

ANTI-SOCIAL BEHAVIOUR ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Housing

25. This part gives local authorities, housing action trusts and social landlords registered with the Housing Corporation new and more effective tools to deal with anti-social behaviour. The Bill also introduces a new duty on social landlords to publish their anti-social behaviour policies so that tenants and members of the public are informed about the measures that social landlords will use to address anti-social behaviour in their stock. In addition to the White Paper *'Respect and Responsibility'* these measures were the subject of public consultation from 2 April until 12 July 2002.

Section 12: Anti-social behaviour: landlords' policies and procedures

26. This section introduces a new section 218A into the Housing Act 1996. This requires certain social landlords to prepare and publish policies and procedures on anti-social behaviour, and to make them available to the public.
27. New section 218A(3) to (6) gives details relating to the times at which a statement of policies and procedures must be published and reviewed, and how the statement must be made available to the public. The duty comes into effect within 6 months of the date of commencement of this section.
28. New section 218A(7) requires social landlords to have regard to relevant guidance when preparing or reviewing their policies and procedures. Guidance may be issued to local housing authorities or housing action trusts in England by the Secretary of State or, in Wales, by the National Assembly for Wales. Guidance to registered social landlords may be issued by the Housing Corporation in England or, in Wales, by the National Assembly for Wales.

Section 13: Injunctions against anti-social behaviour on application of certain social landlords

29. This section repeals sections 152 and 153 of the Housing Act 1996 and introduces new provisions allowing certain social landlords to apply for injunctions to prohibit anti-social behaviour which relates to or affects their management of their housing stock. *Subsection (3)* introduces new sections 153A, 153B, 153C, 153D and 153E into the Housing Act 1996.
30. New section 153A(1) provides that the conduct to which that provision applies is conduct which is capable of causing nuisance or annoyance (even if no complaint has been received) and which directly or indirectly relates to or affects the landlord's management of its housing stock.
31. New section 153A(2) to (5) sets out the conditions that have to be met before an injunction against anti-social behaviour can be granted. An injunction may be granted

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against any person whose behaviour could cause nuisance or annoyance to anyone in any of classes of people listed in S153A(4). These include:

- Anyone who has a right to live in property owned or managed by the landlord (for example, tenants, licensees, long leaseholders and their families)
 - Anyone who has a right to live in any other property in the neighbourhood (for example owner occupiers, tenants of other landlords).
 - Anyone else lawfully in such property or in the neighbourhood. This could include anyone visiting family or friends, using local facilities, passing through, or working in the neighbourhood.
 - Staff employed in connection with the management of the landlord's stock.
32. The conduct need not cause any such nuisance or annoyance to any specific individual. It is sufficient that it is capable of having that effect.
33. New section 153A(5) provides that the anti-social behaviour need not occur in the vicinity of the landlord's housing accommodation. However the behaviour will still need to be related, at least indirectly, to the landlord's management of its accommodation. For example a landlord should be able to apply for an injunction to protect a tenant who has been regularly harassed by other residents of an estate even if the incident itself which gave rise to the injunction application happened elsewhere. The anti-social behaviour in this example is clearly related to the tenant's occupation of a home owned or managed by the landlord.
34. New section 153B allows specified landlords to apply for injunctions where someone has used or threatened to use their housing for an illegal purpose. This could cover, for example, drug dealing or use of the premises as a brothel.
35. New section 153C allows the court granting an injunction under new sections 153A or 153B to attach a power of arrest or to exclude a person from specified premises or a specified area where there is the use or threat of violence or a significant risk of harm to any person mentioned in new section 153A(4) (see above). Consequently a power of arrest will be available in cases where there is a significant risk of harm even if there has been no actual or threatened violence. Significant risk of harm is defined in new section 153E(12). It could include emotional or psychological harm. This could apply, for example, in cases of racial or sexual harassment. The existing provisions, which are being repealed, only allow a power of arrest when there is either violence or threatened violence together with a significant risk of harm.
36. New section 153D applies in relation to injunctions sought by a local authority, a housing action trust, a registered social landlord or a charitable housing trust on the grounds of a breach or anticipated breach of a tenancy agreement by a tenant. If the behaviour is prohibited by the terms of the tenancy agreement and satisfies the criteria described in paragraphs (a) and (b) of new section 153D(1) (as outlined in the next paragraph), the court may exclude a person from specified premises or a specified area and attach a power of arrest to any provision of the injunction.
37. The breach (or anticipated breach) of the tenancy agreement must relate to conduct which is capable of causing nuisance or annoyance to any person. The tenant may have engaged or threatened to engage in the conduct directly or have allowed, incited or encouraged another person to engage in such conduct. In addition the conduct must include violence or the threat of violence or a significant risk of harm to any person.
38. New section 153E includes provisions supplementing sections 153A to 153D, including provisions for the variation or discharge of an order. New subsection 153E(2)(b) confirms that an injunction under new section 153A, 153B or 153D may exclude someone from his own place of residence. New subsection 153E(4) allows an injunction under sections 153A, 153B or 153D to be made without notice having been given to the

respondent, although the respondent must subsequently be given the chance to make representations. *Subsections (4) to (7)* of section 13 make consequential amendments to housing legislation to give effect to the new provisions for injunctions under new sections 153A, 153B and 153D of the Housing Act 1996.

