons:

- *(1) The only restrictions on the County Court entertaining possession proceedings are those specified in section 128(1) and section 128(5) of the 1996 Act. There is*

¹⁴ Counsel for the Appellant in *Barber v Croydon LBC* [2010] EWCA Civ 51; [2010] HLR 26 conceded ¶21 that post-issue consideration of the need to seek possession was prima facie possible pre-execution of any possession order made



no prohibition upon possession proceedings in the County Court running in parallel with any extended period of review by the landlord.

- *(2) If Mr Egleton's contention is correct, then time and money must be devoted to a second possession action in the County Court, which (as Mr Egleton concedes) is a pure formality with only one possible outcome.*
- *(3) In those rare cases where the County Court makes a possession order before the statutory review is complete, the tenant can be protected by staying the warrant for possession until completion of the review. That has happened in the present case.*
- *(4) Richards J took the view on 20 March, after an unusually long permission hearing, that the council's earlier mistakes could be cured by the holding of a further review. This conclusion is persuasive, although not binding upon me."*

6 The Hearing

6.1 At any first hearing of a possession claim, the mere production of a written defence, whether within the required 14 day period from service of the claim¹⁵ or otherwise, or oral submissions as to a "likely" defence, is not necessarily sufficient in itself to prevent the judge making an order for possession.

6.2 Rather, she/he should only give case management directions, such as an extended time to file a defence, if¹⁶:

"...the claim is genuinely disputed on grounds which appear to be substantial..."

6.3 The Guidance says this about possible defences:

- *Tenants will be entitled to a court hearing.*

¹⁵ CPR 15.4 – late service may be taken into account by the court when deciding the appropriate order to make regarding costs (CPR 55.7(3))

¹⁶ CPR 55.8(2)



- *As with other grounds of possession, tenants of public authorities or landlords carrying out a public function will be able to raise any available human rights defence, including proportionality, against the possession proceedings.*
- *The court will consider whether such a defence meets the high threshold of being ‘seriously arguable’ established by the Supreme Court.*
- *Subject to any available human rights defence raised by the tenant, the court must grant an order for possession where the landlord has followed the correct procedure.*

6.4 On the assumption that a valid notice has been properly served, and that there are no issues with the review process (whether or not invoked) and that the Condition relied upon is made out, then prima facie the court should make the possession order sought.

6.5 That is though subject to three potentially relevant factors:

- i. A Convention right argument is enshrined in the amended legislation¹⁷ and referred to above – though this is unlikely to succeed¹⁸ in most instances and should be determined summarily: *Thurrock Borough Council v West* [2012] EWCA Civ 1435; [2013] HLR 5 ¶22-31.
- ii. Consideration of the Equality Act 2010 (“the 2010 Act”).

¹⁷ See section 84(A)(1)

¹⁸ See for example Lord Neuberger in *Corby BC v Scott; West Kent Housing Association Ltd v Haycraft* [2012] EWCA Civ 276; [2012] HLR 23 ¶18 – “The effect of the reasoning in *Pinnock* [2011] 2 A.C. 104 seems to me to be that, at least in relation to demoted and introductory tenancies, “it will only be in ‘very highly exceptional cases’ that it will be appropriate for the court to consider a proportionality argument”, although “exceptionality is an outcome and not a guide” – *Pinnock* [2011] 2 A.C. 104 at [51], and see also [62] and [107], and per Lord Phillips in *Powell* [2011] 2 A.C. 186 at [92].”



- iii. A broader public law argument¹⁹, most usually with regard to the review process (see Section 5 above) or application of the landlord's anti-social behaviour policy²⁰.

6.6 There may be an issue as to a private registered provider's susceptibility to any Human Rights Act or public law defence, as seen by the recent authority of *R (on the application of Macleod) v The Governors of the Peabody Trust* [2016] EWHC 737 (Admin), though in most instances this will not be a position adopted by the association at first instance.

6.7 Failure to adopt a review process, or adopt it fairly, may raise a general public law challenge but it is the policy of the landlord that has most often come under scrutiny. Local authorities and private registered providers, such as housing associations, are required by law to have a policy in relation to anti-social behaviour, and procedures for dealing with the same: section 218A(1) of the Housing Act 1996.

