

## **REPORT TO EXECUTIVE AND FULL COUNCIL**

**Date of Meeting: 7<sup>th</sup> October 2014 and 15<sup>th</sup> October 2014**

**Report of: Assistant Director Housing**

**Title: Delegated responsibilities in respect of new Anti-Social Behaviour Legislation**

### **Is this a Key Decision?**

No

\* One that affects finances over £1m or significantly affects two or more wards. If this is a key decision then the item must be on the appropriate forward plan of key decisions.

### **Is this an Executive or Council Function?**

Council

#### **1. What is the report about?**

To seek approval for the delegation of authority to the Assistant Director of Housing to terminate secure tenancies, where necessary, by relying on the new absolute ground for possession introduced by the Anti Social Behaviour Crime and Policing Act 2014.

#### **2. Recommendations:**

That the Executive recommends to Council an amendment to the Council's Constitution, to update the Scheme of Delegation to give the Assistant Director of Housing authority to:

- Terminate any tenancy or licence, and where necessary, by relying on the new absolute ground for possession introduced by the Anti Social Behaviour Crime and Policing Act 2014 ('the ASBCP Act 2014').

#### **3. Reasons for the recommendation:**

The ASBCP Act 2014 received Royal Assent on the 13<sup>th</sup> March, 2014, but not all of the provisions of that Act came into force on that day. The government has made it known that the majority of the provisions of the Act will come into force on the 20<sup>th</sup> October, 2014, and it is believed this will include the new power available to local authority landlords to seek an order for possession based on a mandatory ground, and hence consideration of this power and its delegation is required.

It will be recalled that local authority landlords have been restricted in the availability of and use of mandatory grounds for possession. A mandatory ground is where the landlord only has to prove that the ground is made out rather than also having to persuade the court that it is reasonable for an order to be made even if the ground is made out. However, this council has adopted the Introductory Tenancy regime which does provide, subject to a statutory internal review procedure, a mandatory ground for possession, and also recently adopted the flexible tenancy regime which provides for such a ground, i.e. on the expiry of the fixed term.

The ASBCP act 2014 introduces a new mandatory ground for possession of secure and assured tenancies where anti social behaviour or criminality has already been proven by another court. The purpose of the new power is to expedite the eviction of the most anti social of tenants to bring faster relief to victims.

Section 94 of the ASBCP Act 2014 introduces a new section 84A of the Housing Act 1985 which contains the grounds for obtaining a mandatory order for possession.

Section 83 of the Housing Act 1985 is also amended in that there is a new section 83ZA that imposes a requirement to serve a notice containing the prescribed information relevant to this new ground.

This power can only be used where one or more of the following conditions apply.

The tenant or a member of the tenant's household or a person visiting the property has been:

- Convicted of a serious offence (specified in Schedule 2A of the Housing Act 1985);
- Found by a court to have breached a civil injunction;
- Convicted for breaching a criminal behaviour order;
- Convicted for breaching a noise abatement notice;
- Or the tenant's property has been closed for more than 48 hours under a closure order for anti social behaviour

However, the offence or breach must have occurred in the locality of the property or affected a person with a right to live in the locality or affected the landlord or his or her staff or contractors.

In addition, for secure tenants, there will be a right to request a review of the landlord's decision to seek possession (on the same or similar basis as 'Introductory' tenants).

The government believes that this new power will achieve a number of gains:

- The landlord does not have to prove that it is reasonable to grant possession.
- The court is more likely to determine cases in a single, short hearing.
- It will offer better protection and faster relief for victims and witnesses of anti social behaviour.
- It will save on legal costs and free up court time and resources.
- It will provide new flexibility for landlords.
- The court will not be able to postpone possession to a date later than 14 days after the making of the order save in exceptional circumstances but no later than six weeks.

**4. What are the resource implications including non financial resources.**

Without the appropriate delegated authority being given to the Assistant Director of Housing there is a risk of a legal challenge of a notice being served without authority. This would potentially lead to a costly Court challenge with the resulting loss of monies and reputational damage.

**5. Section 151 Officer comments:**

There are no financial implications arising from approving this recommendation.

**6. What are the legal aspects?**

See paragraph 3 above.

**7. Monitoring Officer's comments:**

This report raises no issues of concern for the Monitoring Officer.

**8. Report details:**

See paragraph 3 above.

**9. How does the decision contribute to the Council's Corporate Plan?**

The recommendation in this report is consistent with the purpose of keeping the city safe

**10. What risks are there and how can they be reduced?**

The new mandatory ground, as the government's Code of Guidance dated July 2014 makes clear, is intended for the most serious cases of anti social behaviour and landlords should ensure that the ground is used selectively. The Code of Guidance suggests that all tenants should be made aware that anti social behaviour or criminality could lead to a loss of their home under this new ground. Steps will be taken, once the power comes into force, and delegated authority has been granted, if that be the decision, to inform the tenants. However, the new tenancy agreement which came into force on the 1<sup>st</sup> October, 2013, already makes it quite clear to tenants that anti social behaviour including criminal behaviour in or near the property will be considered a breach of the tenancy and enforcement action will be taken.

In addition, the council has already in place an Anti Social Behaviour Policy and Procedure for addressing anti social behaviour within its housing stock, and this has also been recently updated. This provides a clear road map for cases involving anti social behaviour and which guides officers in regard to how to identify and pursue the most serious cases. Prevention and early intervention remain at the heart of our approach to dealing with anti social behaviour but the new power will fit within this policy albeit that further amendment to the policy and the procedures may be required.

Finally, the new power is subject to an internal review procedure which is already familiar to officers in the context of Introductory tenancies. Such reviews have been the subject of vigorous scrutiny in the past and have ensured that if a decision to end a tenancy is taken, that it is taken for all of the right reasons. There is no reason to doubt that this approach will apply with the mandatory ground and therefore will reduce the risk of any successful human rights arguments being raised by tenants when the case goes before the court.

**11. What is the impact of the decision on equality and diversity; health and wellbeing; safeguarding children, young people and vulnerable adults, community safety and the environment?**

The decision to delegate this power and to exercise it will have a potential impact on those who may have a protected characteristic for the purposes of the Equality Act 2010, and it will also involve decisions that will bring into play the Public Sector Equality Duty under section 149 of the Equality Act 2010. However, the council's policy and procedure in dealing with anti social behaviour within its housing stock already requires officers to be sensitive to the question of vulnerability in regard to both victim and alleged perpetrator.

In cases where the alleged perpetrator is vulnerable and or has a protected characteristic for the purposes of the Equality Act, e.g. disability, prevention and intervention are the key tools in this context albeit that enforcement action may have to be pursued if these methods do not bring about a change in the behaviour. The new power will only be exercised in appropriate cases where senior officers consider that it is both reasonable and proportionate to do so. When such decisions are made it will be with reference to the section 149 duty.

In cases where the victims are vulnerable but the alleged perpetrator is not, it is believed that the use of the power is going to have a positive impact on the health and well being of the community generally and the victims in particular, which is likely to achieve the aims of safeguarding the community, children, the vulnerable etc., and the environment.

**12. Are there any other options?**

No.

**Assistant Director**

**Local Government (Access to Information) Act 1972 (as amended)**

**Background papers used in compiling this report:-**

None

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