HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

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Crown Tenancies Bill [Bill 32 of 2016-17]

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Summary

Wendy Morton presented the *Crown Tenancies Bill* on 4 July 2016. The debate on Second Reading was initially scheduled to take place on 16 December 2016. The Bill passed its Second Reading stage with no debate on 3 February 2017 and was committed to Public Bill Committee. It was considered in Committee on 1 March 2017; no amendments were made. Report and Third Reading are scheduled to take place in the House of Commons on 12 May 2017.

The Bill is seeking to bring most Crown tenancies created after it comes into force within the assured tenancy regime governed by the *Housing Act 1988*. It is felt that this regime will offer flexibility to government departments, while at the same time improving the statutory protection offered to Crown tenants. Crown tenants are generally tenants of the Secretary of State or government departments. Some exclusions from the 1988 Act will remain in place.

The Coalition Government announced its intention to legislate in this area in July 2013 but consultation on the proposals did not take place until July 2015: Giving Crown Tenants Greater Protection. A summary of responses to this consultation process has not yet been published – the proposals appear to be relatively uncontroversial.

The Bill replicates the provisions in a Private Member's Bill introduced by Mark Pawsey during the 2015-16 parliamentary session: *Crown Tenancies Bill* 2015-16. The Bill did not progress beyond its First Reading despite attracting Government support.

The Bill extends to England and Wales.

1. Background

1.1 Crown tenants' security of tenure

Currently, Crown tenants, who are generally tenants of the Secretary of State or government departments, are specifically excluded from Part 1 of the *Housing Act 1988*.[1] This means that these tenants cannot have an assured or an assured shorthold tenancy (now the most common form of tenancy in the private rented sector). The only statutory protection Crown tenants have in terms of their security of tenure is provided by the *Protection From Eviction Act 1977*. This Act requires that a landlord must give the tenant at least 28 days' notice to end the tenancy and must obtain a court order to gain possession.

The limitation of Crown tenants' security of tenure is thought to have emanated from a desire to retain flexibility and control over properties owned by government departments, the occupation of which would often be linked to carrying out the functions of those departments.[2]

The Coalition Government announced its intention to bring Crown tenants within the assured tenancy regime, with some exceptions, on 18 July 2013:

> **Fiona Bruce:** To ask the Secretary of State for Communities and Local Government what plans he has to bring Crown tenants within the assured tenancy scheme.
>
> **Mr Prisk:** Subject to finding parliamentary time, it is the Government's intention to amend legislation to ensure that Crown tenants (mostly tenants of Government Departments) are in general provided with the same statutory rights as the majority of tenants in the private sector.
>
> Currently, most tenants in the private sector have assured shorthold tenancies. Assured shorthold tenants enjoy a minimum tenancy term of six months and the landlord may only seek possession on one of the grounds set out in legislation. The no-fault ground for possession gives landlords an automatic right to possession, provided the landlord has given the tenant at least two months' notice. However, an order for possession on this ground cannot be enforced during the initial six months or any fixed term period.
>
> Crown tenancies are currently excluded from the assured tenancy regime. This means that the only statutory protection enjoyed by a Crown tenant is that provided by the Protection from Eviction Act 1977, which requires the landlord to give the tenant a minimum of 28 days' notice. In both cases, the landlord needs to obtain an order for possession from the court.
>
> There may of course be certain specific situations where there are compelling reasons why a Crown tenancy might need to be terminated after less than six months or with less than two months' notice being given. We intend to retain an exemption for Crown tenancies from the assured tenancy regime in limited

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1 Paragraph 11 to Part 1 of Schedule 1 to the 1988 Act. Note that tenancies managed by the Crown Estate Commissioners are not covered by this exemption.

2 Department for Communities and Local Government (DCLG), Giving Crown Tenants Greater Protection, July 2015, para 11

> circumstances, for example where occupants may need to be moved at short notice for military operational reasons.
>
> The Government will of course consult on any proposed changes before bringing forward legislation. It is intended that any change to legislation would apply only to Crown tenancies granted after the date on which the amendment comes into force.[3]

1.2 Why legislate?

Assured shorthold tenancies (the default tenancy in the private rented sector since February 1997) offer landlords the option of terminating the tenancy without establishing any fault on the part of the tenant by giving two months' notice once the initial six months (or fixed term if longer) of the tenancy has come to an end. The Coalition Government said that this regime would offer departments flexibility to manage their properties within the assured tenancy regime.[4]

3 HC Deb 18 July 2013 cc904-5W
4 Department for Communities and Local Government (DCLG), Giving Crown Tenants Greater Protection, July 2015, para 12

2. Consultation July 2015

After having announced an intention to legislate in 2013, the Government launched a consultation exercise, Giving Crown Tenants Greater Protection, in July 2015. The consultation process ran from 22 July to 10 August 2015.

