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Research Briefing

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Renters (Reform) Bill 2022-23

Summary

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Contents

Summary

The Renters (Reform) Bill was introduced in Parliament on 17 May 2023. It will fulfil the 2019 Conservative manifesto commitment to abolish 'no fault' evictions in England. The Government's plans for reform were set out in the white paper A fairer private rented sector (June 2022) which followed several earlier consultation exercises.

Why is the Government legislating?

Assured shorthold tenancies (ASTs) were introduced by the Housing Act 1988 and became the default tenancy in the private rented sector (PRS) in England and Wales from 28 February 1997.

ASTs offer no long-term security of tenure. Section 21 of the 1988 Act enables private landlords to repossess their properties without having to establish fault on the part of the tenant. It is referred to as the 'no-fault' ground for eviction.

Over time, evidence has shown this lack of security has led to tenants feeling unable to enforce their rights in relation to repairs and to challenge unreasonable rent increases. The foreword to A fairer private rented sector says "far too many renters are living in damp, dangerous, cold homes, powerless to put things right, and with the threat of sudden eviction hanging over them."

Local housing authorities argue no fault evictions increase the likelihood of homelessness. Landlord bodies dispute this. They say homeless applications from people living in the sector are linked more closely to rent arrears caused by welfare reform, and that landlords use section 21 to avoid lengthy processes and the uncertainty associated with evicting tenants through service of a section 8 notice and establishing a ground for eviction set out in schedule 2 to the Housing Act 1988.

There's currently no legal requirement for private landlords in England to belong to a redress scheme. Tenants are often left to negotiate with their landlords and enforce their rights through the courts.

Although local authorities have extensive powers to tackle poor property conditions and management standards in the PRS, there's evidence of low and inconsistent levels of enforcement between authorities. A lack of robust data and information on the sector is recognised as a key barrier to effective enforcement action.

What would the Bill do?

- It would abolish assured shorthold tenancies and with them, section 21 'no fault' evictions. Instead, PRS tenancies will be monthly periodic assured tenancies with no end date.
- The grounds on which landlords can seek to repossess properties would be amended and strengthened. The aim is to make it easier for landlords to repossess properties where tenants exhibit anti-social behaviour or repeatedly build up rent arrears.
- A process would be introduced for implementing annual rent increases. First-Tier Tribunals would determine market rents if a tenant appeals against a landlord's proposed increase.
- A new independent Ombudsman would be established for the PRS.
- A new PRS Property Portal would be established so tenants, landlords and local councils can access the information. One aim of the portal is to help local authorities target enforcement activity where it is most needed.
- Landlords would be required to consider tenants' requests to keep a pet. They would not be able to refuse such a request unreasonably. Landlords would be able to require pet insurance to cover related property damage.

The Department for Levelling Up, Housing and Communities (DLUHC) has published a series of guides to different parts of the Bill.

An Impact Assessment has been submitted for review by the Regulatory Policy Committee and will be published in due course.

Reaction to the Bill

Broadly, tenant organisations welcome the abolition of 'no fault' evictions while landlord bodies initially opposed it. More recently, the National Residential Landlords Association (NRLA) and others have focused on changes landlords require to retain confidence under the new regime. This includes:

- Reformed grounds for possession.
- Improved dispute resolution. There's some support for a housing court or tribunal among landlord bodies. Improvements to court processes to speed up consideration of claims for possession are regarded as key.
- A review of enforcement.

Landlords are focused on the speed and efficiency with which courts process possession claims. The Bill does not address this but there is a commitment to "align the abolition of section 21 and new possession grounds with court improvements."

Tenant bodies are concerned that giving a landlord a right to repossess if they want to sell or occupy the property amounts to creating new 'no fault' eviction grounds. They argue the evidence thresholds and protections offered in the Bill are insufficient and need to be strengthened if the ambition of creating a fairer PRS is to be achieved.

The provisions to establish a single Ombudsman for the PRS and to require all private landlords to join have been broadly welcomed by stakeholders, as has the establishment of the Property Portal.

Enforcement measures are viewed as important by all stakeholders. The housing charity Shelter and others are calling for adequate funding so local authorities can carry out effective enforcement.

Measures not in the Bill

A fairer private rented sector included several legislative commitments not included in the Bill. The Secretary of State at the DLUHC, Michael Gove, said these measures will be legislated for "in this Parliament", including:

- A statutory decent home standard to apply in the PRS.
- Making it illegal for landlords and agents to have blanket bans on renting to tenants in receipt of benefits or with children.
- Strengthening councils' enforcement powers and introducing a requirement on them to report on enforcement activity.

1 Tenancy reform

1.1 Assured tenancies: background

Part 1 of the Renters (Reform) Bill seeks to amend the assured tenancy regime introduced by the Housing Act 1988. It will fulfil the 2019 Conservative manifesto commitment to abolish 'no fault' evictions.[1] The Government's plans for reform were set out in a white paper A fairer private rented sector (June 2022) which followed several earlier consultation exercises.[2]

Part 1 of the Housing Act 1988 deregulated private sector tenancies. Assured tenancies and assured shorthold tenancies (ASTs) created by the 1988 Act are not subject to rent control and section 21 of the Act made it relatively straightforward for landlords of ASTs to regain possession of their properties.

Features of an AST

Part 1 of the Housing Act 1988 came into force on 15 January 1989. Since this date, with some limited exceptions, new private sector tenancies created in England and Wales have been either assured or assured shorthold tenancies (ASTs).

Subsequently, the Housing Act 1996 amended the 1988 Act to make ASTs the default tenancy in the private rented sector with effect from 28 February 1997. ASTs are the most common form of private sector tenancy in England. This was also the case in Wales up to 1 December 2022, when provisions in the Renting Homes (Wales) Act 2016 came into force to change the tenancy regime there.

ASTs are typically fixed term tenancies.[3] At the end of the fixed term the tenancy may be replaced with a new fixed term or may roll over on a periodic basis. For example, if the rent is payable monthly it would be a monthly periodic tenancy.

Section 21 of the 1988 Act enables private landlords to repossess their properties without having to establish fault on the part of the tenant. It is

1 Conservative manifesto 2019, p29

2 For more information see section 3 of the Commons Library briefing: The end of 'no fault' section 21 evictions

3 A tenancy will be for a fixed term if it runs for a specific period, for example, the tenancy is for six or 12 months.

sometimes referred to as the 'no-fault' ground for eviction. Landlords must serve a minimum two months' notice of the intention to seek possession.

If the tenant does not move out on expiry of the notice the landlord must seek a court order for possession. The court will grant an order if the correct procedures have been followed and there is no defence. Landlords have the option of applying for an accelerated possession order. Where used, this negates the need for a court hearing. If a tenant does not move out on the date specified in the court order, the landlord may apply for a warrant for possession to arrange for bailiffs to evict the tenants.

There are restrictions on when a section 21 notice can be used to evict AST tenants. For example, a section 21 notice cannot expire before the end of the fixed term of an AST and cannot be used to end a tenancy within the first six months. An AST will be invalid if the landlord has not protected the tenant's deposit in an approved scheme.

A landlord can seek to evict an AST tenant at any point of the tenancy, including within a fixed term, by serving a notice of intention to seek possession under section 8 of the Housing Act 1988. The notice must set out the ground under which possession is sought. The possible grounds for possession are listed in schedule 2 to the 1988 Act. There are mandatory grounds, on which the court must order possession if the ground is proven. For the discretionary grounds, the court must be satisfied that it is reasonable to grant a possession order where the ground is proven. The length of the notice period depends on the ground under which an order is being sought. Tenants can seek to defend an application for possession.

In The Evolving Private Rented Sector: Its Contribution and Potential (2018) Julie Rugg and David Rhodes referred to difficulties in using section 8 to evict AST tenants in rent arrears:

> In part, the increasing use of 'no-fault' eviction reflects problems in securing evictions using S.8 for rent arrears, which requires the production of evidence to legal, court standard. Further, evicting a tenant under S.8 for rent arrears requires the tenant to be two months in arrears, and there is anecdotal evidence of some tenants making sufficient rental payment, prior to any court case, to take them slightly above that limit. Landlords argue that tenants are routinely advised by local authorities to remain in a property and actively frustrate the repossession process: both as a means of extending the period during which local authorities will have no obligation to re-house, and to obviate any risk that the tenant can be regarded as intentionally homeless. Notwithstanding a great deal of confusion regarding practice in deploying S.21 notices, it is clear that 'banning' S.21 does not remove any of the reasons that provoke a landlord to use it.[4]

Rugg and Rhodes concluded:

[4] Rugg J; Rhodes D: Centre for Housing Policy University of York, The Evolving Private Rented Sector: Its Contribution and Potential, 2018, p112

> ...landlord groups still remain strongly wedded to the S.21 notice, and the strength of this feeling is an indicator of dissatisfaction with ending tenancies using the S.8 route, with its attendant delays and court costs.[5]

Who lives in the private rented sector?

Deregulation of the private rented sector (PRS) coincided with its growth. Around 9% of English households were private renters in 1988. The proportion began to rise substantially in the mid-2000s and has been between 18% and 20% since 2012/13.[6] The number of households renting privately has also risen. Around 4.6 million households were renting privately in 2021/22, more than twice as many as the 1.7 million renting privately in 1988.[7]

In 2021/22, around 32% of private renting households were families with children (around 1.5 million households).[8]

While still a sector dominated by younger residents, the proportion of older people living in the PRS increased over the past decade. In 2003/04, 4% of households with a Household Reference Person aged 55 or over were privately renting.[9] By 2021/22, this had increased to 8%. The number of households with a reference person aged 55 or over privately renting more than doubled in this period, rising from 366,000 to 879,000.[10]

The English Housing Survey (EHS) has also found that the private rented sector experiences more churn than any other sector. In 2021/22, 620,000 households moved within the sector, while 315,000 households moved into the sector and 242,000 households moved out.[11]

In 2020/21, the EHS asked private renters who had moved in the past year why their previous private rental tenancy had ended. Overall, 6% said they had been asked to move by their landlords, and in most of these cases (63%) this was because the landlord wanted to sell or use the property. Nearly three-quarters (73%) of tenants said they moved because they wanted to.[12]

Why abolish ASTs?

The ability of landlords to regain possession of their properties on a no-fault basis, coupled with an absence of rent control, has played a significant role in

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5 Rugg J; Rhodes D: Centre for Housing Policy University of York, The Evolving Private Rented Sector: Its Contribution and Potential, 2018, p112

6 Department for Levelling Up, Housing and Communities (DLUHC), English Housing Survey Headline Report, 2021 to 2022, December 2022

7 As above.

8 DLUHC, English Housing Survey 2021 to 2022: headline report, Annex Table 1.5

9 The Household Reference Person is the person who owns the home or is responsible for the tenancy, or the higher earner in joint tenancies.

10 DLUHC, English Housing Survey 2021 to 2022: headline report, Annex Table 1.4

11 DLUHC, English Housing Survey 2021 to 2022: headline report

12 DLUHC, English Housing Survey 2020 to 2021: private rented sector, p5

increasing potential landlords' willingness to invest in the PRS. Other factors to note include:

- The availability of buy-to-let mortgages from 1996 onwards.
- Restricted growth and access to the social rented sector over the period.
- Difficulties in accessing affordable home ownership. For example, after the 2008 financial crash lenders started to apply more stringent requirements for mortgage eligibility.

