



ASB Master class in partnership with CIH NW

23 February 2015

2 March 2015

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Topics for today



- The new ASB tools and powers
- Likely Defence tactics and things to watch out for
- A revisit of injunction terms and problems with enforcement
- Case studies
- Q&A

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Anti-social Behaviour Crime and Policing Act 2014

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when in force?



13 May 2014 – discretionary grounds for possession in force

20 October 2014 – Most of the Act except Part 1 Injunctions (delayed due to Legal Aid issues)

Still no formal commencement date but Home Office have stated Part 1 to come in **Monday 23 March 2015 ***

*** For purposes of this training – 23 March 2015 will be assumed start date for Part 1**

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when in force?



23 March 2015 – new injunction

We are now weeks away

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summary of new reforms



the act replaces the existing 19 powers available to tackle antisocial behaviour with the following 7 tools:-

- 1. Injunctions**
 - 2. Criminal Behaviour Orders**
 3. Dispersal Powers
 - 4. Community Protection Notices**
 5. Public Spaces Protection Orders
 6. Closure Notices and Orders
 - 7. Recovery of Possession of dwelling houses**
- some of which will be more useful to RPs than others....**

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new reforms



Will see RPs, the Police and the Local Authority being able to apply for (some) of the same measures in the County Court



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new reforms



Judges are not being trained on the new Act and new regime



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statutory guidance



Published by Home Office in July 2014

63 pages long

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332839/StatutoryGuidanceFrontline.pdf

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statutory guidance



partnership working

“need for a joined up approach between organisations”

“need for effective information-sharing protocol”

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Injunctions



- set to replace ASBIs which are currently a very useful tool for social landlords
- and stand alone ASBOs
- Injunctions will bear significant resemblance to the current ASBIs but with some important differences

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what about our existing
ASBI/ASBO applications?



What about Applications made before 23
March?

What about any existing ASBI/ASBO in
force – are they still valid?

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Existing applications



Any application for an ASBI/ASBO issued before 23 March 2015 will be dealt with under the “old” legislation

Section 21 (2) ASBCPA 2014

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Existing orders



Any existing ASBI/ASBO in force still valid and “anything done in connection with that order” not affected by the Act

Section 21 (2) ASBCPA 2014

Except.....

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Existing orders



Section 21 (4) – “As from the commencement day there may be no variation of an existing order that extends the period of the order or any of its provisions”

Can't apply to extend an ASBI/ASBO after 23 March 2015

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Existing orders



Section 21 (5)

After 5 years of the Act (March 2020) any existing ASBI/ASBO still in force will be treated as if a “new” injunction

Applicable to lifetime orders

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The new Injunction



- Granted where the court is satisfied that the respondent has engaged or is threatening to engage in conduct capable of causing nuisance or annoyance to *any* person where the applicant is a housing provider or local authority and it affects their **housing management** functions.
- Applications by police and local authority can also relate to the person's occupation of residential premises (eg tenant or owner occupier), with same nuisance test.
- Otherwise the behaviour test is the old harassment alarm and distress test from the asbo i.e. non-housing related nuisance

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The new Injunction



- Standard of proof is the balance of probabilities (now expressly defined avoiding McCann v Manchester challenges)
- the power of arrest & exclusion remains available where there is a threat of violence or significant risk of harm to another

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What has changed?

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- Who can apply?
- Not only “housing provider” or local authority but also
- The chief officer of police for a police area
- The chief constable of the British Transport Police Force
- Transport for London
- The Environment Agency
- National Resources Body for Wales
- Welsh Ministers exercising security management functions
- Sec of State/Special Health Authority

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What has changed?



