

National Assembly for Wales

Communities, Equality and Local Government Committee

17 September 2013

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



Report on the Legislative Consent Memorandum for provisions relating to the recovery of possession of dwelling houses

Background

1. On 23 and 24 May 2013, the Welsh Ministers laid four Legislative Consent Memoranda for the Anti-social Behaviour, Crime and Policing Bill¹, which is currently before the UK Parliament. This Memorandum was laid by the Minister for Housing and Regeneration on 23 May.
2. On 4 June 2013, the Business Committee referred the above Memorandum to the Communities, Equality and Local Government Committee for consideration and agreed a reporting deadline of 19 September 2013. The LCM is due to be considered in plenary on 24 September 2013.

Anti-Social Behaviour, Crime and Policing Bill (“the Bill”)

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;

¹ <http://services.parliament.uk/bills/2013-14/antisocialbehaviourcrimeandpolicingbill.html>

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.”

Main effect of the provisions in the Bill for which consent is sought

5. Consent is sought for provisions in Part 5 of the Bill which relate to recovery of possession, on anti-social behaviour grounds, of dwelling-houses that are held either on a secure or on an assured tenancy. Consent is also sought for related provisions in Part 13 of the Bill, which deal with the procedure for subordinate legislation made by the Welsh Ministers under the Bill, and with commencement of the relevant provisions of Part 5, in so far as they relate to Wales.

Consideration of LCM

6. We considered the LCM on 13 June 2013 and agreed to invite the Minister to attend a Committee meeting to clarify a number of issues. The Minister attended the Committee meeting on 17 July 2013.

Consultation

7. In reference to consultation on the proposals, the Minister said:

“[...] the consultation on the proposals for Wales was carried out between November 2011 and February 2012. There was general support for certain powers of possession in relation to serious anti-social behaviour with a general agreement that further guidance and training would be needed before any power is introduced. It is fair to say that, from the consultation, it is clear that many landlords and victims of anti-social behaviour were very frustrated about the length of time it takes, and the complexities in the system, to deal with anti-social behaviour in the home.”²

Discretionary grounds for possession

8. The existing discretionary grounds for possession will be modified by the Bill. However they are, and will remain, discretionary. This means that the Court will make an order for possession only if satisfied that it reasonable to do so.³

9. Clause 90 of the Bill amends the existing discretionary ground for possession for anti-social behaviour for both secure and assured tenants. Tenants of local authorities are usually (but not exclusively) secure tenants. Tenants of registered social landlords (housing associations) are usually (but not exclusively) assured

² Oral Evidence, 17.7.13

³ S7(4) *Housing Act 1988* (assured tenancies) and s84(2)(a) *Housing Act 1985* (secure tenancies).

tenants. It can be used 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. This means the conduct need not have occurred in the vicinity of the property so long as it has an adverse effect on the landlord or its staff.

10. It should also be noted that the conduct, which may lead to the making of a possession order against the tenant, may have been carried out by another resident of the property or even by a visitor. It does not have to be the tenant.

11. In response to a question from the Committee, the Minister said that he felt that the amendment of the discretionary grounds for possession was proportionate. He emphasised that possession would be the end point of a longer process:

"The issue is to be taken in proportion in terms of what is determined as serious anti-social behaviour. We would not be seeking to do that unless it was a case of serious anti-social behaviour away from the home. Perhaps it is easier to explain it by giving an example of what that may constitute. If a tenant, or a resident within the tenancy, has committed serious anti-social behaviour against a person within the vicinity of their home, or, indeed, against the landlord away from home, we believe that it is appropriate that there should be grounds for eviction in terms of anti-social behaviour in the most serious cases. The definition including such behaviour away from the locality would only be for the serious element of this, but it does or could have an effect on the locality where that person may live peacefully, as you say, but may have attacked the landlord 20 miles away."⁴

12. In relation to the possibility that the behaviour of a visitor or another resident could lead to the eviction of a tenant, the Minister said:

"It is the responsibility of communities. The home is really important, whoever you are. It is really unfortunate if you allow friends or family – I cannot see how they could be friends, really, if they are causing that much disruption to your home and risking you losing your tenancy. It is a really unfortunate position, and the responsibility for the household lies with the tenant or the owner."⁵