The sector's growth is viewed as a success story, but some aspects of the AST regime's operation are controversial. Tenants and their representative bodies have long argued for reforms to remove the insecurities underpinning ASTs, which in turn would enable tenants to enforce their rights to secure improved housing conditions.

Responses to a 2018 consultation exercise on Overcoming the Barriers to Longer Tenancies in the Private Rented Sector led the then-Government to commit to "a generational change to the law that governs private renting" which would include ending 'no-fault' evictions by repealing section 21 of the Housing Act 1988.[13]

The following sections provide an overview of the main issues with ASTs.

A cause of homelessness?

From 2010 onwards there was a substantial increase in homelessness where the applicant's last settled home was an AST.

The trend can be seen in statistics on the reason for homelessness given by households owed a duty to secure accommodation by their local authority. In 2010/11, the end of an AST was given as a reason in 15% of cases, rising to a peak of 31% in 2015/16. In 2017/18, the figure was 27%.[14]

In 2021/22, 21% of households owed a prevention or relief duty[15] were homeless or at risk of homelessness due to the end of an AST.[16] 7% of households (around 19,800) were owed a prevention duty due to the service of a section 21 notice.[17]

Research conducted on behalf of the Residential Landlords Association (now the National Residential Landlords Association, NRLA) argued section 21 was not a cause of homelessness. In Homelessness and the Private Rented Sector (November 2018), Dr Chris O'Leary and others suggested landlords use

13 MHLC, Overcoming the barriers to longer tenancies in the private rented sector: summary of responses and government response, April 2019, p5

14 MHCLG, Acceptances and decisions live tables: Table 774, 12 September 2019

15 Local housing authorities have an initial duty under Part 7 of the Housing Act 1996 to prevent or relieve homelessness for all eligible applicants in circumstances specified in the Act.

16 DLUHC, Statutory homelessness live tables, Table A2, 22 September 2022

17 DLUHC, Statutory homelessness live tables, Table A1, 22 September 2022

section 21 where there are grounds for evicting tenants, such as rent arrears and anti-social behaviour. They said section 21 provides a straightforward mechanism through which a landlord can be sure of recovering possession and which avoids the lengthy processes associated with section 8. The report also pointed to evidence suggesting tenants are responsible for ending ASTs in most cases and called for more research into why section 21 notices are used prior to any reforms.[18]

The Residential Landlords Association published several pieces of research to demonstrate that the rise in homeless applications from people living in the PRS is linked more closely to rent arrears caused by welfare reform.[19] For example, Homelessness and the Private Rented Sector (November 2018) identified the failure to uprate Local Housing Allowance rates as having a "double whammy" effect of "increasing the likelihood that tenancies will be ended, and reducing the chances of affected households finding suitable, affordable, alternative accommodation."[20] Uncertainty around the roll-out of Universal Credit was also cited as a reason for landlords seeking to evict tenants reliant on benefits.[21]

Impact on households: insecurity

Research commissioned by the housing charity Shelter in 2022 found a quarter of all private renters had had three or more private rented homes in the previous five years. The figure for renting families with children was one in five.[22]

Irrespective of whether a landlord uses section 21 to evict a tenant, the fact that it could be used at any point after the expiry of a fixed term tenancy is thought to have a considerable impact on tenants' wellbeing. Generation Rent, which campaigns on behalf of tenants, has said section 21 can mean "constant anxiety and insecurity – particularly for the 1.8 million renter households with children or the growing numbers of older people privately renting." [23]

Generation Rent refers to a fear of eviction which stops households from establishing roots in local communities.[24]

There are concerns about the suitability of insecure tenancies for older people and those with young families. Older people may struggle to secure landlords'

18 RLA and Dr Chris O'Leary et al, Homelessness and the Private Rented Sector, Residential Landlords Association, November 2018, p40

19 See Simcock, TJ, How have welfare reforms impacted the private rented sector? A review of our research & policy work (NRLA), 2018 and Dr Chris O'Leary and others, Homelessness and the Private Rented Sector, Residential Landlords Association, November 2018

20 RLA and Dr Chris O'Leary and others, Homelessness and the Private Rented Sector, Residential Landlords Association, November 2018, pp38-39

21 As above.

22 Shelter, Every seven minutes a private renter is served a no-fault eviction notice despite government promise to scrap them three years ago, 26 April 2022

23 Generation Rent, What is section 21 and why does it need to be scrapped?, 25 May 2018

24 As above.

agreement to structural adaptations when their mobility reduces. Children's education can be disrupted by the need to find new schools when forced to move at short notice. The white paper, A fairer private rented sector (June 2022) referred to evidence of children in insecure housing experiencing worse educational outcomes, reduced levels of teacher commitment and having more disrupted friendship groups than other children.[25]

Research published by the London School of Economics (LSE) in June 2018, The Future Size and Composition of the Private Rented Sector, forecast growth in the number of older households and families with children in the PRS.[26]

Landlords' representative bodies often point out that many tenants want the flexibility of shorter tenancies and can be reluctant to commit to longer term contracts. This was acknowledged in the then Government's July 2018 consultation paper Overcoming the Barriers to Longer Tenancies in the Private Rented Sector.[27]

Reference is also made to lenders' requirements for short-term tenancies in mortgage conditions.[28] The Council of Mortgage Lenders (CML) responded to this point saying it was not opposed to longer tenancy agreements. It was for lenders to determine their own policies but "an increasing number of lenders are now willing to offer mortgages to landlords who want to provide extended tenancies".[29]

Household impacts: the cost of frequent moves

Frequent home moves are expensive for tenants. Analysis by Generation Rent in 2021 found that moving costs were on average £1,709.[30]

In Overcoming the barriers to longer tenancies in the private rented sector (July 2018), the then Government acknowledged that being forced to move by a landlord for no reason can cause emotional and financial harm to tenants.[31]

Household impacts: an inability to seek improved conditions

'Retaliatory eviction' describes the use of section 21 by landlords in direct response to a tenant's request for repairs. The English Housing Survey (EHS) estimated that in 2021, 23% of PRS homes did not meet the Decent Home Standard – around 1 million homes. This compares with 13% of owner-occupied and 10% of social-rented homes.[32]

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25 DLUHC, A fairer private rented sector, CP 693, 16 June 2022, Executive Summary, p5

26 Udagaw C and others, The Future Size and Composition of the Private Rented Sector, LSE, 20 June 2018

27 MHCLG, Overcoming the barriers to longer tenancies in the private rented sector, July 2018, paras 32-35

28 As above, para 45

29 CML, Fact check: do lenders really oppose longer tenancies?, 19 January 2017

30 Generation Rent, The cost of unwanted moves, 28 August 2021

31 MHCLG, Overcoming the barriers to longer tenancies in the private rented sector, July 2018, paras 24 and 25

32 DLUHC, English Housing Survey 2021 to 2022: headline report, December 2022

The Government introduced some protection from retaliatory eviction through amendments to the Deregulation Bill as it progressed through Parliament. The Deregulation Act 2015 provides, if certain conditions are met, a landlord cannot serve a section 21 notice on tenants who have requested repairs for a period of six months. For more information see: Guidance note: Retaliatory Eviction and the Deregulation Act 2015.[33]

Stakeholders told the Housing, Communities and Local Government Select Committee's inquiry into the PRS (2017-2019) that the Deregulation Act's measures were a welcome improvement but did not offer sufficient protection against retaliatory eviction. The Committee recommended a rebalancing of the landlord-tenant relationship "by providing additional protections from retaliatory eviction and rent increases."[34]

The Public Accounts Committee's inquiry into the Regulation of private renting (2022) concluded that the Department for Levelling Up, Housing and Communities (DLUHC) did not collect data on the reasons for evictions, the numbers of improvement notices served by local authorities or the number of complaints that lead to eviction, and was therefore unable to evaluate how effective the 2015 legislative change has been in practice.[35]

The Committee recommended: "The Department should develop a coherent data strategy to identify and collect the data it needs to: understand the problems renters are facing; and evaluate the impact of legislative changes."[36]

Household impacts: challenging rent increases

AST tenants have a very limited right to challenge rent levels and increases. Section 22 of the Housing Act 1988 gives the tenant of an AST the right to refer the rent to the First-tier Tribunal (Property Chamber) for an assessment as to whether it is 'excessive'. Only one application can be made. For ASTs created on or after 28 February 1997, a referral cannot be made once the tenant has been in the property for more than six months.

If a tenancy agreement does not contain a rent review clause, or if the clause no longer has effect,[37] a landlord can use a section 13 notice to increase the rent on a periodic AST subject to certain limitations. The tenant can refer the increase to the First-tier Tribunal (Property Chamber) within the notice period. The Tribunal determines a market rent for the property, ie the rent

33 Department of Levelling Up, Housing and Communities (DLUHC), Guidance note: Retaliatory Eviction and the Deregulation Act 2015, 2015

34 Housing, Communities and Local Government Committee, Private rented sector (PDF), 19 April 2018, HC 440 2017-19, para 28

35 House of Commons Committee of Public Accounts Committee, Regulation of private renting Forty-Ninth Report of Session 2021–22 (PDF), HC 996, 13 April 2022, para 22

36 As above, conclusions and recommendations, para 5

37 This will arise where the fixed term of the tenancy has ended and the tenant remains in occupation as a periodic tenant.

which could reasonably be expected to be obtained in the open market for a similar property let on similar terms.

As with reporting repairs, it is argued the threat of receiving a section 21 notice means tenants are unlikely to exercise these rights. The Tenants' Voice has said for a minority of landlords: "Section 21 is a tool that can be used for legal blackmail and coercion to accept terms that are only favourable for the landlord."[38]

Statistics on possession claims

The Government publishes statistics on evictions pursued through the courts in England and Wales. The courts aren't involved in all evictions, only those where a tenant does not move out once a notice is served.

Not all court proceedings end in the tenant's eviction. Action taken through the courts has several stages:

- Landlords must first enter a claim for possession.
- The court may then grant a possession order. Some possession orders are suspended (meaning the tenant can stay in the property if they meet certain conditions, such as making rent payments). Other possession orders specify a date on which the tenant must leave.
- If the tenant doesn't leave the property by the date specified, the court can issue a warrant for possession.
- The warrant enables a repossession to be carried out by court bailiffs.

Statistics are published on standard procedure claims by private landlords using section 21 and section 8 notices (as a combined total) and use of the accelerated procedure by all landlords (including social landlords).

The latest statistics are available in the Ministry of Justice's quarterly Mortgage and landlord possession statistics publication. The Ministry of Justice also publishes an interactive data visualisation tool which summarises the latest data for England and Wales and for local authority areas.

Government measures in response to the Covid-19 pandemic had a substantial impact on repossession activity. In 2019, there were around 23,220 possession claims by private landlords using the standard procedure (section 8 or section 21). This was the highest number of claims in the series. In 2020, this fell by almost half to around 12,150 claims – with the bulk of these claims taking place in the first and last quarters of 2020.[39]

38 "Section 21 – An Uphill Battle For Tenants?", The Tenants' Voice, 2017

39 Ministry of Justice, Mortgage and landlord possession statistics: January to March 2023, Table 8

Claims remained low in 2021 (there were 15,760 claims in total) but in 2022 reached levels higher than those seen before the pandemic, with almost 25,000 claims made.[40]

Use of the accelerated procedure for section 21 evictions[41] increased sharply after 2011, peaking at around 37,690 claims and 16,440 repossessions in 2015. Activity was declining before the pandemic, with 18,320 claims and 8,100 possessions in 2019. This fell to 8,740 claims and 1,830 repossessions in 2020, again with the bulk taking place in the first quarter of 2020 before the Covid-19 outbreak.