- Positive requirements
- In addition to 'prohibiting' activities an injunction can also require a respondent to engage in certain positive activities eg to address underlying issues contributing to their anti-social behaviour (such as drug and alcohol problems)
- Power of arrest can be attached
- Not in without notice injunction applications
- must specify who is responsible for supervising compliance
- Old s153D breach of tenancy injunction has gone. Now an injunction is only available for nuisance and annoyance, have to look to contract law for other tenancy breaches if possible if breach cannot be shown to cause nuisance and annoyance and fit within new test

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Positive requirements



- Concern about who will pay for these.
- Act requires person/body who will supervise compliance to be specified and this person must be able to supervise compliance with the positive terms and inform if terms are breached.
- What about a direct referral to Troubled Families Programme? Could this be set up to allow positive requirements that may be applied for/ordered by the court to take advantage of this scheme and secure funding

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Troubled Families Programme



- Designed to assist families who meet certain criteria including committing crime and/or asb
- Already up and running in 51 areas including 10 local authority areas of Greater Manchester, Liverpool, Knowsley, Blackpool, North Yorkshire.
- 2015-2016 £200 million pounds in funding is available to turn troubled families around.

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Youths and ASB – life after the ASBO



- Injunctions available against individuals over the age of 10
- those under 18 will have to be pursued in the Youth Court after consultation with the Youth Offending team
- an injunction can only be granted for up to 12 months against a person under 18
- breach of an injunction against a minor can lead to prison, up to 3 months' detention for under 18s
- an appeal to an injunction granted in the Youth Court lies to the Crown Court

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Injunctions generally



- Must be “just and convenient”
- Variation or discharge – if application to vary has been dismissed, no further application to vary without consent of court or other party. Make sure applications to vary are done properly!
- Anti-social behaviour can affect “any person”, not just someone not of same household – unlike ASBO
- Formal consultation for youths
- Applicant must inform any other agency “if appropriate” before applying for injunction

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Injunctions continued



- Applications can be with or without notice. If without notice be sure to explain why notice cannot be given.
- Breach proceedings as with ASBIs. Defendant must be brought before the court within 24 hours of time of arrest. When calculating 24 hours, Sundays, Good Friday and Christmas Day don't count. Otherwise an emergency court must be convened.
- Applicant must be informed of arrest!! – section 9 (2)
- Can also be dealt with by way of committal application on notice.

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Injunctions continued



- Court has power to remand adult Defendant in custody. Up to 8 days at a time.
- Youths can be remanded in limited circumstances
- If mental health is raised then court has power to remand for up to 3 weeks to allow a psychiatric report to be prepared.
- Breaches dealt with by way of contempt of court – up to 2 years imprisonment. ASBO sentencing guidelines are usually considered following case law from 2012.
- Still criminal standard of proof to prove a breach – beyond reasonable doubt.

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Likely challenges



- Equality Act. Does Respondent have any protected characteristics? Public Sector Equality Duty s149 Equality Act 2010 must be considered. Document this as it will be picked up and probably cross-examined about it at trial.
- Human Rights. Especially Article 8 – if look to interfere with home/family life. Should be considered if look to injunct someone to keep them away from family member
- Consultation. Has everyone who should have been consulted considered? S14 Act requires consultation with YOT if Respondent is under 18 and also **“inform any other body or individual the applicant thinks appropriate”** regardless of age!!
- Lots of ASBO case law on this – get legal advice. If application made without notice consultation must be done by return hearing

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“Inform any other bodies”

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- Up to the applicant to consider who should be informed?
- Difficult if applicant does not “know” the Respondent
- Should make efforts and document efforts to inform in witness evidence included in application
- Likely to be a Defence point

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Likely challenges



- Judicial Review. What are your policies on ASB? Have you followed your own policies? If not decision to issue proceedings could be challenged at court.
- General – are terms sought just and convenient? Could 3 negative terms be better dealt with by one positive term? Get legal advice when drafting orders.
- Standard of proof. Written into legislation as being civil standard. Have seen with other remedies with the same standard of proof written into legislation that defence tried to argue parliament was wrong and criminal standard should apply. Need to be aware of this.

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Likely challenges



- Capacity. Very important with injunctions. Wookey v Wookey case – Respondent must have the capacity to understand an injunction.
- Mental Capacity Act 2005– everyone is presumed to have capacity until evidence to the contrary is demonstrated.
- If there is a question over capacity investigate where possible and document.