13. On this issue, the Minister also said that:

⁴ Oral Evidence, 17.7.13

⁵ Oral Evidence, 17.7.13

“I would hope that we have in place or should have in place support mechanisms for families in order to assist them with dealing with an individual in the property who is behaving anti-socially. As I said, it is not an overnight trigger or a knock on the door and someone saying, ‘You’re going to be evicted because of what you’ve just done.’ There is a process to this. We identify what the anti-social behaviour is or is not and how we deal with and manage that process. If it cannot be managed, then there is a very quick process, compared with the old system, that will deal with the anti-social behaviour that is being seen.”⁶

14. In response to a question relating to victims of domestic abuse, who may be at risk of eviction due to the behaviour of a partner or spouse, the Minister responded:

“I am very keen to make sure that we make the right provision for people suffering from domestic abuse and ensure that we have things in place to support them. So, I would hope, during that period prior to eviction, that the teams involved in that would be able to identify and seek to support any individual suffering from abuse.”⁷

Mandatory grounds for possession

15. For both secure and assured tenancies, under Clause 89, serious anti-social behaviour (as defined by the Bill) will become a mandatory ground for possession and may be based on the conduct of visitors or other residents. The decision on which ground to seek possession will be a matter for the landlord. The mandatory grounds will be based upon the landlord proving any one of five conditions. A summary of these conditions is provided in the LCM which states that the condition is met if the tenant, a member of their household or a visitor 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). Serious offences include murder, manslaughter, kidnapping, false imprisonment, a range of offences against the person, sexual offences, possession of offensive weapons, offences against property, drug related offences and others; or found by a court to have breached an injunction to prevent nuisance and annoyance.

The offence or anti-social conduct must have been committed either (i) in the dwelling house or in the locality of the dwelling house or (ii), affected a person with a right to live in the locality of the dwelling house or (iii) affected the landlord or a person connected with the landlord’s housing management functions.

⁶ Ibid

⁷ Ibid

- convicted for breach of a criminal behaviour order.

The breach must have been committed either (i) in the locality of the dwelling house or (ii), caused, or was likely to cause harassment, alarm or distress to a person with a right to live in the locality of the dwelling house or to a person connected with the landlord's housing management functions.

16. 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*.

17. The Court will have no discretion and no power to suspend the order⁸. In other words, where the Court is satisfied that at least one of the above five conditions is met, the Court will be required to make an order for possession with no possibility of a 'second chance' by way of a suspended order.

18. In relation to the ability of the Court to suspend an order, the Minister said that:

"[...] the absolute route for possession for anti-social behaviour will only apply when a court has already found a tenant or a member of the tenant's family guilty of the serious anti-social behaviour that we mentioned earlier. The tenant is able to have the court consider their defence to the original proceedings at the time that they took place. So, there is a review period within that. Although the ground for possession is absolute, I think that I am right in saying that it is still subject to the Human Rights Act, which was mentioned earlier. So, there is a process whereby it can be considered to do with the original Act that led to this."⁹

Requesting a review

19. The Bill will provide a secure tenant with a right to seek a review of the landlord's decision to seek possession under the mandatory ground. The Welsh

⁸ For assured tenancies, the Ground will be added to Part 1 of Schedule 2 to the 1988 Act as 'Ground 7A'. The power to suspend does not apply to any of the grounds in Part 1 of Schedule 2 (see s9(6)(a) Housing Act 1988). For secure tenancies, the power to suspend applies to grounds set out in Part 1 or Part 3 of Schedule 2 to the 1985 Act. The new ground will not appear in that Schedule. It will appear as a separate ground under s84A of the 1985 Act. So, the power to 'suspend' will not apply to the new grounds proposed by the Bill.

⁹ Oral Evidence, 17.7.13

Ministers may set out in regulations the process to be followed on review and this may include making provision that the reviewer must be in a more senior role than the original decision-maker. Assured tenants will have no such right to request a review, but would be able to request a review through their landlord's complaints procedure on a non-statutory basis.

20. In response to a question on the lack of a statutory right for assured tenants to seek a review, the official accompanying the Minister said that:

“Statutory review procedures are normally only considered for public bodies, and RSLs, for example, are not public bodies; they are private bodies. In practice, housing associations do have their own review procedures, and we would expect that, in these situations, they would carry out review procedures similar to those that are statutory for secure tenants.”¹⁰

Human Rights Act

21. The Human Rights Act incorporates the European Convention on Human Rights into UK law. For secure tenants, the Bill specifically provides that the Court's obligation to make an order using the mandatory grounds for possession will be subject to any defence presented by the tenant which raises potential human rights issues. This would generally be a breach of Article 8 of the Convention – the right to respect for a private and family life.