In 2021, claims using the accelerated procedure remained low (at around 8,050 levels) but in 2022 there were around 23,600 claims – the highest level recorded since 2017.[42]

More detailed statistics are also available in the Commons Library briefing on The end of 'no fault' section 21 evictions.

1.2 The Bill's provisions and comment

Abolition of ASTs (clauses 1 and 2)

Clause 1 provides that when in force, all assured tenancies will be monthly periodic tenancies.[43] It will not be possible to create a fixed term assured tenancy. Terms in tenancy agreements deviating from these requirements will have no legal effect.[44]

When a tenant gives notice to the landlord to end a tenancy the date on which the notice expires must align with the end of a period of the tenancy. Restricting the length of a period to one month will "prevent tenants from being locked into unduly long periods in future - which would have the same impact as a fixed term".[45] A tenant wishing to terminate a tenancy will have to give the landlord a minimum of two months' notice. Guidance on tenancy reforms published alongside the Bill outlines the benefits for tenants:

> This will provide greater security for tenants while retaining the important flexibility that privately rented accommodation offers. It will enable tenants to leave poor quality properties without remaining liable for the rent, or to move

40 Ministry of Justice, Mortgage and landlord possession statistics: January to March 2023, Table 8

41 Statistics on the accelerated procedure include both private landlords and social housing providers. Housing associations/registered providers of social housing may use an AST in limited circumstances. Most housing association tenants have an assured tenancy.

42 Ministry of Justice, Mortgage and landlord possession statistics: January to March 2023, Table 8

43 Rent periods will not be able to exceed 28 days. Existing tenancies with rent periods greater than 28 days (unless of one month) will be recalculated by a formula to meet this requirement.

44 Explanatory Notes to the Renters (Reform) Bill (Bill 305 of 2022-23) (PDF), paras 50–52.

45 As above, para 54

> more easily when their circumstances change, for example to take up a new job opportunity.[46]

For example, currently, a tenant with a fixed term AST of 12 months who has a change in circumstances and needs to terminate the tenancy after six months is reliant on the landlord agreeing to this. If agreement cannot be reached the tenant could remain liable to pay the rent for the remaining term (six months).

Purpose-Built Student Accommodation (PBSA) will be exempt from these changes where the provider is registered to adhere to government-approved codes.

Clause 2 would amend the Housing Act 1988 to omit reference to assured shorthold tenancies.

It will no longer be possible for assured housing association tenants to be offered ASTs as 'starter tenancies' or be demoted to AST status because of anti-social behaviour.

The provisions would be brought into force on a date appointed in regulations made by the Secretary of State at DLUHC.[47] Guidance accompanying the Bill sets out plans for implementing the new regime in a phased way:

- We will implement the new system in two stages to ensure all stakeholders have sufficient notice to implement the necessary changes.
- We will provide at least six months' notice of our first implementation date after which all new tenancies will be periodic and governed by the new rules. The date of this will be dependent on when Royal Assent is received, and when the court system is ready to implement the new system.
- To avoid a two-tier rental sector and to make sure landlords and tenants are clear on their rights, all existing tenancies will transition to a new system on the second implementation date. After this point, all tenants will be protected from section 21 eviction and landlords will have access to a full range of strengthened grounds. We will allow at least twelve months between the first and second date.[48]

Comment

Section 4 of the Commons Library briefing, The end of 'no fault' section 21 evictions contains detailed comment on the abolition of section 21 evictions since it was first announced in 2019.[49] Broadly, tenant organisations support the measure while landlord bodies initially opposed it.

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46 DLUHC, Tenancy reform: Renters (Reform) Bill - GOV.UK, 17 May 2023

47 Clause 67 provides for commencement of the Bill's provisions once Royal Assent is received.

48 DLUHC, Tenancy reform: Renters (Reform) Bill - GOV.UK, 17 May 2023

49 Commons Library briefing CBP08658, The end of 'no fault' section 21 evictions

Shelter described the Government's 2019 announcement as "an outstanding victory."[50] Its briefing on the Bill says: "Scrapping section 21 evictions will be foundational to reforming the private rented sector" but notes of caution are sounded about the risk of "opening up loopholes for unfair evictions".[51]

The Local Government Association (LGA) supports the potential to deliver increased security and stability for households, and to reduce homeless applications from ASTs.[52]

The Residential Landlords Association said deregulation of rents and security of tenure had given landlords confidence to invest in the sector, resulting in its growth.[53] It warned of "serious dangers" to the supply of rented housing for vulnerable tenants as landlords would withdraw from the market.[54] Landlord bodies suggest the sector will see "intense screening" processes for prospective tenants.[55]

More recently, the National Residential Landlords Association (NRLA) and others have focused on changes landlords require to retain confidence under the new regime. This includes:

- Reformed grounds for possession.
- Improved dispute resolution. There's some support for a housing court or tribunal amongst landlord bodies. Improvements to court processes to speed up consideration of claims for possession are regarded as key.
- A review of enforcement.[56]

The NRLA's evidence to the Levelling Up, Housing and Communities Committee (LUHC) inquiry into reforming the private rented sector (August 2022) said court reforms should "be seen to be working before the Government transfers to the new system of tenancies without Section 21."[57] An "overwhelming majority" of individual landlords and letting agents who

50 Shelter, Abolishing no-fault evictions will be 'outstanding victory' for 11 million renters, 15 April 2019
51 Shelter, Briefing: The Renters (Reform) Bill - Shelter England, May 2023
52 LGA, LGA responds to Government announcement on landlord evictions (accessed on 18 September 2019 – link no longer operational)
53 Dr Tom Simcock, Longer Term Tenancies in the Private Rented Sector, National Residential Landlords Association, August 2018. The RLA merged with the National Landlords Association in 2020 to form the National Residential Landlords Association (NRLA).
54 RLA, Section 21 to go – housing reforms risk hurting tenants, 15 April 2019
55 BEYOND SECTION 21 Evidencing need and processing a model for change, (PDF) Company Consultancy Project (CCP) on behalf of The Lettings Industry Council Section 21 Working Group [undated]
56 Propertymark, The Future of Renting, 13 December 2021; NRLA, Rental Reform Campaign, 23 August 2021
57 Written evidence submitted by the National Residential Landlords Association [RRS 207], August 2022

submitted evidence to the Committee's inquiry opposed the abolition of section 21.[58]

There's a good deal of cross-party consensus on the abolition of section 21 in England. The Labour Party 2019 manifesto committed to "give renters the security they need to make their rented housing a home, with new open-ended tenancies to stop unfair, 'no fault' evictions."[59] The Liberal Democrats passed a motion at their 2019 conference to abolish section 21 evictions through reform of the Housing Act 1988. [60] The Green Party's housing webpage refers to the phasing out of ASTs and the abolition of section 21.[61]

The LUHC Committee published the report of its inquiry into reforming the private rented sector on 9 February 2023.[62] The Committee said the abolition of fixed term tenancies combined with the repeal of section 21 would "give tenants greater security of tenure" and welcomed the proposals on that basis.[63]

The representative body of housing associations, the National Housing Federation, submitted evidence to the Committee's inquiry in which it agreed with extending the abolition of section 21 to all users of the 1988 Act:

> The reasoning behind this was the importance of striking a balance between landlords and tenants in all sectors and that, while this may present some operational issues for housing associations, it would be unacceptable for housing association tenants to have less statutory protection than private sector tenants.[64]

Landlords operating in the student lets market have raised concerns about ending fixed term tenancies. The NRLA briefing prepared for a Commons debate on section 21 evictions on 25 October 2022 highlighted issues with Government plans for the student lettings market. It said:

- Under the Government's proposals, landlords will be reliant on sitting tenants to give two months' notice before they can re-let a property to new students. This will cause anxiety for students who will have no certainty about homes being available for the start of their academic year.

- The Government has recognised that students are a special case by allowing fixed term tenancies to continue in purpose-built student

58 Levelling Up, Housing and Communities Committee, Reforming the private rented sector, 9 February 2023, HC 624 2022–23, para 24

59 Labour Party Manifesto 2019, Tackle Poverty and Inequality: Housing (PDF)

60 ARLA Property Mark: Lib Dems to scrap section 21 (accessed on 3 May 2021 – link no longer operational)

61 Green Party: Housing Policy, last updated October 2021

62 Levelling Up, Housing and Communities Committee, Reforming the private rented sector, 9 February 2023, HC 624 2022–23

63 As above, p3 (summary)

64 Written evidence submitted by the National Housing Federation [RRS 174], August 2022

> accommodation. This needs to be extended to students and landlords in the private rented sector.[65]

In January 2023, a coalition of bodies wrote to the Ministers for Private Housing and Higher Education respectively saying the reforms "threaten to make it harder for students to enter higher education."[66]

The LUHC Committee also expressed concerns about the effect of reforms on the general student private rented sector market. It concluded that "abolishing fixed-term contracts here could make letting to students considerably less attractive to private landlords, as the student market mirrors the academic year and benefits greatly from 12-month fixed tenancies."[67] The Committee recommended the retention of fixed term contracts in the student private rented sector.[68]

On publication of the Bill, Ben Beadle chief executive of the NRLA said:

> ...the Government must recognise the serious concerns of landlords letting to students about open ended tenancies. Without the ability to plan around the academic year, students will have no certainty that properties will be available to rent when they need them.[69]

Changes to the grounds for possession (clauses 3, 4 and schedule 1)

With the abolition of section 21 'no fault' evictions, landlords regard reforms to the grounds for possession as central to the future success of the private rented sector. DLUHC acknowledges this in guidance published alongside the Bill:

> In the absence of section 21, it is critical that landlords have the peace of mind that they can regain their property when their circumstances change or tenants do not fulfil their obligations.[70]

Tenants' representative bodies stress the need to ensure that strengthened grounds for possession are not open to abuse by landlords.[71] They argue some of the new grounds for eviction are 'no fault' grounds (for example, when a landlord wishes to sell) and that protecting tenants from the use of these grounds for an initial six months will not be long enough to make them "feel secure in their home or put down roots in their community."[72]

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65 Levelling Up, Housing and Communities Committee, Reforming the private rented sector, 9 February 2023, HC 624 2022–23, p3 (summary)

66 NRLA, Rental reform plans risk damaging access to higher education, 24 January 2023

67 Levelling Up, Housing and Communities Committee, Reforming the private rented sector, 9 February 2023, HC 624 2022-23, p3 (summary)

68 As above.

69 NRLA, Renters' Reform Bill lacks vital detail, warn landlords, 17 May 2023

70 DLUHC, Tenancy reform: Renters (Reform) Bill - GOV.UK, 17 May 2023

71 Generation Rent, Renters Reform White Paper - our verdict, 16 June 2022

72 Written evidence submitted by Generation Rent [RRS 230], (PDF), August 2022

Generation Rent is calling for the protected period from eviction using 'no fault' grounds to be extended from six to 24 months and for tenants to receive financial support from landlords to move.[73] Shelter also wants to see longer notice and protection periods "to help prevent homelessness and to give renters real security when entering a tenancy agreement."[74]

Landlords are also focused on the speed and efficiency with which courts process possession claims. The Bill does not address this, but Michael Gove's written statement announcing the Bill said:

> The Government remain fully committed to improving the court system for landlords and tenants. Following the recommendation of the Levelling Up, Housing and Communities Select Committee, we will align the abolition of section 21 and new possession grounds with court improvements. This includes end-to-end digitisation of the process and our work with the courts to explore the prioritisation of certain cases, including antisocial behaviour.[75]

Commenting on this, Ben Beadle, Chief Executive of the NRLA welcomed the Government's acceptance of calls to digitise cases but said "staff numbers need to increase in the court system as well to meet the needs of these reforms."[76]

The NRLA's arguments about court processes and efficiency gained traction with the LUHC Committee. The final report of the inquiry highlights the capacity of the courts as "the biggest obstacle" to landlords having confidence in the new regime. The Committee said: "We are concerned that the Government does not fully appreciate the extent to which an unreformed courts system could undermine its tenancy reforms."[77] The Committee's preference is for the introduction of a specialist housing court but in any event, argues "it is absolutely essential that the Government significantly increase the courts' ability to process possession claims quickly and efficiently and in a way that is fair to both landlords and tenants."[78]

Clause 3 and schedule 1 of the Bill seek to amend schedule 2 to the Housing Act 1988 which sets out the grounds for possession landlords can use to evict assured tenants. There are mandatory grounds where judges must award a possession order when a landlord can evidence the ground is met, and discretionary grounds, which allow judges to consider whether it is reasonable to grant an order even where the ground is met.