6.8 In fact, many authorities and associations have declined to use the absolute ground procedure to date pending a review of their anti-social behaviour policies and procedures to take account of the 2014 Act's changes.

6.9 This is a sensible approach, not least given the court's approach to policy. Lord Justice Patten said, in allowing the tenant's appeal, in *Barber v Croydon LBC* [2010] EWCA Civ 51; [2010] HLR 26:

"42 It seems to me that the real difficulty with that evidence and the judge's treatment of it is that it takes no real account of the fact that Mr Barber's behaviour on May 22 was clearly obsessive and irrational and, as Dr Owen explains, almost certainly linked to the personality disorder from which he suffers. In these circumstances, it was unreasonable for Mr Hunt to proceed without applying the Council's policy on vulnerable people set out earlier. This

¹⁹ Following on from the seminal authority of *Wandsworth LBC v Winder* [1985] AC 461, HL

²⁰ As seen in *Barber v Croydon LBC* [2010] EWCA Civ 51; [2010] HLR 26.



would have involved him or his department liaising with IMHS and social services to see whether or not an alternative strategy to seeking possession could be followed in order to prevent any repetition of the ASB by Mr Barber. A supervised ABC is one obvious alternative.”

6.10 That said, a public law challenge needs to be identified and evidenced, and social landlords are much more alive than previously to the importance of reaching proportionate decisions in accordance with their policies (not least where a review of any decision to seek a possession order has been made). Indeed, many of them are advised to provide a statement to this effect to accompany a claim for possession based on the absolute ground.

7 Equality Act 2010

7.1 A common defence found in possession claims is that the landlord has, in some way, fallen foul of the provisions of the 2010 Act. In particular, it is often two sections that are relied upon:

- i. Section 15 – disability discrimination.
- ii. Section 149 – the public sector equality duty.

7.2 Putting aside for the purposes of this paper the need of any defendant to first show for disability discrimination that she/he has a disability for the purposes of the 2010 Act (see section 6 and Schedule 1), section 15 provides:

(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.



(2) *Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.*

7.3 If such discrimination is demonstrated – whether that be in relation, for example, to the review process or the acts complained of which satisfy the requirements of one of the absolute ground conditions – then section 35 needs to be considered:

(1) *A person (A) who manages premises must not discriminate against a person (B) who occupies the premises—*

(a) *in the way in which A allows B, or by not allowing B, to make use of a benefit or facility;*

(b) *by evicting B (or taking steps for the purpose of securing B's eviction);*

(c) *by subjecting B to any other detriment.*

7.4 The Supreme Court addressed this issue last year in *Akerman-Livingstone v Aster Communities Ltd* [2015] UKSC 15; [2015] AC 1399 when Lord Wilson stressed the difference in approach to the section 15 question from that facing an art.8 defence when he said:

“68 The structured approach requires attention to be given, first, to the claimant's aims or objectives in taking the steps for the purpose of securing the defendant's eviction. In Manchester City Council v Pinnock (Secretary of State for Communities and Local Government intervening) [2011] 2 AC 104 Lord Neuberger of Abbotsbury MR, indicated on behalf of this court, at para 52, that one aim of a possession action would be the vindication of the claimant's ownership rights and that a second aim of a possession action brought by a housing authority would usually be to enable it to comply with its duties in relation to the distribution and management of its housing stock. Adapted to the facts of this case, in which the action is not brought by Mendip, the housing authority, but by a registered social landlord which has agreed with Mendip to let accommodation at its request to



those whom Mendip is obliged (or elects) to accommodate under Part VII of the 1996 Act, the usual second aim, if it were to exist in the present case, would be to enable Mendip to comply with its duties (and to exercise its powers) through its agreement with the claimant to provide accommodation to homeless persons under the 1996 Act.

...