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Injunction Terms



Good time to revisit clauses which may use
& see if still fit for purpose

Remember “one size does not fit all”

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Injunction Terms



Civil Procedure Rules 1998

Part 65 deals with Anti-Social Behaviour & Harassment

Constantly being updated & amended with new publication issued each April

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Injunction Terms



Part 65.3

“Injunctions should be framed in terms appropriate and proportionate to the facts of the case”

“If there is a risk of significant harm to a person – injunction should identify that person”

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Injunction Terms



“If a power of arrest is sought, each separate provision which is subject to the power of arrest must be set out in a separate clause in the injunction”

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Injunction Terms



“Summary arrest & detention are clearly an extremely serious interference with a persons private life, which can only be justified by an order which is “particularly precise” “

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Injunction Terms



Terms to avoid:

“any person engaged in lawful activity in the neighbourhood of XXX”

- Too wide
- What’s the neighbourhood?
- Who is engaged in lawful activity and how would the Respondent identify this?

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Injunction Terms



Be very careful with wording on power of arrest.

Court form is clear – ONLY the terms that have the power of arrest attached to it should be included on the power of arrest form

Drafting that has wording such as listing a group of people in one term, then continuing in the injunction to prohibit behaviour toward them in later clauses with the wording “any person referred to in term 1 above”, attaching a power of arrest, is likely to be very confusing, open to misinterpretation (and possible unlawful arrest), and successful defence challenges.

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Criminal Behaviour Order

- similar to and replaces the ASBO on conviction
- available where the offender has engaged in behaviour that has caused or was likely to cause harassment, alarm or distress to any person and
- the court considers that making the order will help in preventing the offender from engaging in such behaviour.
- no longer prevented against someone of the same household
- can include positive requirements (who pays/supervises?). Made by prosecution.

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CBOs continued



- fixed period of 1 – 3 years where under 18
- 2 years – indefinitely over 18
- if application to vary dismissed, no further application without consent of court or offender
- review of order within 12 months if under 18
- breach = imprisonment up to 5 years or fine or both
- after commencement of Act, conduct up to 1 year before this taken into account, no extension of ASBO
- concern for Equality Act challenges as with injunctions – must not interfere with school/work attendance or other orders

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Putting Victims First

- Statutory Guidance; Reforms “designed to put victims at the heart of the response to anti-social behaviour”
- Part 6 of the Act; “Local Involvement & Accountability” introduces 2 new measures:-
 - “the Community Trigger”
 - “the Community Remedy”
- Aim is to promote public confidence & empower victims and communities in dealing with ASB.

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The Community Trigger

- S104 ASB Act 2014
- Where a person has made a complaint about ASB, the relevant bodies in that area, including social landlords, must carry out a review (an “ASB case review”) of their response to that behaviour if
 - That person or any other person makes an application for a review &
 - The relevant bodies decide that the threshold for the review is met
- “Relevant Bodies”, council, police, clinical commissioning groups, RPs
- ASB review can lead to recommendations being made to the relevant bodies
- Obligation on the relevant bodies to publish information about applications received for review & the outcomes

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The Community Trigger

Trigger threshold set locally by the “relevant bodies”.

Triggers are open to all residents, businesses and third parties in the case of vulnerable victims.

Even if trigger threshold not met, if the victim is considered vulnerable,, consider offering victim additional support.