The initial stage of the possession process involves a landlord serving notice on the tenant. When the notice period expires the tenant may vacate, or the landlord can start court proceedings to regain possession. Section 8 of the Housing Act 1988 sets out the notice periods required for each ground for

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73 Generation Rent, The Renters (Reform) Bill: Our Verdict, 19 May 2023

74 Shelter, Briefing: The Renters (Reform) Bill - Shelter England, May 2023

75 HCWS778, 17 May 2023

76 NRLA, Renters' Reform Bill lacks vital detail, warn landlords, 17 May 2023

77 Levelling Up, Housing and Communities Committee, Reforming the private rented sector, 9 February 2023, HC 624 2022–23, para 48

78 As above, para 49

possession. Clause 3 would amend these notice periods "to provide balance between the interests of landlords and tenants."[79]

Annex B to the Bill's Explanatory Notes sets out the new notice periods for each ground for possession.[80] Briefly, the notice period required for serious rent arrears will increase from two to four weeks but the notice period for serious anti-social behaviour will be reduced so landlords will be able to begin a claim for possession immediately. These changes are discussed below.

Clause 4 would amend section 8 of the 1988 Act to provide for regulations allowing the Secretary of State to publish the form to be used when serving notice of possession proceedings. Currently, updates to the prescribed forms must be made by statutory instrument, rather than being published.

The Explanatory Notes to the Bill (PDF) explain each of the new grounds for possession and amendments to existing grounds in detail on pages 71 to 88.[81] Many of the changes are technical in nature to address the fact that it will no longer be possible to create a fixed term private sector tenancy.

The sections below focus on what might viewed as the more controversial changes to the grounds for possession.

New ground 1: occupation by landlord or family (mandatory – two months' notice)

Schedule 1 introduces a new ground 1 which landlords will be able to use after the expiry of six months of an assured tenancy where they require the property for use as the only or principal home for themselves or their spouse or civil partner or with whom they live as though they were married; their parent; grandparent; sibling; child; grandchild; and child or grandchild of their spouse or civil partner. Tenant groups believe that this new ground, along with 1A (below), constitute 'no fault' grounds for eviction.

Generation Rent and Shelter are calling for a notice period for this ground of four months rather than two and for an extension of the period in which landlords may not use this ground from six to 24 months.[82] When views were sought in 2019, the Government had proposed a two-year period at the start of a tenancy during which the landlord could not apply for possession under either the occupation or sales grounds (new ground 1A).[83]

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79 Explanatory Notes to the Renters (Reform) Bill (Bill 308 of 2022-23) (PDF), para 60

80 As above, Annex B.

81 As above, pp77–88.

82 Generation Rent, The Renters (Reform) Bill: Our Verdict, 19 May 2023; Shelter, Briefing: The Renters (Reform) Bill - Shelter England, May 2023

83 Ministry of Housing, Communities and Local Government, A New Deal for Renting. Resetting the balance of rights and responsibilities between landlords and tenants: a consultation (PDF), July 2019, paras 3.16 and 3.19

The LUHC Committee also recommended a four-month notice period "to give tenants time to save up for moving costs and find alternative accommodation."[84]

Where new ground 1 is used, including where a tenant leaves after receiving a notice citing ground 1, landlords would be prevented from letting or advertising the property for the next three months. Clause 10 of the Bill would create certain prohibited actions, including prohibiting a landlord from using a ground for possession they are not entitled to use. Clause 11 would insert a new section 16G into the 1988 Act to provide for certain breaches by landlords to be criminal offences and liable to prosecution or the imposition of fines by local authorities of up to either £5,000 or £30,000 depending on the offence.

Comment

Giles Peaker, partner at Anthony Gold solicitors and commentator on the Nearly Legal: Housing Law News and Comment website, has questioned how this will be enforced:

> Who is going to tell the LA there has been a breach in most circumstances? It wholly relies on the former tenant noticing. The ground does not require any real evidence of intention. This is weak and will be abused.[85]

He suggested a more effective approach might be to make breaches a rent repayment order offence: "This would allow tenants to claim a year's worth of rent because they were illegally evicted and could serve as a more significant deterrent."[86]

Generation Rent's evidence to the LUHC Committee called for landlords to "provide unequivocal evidence to prove that they will be selling, moving into or moving their close family members into their property."[87] The Committee recommended a period of 12 months before landlords would be able to use this ground (as opposed to six months) and a period of six months during which landlords would not be able to market or relet the property (as opposed to three months).[88]

Shelter's briefing on the Bill calls for a 'no reletting' period of 12 months as a "strong disincentive" against landlords misusing this new eviction ground (and new ground 1A below). They also support a "high evidence threshold" for landlords and "punitive fines for landlords that misrepresent evidence when repossessing a property on these new grounds."[89]

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84 Levelling Up, Housing and Communities Committee, Reforming the private rented sector, 9 February 2023, HC 624 2022–23, para 47

85 Renters (Reform) Bill - the good, the potentially good and the ugly. Part 1 - Nearly Legal: Housing Law News and Comment, 17 May 2023

86 Inside Housing, "Renters' Reform Bill: what does it mean for social landlords and tenants?" 19 May 2023 [login required]

87 Written evidence submitted by Generation Rent [RRS 230], (PDF), August 2022

88 Levelling Up, Housing and Communities Committee, Reforming the private rented sector, 9 February 2023, HC 624 2022–23, para 47

89 Shelter, Briefing: The Renters (Reform) Bill - Shelter England, May 2023

Currently, there are several requirements with which landlords must comply in order to use the section 21 no fault eviction route. These include having protected the tenant's deposit; having issued the 'how to rent' guide to tenants; supplied a gas safety certificate and an energy performance certificate. There is no equivalent requirement in the Bill in relation to grounds 1 and 1A aside from protecting tenants' deposits (see clause 19). Giles Peaker has suggested the omission of a requirement in relation to gas safety certificates seems "short sighted."[90]

New ground 1A: sale of dwelling house (mandatory – two months' notice)

New ground 1A will require a court to award possession if the landlord intends to sell the dwelling-house. As with new ground 1, an application by the landlord will not be possible within the first six months of the tenancy. Certain exceptions will apply, and certain social landlords will not be able to use this ground. Breaches may attract penalties set out in new section 16G as explained above.

Generation Rent's written evidence to the LUHC Committee's inquiry into reforming the private rented sector (PDF, 2022) referred to analysis of a similar ground for eviction in operation in Scotland which had identified evidence of abuse by landlords:

> According to Generation Rent research, in Scotland, out of 74 cases where the landlord was awarded possession between 2018 and 2020 based on their intention to sell, 21 properties (28%) had still not been sold by early 2022. Ten of those (14% of the total) were still on the landlord register, indicating that the landlord may have abused this ground to wrongfully evict the tenant. We think that no-relet period should be increased to 12 months and any abuse made a criminal offence.[91]

The LUHC Committee's recommendations on notice periods and when landlords should be able to advertise or relet (see above) applied equally to ground 1A.[92]

Shelter and Generation Rent regard this as another 'no fault' ground for eviction to which stronger disincentives should apply, including a longer notice period for tenants; a longer 'no relet' period; and a high evidence threshold for landlords.

New ground 5E: possession for occupation as supported housing (mandatory – four weeks' notice)

Where accommodation normally let as supported housing to someone who requires care, support or supervision has been let to someone not requiring

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90 Renters (Reform) Bill - overview Part 2 - Nearly Legal: Housing Law News and Comment, 18 May 2023. Note that the requirement to issue a tenant with a valid gas safety certificate and to carry out annual checks will remain, but eviction will be possible if this statutory requirement has not been met.

91 Written evidence submitted by Generation Rent [RRS 230], (PDF), August 2022

92 Levelling Up, Housing and Communities Committee, Reforming the private rented sector, 9 February 2023, HC 624 2022–23, para 47

this support, new ground 5E provides the court must grant possession where the landlord needs to return to the property for use as supported accommodation.

Giles Peaker notes that this ground and 5F (below) may need further scrutiny.[93]

New ground 5F: possession of a dwelling housing as supported accommodation (mandatory – four weeks' notice)

New ground 5F would give supported housing providers[94] grounds on which to end a tenancy "where it is necessary to enable them to continue to operate safely, effectively or otherwise protect the viability of their service."[95] This will cover circumstances where; for example, the tenant no longer needs the level of support provided, where the support available does not meet their needs, or where the accommodation is physically unsuitable for tenant.

New ground 18 (discretionary) would give landlords a ground on which to evict tenants in supported housing who have unreasonably failed to cooperate with the support services provided.

The National Housing Federation's evidence to the LUHC Committee's inquiry referred to the need for mandatory no fault possession in a small number of cases and specific circumstances to support the effective management and provision of supported housing. It said that if providers could not gain possession, for example where a resident no longer needs support, this would result in a loss of supported housing provision; existing housing could become "silted up."[96]

Amendment to ground 8: rent arrears (mandatory – four weeks' notice)

Currently, ground 8 requires a court to award possession if a tenant owes over two months' rent when a landlord initiates possession proceedings and at the time of the court hearing. The Bill would amend ground 8 to provide that if a tenant's arrears have arisen only because a Universal Credit payment they are entitled to has not yet been paid, they cannot be evicted.

The Bill's Explanatory Notes say: "this may happen on a recurring basis if the timing of their payment does not align with the date rent is due."[97] The notice period for this ground would be increased from two weeks to four.

New ground 8A: repeated rent arrears (mandatory – four weeks' notice)

New ground 8A is aimed at meeting landlords' request for strengthened grounds for eviction for rent arrears. In May 2022, the NRLA said that for the

93 Renters (Reform) Bill - the good, the potentially good and the ugly, Part 1 - Nearly Legal: Housing Law News and Comment, 17 May 2023

94 Defined in para 24 of schedule 1 to the Bill.

95 Explanatory Notes to the Renters (Reform) Bill (Bill 308 of 2022-23) (PDF), para 590

96 Written evidence submitted by the National Housing Federation [RRS 174], August 2022

97 Explanatory Notes to the Renters (Reform) Bill (Bill 308 of 2022-23) (PDF), para 612

reforms to work, rent arrears cases would need to be a mandatory ground for repossession:

> Any move to make such a ground discretionary, at the whim of the courts, would send a dangerous signal that paying rent was an optional extra.[98]

Tenant groups told the LUHC Committee's inquiry that all grounds for possession relating to rent arrears should be discretionary to allow the courts to take account of various life events tenants might face, particularly in the current economic climate.[99] Debt charities called for a pre-action protocol to ensure landlords take steps to work with tenants in arrears.[100]

The court would be required to award possession in cases where, over a period of three years:

1. at least two months' rent was unpaid for at least a day on three separate occasions and rent is payable monthly.