The paper sought views on proposals to bring most Crown tenants within the assured tenancy regime through an amendment to the *Housing Act 1988* with some specific exclusions. These exclusions were proposed in recognition that "there may be circumstances where there are compelling operational reasons why a Crown tenancy may need to be ended within the initial six months or with less notice than is required for assured shorthold tenants under the provisions of the 1988 Act."[5]

The proposed exclusions included:

Service living accommodation – this accommodation is occupied by Service personnel under a licence agreement. There is often a need to move Service personnel at very short notice and the consultation document suggested that excluding this type of accommodation "would help maintain operational effectiveness."[6]

Properties in the MOD wider estate – for example, accommodation provided on training areas. The rationale for an exemption would again be the need to move at short notice for operational reasons.[7]

Properties acquired by the Secretary of State for Transport – within the Limits of Land to Be Acquired or Used under the High Speed Rail (London – West Midlands) Hybrid Bill or within the Limits of Land to be Acquired or Used under any other Hybrid Bill or proposed Bill to authorise works for a high speed railway line in Great Britain.[8]

To date, a summary of responses has not been published.[9]

5 Department for Communities and Local Government (DCLG), Giving Crown Tenants Greater Protection, July 2015, para 16
6 Ibid., para 17a
7 Ibid., para 17b
8 Ibid., para 17c
9 Giving Crown Tenants greater protection, 2015 [accessed on 12 December 2016]

3. The Bill

The Explanatory Notes to the Bill provide a commentary on its clauses.

The Bill will remove the general exemption in the *Housing Act 1988* which prevents Crown tenants from being assured tenants.[10] However, a Crown tenancy relating to a dwelling house "within the Act limits" for the purposes of the *High Speed Rail (London – West Midlands) Act 2017* will be exempt.

The Secretary of State will have regulation making powers to exempt other categories of Crown tenancies (subject to the affirmative resolution procedure).[11] There is no reference in the Bill to exempting MOD accommodation as proposed in the consultation paper but additional provisions have been added in relation to possession proceedings and rent setting in respect of HM Forces accommodation.

Clause 3 would introduce two new mandatory grounds for possession which would only apply to Crown tenancies:

- one would apply where the Secretary of State has certified that possession is needed for an operational reason in connection with Her Majesty's Armed Forces;
- the second would apply where Welsh Ministers certify that possession is needed in connection with the exercise by them of functions under the Welsh Development Agency Act 1975 or the Highways Act 1980.

Clause 4 of the Bill would ensure that the rent procedures set out in the 1988 Act do not apply to Crown tenancies if the Secretary of State has certified that the interest of the landlord is held for purposes connected with the armed forces.

The 1988 Act's provisions on rent increases will not apply to Crown tenancies held in connection with the armed forces. The MOD will "continue to set rents annually following consideration of recommendations from the Independent Armed Forces Pay Review Body."[12] Similarly, the Bill will prevent these tenants from referring excessive rent increases to a tribunal – the existing process of raising issues via the MOD's complaints and appeals arrangements will continue.

10 Clause 1
11 Clause 2
12 Bill 32 – EN, para 11

4. Consideration in Public Bill Committee

The Bill was not amended in Public Bill Committee – no amendments were tabled.

During the clause stand part debate on clause 1, clauses 2 and 8 were also considered. Wendy Morton advised that there are about 500 Crown tenants who fall within the category covered by the Bill.[13] She explained the position of members of the armed forces who live in service accommodation:

> Members of the armed forces who live in service accommodation are not Crown tenants; they get a licence agreement, not a tenancy. However, the Ministry of Defence has plans from 2018 to grant tenancies to service personnel and their families who occupy service family accommodation, which means that some 45,000 service personnel in England and Wales will become Crown tenants and will benefit from the provisions in the Bill.[14]

The Housing Minister, Gavin Barwell, confirmed that this would bring up to 45,000 more Crown tenants within the statutory protection offered by the Bill.[15] The Minister also clarified that certain types of accommodation, such as that occupied as single living accommodation and provided for specific roles, would continue to be occupied under a licence agreement.[16] He said that the Bill would "contribute to the Government's commitment under the armed forces covenant to ensure that members of the service community do not experience any disadvantage as a result of their service to this country."[17]

Maggie Throup probed the impact of the Bill on phases 2a and 2b of the high speed rail scheme; Wendy Morton replied:

> Only properties located within the Act limits for the purposes of High Speed 2, between London and the west midlands, will be covered by the Crown tenancy exemption in the Bill. The exemption does not currently apply to properties acquired in connection with phase 2 of the HS2 scheme, to which my hon. Friend referred, because Act limits for phase 2 have not yet been determined and the Bill has not been deposited. However, I believe the proposed legislation will allow for the list of tenancies to which the exemptions apply to be amended. The Minister may wish to expand on that. In broad terms, people can continue to live in these properties and provide rental income for the Government, but at the same time the Department will be able to get possession at short notice where that is necessary to meet construction deadlines.[18]

The Minister added:

> My understanding is that legislation has passed through this House that sets limits for phase 1 of the HS2 scheme up to the

13 PBC 1 March 2017 c4
14 PBC 1 March 2017 c4
15 PBC 1 March 2017 c7
16 PBC 1 March 2017 c7
17 PBC 1 March 2017 c7
18 PBC 1 March 2017 c5

> west midlands, but we have not yet had primary legislation in relation to the next phase. We are not therefore in a position to incorporate that, but there is a possibility that the exemption in this Bill could be updated using the regulating powers we have here to include land within the phase 2 limits, once we know what those are. I hope that that reassures my hon. Friend.[19]

[19] PBC 1 March 2017 c8

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