73 The structured approach requires attention to be given, second, to the existence or otherwise of a rational connection between the claimant's objectives and the defendant's eviction (upon which the conclusion must be that it exists) and, third, to whether the eviction is no more than is necessary to accomplish them (upon which the conclusion must be that it is indeed no more than is necessary). But there is a fourth element to which the structured approach requires that attention be given. For the eviction may be proportionate to the claimant's objectives without being proportionate in the necessary wider sense. Section 15(1)(b) of the 2010 Act requires the claimant to show that the eviction strikes a fair balance between its need to accomplish its objectives and the disadvantages thereby caused to the defendant as a disabled person."

7.5 The first two elements rarely are in serious dispute and it is the third and fourth that occasionally encounter greater argument. The third may rely heavily on the landlord's policies and objectives (e.g. re dealing with those cultivating cannabis in their homes) whereas the fourth element suggests a wider view needs to be taken (e.g. it may not be enough to talk of "zero-tolerance" to particular forms of behaviour).

7.6 The reality is that if raised at the first hearing then a section 15 argument may well have the effect of "pushing" the judge to the conclusion that an adjournment is required for the purposes of a detailed defence and/or expert evidence. Clarity is though required on the question of causation with the matters complained of and Condition(s) relied upon, as well as the asserted nature of the disability.



7.7 The public sector equality duty defence is a more nebulous, though no less important²¹, defence. However, it is an on-going obligation and if appropriate and properly raised can often be addressed even post-issue by the claimant landlord: *Barnsley MBC v Norton* [2011] EWCA Civ; [2011] HLR 46.

7.8 It is however worth noting on that last point that the Court of Appeal is due to hear a case shortly²², *Ahern v Southern Housing Group*, on the question of the extent to which a county court can “ignore” a breach of policy by reason of it being corrected ex post facto or being of no practical relevance to the claim.

8 Conclusion

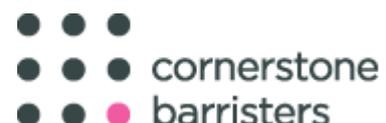
8.1 It is very early days still for the absolute grounds, and anecdotally they have not presented particular issues either for the courts or landlords operating them, but as policies are developed to take them into account it is likely that they are to become more prevalent.

8.2 This paper is not intended to be fully comprehensive on all the relevant issues but rather is meant to give a “steer” to the many complications implicit in the absolute ground procedure.

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²¹ Not least in the field of homelessness: *Hotak v Southwark LBC* [2015] UKSC 30; [2015] 2 WLR 1341

²² It was due to be heard on 10 or 11 May 2016 but has been vacated due to lack of judicial time



APPENDIX

Housing Act 1985

83ZA(1) This section applies in relation to proceedings for possession of a dwelling-house under section 84A (absolute ground for possession for anti-social behaviour), including proceedings where possession is also sought on one or more of the grounds set out in Schedule 2.

(2) The court must not entertain the proceedings unless the landlord has served on the tenant a notice under this section.

(3) The notice must—

(a) state that the court will be asked to make an order under section 84A for the possession of the dwelling-house,

(b) set out the reasons for the landlord's decision to apply for the order (including the condition or conditions in section 84A on which the landlord proposes to rely), and

(c) inform the tenant of any right that the tenant may have under section 85ZA to request a review of the landlord's decision and of the time within which the request must be made.

(4) In a case where possession is also sought on one or more of the grounds set out in Schedule 2, the notice must also—

(a) specify the ground on which the court will be asked to make the order, and

(b) give particulars of that ground.

(5) A notice which states that the landlord proposes to rely upon condition 1, 3 or 5 in section 84A—

(a) must also state the conviction on which the landlord proposes to rely, and



(b) must be served on the tenant within—

(i) the period of 12 months beginning with the day of the conviction, or

(ii) if there is an appeal against the conviction, the period of 12 months beginning with the day on which the appeal is finally determined or abandoned.

(6) A notice which states that the landlord proposes to rely upon condition 2 in section 84A—

(a) must also state the finding on which the landlord proposes to rely, and

(b) must be served on the tenant within—

(i) the period of 12 months beginning with the day on which the court has made the finding, or

(ii) if there is an appeal against the finding, the period of 12 months beginning with the day on which the appeal is finally determined, abandoned or withdrawn.