2. at least eight weeks' rent was unpaid for at least a day on at least three separate occasions and rent is payable for a period shorter than a month.

The ground will not be met if the arrears arise because a benefit the tenant is entitled to has not been paid.

Giles Peaker has described this as "a very tough ground":

> Someone could have had several crises over a three year period, but on each occasion paid off the arrears in full, but still be subject to a mandatory possession claim. This covers far more than 'persistent arrears' or the announced purpose of avoiding people allegedly avoiding ground 8 by paying arrears below two months whenever at risk.[101]

The LUHC Committee said most landlords "had little to say about the new mandatory ground, although some said it would offer little protection, since most landlords have very small portfolios and will struggle to cope even with two months' rent arrears."[102]

Amendment to ground 14: anti-social behaviour (discretionary – landlords can make a possession claim immediately)

Being able to quickly remove tenants exhibiting anti-social behaviour is another priority area for landlords.

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98 NRLA, Queen's Speech Briefing: Renters' Reform Bill, 11 May 2022

99 Levelling Up, Housing and Communities Committee, Reforming the private rented sector, 9 February 2023, HC 624 2022–23, para 30

100 As above. A pre-action protocol applies to claims for possession made by social landlords.

101 Renters (Reform) Bill - the good, the potentially good and the ugly. Part 1 - Nearly Legal: Housing Law News and Comment, 17 May 2023

102 Levelling Up, Housing and Communities Committee, Reforming the private rented sector, 9 February 2023, HC 624 2022–23, para 29

The existing ground would be widened to include behaviours "capable of causing" nuisance or annoyance. Currently, the landlord must demonstrate that a tenant's behaviour is "likely to cause" a nuisance or annoyance.

The NRLA told the LUHC Committee that anti-social behaviour is difficult to prove as witnesses are often reluctant to give evidence in court. The discretionary nature of the ground means the outcome is uncertain. They argued for ground 14 to be mandatory or for "clear guidance to the courts on when possession should be granted, so as to "structure" the courts' discretion and provide more certainty to landlords."[103] Landlords regard the other (mandatory) anti-social ground for possession (7A)[104] as setting "too high a bar" and "of limited use, especially in respect of repeated and relatively low-level antisocial behaviour."[105]

Tenant groups told the Committee that anti-social behaviour is often linked to mental ill health and called for the Government to issue landlords with guidance on how to deal with tenants who exhibit antisocial behaviour.[106]

The Committee concluded the impact of anti-social behaviour and the "compensating" abolition of section 21 justified ground 14 being made mandatory:

> The Government should make existing ground 14 mandatory and issue guidance to the courts setting out the precise definition of antisocial behaviour and the circumstances in which they must grant possession. It should also publish equivalent guidance to landlords and tenants on what constitutes antisocial behaviour and the evidential threshold required to prove it in court.[107]

Generation Rent is concerned about the potential for changes to ground 14 to lead to "unfair evictions."[108] Any actions "capable of causing nuisance and annoyance" is viewed as "ambiguous and open to abuse". It also notes the requirement for landlords to have complied with deposit protection requirements (see clause 19) would not apply if a landlord seeks possession on ground 14. It says this "is an invitation to unscrupulous landlords to make false allegations."[109]

A landlord would be able to begin possession proceedings when using this ground as soon as they give notice to the tenant. The court would not be able to make an order for possession to take effect within 14 days of service of the

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103 Levelling Up, Housing and Communities Committee, Reforming the private rented sector, 9 February 2023, HC 624 2022–23, para 34

104 Ground 7A can be used where a tenant has been convicted of a criminal offence in or near the property.

105 Levelling Up, Housing and Communities Committee, Reforming the private rented sector, 9 February 2023, HC 624 2022-23, para 33

106 As above, para 35

107 As above, para 50

108 Generation Rent, The Renters (Reform) Bill: Our Verdict, 19 May 2023

109 As above.

notice. Generation rent has said this two-week period would leave tenants with "very little time to get legal advice."[110]

Shelter's response echoes the concerns of Generation Rent and again raises the question of anti-social behaviour linked to tenants' mental health and support needs:

> ...a blanket policy on anti-social behaviour fails to take into consideration a tenant's particular circumstances. Shelter sees cases where the nuisance and annoyance perceived by neighbours is linked to other vulnerabilities or circumstances beyond a tenant's control. Streamlining evictions of vulnerable people, often with unmet support needs, is entirely the wrong approach and would put people at severe risk of homelessness. Support services are needed to help people sustain their tenancies and to arbitrate resolutions between neighbours – rather than merely shifting problems elsewhere through evictions.[111]

Rent increases (clauses 5 and 6)

Currently, a landlord can only increase the rent during a fixed term AST by including a rent review clause in the tenancy agreement. The rents on periodic ASTs can be increased by the landlord serving notice under section 13 of the Housing Act 1988. Section 13 increases can only take place once a year. Tenants can refer section 13 increases to a First-Tier Tribunal (property chamber) (FTT), the tribunal determines a market rent which may be higher than that initially proposed.

The provisions in the Bill on rent increases are aimed at creating more predictability and "to stop retaliatory rent increases being used as a route to evict tenants."[112] Clause 5 would make the service of a section 13 notice the only way a rent increase could take place. Tenants would be entitled to two months' notice. Landlords and tenants may agree a lower increase than the amount proposed in the notice (but higher than the previous rent level).

Referrals to a FTT will remain. The tribunal would still be able to increase the rent above that proposed in the landlord's section 13 notice.

Private registered providers of social housing will retain the ability to increase rents on "relevant low-cost tenancies" via a provision in the tenancy agreement. They will be permitted to increase the rent at any point in the first 52 weeks of a tenancy, and then once every 52 weeks thereafter having given one month's notice.

Clause 6 would amend section 14 of the Housing Act 1988 which sets out when a tenant can apply to the FTT to challenge the rent level within the first six months of a tenancy (replicating existing mechanisms in section 22 of the Housing Act 1988) or following a section 13 rent increase notice.

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110 As above.

111 Shelter, Briefing: The Renters (Reform) Bill - Shelter England, May 2023

112 Explanatory Notes to the Renters (Reform) Bill (Bill 308 of 2022-23) (PDF), para 72

Comment

The LUHC Committee said most evidence received on the rent increase proposals "opposed or was underwhelmed" by them.[113] Larger professional landlords said the section 13 process was "not suited to the management of large portfolios" as it is "time consuming". They called for the retention of rent review clauses, saying that clauses linking increases to the Consumer Price Index already offered stability and predictability.[114]

Landlords questioned the capacity and efficiency of the tribunal process. Some tenant bodies doubted that tenants would make FTT referrals and pointed out that they "would need to be well informed of their right to take a complaint to tribunal."[115]

The Committee called on the Government to explore mechanisms for identifying market rents and making this information accessible to remove some of the burden from landlords and tenants.[116] It concluded that rent review clauses should not be abolished as it could amount to "removing a mechanism for predictable and fair rent rises and replacing it with a system that relies on a resource-intensive and time-consuming appeals process."[117]

Instead, the Committee recommended making it a requirement to stipulate how much rents will increase by and to require rent review clauses to include break periods "during which tenants may appeal to the First Tier Property Tribunal if they think their rent has risen above local market rents."[118]

Generation Rent has highlighted the FTT's ability, having received a referral, to increase the rent above that proposed in a landlord's section 13 notice:

> This appears to be an attempt to disincentivise its use and will mean that tenants face greater uncertainty in their negotiations with their landlord. It also leaves tenants vulnerable to unaffordable rent increases equivalent to no-fault eviction by the back door.[119]

It is calling for a tribunal process "designed to give tenants confidence to challenge an unfair increase without fear of further detriment."[120]

Permission to keep a pet (clauses 7 and 8)

Currently, a tenancy agreement might say pets are not allowed. The Consumer Rights Act 2015 prohibits "unfair terms" in a contract. This means a

113 Levelling Up, Housing and Communities Committee, Reforming the private rented sector, 9 February 2023, HC 624 2022–23, para 121
114 As above.
115 As above, para 122
116 As above, para 128
117 As above, para 129
118 As above.
119 Generation Rent, The Renters (Reform) Bill: Our Verdict, 19 May 2023
120 As above.

blanket ban on keeping pets in a tenancy agreement might be struck out if challenged in court.

Alternatively, the tenancy agreement might say the landlord's permission should be sought if the tenant intends to keep a pet. In this case, the landlord's permission should not be unreasonably refused. What amounts to a reasonable refusal will vary with the circumstances.

The tenancy agreement might not mention pets, in which case it may be harder for landlords to argue that pets are not allowed.

The Government committed to "ensure landlords do not unreasonably withhold consent when a tenant requests to have a pet in their home" in A fairer private rented sector (June 2022).[121]

Clause 7 seeks to amend the Housing Act 1988 to make it an implied term of an assured tenancy (with some exceptions[122]) that a tenant may keep a pet with the landlord's consent unless the landlord reasonably refuses. The landlord will be required to give or refuse consent in writing within 42 days of receiving a written request. The tenant's written request must describe the pet.

Courts will be able to order specific performance of the obligation if the landlord breaches the new implied term.

As a condition of giving consent, a landlord will be able to tell the tenant in writing that they must have insurance covering the risk of pet damage or require the tenant to pay the landlord's reasonable costs of maintaining pet damage insurance.

Clause 8 would amend the Tenant Fees Act 2019 to allow a landlord to recover the cost of pet damage insurance if the tenant has a pet and the landlord has consented to this arrangement.

Comment

Evidence submitted to the LUHC Committee indicated that landlords would prefer to retain full flexibility over requests for pets. There is concern about potential damage and disturbance to neighbours. Witnesses told the Committee that some properties are simply unsuitable for pets, such as houses in multiple occupation (HMOs) and flats.[123] The NRLA called for guidance on when landlords might reasonably withhold consent.[124]

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121 DLUHC, A fairer private rented sector, June 2022, chapter 6

122 Social housing tenancies will not be affected, and it will be a reasonable refusal where accepting a pet would breach an agreement with a superior landlord.

123 Levelling Up, Housing and Communities Committee, Reforming the private rented sector, 9 February 2023, HC 624 2022–23, para 145

124 As above, para 147

The ability to require pet insurance is welcomed but landlords are concerned that tenants could cancel it or not make the payments. An option would be for landlords to take out the insurance and recover the cost from tenants.

The Committee recommended the proposal be abandoned, but if this was not accepted, it said the Government response should define in what circumstances a refusal would amount to unreasonably withholding consent.[125]

Information, including FAQs, on the pet provisions was published alongside the Bill.[126]

Written tenancy agreement and other landlord duties (clauses 9 and 10)

A fairer private rented sector (June 2022) said the Government would require landlords to provide a written tenancy agreement which would include:

> ...basic information about the tenancy and both parties' responsibilities, while retaining their right to agree and adapt terms to meet their needs. Written contracts will help to avoid and resolve disputes, and provide evidence if disputes go to court.[127]

Clause 9 would place a duty on landlords to provide a written statement of terms and conditions to the tenant on or before the first day of a tenancy. This would include where the landlord might wish to use any of the 'prior notice' grounds for possession to recover the property in the future (1B, 2ZA, 2ZB, 4, 5 to 5G, or 18).