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Implications for RPs



- RPs may be “relevant bodies” with statutory duty to participate in ASB Case Reviews
- Other bodies may scrutinise & challenge action/inaction
- Duty to co-operate & share information
- RPs to act on recommendations – financial implications?
- Joined-up, problem – solving approach

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Practical Advice for RPs

- Use Risk Assessment Matrix for identifying vulnerable victims and victims of hate crime
- See as an opportunity for co-ordinated response & support rather than just a risk of scrutiny
- Refer tenants to this power eg. on website and raise awareness with bodies working with vulnerable people
- Budget for putting any recommendations into place
- Good system of recording complaints & retaining info

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Community Protection Notices



CPN's - intended to deal with *repeated or on-going conduct which negatively and unacceptably affects the quality of life of the community*

Can be issued by: Local Authority, Police or Designated Persons (i.e. RP)

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Community Protection Notices



Designated person:

Anti-social Behaviour (Authorised Persons)
Order 2015 – no commencement yet

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Community Protection Notices



S.43(6) – any person considering issuing a CPN must “inform any body or individual that person thinks appropriate”

Written warning must be issued first

S43.(1) CPN may be issued only to an individual aged 16 or over

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Community Protection Notices



Person issued with a CPN can appeal to Magistrates Court within 21 days

Failure to comply:

- Prosecution
- Fixed Penalty
- Caution
- Seizure

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are RPs evicting due to ASB?



Homes & Communities Agency published statistics on 3 September 2014 showing eviction for ASB was up

Year	Total evictions	Arrears	ASB	Both	Other
2008	11,354	8,391	1,626	455	882
2009	11,230	8,456	1,518	250	1,006
2010	9,905	7,535	1,309	214	847
2011	9,735	7,188	1,364	255	928
2012	9,243	6,808	1,277	234	977
2013	10,018	7,324	1,329	352	1,013
2014	11,881	8,825	1,695	267	1,094

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new grounds for possession



- the act introduces absolute grounds for possession and 2 discretionary ground for possession where there has been anti-social behaviour
- putting victims first May 2012 “speeding up the process of eviction for nightmare neighbours who make victims lives a misery”

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the absolute ground
for possession



Secure tenancies: Ground 84A Housing Act
1985

Assured tenancies: Ground 7A Housing Act
1988

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the absolute ground for possession - conditions



The court **MUST** order possession if **ANY** of the following conditions are satisfied (of which there are 5).

- Condition 1

the tenant or a person residing in or visiting the dwelling-house has been **convicted of a serious offence** (listed in Schedule 2A) and the offence was committed (wholly or partly)

- in the locality of the dwelling house
- elsewhere against a person with a right (of whatever description) to reside in the locality of the dwelling house
- elsewhere against the landlord or a person employed in connection with the landlord's management functions.

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the absolute ground for possession - conditions



What is a Serious Offence to satisfy Condition 1?
Over 50 offences listed in Housing Act but include Murder, Manslaughter, Kidnap, False Imprisonment, Section 18 /Section 20 wounding, actual bodily harm, robbery, cultivation of cannabis

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the absolute ground for possession – conditions cont...



- Condition 2

the tenant or a person residing in or visiting the dwelling house has **breached an injunction** under section 1 ABCPA (other than a positive requirement) and the breach occurred:

- a) In the locality of the dwelling house or
- b) elsewhere and the provision breached was intended to prevent nuisance or annoyance to a person with a right to reside in the locality or the landlord or a person employed in connection with exercising the landlord's management functions and it directly or indirectly related to or affects those functions

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the absolute ground for possession – conditions cont...



Condition 3

the tenant or a person residing in or visiting the dwelling house has been convicted of **breaching a CBO** and the breach involved

- In the locality of the dwelling house *or*
- Behaviour occurred elsewhere and the provision breached was intended to prevent behaviour likely to cause harassment, alarm or distress to a person with a right to reside in the locality *or*
- Behaviour occurred elsewhere and the provision breached was intended to prevent behaviour likely to cause harassment, alarm or distress to the landlord or a person employed in connection with exercising the landlord's management functions

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the absolute ground for possession – conditions cont...



