EXPLANATORY MEMORANDUM TO

THE ABSOLUTE GROUND FOR POSSESSION FOR ANTI-SOCIAL BEHAVIOUR (REVIEW PROCEDURE) (ENGLAND) REGULATIONS 2014

2014 No. 2554

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Absolute Ground for Possession for Anti-social Behaviour (Review Procedure) (England) Regulations 2014 ("the Regulations") specify the procedure to be followed in an internal review by a local housing authority or housing action trust of its decision to seek possession under the new absolute ground for anti-social behaviour.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These Regulations are the first time that the power under section 85ZA(7) of the Housing Act 1985 has been exercised. This section was inserted by section 96 of the Anti-social Behaviour, Crime and Policing Act 2014 ("the 2014 Act").

4. Legislative Context

4.1 Section 84A of the Housing Act 1985 (as inserted by section 94(1) of the 2014 Act) introduces a new absolute ground for possession of a dwelling that is the subject of a secure tenancy. Section 84A provides that the court will be required to grant possession if any one of the following five conditions is met:

1. the tenant, a member of the tenant's household, or a person visiting the property has been convicted of a serious offence (which is one of the offences set out in Schedule 2A to the Housing Act 1985 as inserted by section 94(2) and Schedule 3 to the 2014 Act);
2. the tenant, a member of the tenant's household, or a person visiting the property has been found by a court to have breached an injunction obtained under section 1 of the 2014 Act;
3. the tenant, a member of the tenant's household, or a person visiting the property has been convicted of an offence under section 30 of the 2014 Act consisting of a breach of a criminal behaviour order;
4. the tenant's property has been closed for more than 48 hours under a closure order (under section 80 of the 2014 Act) for anti-social behaviour; or

5. the tenant, a member of the tenant's household, or a person visiting the property has been convicted for breaching a noise abatement notice or order in relation to the tenant's property under the Environmental Protection Act 1990.

4.2 The offence or anti-social behaviour must have been committed in, or in the locality of, the property, affected a person with a right to live in the locality of the property or affected the landlord or a person connected with the landlord's housing management functions.

4.3 Section 85ZA(1) of the Housing Act 1985 provides secure tenants of local housing authorities and housing action trusts with a right to request a review of the landlord's decision to seek possession on the absolute ground. The landlord must review the decision, if the tenant so requests. These Regulations set out the procedure for carrying out such a review.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 A new absolute ground for possession for anti-social behaviour was introduced by the 2014 Act in order to expedite the eviction of landlords' most anti-social tenants and, thereby, bring faster relief to victims and witnesses.

7.2 As is the case with other proceedings for possession, a landlord seeking possession under the new absolute ground would have to apply to the court for a possession order. The landlord is required to give the tenant notice of their intention to seek possession under the new ground before applying to the court. The notice requirements for secure tenancies are set out in section 83ZA of the Housing Act 1985. The minimum notice period for a periodic tenancy is four weeks or a tenancy period (if the tenancy period is longer than four weeks). In the case of a fixed term tenancy, the minimum notice period is one month (s.83ZA(10)).

7.3 The notice must specify the date after which the possession proceedings may be begun and specify the reasons why possession is being sought. It must also inform the tenant of any statutory right of review that the tenant may have and explain where the tenant can obtain help and advice.

7.4 The new ground is designed to be used for the most serious cases of anti-social behaviour and the recently produced guidance for frontline practitioners on the use of the new anti-social behaviour powers in the 2014 Act advises landlords to use it selectively. The guidance is available at:

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

7.5 Section 85ZA(1) of the Housing Act 1985 (as introduced by section 96 of the 2014 Act) introduces an important safeguard by providing secure tenants of local housing authorities and housing action trusts with a right to request a review of the landlord's decision to seek possession under the new ground.

7.6 Where a secure tenant requests such a review, a local housing authority will have an opportunity to reconsider its decision to ensure that it is robust and proportionate, prior to court proceedings.

7.7 Section 85ZA(2) of the Housing Act 1985 sets out that the tenant has to request a review, in writing, within 7 days of being served with notice of the landlord's decision to seek possession under the new ground. If the tenant fails to request a review within the required timescale, they will not be entitled to a review. The landlord must carry out the review, and notify the tenant of the outcome, before the date on which possession proceedings may be begun (s.85ZA(6)). The review should not, therefore, delay the possession proceedings.

7.8 This instrument sets out the basic requirements to be followed by a local housing authority and housing action trust when conducting a review. The Regulations seek to ensure that the review is conducted fairly. They will ensure that local housing authorities apply a clear and consistent approach. They will also ensure that landlords and tenants (or their representatives) understand the process and know what to expect.

7.9 The Regulations set out, amongst other things, the tenant's right to an oral hearing, the procedure for such hearings, as well as the procedure for carrying out reviews without an oral hearing. The Regulations also require that the decision on review is made by a person of appropriate seniority who was not involved in the original decision.

8. Consultation outcome

8.1 No formal consultation has been undertaken for this instrument, however the Regulations were published in draft and made available on the gov.uk website with other relevant Bill documents at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260863/review_procedure_regulations_draft.pdf during the parliamentary stages of the Anti-social Behaviour, Crime and Policing Bill. A draft version was also placed in the Library of the House of Lords.

8.2 The broad policy proposals to introduce a new absolute ground for possession were the subject of a public consultation between August and November 2011. The outcome of the consultation was published on the Department's website in May 2012.

9. Guidance

9.1 No guidance will be published for this instrument.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies as the Regulations simply specify the procedure to be followed where a secure tenant of local housing authority or housing action trust requests a review of a landlord's decision to seek possession under the new absolute ground.

10.2 The impact on the public sector will be limited to local authority landlords who choose to seek possession under the new absolute ground. (Whilst the statutory right to request a review also applies to secure tenants of housing action trusts, there are no housing action trusts currently in existence.)

10.3 An Impact Assessment has not been prepared for this instrument. These Regulations relate to the implementation of Part 5 of the 2014 Act. An Impact Assessment relating to that Part as well as an overarching Impact Assessment of the whole Act is published on the Home Office's website.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 These Regulations will not be subject to specific monitoring or review.

13. Contact

13.1 Adetokunbo Okunlola at the Department of Communities and Local Government Tel: 03034 443664 or email: adetokunbo.okunlola@communities.gsi.gov.uk can answer any queries regarding the instrument.