The clause provides for the Secretary of State at DLUHC to make regulations to require which terms and information are required in writing at the start of a tenancy. The Explanatory Notes to the Bill say this power "will enable Government to reflect future changes to regulation of the PRS consequent from the Bill and allow further consultation on the details of which terms are necessary."[128]

Clause 10 would insert a new section (16E) into the Housing Act 1988 to prohibit certain actions by a landlord or former landlord of an assured tenancy. The prohibited actions (which will not apply to assured tenancies of social housing) would include:

- Letting a fixed term tenancy.
- Serving an incorrect form of possession notice.

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125 Levelling Up, Housing and Communities Committee, Reforming the private rented sector, 9 February 2023, HC 624 2022–23, para 148

126 DLUHC, Renting with pets: Renters (Reform) Bill - GOV.UK, 17 May 2023

127 DLUHC, A fairer private rented sector, June 2022, section 5.1

128 Explanatory Notes to the Renters (Reform) Bill (Bill 308 of 2022-23) (PDF), para 92

- Failing to give prior notice where it is required.
- Specifying a ground for possession the landlord is not entitled to use.
- A notice that specifies a date for starting possession proceedings earlier than six months after the start of the tenancy when using the occupation, selling or redevelopment grounds for eviction.
- Reletting or remarketing a property within three months of obtaining possession on the occupation or selling grounds for eviction.

The clause defines 'lettings agency work' for the purposes of new section 16E and the Secretary of State will gain regulation making power to exclude other activities from the definition.

Financial penalties and offences (clauses 11 to 13)

Clause 11 would add new sections to the Housing Act 1988 setting out the financial penalties and offences that would apply where a landlord breaches the prohibitions in clause 10 and the failure to provide a written statement of terms (clause 9).

Local authorities would be able to impose financial penalties of up to £5,000 if satisfied 'beyond reasonable doubt' of a contravention of clauses 9 or 10 (new section 16F). One penalty would apply unless the breach continued for more than 28 days after a final notice is given or unsuccessfully appealed. No penalty may be imposed in certain circumstances, eg if the landlord has been convicted of an offence under new section 16G in respect of this conduct.

New section 16G sets out certain offences which will attract a penalty of up to £30,000 or prosecution (under section 16H), including where a landlord serves a notice specifying a possession ground they are not entitled to use and the tenant leaves the tenancy without an order for possession having been made. A section 16G offence will also be committed if a landlord remarkets a property within three months of using the moving or selling grounds or instructs a letting agent to do so.

There will be a continuing offence where a landlord or former landlord receives a financial penalty for prohibited conduct and continues the conduct for more than 28 days thereafter. Repeat breaches (offences) will occur where a landlord or former landlord conducts themselves in a way that gives rise to liability to a financial penalty under section 16F within five years of receiving a penalty for different conduct or within five years of a conviction under section 16G.

New section 16H provides for a local authority to impose a fine of up to £30,000 if satisfied beyond reasonable doubt that the person is guilty of an offence under section 16G. The section specifies circumstances in which a fine may not be imposed, including where criminal proceedings have been instituted against the person and not concluded. The Secretary of State may

issue guidance for local authorities on the exercise of functions under section 16H.

New section 16I provides for the Secretary of State to provide financial assistance to local authorities to support their functions under new sections 16F to 16H. It would also provide a power through which the Secretary of State may amend the maximum penalty levels specified in sections 16F (£5,000) and 16H (£30,000) by regulations to reflect inflation.

Clause 12 would insert new schedule 2ZA in the Housing Act 1988 which sets out the procedure local authorities would follow when imposing financial penalties, including rights of appeal and enforcement.

Clause 13 would provide for new section 16G not to apply to the Crown.

Comment

Giles Peaker has described a fine of £5,000 for landlord breaches as "sadly feeble."[129] There's no reference in Part 1 of the Bill to allowing an application for a rent repayment order as a deterrent to landlords in regard to offences.[130]

Assured tenancies: notices to quit (clauses 14 and 15)

Clause 14 would amend section 5 of the Protection from Eviction Act 1977 to specify the amount of notice that a tenant will need to give when ending an assured tenancy. The default notice period will be two months, but landlords and tenants will be able to agree a shorter period in the tenancy agreement or in a separate written document.

Clause 15 provides that it will be possible to withdraw a notice to quit once served if the landlord and tenant agree in writing. Any attempt by a landlord to specify the form of written notice a tenant must give will have no effect.

Limitation on obligation to pay removal expenses (clause 16)

This clause will amend the Housing Act 1988 to ensure only private registered providers of social housing would be required to pay a tenant's removal expenses when the court awards possession under grounds 6 (redevelopment) or 9 (suitable alternative accommodation).

Assured agricultural occupancies: grounds for possession (clause 17)

Clause 17 will make consequential amendments to ensure tenants with an Assured Agricultural Occupancy continue to enjoy greater security of tenure.

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129 Renters (Reform) Bill - the good, the potentially good and the ugly, Part 1 - Nearly Legal: Housing Law News and Comment, 17 May 2023

130 Shelter provides an explanation of Rent Repayment Orders [accessed on 25 May 2023]

Landlords will continue to be excluded from using certain grounds for eviction against these tenants.

Accommodation for homeless people: duties of local authority (clause 18)

Part 7 of the Housing Act 1996 governs English local authorities' duties towards homeless households. Currently, if the local housing authority is satisfied that the applicant is eligible, unintentionally homeless, and has a priority need, but has deliberately and unreasonably failed to cooperate with the local authority in carrying out its prevention or relief duty, the applicant is owed a lessor housing duty. This duty amounts to an offer of a fixed term tenancy of at least six months. The Bill abolishes fixed term tenancies so the provision is no longer needed and will be removed by clause 18.

Where a homeless household accepts a suitable private rented tenancy secured by a local authority in discharge of its duties under Part 7, there is a duty to offer accommodation if the household becomes homeless again within two years irrespective of whether the household still has a priority need. The Bill's removal of ASTs and fixed term tenancies will mean all tenants will have rolling periodic tenancies: "This increased security of tenure and removal of section 21 evictions means the reapplication duty will no longer be required."[131]

Shelter has raised issues about one of the consequential amendments in schedule 2 to the Bill relating to homelessness. Section 175 of the Housing Act 1996 provides that an authority should consider a household as threatened with homelessness if served with a valid section 21 notice that expires in 56 days or less, and they have no other accommodation available to them.[132] This acts as a trigger point in terms of the authority's duty to work to prevent homelessness.

The Bill will remove section 21 eviction notices and will also repeal subsection 175(5) of the 1996 Act to "remove the provision that provides for a person to be considered as threatened with homelessness if they have been served with a valid notice under section 21 of the Housing Act 1988."[133] In Shelter's view, this would mean:

> ...the law no longer specifies *when* help to prevent homelessness should be available to private renters, following service of a notice. It's left to the discretion of the council to decide when the person is threatened with homelessness within a 56-day period.[134]

Shelter is seeking an explicit requirement in legislation "to make sure renters have a right to get help from their local council from the moment their

131 Explanatory Notes to the Renters (Reform) Bill (Bill 308 of 2022-23) (PDF), para 142

132 The background to this provision can be found in a Commons Library briefing: Applying as homeless from an assured shorthold tenancy (England).

133 Explanatory Notes to the Renters (Reform) Bill (Bill 308 of 2022-23) (PDF), para 642

134 The Renters' Reform Bill: live updates | Shelter [accessed 25 May 2023]

landlord serves notice" because "The scrapping of section 21 will not fully neutralise the very real risk of homelessness following eviction."[135]

Tenancy deposit requirements (clause 19)

The Housing Act 2004 placed a duty on landlords and letting agents to place an assured shorthold tenant's deposit into a government-approved Tenancy Deposit Protection scheme. They must provide tenants of ASTs with prescribed information about how the deposit is protected. If the deposit requirements are not adhered to, a section 21 notice served on a tenant may be invalid.

Clause 19 would amend the 2004 Housing Act to continue the requirement for deposits to be protected in respect of all new assured tenancies and tenancies that were ASTs immediately before the extended application date.

Landlords who take a deposit and do not fulfil the statutory requirements will not be awarded a possession order on any of the grounds set out in schedule 2 to the Housing Act 1988 aside from grounds 7A and 14 relating to serious crimes and anti-social behaviour.[136]

Tenancies that cannot be assured tenancies (clause 21)

Ground rents on some leasehold properties have risen in recent years. An unintended consequence is that where they exceed £1,000 per year in Greater London and £250 elsewhere, the lease agreements are classed as assured tenancies under the Housing Act 1988.

In turn, this means landlords (freeholders) can seek a court order for eviction where three months' ground rent is at least three months in arrears (where ground rent is payable annually) under ground 8 of schedule 2 to the Housing Act 1988.

The Government committed to resolve this issue in 2017 saying "action will be taken to address this loophole and ensure that leaseholders are not subject to unfair possession orders."[137]

Clause 21 will allow for leases over seven years to have a fixed term. This is necessary for the functioning of leasehold tenure. Schedule 1 of the 1988 Act will be amended so fixed term tenancies of more than seven years will be added to the list of tenancies excluded from the assured tenancy system. The Explanatory Notes advise:

> This will mean landlords are no longer able to use the section 8 grounds to obtain possession of long leases which are also assured tenancies by virtue

135 As above.

136 Comment on the non-requirement to comply with deposit protection measures when using grounds 7A or 14 is covered in the section on amendments to ground 14, pp27-28

137 DCLG, Tackling unfair practices in the leasehold market: government response, December 2017, para 75

that they are not at low rent, including where a shared owner has built up arrears of rent.[138]

This provision will come into effect two months after Royal Assent.[139]

Penalties for unlawful eviction or harassment of occupier (clause 22)

Clause 22 would insert a new section 1A into the Protection from Eviction Act 1977 to enable local authorities to issue fixed penalty notices for offences under section 1 of the 1977 Act up to a maximum of £30,000. Financial penalties may only be imposed in lieu of prosecution. The threshold for levying a financial penalty would be 'beyond reasonable doubt'.

New schedule A1 would provide a process for the service of these financial penalties, including a right of appeal to a FTT.

The Secretary of State may provide guidance on fines which local authorities must have regard to when exercising their functions under new section 1A.

138 Explanatory Notes to the Renters (Reform) Bill (Bill 308 of 2022-23) (PDF), para 158

139 Commencement clause 67(8).

2 Landlord redress schemes

2.1 Background

A redress scheme allows consumers to escalate a complaint they have against a member of the scheme to an independent arbitrator. There is currently no legal requirement for private landlords in England to belong to a redress scheme. A small number of private landlords have voluntarily joined a redress scheme, but it is estimated this applies to only 80 to 90 private landlords out of around 2.3 million.[140]

Since 1 October 2014, private sector letting and managing agents have been required to belong to a government-approved redress scheme: The Property Ombudsman or The Property Redress Scheme.