Condition 4

the dwelling house is or has been subject to a closure order and access to the dwelling house has been prohibited under the closure order for a continuous period of more than 48 hours

Condition 5

- a) the tenant, or a person residing in or visiting the dwelling- house has been convicted of breaching an abatement notice or court order to abate statutory nuisance *and*
- b) the nuisance concerned was noise emitted from the dwelling house which was a statutory nuisance

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the absolute ground for possession – practice points



Condition 1 – the serious offence must have occurred after the Act comes into force so after midnight 20 October 2014

Conditions 2 and 3 – the Act refers specifically to the injunction under the ABCPA and the CBO so must be breaches relating to these and NOT ASBI/ASBO

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the absolute ground for possession – practice points



- Notice Seeking Possession must be served on the tenant citing the grounds for possession and notice period must be at least 28 days. Court does NOT have discretion to dispense with service of NSP for absolute ground
- If relying on conditions 1,3 or 5 – notice must be served within 12 months of the conviction or 12 months after the appeal has been determined/withdrawn
- If relying on condition 2 – notice must be served within 12 months of the Court making the finding of breach or 12 months after the appeal has been determined/withdrawn
- If relying on condition 4 – notice must be served within 3 months of the date of which the closure order was made or 3 months after the appeal has been determined/withdrawn

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the absolute ground for possession – practice points



- Will be a court hearing in front of a judge and court must grant an order for possession if landlord has carried out correct procedure. The court does not consider reasonableness.
- The court may **not** postpone possession later than 14 days unless exceptional hardship and then max of 6 weeks
- Statutory guidance states “ The new absolute ground is intended for the most serious cases of anti-social behaviour and landlords should ensure that the ground is used selectively”

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the absolute ground for possession – right to review



- section 96 - right to review a decision to seek possession on mandatory grounds only for **secure** tenants. Based on introductory tenancy appeal
- secure tenant has the right to ask for a review within 7 days of notice being served
- if review requested, review must take place before possession proceedings issued

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the absolute ground for possession – right to review



So should Assured tenants be offered the right to review?

Yes. Even though no statutory right to review this is expected and statutory guidance does state *“the statutory review procedure will not apply to housing association tenants. However we would expect housing associations to offer a similar non-statutory review procedure in the same way that they have done for starter tenancies for example”*

Reviews should also help avoid Proportionality defence arguments

Should have a policy and procedure in place ASAP

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potential issues with absolute ground



- “Pinnock” proportionality arguments may water down effectiveness, and may be unlikely to be proportionate to evict where anti-social behaviour comes from visitor
- Statutory guidance states “ The new absolute ground is intended for the most serious cases of anti-social behaviour and landlords should ensure that the ground is used selectively” – could be raised as an issue by the Defence that case is not most serious and not used selectively
- Injunction and Injunction breach cases likely to be very vigorously defended by the Defence if risk of absolute ground being used in future

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the “new” discretionary ground for possession



- Came into force on 13 May 2014
- Section 98 Nuisance to Landlord – creates Ground 2 (aa) (secure) / 14 (aa) (assured)
- Section 99 Offences connected with riot – creates Ground 2ZA (secure) / 14ZA Housing Act 1988 (assured)

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Section 98

– Ground 2 (aa) / 14 (aa)



Nuisance to landlord

“Defendant has been guilty of conduct causing or likely to cause a nuisance or annoyance to the landlord of the dwelling house, or a person employed (whether or not by the landlord) in connection with the exercise of the landlords housing management function, and that is directly or indirectly related to or affects those functions”

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Ground 2 (aa) / 14 (aa)



Abusive to staff/contractors

Vexatious complainers?

Court must be satisfied that ground has been made out and that reasonable to make a possession order

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Section 98 – Ground 2ZA / 14ZA



Offences connected with riot

“The tenant or an adult residing in the dwelling house* has been convicted of an indictable offence which took place during, and at the scene of, a riot in the United Kingdom”

*dwelling house must be in England only

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Section 99 – Ground 2ZA/14ZA



- by product of August 2011 riots
- ground made out where the tenant or person residing in the dwelling house has been convicted of a riot offence **anywhere** in the UK
- court must consider it reasonable to order possession
- intends to tackle “riot tourism” - No longer a requirement that the anti-social behaviour must be in a particular locality

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any questions?

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