(7) A notice which states that the landlord proposes to rely upon condition 4 in section 84A—

(a) must also state the closure order concerned, and

(b) must be served on the tenant within—

(i) the period of 3 months beginning with the day on which the closure order was made, or

(ii) if there is an appeal against the making of the order, the period of 3 months beginning with the day on which the appeal is finally determined, abandoned or withdrawn.

(8) A notice under this section must also inform the tenant that, if the tenant needs help or advice about the notice and what to do about it, the tenant should take it immediately to a Citizens' Advice Bureau, a housing aid centre, a law centre or a solicitor.

(9) The notice—

(a) must also specify the date after which proceedings for the possession of the dwelling-house may be begun, and



(b) ceases to be in force 12 months after the date so specified.

(10) The date specified in accordance with subsection (9)(a) must not be earlier than—

(a) in the case of a periodic tenancy, the date on which the tenancy could, apart from this Part, be brought to an end by notice to quit given by the landlord on the same day as the notice under this section;

(b) in the case of a secure tenancy for a term certain, one month after the date of the service of the notice.

(11) Where a notice under this section is served with respect to a secure tenancy for a term certain, it has effect also with respect to any periodic tenancy arising on the termination of that tenancy by virtue of section 86; and subsection (10)(a) does not apply to the notice.

84(1) If the court is satisfied that any of the following conditions is met, it must make an order for the possession of a dwelling-house let under a secure tenancy.

This is subject to subsection (2) (and to any available defence based on the tenant's Convention rights, within the meaning of the Human Rights Act 1998).

(2) Subsection (1) applies only where the landlord has complied with any obligations it has under section 85ZA (review of decision to seek possession).

(3) Condition 1 is that—

(a) the tenant, or a person residing in or visiting the dwelling-house, has been convicted of a serious offence, and

(b) the serious offence—

(i) was committed (wholly or partly) in, or in the locality of, the dwelling-house,

(ii) was committed elsewhere against a person with a right (of whatever description) to reside in, or occupy housing accommodation in the locality of, the dwelling-house, or



(iii) was committed elsewhere against the landlord of the dwelling-house, or a person employed (whether or not by the landlord) in connection with the exercise of the landlord's housing management functions, and directly or indirectly related to or affected those functions.

(4) Condition 2 is that a court has found in relevant proceedings that the tenant, or a person residing in or visiting the dwelling-house, has breached a provision of an injunction under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014, other than a provision requiring a person to participate in a particular activity, and—

(a) the breach occurred in, or in the locality of, the dwelling-house, or

(b) the breach occurred elsewhere and the provision breached was a provision intended to prevent—

(i) conduct that is capable of causing nuisance or annoyance to a person with a right (of whatever description) to reside in, or occupy housing accommodation in the locality of, the dwelling-house, or

(ii) conduct that is capable of causing nuisance or annoyance to the landlord of the dwelling-house, or a person employed (whether or not by the landlord) in connection with the exercise of the landlord's housing management functions, and that is directly or indirectly related to or affects those functions.

(5) Condition 3 is that the tenant, or a person residing in or visiting the dwelling-house, has been convicted of an offence under section 30 of the Anti-social Behaviour, Crime and Policing Act 2014 consisting of a breach of a provision of a criminal behaviour order prohibiting a person from doing anything described in the order, and the offence involved—

(a) a breach that occurred in, or in the locality of, the dwelling-house, or

(b) a breach that occurred elsewhere of a provision intended to prevent—

(i) behaviour that causes or is likely to cause harassment, alarm or distress to a person with a right (of whatever description) to reside in, or occupy housing accommodation in the locality of, the dwelling-house, or

(ii) behaviour that causes or is likely to cause harassment, alarm or distress to the landlord of the dwelling-house, or a person employed (whether or not by the landlord) in connection



with the exercise of the landlord's housing management functions, and that is directly or indirectly related to or affects those functions.

