

CELG(4)-23-13 - Paper 4

LEGISLATIVE CONSENT MEMORANDUM ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING BILL PROVISIONS RELATING TO THE RECOVERY OF POSSESSION OF DWELLING HOUSES

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO 29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for a purpose that falls within, or modifies, the legislative competence of the National Assembly.

2. The Anti-social Behaviour, Crime and Policing Bill (the “Bill”) was introduced in the House of Commons on 9 May 2013. The Bill can be found at:

[Bill Documents – Anti-social Behaviour, Crime and Policing Bill 2013-14 – UK Parliament Website](#)

Summary of the Bill and its Policy Objectives

3. The Bill is sponsored by the Home Office. The UK Government’s policy objectives for the Bill are to create new and simpler powers to tackle antisocial behaviour, encourage responsible dog ownership, tackle the use of illegal firearms by gangs and organised crime groups, make forced marriage illegal and improve professional standards of the police.

4. The Bill makes provision for condensing the current 19 orders to 6 new orders to deal with anti-social behaviour; provides victims of anti-social behaviour with the ability to ensure action is taken; allows for the mandatory repossession of secure tenancies where the tenant is in breach of one of the new orders; amends the Dangerous Dogs Act 1991 to extend its provisions to private property; increases the maximum penalty for the importation and exportation of firearms; creates a new offence of possession for sale or transfer of firearms; makes forced marriage illegal; creates a new College of Policing, and also makes provisions relating to the financial controls on chief constables and extending the powers and remit of the Independent Police Complaints Commission.

Provisions for which consent is sought

Part 5 – Recovery of Possession of Dwelling Houses: Anti-social behaviour grounds

5. The provisions in Part 5 of the Bill for which consent is sought relate to recovery of possession of dwelling-houses that are the subject of either a secure or assured tenancy on anti-social behaviour grounds.

Secure Tenancies

6. Clause 86 of the Bill 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 (Registered Social Landlords or “RSLs”) also have secure tenants.

7. Subsection (1) of Clause 86 inserts a new section 84A into the Housing Act 1985 (“the 1985 Act”) which provides that the court will be required to grant possession if any one of the five conditions in new section 84A 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.

8. The conditions are that the tenant, a member of the tenant’s household or a person visiting the property has been:

- 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 Clause 86 and Schedule 3 to the Bill).
- found by a court to have breached an injunction to prevent nuisance and annoyance; or
- convicted for breach of a criminal behaviour order.

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 of the dwelling house or affected the landlord or a person connected with the landlord’s housing management functions. Other conditions are that:

- the tenant’s property has been the subject of a closure order where the total period of closure exceeds 48 hours; or
- 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.

9 New section 84A confers power on the Welsh Ministers to amend by order new Schedule 2A to the 1985 Act by adding indictable offences or removing an offence. Any such order would be subject to negative Assembly procedure.

10. Clause 87 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 because they believe one or more of the conditions in new section 84A of the 1985 Act have been met. The new section prescribes the minimum notice that the landlord must give to a tenant with a periodic tenancy and the time limits in which possession proceedings must begin. It also sets out time limits within which a notice must be served following a conviction, finding of the court or closure of premises or the conclusion of any appeal process.

11. Clause 88 inserts new section 85ZA into the 1985 Act and provides secure tenants of local housing authorities with a right to request a review of the landlord’s decision to seek possession using the absolute ground. The landlord must review the decision if requested to do so by the tenant. New section 85ZA confers power upon the Welsh Ministers to make regulations setting out the procedure for carrying out such reviews. These regulations would be subject to negative Assembly procedure.

Assured Tenancies

12. Clause 89 amends Schedule 2 to the Housing Act 1988 (“the 1988 Act”) so as to introduce a new absolute ground for possession (Ground 7A) in respect of assured tenants i.e. those tenants who rent property from Registered Social Landlords (RSLs). The grounds for possession are the same as those for secure tenants in clause 86 and are subject to any available defence based upon the tenant’s Convention rights.

Subsection(2) of Clause 89 amends section 8 of the 1988 Act to modify the notice requirements for possession for assured tenancies to take account of the new Ground 7A. It sets the time limits within which notices under Ground 7A must be served.

13. Clause 90 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 1988 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.

14. Clause 92 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 ground 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. The amendments made by this clause 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) or a transfer of tenancy under the Localism Act 2011(which applies to certain secure and assured tenants). Landlords may already withhold consent where possession is being sought on the discretionary ground for anti social behaviour.

15. Clause 137(3) provides power to the Welsh Ministers to make any consequential amendments to provisions contained in or made under any Act or any Measure or Act of the National Assembly for Wales. Consequential amendments can only be made in relation to those clauses over which the Assembly has legislative competence. Such amendments must be made by Order which is subject to affirmative Assembly procedure.

16. Clause 141 provides power to the Welsh Ministers to commence by Order those clauses over which the Assembly has legislative competence on whatever day or days they appoint. The Welsh Ministers may make any saving, transitional or transitory provisions they consider appropriate in relation to the coming into force of those clauses. This Order would not be subject to Assembly procedure.

17 It is the view of the Welsh Government that the provisions referred to in paragraphs 5 to 16 fall within the National Assembly’s legislative competence as set out in Subject 11 (Housing) of Schedule 7 to the Government of Wales Act 2006.

Advantages of utilising this Bill rather than Assembly legislation

18 Using this UK Bill will ensure that the powers are available on a consistent basis across Wales and England simultaneously. Consultation results demonstrated that Welsh stakeholders were keen to have the same tools to deal with anti-social behaviour as England and this is the fastest route at present to make them available to more effectively tackle anti-social behaviour.

Financial Implications

19 There are no anticipated financial implications for the Welsh Government of the relevant provisions of this Bill which cannot be absorbed as part of existing obligations.

20 There may be additional duties at a local authority level and housing association level when social landlords choose to exercise the powers.

Carl Sargeant AM
Minister for Housing and Regeneration

May 2013