The current potential redress options for private tenants depend on the type of dispute. For example: disputes about tenancy deposits can be referred to one of the tenancy deposit protection schemes; problems with disrepair may be referred to the local authority's environmental health team; and certain disputes can be adjudicated by the independent First-tier Tribunal (Property Chamber).[141]

The limited redress options mean the regulatory system primarily relies on tenants negotiating with private landlords and enforcing their own rights. Tenants may lack the necessary knowledge of their rights and may be reluctant to pursue a complaint against their landlord for fear of retaliatory eviction or a rent rise. Other barriers to tenants raising complaints include: a lack of time and funds, language barriers and a complex system.[142]

In a 2021 report on the regulation of private renting, the National Audit Office (NAO) described redress mechanisms as a common feature of well-designed consumer markets and highlighted that "there are limited redress options for tenants when things go wrong".[143] The subsequent Public Accounts Committee report on the regulation of private renting, published in March 2022, was critical of the lack of redress mechanisms for tenants:

> For those that do want to complain, their access to redress mechanisms is severely limited—the system is highly complex and requires significant time

[140] DLUHC, A fairer private rented sector, CP 693, 16 June 2022, p37

[141] The Commons Library constituency casework page on How to complain about rented housing (England) provides further information about the different redress routes.

[142] See section 3.3 of the Commons Library briefing on Housing conditions in the private rented sector (England) for further information.

[143] NAO, Regulation of private renting, 10 December 2021, HC 863 2021–22, para 17

> and resource to pursue court action. This will be particularly difficult for more vulnerable tenants who may lack awareness of their rights or how to enforce them. The Department is considering a mandatory redress scheme for landlords, but the way this is designed will determine how helpful it will be. For example, multiple redress schemes instead of a single ombudsman may create a market for landlords to choose from but be more confusing for renters.[144]

Consultation on consumer redress in housing

On 18 February 2018 the Government issued a consultation seeking views on how to strengthen consumer redress in housing. In the foreword the Secretary of State for Housing, Communities and Local Government, then Sajid Javid, acknowledged the redress system was fragmented and patchy:

> ... There's not one redress scheme but many and each operate different practices. Even this array of schemes does not entirely cover the issues that consumers might encounter. Too many people have no option but to take a grievance through the courts.
>
> Ultimately, I want to simplify the process so that people have a clearer and simpler route to redress...[145]

The Government published the results of the consultation in January 2019. Most respondents considered all private landlords should belong to a redress scheme (65%) and private landlord redress should be delivered by a new ombudsman such as a single housing ombudsman (63%).[146]

Following the consultation the Government confirmed it would bring forward legislation to require all private landlords to belong to a redress scheme.[147]

The Government also established a Redress Reform Working Group, bringing together expertise from across the redress sector, to help drive the programme of reform. The Working Group began work in the summer of 2019 and has continued to meet independently and provide updates to the Government.[148]

Private rented sector white paper

On 16 June 2022 the Government published the white paper: A fairer private rented sector. It included a commitment to introduce a single Ombudsman to enable disputes between tenants and private landlords to be settled quickly, at low cost, and without going to court:

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144 Public Accounts Committee, Regulation of private renting, 13 April 2022, HC 996 2021–22, Conclusions and recommendations, para 1

145 MHCLG, Strengthening consumer redress in the housing market: A Consultation, 18 February 2018, Ministerial Foreword

146 MHCLG, Strengthening Consumer Redress in the Housing Market: Summary of responses to the consultation and the Government's response, 24 January 2019, paras 61 and 64

147 HCWS1272, 24 January 2023

148 PQ 13787 [Leasehold: Reform], 15 June 2022

> The government is committed to making sure that PRS [private rented sector] tenants have the same access to redress as those living in other types of housing. That is why **we will introduce a single government-approved Ombudsman covering all private landlords who rent out property in England**, regardless of whether they use an agent. This will ensure that all tenants have access to redress services in any given situation, and that landlords remain accountable for their own conduct and legal responsibilities. Making membership of an Ombudsman scheme mandatory for landlords who use managing agents will mitigate the situation where a good agent is trying to remedy a complaint but is reliant on a landlord who is refusing to engage.[149]

The white paper explained why the Government considered it preferable to have a single Ombudsman rather than multiple redress schemes:

> ... A single scheme will mean a streamlined service for tenants and landlords, avoiding the confusion and perverse incentives resulting from competitive schemes. As well as resolving individual disputes, an Ombudsman can tackle the root cause of problems, address systemic issues, provide feedback and education to members and consumers, and offer support for vulnerable consumers...[150]

2.2 The Bill's provisions on redress schemes

Overview

Part 2, Chapter 2 of the Renters (Reform) Bill[151] includes provisions to enable the Government to approve or designate one or more redress schemes which all private landlords who rent out property in England will be required to join.

The Government intends to only approve one redress scheme, and for this to be an Ombudsman. Requiring landlords to join the same scheme will mean tenants and landlords have access to a streamlined service.[152]

The Ombudsman will investigate tenant complaints and provide fair, impartial, and binding resolution to many issues, including those relating to property standards, repairs, maintenance, and poor landlord practice and behaviour. The Ombudsman scheme is expected to be quicker, cheaper, and less adversarial than the court system.

Landlords who fail to join the Ombudsman scheme can be fined up to £5,000 by the local authority. If a landlord repeatedly breaches the requirement, they may be fined up to £30,000 and could face criminal prosecution.

The Ombudsman will have powers to put things right, including compelling landlords to issue an apology, provide information, take remedial action, and/or pay compensation of up to £25,000. It will be mandatory for landlords

149 DLUHC, A fairer private rented sector, CP 693, 16 June 2022, p39
150 DLUHC, A fairer private rented sector, CP 693, 16 June 2022, p39
151 Renters (Reform) Bill 308 2022-23
152 DLUHC, Guidance - Private Rented Sector Ombudsman: Renters (Reform) Bill, 17 May 2023

to comply with any decision of the Ombudsman, should the complainant accept the final determination.

The intention is for any approved redress scheme to be self-funding through membership fees.

The Department for Levelling Up, Housing and Communities (DLUHC) has published guidance on the Private Rented Sector Ombudsman (May 2023). This confirms the Government will introduce the Ombudsman as soon as possible after the Bill has received Royal Assent.

The following sections provide a clause-by-clause explanation of the Bill's landlord redress schemes provisions.

Meaning of "residential landlord" (clause 23)

Clause 23 sets out the meanings of private "residential landlord", "relevant tenancy" and "dwelling" for the purpose of defining which tenancies fall within scope of the landlord redress schemes and the private rented sector database (see section 3 of the briefing).

A "residential landlord" means the landlord under a relevant tenancy of a dwelling in England that is not social housing. A "relevant tenancy" is defined as either 1) an assured tenancy under the Housing Act 1988 or 2) a regulated tenancy under the Rent Act 1977. A "dwelling" means a building or part of a building which is occupied or intended to be occupied as a separate home. This excludes non-buildings like caravans, tents, houseboats and park homes which do not fit this definition.

Clause 23 also sets out how and to what extent these definitions may be changed through regulations.

The Government intends to lay regulations as soon as possible after Royal Assent to further define the scope of the landlord redress schemes and private rented sector database provisions. The intent is to use these regulations to clarify the position of superior landlords in certain arrangements known as rent-to-rent, and to include, exclude or make special arrangements for niche tenures such as purpose-built student accommodation, temporary accommodation and supported housing.[153]

Landlord redress schemes (clause 24)

Clause 24 gives the Secretary of State power to make regulations requiring a residential landlord (as defined in clause 23) to join a landlord redress scheme.

A "landlord redress scheme" is defined as a scheme "which provides for a complaint made by or on behalf of a prospective, current or former

[153] Explanatory Notes to the Renters (Reform) Bill (Bill 308 of 2022-23), para 172

residential tenant against a member of the scheme to be independently investigated and determined by an independent individual" and which is approved by the Secretary of State or administered by, or on behalf of, the Secretary of State and designated by the Secretary of State.[154]

Regulations may require a landlord to be a member of a landlord redress scheme before a property is marketed for rental and to remain a member of the scheme after ceasing to be a residential landlord, for a specified period.

Subsections (6) and (7) specify that, beyond the mandatory aspects, a landlord redress scheme can:

- allow voluntarily membership of the scheme.
- investigate and determine complaints under a voluntary jurisdiction (ie, where members against whom the complaints are made have voluntarily accepted the jurisdiction of the scheme over those complaints).
- provide voluntary mediation services.

Subsection (6) also allows for a scheme to specify the types of complaints it will not investigate or determine.

Approval and designation of landlord redress schemes (clause 25)

Clause 25 requires the Secretary of State to make regulations setting out the conditions that a landlord redress scheme must meet before it is approved or designated. These must include provisions:

- for the administrator to appoint an individual, with the Secretary of State's approval of the individual and the terms of the appointment, who is to be responsible for overseeing and monitoring the investigation and determination of complaints under the scheme. While there is no explicit reference to an 'Ombudsman' or 'Head of Redress', the intention is that this subsection will provide for this or a similar post to be created by the scheme administrator and approved by the Secretary of State.[155]
- about the types of complaints that may be made under the scheme.
- about the length of time a tenant will need to give their landlord to resolve their complaint in the first instance before they can escalate it to the redress scheme.
- about the circumstances in which a scheme might reject a complaint.
- about co-operation with other redress schemes or enforcement bodies in handling tenants' complaints, including provision for joint investigations

[154] Subsection 24(2)

[155] Explanatory Notes to the Renters (Reform) Bill (Bill 308 of 2022-23), para 184

where appropriate, and for the sharing of information with the Secretary of State and other bodies to facilitate co-operation.

- about the level of fees for the compulsory and voluntary aspects of the scheme.[156]
- to be able to require landlords to provide the following types of redress to tenants: 1) an apology or explanation, 2) financial compensation, and 3) other actions in the interests of the complainant as the individual determining the complaint may specify.
- about the enforcement of the scheme and decisions made under the scheme.
- about the circumstances in which a person can be expelled from the scheme, an expulsion can be revoked, and a person can be prohibited from joining the scheme.
- about transferring the administration of the scheme and closing the scheme.

Clause 25 also allows the Secretary of State to make regulations about:

- the number of approved or designated redress schemes (which may be one or more).
- the process for making applications for approval.
- the period for which an approval or designation is valid.
- the conditions and process for approval or designation to be withdrawn or revoked.
- authorising the approval or designation of a scheme which sets member fees by reference to the total administration costs of the compulsory aspects of the scheme.

Regulations made under clause 25 may confer a discretion on the Secretary of State or require a scheme to do so. For example, the intention is to set a maximum limit of £25,000 on the level of compensation that may be awarded under a scheme.[157]

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156 Under subsection 25(8), "voluntary aspects", in relation to a scheme, means aspects of the scheme that relate to: (a) complaints under a voluntary jurisdiction; (b) voluntary mediation services; or (c) voluntary members.

157 Explanatory Notes to the Renters (Reform) Bill (Bill 308 of 2022-23), para 187

Financial penalties for breach of regulations (clause 26)

If a landlord markets or lets a property without being a member of an approved or designated redress scheme, the local housing authority may impose a financial penalty of up to £5,000.

A local housing authority may impose a financial penalty of up to £30,000 if a person commits an offence under clause 27 (ie because of a persistent or repeated failure to comply). A financial penalty cannot be imposed if criminal proceedings against the person in respect of the same offence are ongoing or have concluded with a conviction or acquittal.

Subsections (3) and (4) set out the circumstances under which more than one penalty could be imposed for the same conduct.

The Secretary of State may issue guidance for local housing authorities on how to exercise the powers provided in this clause and require them to have regard to such guidance.