(6) Condition 4 is that—

(a) the dwelling-house is or has been subject to a closure order under section 80 of the Anti-social Behaviour, Crime and Policing Act 2014, and

(b) access to the dwelling-house has been prohibited (under the closure order or under a closure notice issued under section 76 of that Act) for a continuous period of more than 48 hours.

(7) Condition 5 is that—

(a) the tenant, or a person residing in or visiting the dwelling-house, has been convicted of an offence under—

(i) section 80(4) of the Environmental Protection Act 1990 (breach of abatement notice in relation to statutory nuisance), or

(ii) section 82(8) of that Act (breach of court order to abate statutory nuisance etc), and

(b) the nuisance concerned was noise emitted from the dwelling-house which was a statutory nuisance for the purposes of Part 3 of that Act by virtue of section 79(1)(g) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance).

(8) Condition 1, 2, 3, 4 or 5 is not met if—

(a) there is an appeal against the conviction, finding or order concerned which has not been finally determined, abandoned or withdrawn, or

(b) the final determination of the appeal results in the conviction, finding or order being overturned.

(9) In this section—

“relevant proceedings” means proceedings for contempt of court or proceedings under Schedule 2 to the Anti-social Behaviour, Crime and Policing Act 2014;



“serious offence” means an offence which—

- (a) was committed on or after the day on which subsection (3) comes into force,
- (b) is specified, or falls within a description specified, in Schedule 2A at the time the offence was committed and at the time the court is considering the matter, and
- (c) is not an offence that is triable only summarily by virtue of section 22 of the Magistrates' Courts Act 1980 (either-way offences where value involved is small).

(10) The Secretary of State may by order amend Schedule 2A as it applies in relation to dwelling-houses in England by—

- (a) adding an indictable offence;
- (b) removing an offence.

(11) The Welsh Ministers may by order amend Schedule 2A as it applies in relation to dwelling-houses in Wales by—

- (a) adding an indictable offence;
- (b) removing an offence.

(12) An order under subsection (10) or (11)—

- (a) is to be made by statutory instrument;
- (b) may make different provision for different purposes;
- (c) may include incidental, supplementary, consequential, transitional or saving provision.

(13) A statutory instrument containing an order under subsection (10) or (11) may not be made unless a draft of the instrument has been laid before and approved by a resolution of—

- (a) each House of Parliament (in the case of an order of the Secretary of State), or
- (b) the National Assembly for Wales (in the case of an order of the Welsh Ministers).



85ZA(1) A tenant may request a review of a landlord's decision to seek an order for possession of a dwelling-house under section 84A if the interest of the landlord belongs to—

(a) a local housing authority, or

(b) a housing action trust.

(2) Such a request must be made in writing before the end of the period of 7 days beginning with the day on which the notice under section 83ZA is served.

(3) On a request being duly made to it, the landlord must review its decision.

(4) The landlord must notify the tenant in writing of the decision on the review.

(5) If the decision is to confirm the original decision, the landlord must also notify the tenant of the reasons for the decision.

(6) The review must be carried out, and the tenant notified, before the day specified in the notice under section 83ZA as the day after which proceedings for the possession of the dwelling-house may be begun.

(7) The Secretary of State may by regulations make provision about the procedure to be followed in connection with a review under this section that relates to an order for possession of a dwelling-house in England.

(8) The Welsh Ministers may by regulations make provision about the procedure to be followed in connection with a review under this section that relates to an order for possession of a dwelling-house in Wales.

(9) Regulations under subsections (7) and (8) may, in particular, make provision—

(a) requiring the decision on review to be made by a person of appropriate seniority who was not involved in the original decision, and

(b) as to the circumstances in which the person concerned is entitled to an oral hearing, and whether and by whom the person may be represented at such a hearing.

(10) Regulations under this section—



- (a) may contain transitional or saving provision;
- (b) are to be made by statutory instrument which—
 - (i) in the case of regulations made by the Secretary of State, is subject to annulment in pursuance of a resolution of either House of Parliament;
 - (ii) in the case of regulations made by the Welsh Ministers, is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

Housing Act 1988

8(1) The court shall not entertain proceedings for possession of a dwelling-house let on an assured tenancy unless—

- (a) the landlord or, in the case of joint landlords, at least one of them has served on the tenant a notice in accordance with this section and the proceedings are begun within the time limits stated in the notice in accordance with [subsections (3) to (4B)] below; or
- (b) the court considers it just and equitable to dispense with the requirement of such a notice.