22. The official accompanying the Minister explained that:

“[...] there is an ultimate safeguard that was introduced by the UK Government into the Bill to ensure that a defendant would have the option to make a claim of proportionality under the Human Rights Act 1998. There would be that backstop to make sure that, if someone was in the situation that you were describing, the court would have an opportunity to consider whether it was proportionate to evict on the basis of the behaviour.”¹¹

23. It should be noted that rights arising under the Human Rights Act may be enforced only against public bodies and not against private entities. So, this provision only applies to secure tenants as they are usually tenants of public bodies. Assured tenants are usually tenants of private bodies, so the provision does not apply to them.

¹⁰ Ibid

¹¹ Oral Evidence, 17.7.13

Financial Implications

24. The memorandum states that there are no anticipated financial implications for the Welsh Government as a result of the changes. However, it also notes that:

“There may be additional duties at a local authority level and housing association level when social landlords choose to exercise the powers.”¹²

25. The latest Welsh Government statistics show that there were 106 outright possession orders awarded on the basis of anti-social behaviour in 2010-11.¹³

26. On the financial implications of the proposals, the Minister said that

“[...] the cost analysis, has been done by the UK Government, and we can give you the figures for how there will be a cost saving in the process—the length of period that this would take to deliver means that there is a cost-saving benefit in this.”¹⁴

27. On the issue of financial implications arising from an increase in evictions and, consequently, homelessness, the official accompanying the Minister said that:

“[...] rather than this actually seeking to increase the number of evictions, it is very much focused on a speedier process. So, there might be some slight increase. The UK Government estimated the additional cost for homelessness to be in the region of £36,000, but that is set against potential savings of £1 million split between landlords, and a further saving of, I think they said, £800,000 to the courts service. So, it is a very slight increase in the cost of homelessness, but, actually, landlords will have significant savings from reduced court time and associated costs, et cetera.”¹⁵

28. In relation to a possible increase in evictions, the Minister added:

“This is about the process being less complex and allowing the matter to be dealt with effectively through a quicker process. So, we are not expecting to see this being used more [...]”¹⁶

¹² Paragraph 20

¹³ Welsh Government, [StatsWales – Social landlords possessions and evictions 2010-11](#) [accessed 10 July 2013]

¹⁴ Oral Evidence, 17.7.13

¹⁵ Oral Evidence, 17.7.13

¹⁶ Ibid

Other Issues

Welsh Ministers' powers of modification

29. Clauses 86-90 and 92 may be modified by the Welsh Ministers by way of Regulations (see clause 137(3)). Those Regulations will be subject to affirmative procedure in the Assembly (see clause 138(3)).

30. All other regulation-making powers of the Welsh Ministers will be subject to negative procedure in the Assembly (see clause 138(5)).

Advantages of using this Bill rather than an Assembly Bill

31. The Welsh Government states in its Memorandum that using this Bill, rather than Assembly legislation, will ensure that the powers are available on a consistent basis across Wales and England simultaneously. It also states that stakeholders in Wales were eager to have the same tools to deal with anti-social behaviour as England and this is a method to deliver that outcome quickly.

Renting Homes Bill

32. The Committee notes that the Welsh Ministers intend, during 2015, to introduce a Renting Homes Bill. The Bill is intended to replace secure and assured tenancies (as well as other forms of tenancy) with two new forms of tenancy. The legislation will need to set out new rules for landlords who wish to recover possession, including on the grounds of anti-social behaviour. The following is quoted from the Welsh Government's website:

'Our proposals are based on a new legal framework developed by the Law Commission. It has two types of contract:

A 'secure contract' modelled on the current secure tenancy issued by local authorities.

A 'standard contract' modelled on the 'assured shorthold tenancy' used mainly in the private rented sector.

For the first time, all landlords would be required to issue written rental contracts. We propose to make this easy by publishing model contracts online. These would be written in plain language and cover all relevant law.

Our proposals would also help us to achieve some other important goals. These include enabling a more effective response to the anti-social behaviour of some households and dealing with domestic abuse by targeting action on the perpetrator and enabling the victim to remain in their home.'

Our view

33. We note the Minister's view that possession proceedings come at the end point of a longer process and that he does not anticipate that the proposed legislation will result in an increase in possession actions. We note the Minister's emphasis that the purpose of the legislation is to improve the effectiveness of the process and to reduce costs.

34. We draw the issues outlined in this report to the attention of the Assembly in advance of its debate on the Legislative Consent Memorandum.