

# Housing Team Bulletin

Issue 39 January 2015



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“ Sonia undertakes the full range of housing work including defending possession, injunction / committal proceedings, homelessness and unlawful eviction. She has a particular interest in clients lacking capacity to conduct litigation, instructions via the Official Solicitor and in cases concerning disability discrimination under the Equality Act 2010. ”

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## A focus on amendments to possession regime brought in by Anti-social Behaviour, Crime and Police Act 2014.

### In this issue...

- Discretionary “nuisance” grounds for possession - amendments in force from 13.5.14
- New mandatory ground for possession - in force from 20.10.14
- Injunctions under Part 1, s1 of ACPA 2014

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This bulletin is a heads up to practitioners; the amendments to the possession regime brought in by the [Anti-social Behaviour, Crime and Police Act 2014](#) (‘ACPA 14’) are now in force in England. They are summarised below.

### Discretionary ‘nuisance’ grounds for possession - amendments in force from 13 May 2014

The amendments are both to Ground 2: Pt 1, Schd 2, HA 1985 (secure tenants) and Ground 14: Pt 2, Schd 2, HA1988 (assured tenants) - the ‘nuisance’ grounds.

(i) Insertion of paragraph (aa) after existing paragraph (a). Effect is to make the ground available where nuisance is caused to the landlord or a person employed (not necessarily by the landlord) in relation to landlord management functions and the nuisance is related directly or indirectly to those functions (see s98 ACPA 2014)

The amendments expand the remit of the ‘nuisance’ grounds so as to take account of persons employed to facilitate management the property - akin to a s.153A HA 1996 injunction. But it also goes much further than s.153A and gives more prominence to the landlord’s feelings and takes account of any nuisance caused to him/her personally.

(ii) Addition of Ground 2ZA (secure tenants) and 14ZA (assured tenants). These grounds are the ‘riot grounds’ which allow for possession proceedings where tenant or adult living with tenant is convicted of an indictable offence taking place during, and at the scene of a riot (see s99 ACPA 2014)

This new ground is clearly a nod to the 2011 riots. However, it could be triggered by a relatively minor ‘either way’ offence which is triable on indictment or summarily (grab a Blackstones or Archbold and have a look at what constitutes an either way offence). There may be issues about how much control a tenant had over an adult living with him/her who meets the criteria through behaviour

# Housing Team Bulletin

Issue 39 January 2015



committed away from the property without tenant's knowledge. There are also questions about whether, if a relevant person's conviction is not one for riot, the court will have to conduct a discrete fact finding exercise to determine if a riot, within the meaning of s1 Public Order Act 1986, was taking place.

## New mandatory ground for possession - in force from 20 October 2014

The new grounds are added as s84A (secure tenants) and Ground 7A (assured tenants) by s94 and 97 ACPA 2014 respectively. The regime for each is exactly the same save for only secure tenants are entitled to a review of the decision to seek possession under this ground (s94 and 97 ACPA 2014)

The grounds will be triggered if any one of five conditions are met (set out in s84A(3)-(7) HA 1985 and ground 7A Schd 2 HA 1988).

All of the conditions require a determination to have been made already by the courts, so no determination of the facts is required by the time of the possession claim. If a challenge to the facts is to be made, this must be done by way of appeal so check this when you first have sight of the first court's decision and refer on for appeal if necessary and in time - the possession claim will not proceed until any appeal is determined. The conditions are;

**Condition 1** - Conviction of a 'serious' offence as contained in the exhaustive list at the new Schd 2A HA 1985 (see Schd 3 ACPA 2014).

**Condition 2** - Proved breach of Injunction made under s1 ACPA 2014.

**Condition 3** - Proved breach of Criminal Behaviour Order made under Part 2 ACPA 2014

**Condition 4** - Closure order under s80 ACPA 2014 has been made or property prohibited under such order or closure notice (s70 ACPA 2014) for 48 hours continuously.

**Condition 5** - Conviction under s80(4) or 82(8) for breach of abatement notice where noise has come from subject property.

The behaviour can emanate from tenant or a person residing in or visiting the property.

The Notice requirements (s95 ACPA 2014 introduces these into s83ZA HA 1985 and Ground 7) are very specific and if they are not met, the tenant will have a domestic law defence as there is no power to dispense with notice.