(2) The court shall not make an order for possession on any of the grounds in Schedule 2 to this Act unless that ground and particulars of it are specified in the notice under this section; but the grounds specified in such a notice may be altered or added to with the leave of the court.

(3) A notice under this section is one in the prescribed form informing the tenant that—

- (a) the landlord intends to begin proceedings for possession of the dwelling-house on one or more of the grounds specified in the notice; and
- (b) those proceedings will not begin earlier than a date specified in the notice [in accordance with [subsections (3A)] to (4B) below]; and



(c) those proceedings will not begin later than twelve months from the date of service of the notice.

[(3A) If a notice under this section specifies in accordance with subsection (3)(a) Ground 7A in Schedule 2 to this Act (whether with or without other grounds), the date specified in the notice as mentioned in subsection (3)(b) is not to be earlier than—

(a) in the case of a periodic tenancy, the earliest date on which, apart from section 5(1), the tenancy could be brought to an end by a notice to quit given by the landlord on the same date as the date of service of the notice under this section;

(b) in the case of a fixed term tenancy, one month after the date on which the notice was served.]

[(4) If a notice under this section specifies in accordance with subsection (3)(a) above Ground 14 in Schedule 2 to this Act [(whether without other grounds or with any ground other than Ground 7A)], the date specified in the notice as mentioned in subsection (3)(b) above shall not be earlier than the date of the service of the notice.

(4A) If a notice under this section specifies in accordance with subsection (3)(a) above, any of Grounds 1, 2, 5 to 7, 9 and 16 in Schedule 2 to this Act (whether without other grounds or with any ground other than Ground [7A or] 14), the date specified in the notice as mentioned in subsection (3)(b) above shall not be earlier than—

(a) two months from the date of service of the notice; and

(b) if the tenancy is a periodic tenancy, the earliest date on which, apart from section 5(1) above, the tenancy could be brought to an end by a notice to quit given by the landlord on the same date as the date of service of the notice under this section.

(4B) In any other case, the date specified in the notice as mentioned in subsection (3)(b) above shall not be earlier than the expiry of the period of two weeks from the date of the service of the notice.]

[(4C) A notice under this section that specifies in accordance with subsection (3)(a) Ground 7A in Schedule 2 to this Act (whether with or without other grounds) must be served on the tenant within the time period specified in subsection (4D), (4E) or (4F).



(4D) Where the landlord proposes to rely on condition 1, 3 or 5 in Ground 7A, the notice must be served on the tenant within—

- (a) the period of 12 months beginning with the day of the conviction, or
- (b) if there is an appeal against the conviction, the period of 12 months beginning with the day on which the appeal is finally determined or abandoned.

(4E) Where the landlord proposes to rely on condition 2 in Ground 7A, the notice must be served on the tenant within—

- (a) the period of 12 months beginning with the day on which the court has made the finding, or
- (b) if there is an appeal against the finding, the period of 12 months beginning with the day on which the appeal is finally determined, abandoned or withdrawn.

(4F) Where the landlord proposes to rely on condition 4 in Ground 7A, the notice must be served on the tenant within—

- (a) the period of 3 months beginning with the day on which the closure order was made, or
- (b) if there is an appeal against the making of the order, the period of 3 months beginning with the day on which the appeal is finally determined, abandoned or withdrawn.]

(5) The court may not exercise the power conferred by subsection (1)(b) above if the landlord seeks to recover possession on Ground [7A or] 8 in Schedule 2 to this Act.

(6) Where a notice under this section—

- (a) is served at a time when the dwelling-house is let on a fixed term tenancy, or
- (b) is served after a fixed term tenancy has come to an end but relates (in whole or in part) to events occurring during that tenancy,

the notice shall have effect notwithstanding that the tenant becomes or has become tenant under a statutory periodic tenancy arising on the coming to an end of the fixed term tenancy.