Section 14 : Security of tenure: anti-social behaviour

39. *Subsection (1)* amends section 82 of the Housing Act 1985 to allow a secure tenancy to be brought to an end by a demotion order. *Subsection (2)* inserts new section 82A into the Housing Act 1985.
40. New section 82A of the 1985 Act provides that a local authority, a housing action trust or a registered social landlord can apply for a demotion order. A demotion order will end the secure tenancy on a specified date. If the tenant remains in occupation, a new demoted tenancy will begin on the same date. The court may only make the order if the tenant, another resident of or visitor to the tenant's home has behaved in a way which is capable of causing nuisance or annoyance or if such a person has used the premises for illegal purposes. In addition the court must be satisfied that it is reasonable to make the order.
41. New section 82A(8) of the 1985 Act defines what is meant by a demoted tenancy by reference to new section 143A of the Housing Act 1996 and new section 20B of the Housing Act 1988. *Subsections (3)(c) and (d)* of new section 82A confirm that any rent owed or overpaid on the tenant's rent account under the secure tenancy will be transferred across to the demoted tenancy. *Subsection (5)* of new section 82A sets out certain basic terms of the demoted tenancy at the point at which it is created.
42. *Subsection (3)* of section 14 amends section 83 of the Housing Act 1985 to ensure that landlords are required to serve notice on secure tenants before issuing demotion proceedings, and specifies the information which the notice should contain.
43. *Subsection (4)* of section 14 inserts new section 6A into the Housing Act 1988, dealing with the demotion of assured tenants of registered social landlords. A demotion order will end the assured tenancy on a specified date. If the tenant remains in occupation, a new demoted assured shorthold tenancy will begin on the same date. The court may only make the order if the tenant, another resident of or visitor to the tenant's home has behaved in a way which is capable of causing nuisance or annoyance or if such a person has used the premises for illegal purposes. In addition the court must be satisfied that it is reasonable to make the order.
44. *Subsections (3)(c) and (d)* of new section 6A of the 1988 Act confirm that any rent owed or overpaid on the tenant's rent account under the secure tenancy will be transferred across to the new demoted tenancy. *Subsections (4A) and (4B)* of the new section 6A require landlords to serve notice on assured tenants before issuing demotion proceedings, and specify the information which the notice should contain. *Subsection (5)* of new section 6A sets out certain basic terms of the demoted tenancy at the point at which it is created.
45. *Subsection (5)* of section 14 introduces Schedule 1, which amends the Housing Act 1996 and the Housing Act 1985 and sets out the legal position regarding demoted tenancies where the landlord is a local authority or a housing action trust.

Section 15: Demoted assured shorthold tenancies

46. *Section 15* introduces new section 20B into the Housing Act 1988 which sets out the legal basis for the form of demoted tenancy that can be used by registered social landlords. A demoted assured shorthold tenancy is an assured shorthold tenancy during the demoted period but there is provision for the demoted assured shorthold tenancy automatically to turn into an assured tenancy after one year unless the landlord has issued a notice of proceedings for possession during that year.

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47. If a notice is issued the tenancy will remain a demoted assured shorthold tenancy beyond the first year until the notice is withdrawn or six months have passed and no proceedings have been issued; or, if proceedings have been issued, until they are determined in favour of the tenant.
48. A demoted assured shorthold tenancy can be ended at any time during the demotion period. Unlike non-demoted assured shorthold tenancies a possession order granted on the basis that the landlord has given the required notice under section 21(4) of the Housing Act 1988 can take effect within the first six months of the tenancy.

Section 16: Proceedings for possession: anti-social behaviour

49. This section introduces new provisions relating to the court's exercise of discretion in possession proceedings. *Subsection (1)* introduces a new section 85A into the Housing Act 1985. *Subsection (2)* introduces new section 9A into the Housing Act 1988.
50. The effect of these changes is that when a court is considering whether it is reasonable to grant a possession order against a secure or assured tenant under one of the nuisance grounds for possession, the court must give particular consideration to the actual or likely effect which the anti-social behaviour has had or could have on others.

Section 17: Devolution: Wales

51. This section ensures that all functions of the Secretary of State arising from the amendments to the Housing Acts mentioned are, so far as exercisable in relation to Wales, to be carried out by the National Assembly for Wales.