If the notice is correct, a secure tenant can make a written request for review within 7 days of the notice whereupon the obligation to review is mandatory (see s85ZA(1) - (8)). This all then depends on tenants seeking legal advice very promptly upon receipt of the notice. The government 'hopes' that Housing Associations will draw up a policy for review for assured tenants

If there is no domestic law defence and review is not possible or is unsuccessful, Article 8 and Public law will be the only defences available. All the usual considerations will be material but the seriousness of the facts, tenant's participation and, where relevant, level of control he/she could exert over non-tenant at the time of their behaviour will all be the crucial starting points. See the [official guidance](#) which mentions at several points the purpose of the mandatory ground is to deal with only the most serious cases of anti-social behaviour

# Housing Team Bulletin

Issue 39 January 2015



## Injunctions under Part 1, s1 of ACPA 2014

The new injunctions are very closely modeled on s153A-E of Housing Act 1996 both substantively and procedurally. **These orders are not yet available as Part 1 is still not in force yet therefore this part of the bulletin is not an in-depth look at the provisions.**

These orders replace the ASBI, drinking banning orders, intervention orders and individual support orders. Alongside them stand the new Criminal Behaviour Order (CBO) which replaces the ASBO on conviction and are of the same ilk. As a result, the provisions of Part 1 reflect those origins which are both civil and criminal.

The list of those able to apply for a s1 injunction include social landlords, the police, British transport police and the Environment agency (s5(1)). A person applying for an injunction under section 1 must before doing so either (s14) -

(a) consult the local youth offending team about the application, if the respondent will be aged under 18 when the application is made;  
(b) inform any other body or individual the applicant thinks appropriate of the application. For adjourned without-notice applications or applications for variations or discharge of an injunction, there are the same requirements to consult (for under 18's) or otherwise inform.

A s1 injunction is available where the individual criteria are met and where it is 'just and convenient' to make one.

The individual criteria are;

The Respondent ("R") must be over 10 years old (s1(1));

The court must be satisfied that R has engaged or threatens to engage in antisocial behaviour - this is the 'first condition' (s1(2));

The court must consider if it just and convenient to grant the injunction for the purpose of preventing the respondent from engaging in anti-social behaviour - this is the 'second condition' (s1 (3)).

Antisocial behaviour is defined in s2 and includes;

- conduct causing or capable of causing harassment, alarm or distress to any person generally (s2(1)(a));
- conduct capable of causing a nuisance or annoyance to a person occupying premises (s2(1)(b)) but only where the injunction is applied for by a relevant social landlord (s2(2)) and;
- conduct capable of causing housing-related nuisance or annoyance - that is conduct affecting the housing management functions of a relevant social landlord (s2(3) - to any person (s2(1)(c)).

If a trial is required to determine the facts, bear in mind that by s16, special measures are available for vulnerable and intimidated witnesses just as they are in the criminal courts (see Chapter 1 of Part 2 of the Youth Justice and Criminal Evidence Act 1999). Therefore, where previously an applicant might anonymise its hearsay witnesses with unsupported assertions that they were vulnerable, on application for a s1 order, you can argue that they can still attend and be cross examined behind a screen or via videolink. The introduction of these provisions also suggests that, where appropriate, children might be called to give evidence just as they are in criminal courts. What is 'just and convenient' will be a matter for the court and suggests a wide discretion.

# Housing Team Bulletin

Issue 39 January 2015



If the conditions are met, the order may contain terms requiring your client to do something in addition to the usual prohibitive terms (s1(4)). This is a change which might see Judges requiring clients to attend appointments or engage with services as a term of the order whereas previously this might only be mentioned in the preamble to the order. However, before a court can impose a requirement, it must be satisfied that there is someone appropriate who can supervise compliance with it (s3). It is for the applicant to suggest someone and to persuade the court that such a person is suitable - suitability might be a route in to challenge the term. Requirements cannot be imposed at the interim stage if your client did not have notice of the application (s7(3)).

The court also has the power to exclude a client over 18 from his/her usual place of residence subject to the applicant falling within the list at s13(1)(b) and the court being satisfied that behaviour includes use or threatened use of violence or persons are at risk of significant harm from respondent (13(1)(c)).

The courts can attach a power of arrest on the usual rationale (behaviour includes use or threatened use of violence or persons are at risk of significant harm from respondent: s4(1)) and this can attach to a requirement! If the original order does not contain a power of arrest, the applicant can apply to attach one at a later stage and the Act does not explicitly set out that the provisions of s4(1) would apply at that stage (s3(b)).

Arrest pursuant to a power of arrest is provided for by s9(1) and a person so arrested must be brought before the appropriate court within 24 hours s9(3)-(4).

Your client can be arrested if there are reasonable grounds to believe he/she has breached a term of a s1 order *even if there is no power of arrest attached*. S10 allows an applicant to apply for a warrant for your client's arrest and a court might grant the warrant if there are reasonable grounds for believing that your client has breached a term of a s1 order - in other words, bearing in mind your client's liberty is at stake, the threshold is very low.

The s1 orders can be made for a defined period of up to 12 months for anyone under 18 and indefinitely for anyone else. For over 18s, the order must either state its defined period on its face or state that it is made until further order (s1(6)). The court has the option of defining the period for which any given prohibition or requirement might take effect (s1(7)).

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Please bear in mind that barristers at GCN are always available to give informal advice on any housing matters. In the first instance please contact the clerks (Sarah Wright, Annmarie Nightingale, Nicola Carroll or Calum Hamilton) on 0161 817 6377.

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