Ground 7A

Any of the following conditions is met.

Condition 1 is that—

- (a) the tenant, or a person residing in or visiting the dwelling-house, has been convicted of a serious offence, and
- (b) the serious offence—
 - (i) was committed (wholly or partly) in, or in the locality of, the dwelling-house,
 - (ii) was committed elsewhere against a person with a right (of whatever description) to reside in, or occupy housing accommodation in the locality of, the dwelling-house, or
 - (iii) was committed elsewhere against the landlord of the dwelling-house, or a person employed (whether or not by the landlord) in connection with the exercise of the landlord's housing management functions, and directly or indirectly related to or affected those functions.

Condition 2 is that a court has found in relevant proceedings that the tenant, or a person residing in or visiting the dwelling-house, has breached a provision of an injunction under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014, other than a provision requiring a person to participate in a particular activity, and—

- (a) the breach occurred in, or in the locality of, the dwelling-house, or
- (b) the breach occurred elsewhere and the provision breached was a provision intended to prevent—
 - (i) conduct that is capable of causing nuisance or annoyance to a person with a right (of whatever description) to reside in, or occupy housing accommodation in the locality of, the dwelling-house, or
 - (ii) conduct that is capable of causing nuisance or annoyance to the landlord of the dwelling-house, or a person employed (whether or not by the landlord) in connection with the exercise of the landlord's housing management functions, and that is directly or indirectly related to or affects those functions.



Condition 3 is that the tenant, or a person residing in or visiting the dwelling-house, has been convicted of an offence under section 30 of the Anti-social Behaviour, Crime and Policing Act 2014 consisting of a breach of a provision of a criminal behaviour order prohibiting a person from doing anything described in the order, and the offence involved—

- (a) a breach that occurred in, or in the locality of, the dwelling-house, or
- (b) a breach that occurred elsewhere of a provision intended to prevent—
 - (i) behaviour that causes or is likely to cause harassment, alarm or distress to a person with a right (of whatever description) to reside in, or occupy housing accommodation in the locality of, the dwelling-house, or
 - (ii) behaviour that causes or is likely to cause harassment, alarm or distress to the landlord of the dwelling-house, or a person employed (whether or not by the landlord) in connection with the exercise of the landlord's housing management functions, and that is directly or indirectly related to or affects those functions.

Condition 4 is that—

- (a) the dwelling-house is or has been subject to a closure order under section 80 of the Anti-social Behaviour, Crime and Policing Act 2014, and
- (b) access to the dwelling-house has been prohibited (under the closure order or under a closure notice issued under section 76 of that Act) for a continuous period of more than 48 hours.

Condition 5 is that—

- (a) the tenant, or a person residing in or visiting the dwelling-house, has been convicted of an offence under—
 - (i) section 80(4) of the Environmental Protection Act 1990 (breach of abatement notice in relation to statutory nuisance), or
 - (ii) section 82(8) of that Act (breach of court order to abate statutory nuisance etc), and



(b) the nuisance concerned was noise emitted from the dwelling-house which was a statutory nuisance for the purposes of Part 3 of that Act by virtue of section 79(1)(g) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance).

Condition 1, 2, 3, 4 or 5 is not met if—

(a) there is an appeal against the conviction, finding or order concerned which has not been finally determined, abandoned or withdrawn, or

(b) the final determination of the appeal results in the conviction, finding or order being overturned.

In this ground—

“relevant proceedings” means proceedings for contempt of court or proceedings under [Schedule 2](#) to the Anti-social Behaviour, Crime and Policing Act 2014;

“serious offence” means an offence which—

(a) was committed on or after the day on which this ground comes into force,

(b) is specified, or falls within a description specified, in Schedule 2A to the Housing Act 1985 at the time the offence was committed and at the time the court is considering the matter, and

(c) is not an offence that is triable only summarily by virtue of section 22 of the Magistrates' Courts Act 1980 (either-way offences where value involved is small).