The Secretary of State may change the maximum amounts of the financial penalties by regulations to account for inflation.

Schedule 3 to the Bill sets out the process a local housing authority must follow to impose a financial penalty. This includes the issuing of penalty notices, the means for a person to appeal, and how an unpaid penalty is recovered. Local housing authorities may use the proceeds of financial penalties to meet the costs of their private rented sector enforcement functions.

The Bill's Explanatory Notes provide the following example of how the clause would operate:

> **Example: Where a landlord is not a member of an approved or designated scheme**
>
> A tenant of a private residential landlord raises a complaint with the only approved redress scheme – the Ombudsman scheme - and it is found that the landlord is not a member. The scheme takes reasonable steps to contact the landlord, informs them of the requirement to comply and the consequences of non-compliance. The landlord still fails to sign-up and the scheme then refers the case to the local housing authority in whose area the dwelling is. The local housing authority investigates the breach and determines, beyond reasonable doubt, that the landlord has not signed up to an approved redress scheme. The local housing authority subsequently issues a civil penalty of up to £5,000. The landlord pays the civil penalty and joins the Ombudsman scheme – no further action is taken by the local housing authority, and the Ombudsman will be able to investigate the original complaint made by the tenant if the issue remains ongoing.[158]

[158] Explanatory Notes to the Renters (Reform) Bill (Bill 308 of 2022-23), p37

Offences relating to breach of regulations (clause 27)

Clause 27 sets out the offences which may be committed where a person persistently or repeatedly fails to comply with the requirement to not market or let a property without being a member of a landlord redress scheme.

A person convicted of an offence under this clause is liable to a fine.

Subsection (9) adds the continuing or repeat breaches offences to section 40 of the Housing and Planning Act 2016, meaning that a tenant or local housing authority may apply for a rent repayment order against the landlord under Chapter 4, Part 2 of the HPA 2016.[159]

The Bill's Explanatory Notes provide the following example of how the clause would operate:

> **Example: Landlord is not a member of a scheme – repeat offence**
>
> A private tenant has found that their landlord is not a member of the Ombudsman scheme, as required by law. The tenant reports this to the Ombudsman, who in turn refers the case to the local housing authority for enforcement action. Upon investigation, the local housing authority finds that the landlord has committed an offence because a fine for a similar breach has been imposed within the last 5 years and has not been appealed. As this is a repeat offence, the local authority issues the landlord with a penalty of up to £30,000.[160]

Decision under a landlord redress scheme may be made enforceable as if it were a court order (clause 28)

Clause 28 provides that the Secretary of State may make regulations authorising the administrator of a landlord redress scheme to apply to a court or tribunal for an order that a determination made under the scheme, and accepted by the complainant in question, be enforced as if it were an order of a court.

Before making the regulations, the Secretary of State must consult one or more bodies representing landlords and tenants, and any other persons considered appropriate.

The Bill's Explanatory Notes explain that this measure is intended to be one of last resort:

> The regulations would be subject to the negative resolution procedure. The government will only introduce this measure if it is necessary to achieve the objectives of the legislation, where there is evidence that non-compliance is

[159] A rent repayment order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent. For further information see: DLUHC, Rent repayment orders under the Housing and Planning Act 2016: Guidance for Local Housing Authorities, 6 April 2017

[160] Explanatory Notes to the Renters (Reform) Bill (Bill 308 of 2022-23), p38

high and that the expulsion mechanism, provided for under Clause 25, proves to be ineffective at ensuring compliance in all situations.[161]

Guidance for scheme administrator and local housing authority (clause 29)

Clause 29 allows the Secretary of State to issue or approve guidance for local housing authorities and the administrators of landlord redress schemes about cooperation between local housing authorities and persons exercising functions under the schemes. This is intended to ensure that parties will work together to resolve complaints where they both have a jurisdictional interest.

Local housing authorities must have regard to any guidance issued or approved and the Secretary of State must, by regulations under clause 25, require the administrator of a redress scheme to also have regard to any guidance.

Housing activities under social rented sector scheme (clause 31)

Clause 31 amends Schedule 2 to the Housing Act 1996 (social rented sector: housing complaints). The effect of the amendments would be to remove the jurisdiction of the Housing Ombudsman Service over 1) private residential landlords (who can currently voluntarily join the scheme) and 2) the private rented sector housing activities of social housing providers. This provision is intended to ensure that all private tenants have equal access to redress and that the new private rented sector Ombudsman has oversight of the whole sector

Subsection (3) inserts a provision into the Housing Act 1996 which would allow a housing ombudsman scheme to consider certain complaints in relation to private rented sector activities at the discretion of the Secretary of State.

2.3 Comment

The provisions to establish a single Ombudsman for the private rented sector and to require all private landlords to join have been welcomed by stakeholders.

The Levelling Up, Housing and Communities Committee inquiry report (February 2023) on reforming the private rented sector found landlords, tenant groups and local government gave "considerable support" to the idea of an Ombudsman, "especially as a means of easing pressure on local

[161] Explanatory Notes to the Renters (Reform) Bill (Bill 308 of 2022-23), para 211

authorities and the courts and providing a less intimidating means of redress for tenants."

Where landlords opposed an Ombudsman, they did so on the grounds that it would be an extra layer of bureaucracy, the cost of which would ultimately be passed on to tenants. Some tenant groups were concerned that an Ombudsman should not become a vehicle for discouraging tenants from exercising their legal rights through the courts and that its decisions should still be open to appeal in the court. Inquiry witnesses also called for clear lines of demarcation between any new Ombudsman and existing redress routes.[162]

Responding to the Bill's publication, the Local Government Association's housing spokesman said: "...we are also glad to see the introduction of an Ombudsman for the private rented sector, as an additional mechanism for tenants to seek appropriate redress from their landlord."[163] While the Acting Director of Generation Rent said: "The new Property Portal and Ombudsman have the potential to make it much harder for criminal landlords to operate."[164]

Martin Lewis, founder of MoneySavingExpert.com, commented: "We have long needed a statutory single private rental Ombudsman – so I'm pleased to see it in the legislative plans."[165] The housing charity Shelter welcomed the Bill's provisions, but cautioned that "they are meaningless unless local councils are given the power to enforce them."[166]

[162] House of Commons Levelling Up, Housing and Communities Committee, Reforming the Private Rented Sector, 9 February 2023, HC 624 2022-23, paras 132–33

[163] 'Renters' Reform Bill: LGA statement', Local Government Association, 17 May 2023

[164] DLUHC, Government introduces landmark reforms to deliver fairer private rented sector for tenants and landlords, 17 May 2023

[165] As above

[166] Shelter, What's the good news about the bill so far?, 18 May 2023

3 The private rented sector database

3.1 Background

Local authorities have extensive powers to address poor property conditions and management standards in the private rented sector. However, there is evidence of low and inconsistent levels of enforcement between authorities.[167] A lack of robust data and information on the sector is recognised as a key barrier to local authorities taking effective enforcement action.[168]

A National Audit Office (NAO) report on the regulation of private renting (2021) concluded: "the proportion of private renters living in properties that are unsafe or fail the standards for a decent home is concerning". It recommended the Government "should improve the quality of its data and insight into the private rented sector, so that it can oversee the regulation of the sector more effectively."[169]

There is currently no national landlord registration scheme in England. Wales, Scotland and Northern Ireland all have mandatory landlord registration schemes.

Rogue landlord and property agent database

The 2015 Conservative Government was reluctant to increase the regulatory burden on reputable landlords and instead focused on targeting 'rogue' private landlords who knowingly rent out unsafe and substandard accommodation. It sought to force them to improve the condition and management of their properties or leave the sector entirely.

[167] See for example: National Residential Landlords Association, The enforcement lottery: local authority inspections and notices, 9 February 2022; and House of Commons Levelling Up, Housing and Communities Committee, Reforming the Private Rented Sector, 9 February 2023, HC 624 2022-23, paras 70–72.

[168] DLUHC, Local authority enforcement in the private rented sector: headline report, 16 June 2022

[169] NAO, Regulation of private renting, 10 December 2021

The Housing and Planning Act 2016 extended the range of enforcement measures local authorities in England can use against rogue landlords. This included establishing a database of landlords and property agents subject to a banning order.[170] The database went live in April 2018. Local authorities are responsible for uploading and maintaining records on the rogue landlord database. It enables authorities to share information about rogue landlords but is not viewable by the public.[171]

On 21 July 2019 the Government launched a consultation on the reform of the rogue landlord database seeking views on:

- allowing access to the database for tenants and prospective tenants; and
- expanding the scope of offences and infractions which could lead to entries on the database.[172]

Private rented sector white paper

The Government's white paper on A fairer private rented sector (June 2022) outlined a number of measures intended to improve landlord compliance and ensure robust enforcement of standards. These included a new digital 'Property Portal' to make sure that tenants, landlords and local authorities have the information and data they need.[173]

In September 2022, the Government published the outcome of the consultation on rogue landlord database reform which confirmed some of the functionality of the rogue landlord database would be incorporated into the Property Portal. This would include mandating the entry of all eligible offences on the database and making them publicly viewable.[174]

The private rented sector white paper noted the Government was exploring options for broadening the criteria for entry on the database, but "this will need to be carefully balanced with data protection considerations to make sure that data processing is necessary and proportionate with the intended aims of the policy."[175]

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170 'banning orders' are issued by a First-tier Tribunal on application by a local authority, and can ban an individual from letting housing or engaging in any letting agency or property management work. At present, local authorities are only required to make a record on the database if they make a banning order. If a landlord commits an offence that qualifies for a banning order, but a banning order is not served, then the local authority has discretion over whether to include it on the database. Local authorities also have discretion to record civil penalty notices where an individual has received two or more within 12 months. For further information see DLUHC statutory guidance for local housing authorities on the database of rogue landlords and property agents, 6 April 2018

171 As at 24 March 2023 there were 56 entries on the database (PQ HL6357 [on Landlords: Databases], 24 March 2023

172 MHCLG, Rogue Landlord Database Reform, 21 July 2019

173 DLUHC, A fairer private rented sector, CP 693, 16 June 2022

174 DLUHC, Consultation outcome: Rogue landlord database reform, 8 September 2022

175 DLUHC, A fairer private rented sector, CP 693, 16 June 2022, p50

When asked via a written parliamentary question in March 2023 about progress with establishing the Property Portal, the Government said:

> We are conducting ongoing policy and digital development which has included user research with potential users of the portal, such as private landlords, property agents, local authorities and private renters. We will continue to conduct testing of potential solutions for the property portal to make sure the system works for different users. Announcements will be made in the usual way.[176]

3.2 The Bill's provisions on a database

Overview

Part 2, Chapter 3 of the Renters (Reform) Bill[177] includes provisions to establish a private rented sector database, which will support a new digital Property Portal service. This is intended to:

- help landlords understand their legal obligations and demonstrate compliance;
- provide information to tenants enabling them to make informed decisions when entering into a tenancy agreement and hold their landlord to account; and
- assist local authorities to target enforcement activity where it is most needed.

All private landlords will be required to register themselves and their properties on the Property Portal. Landlords who fail to register themselves or their property may be fined up to £5,000 by the local authority. If a landlord repeatedly breaches the requirement, or if they provide false or misleading information to the Property Portal, they may be fined up to £30,000 or could face criminal prosecution.

The Bill provides for regulations which will set out the details, including: how the database will be operated and overseen; what information will be entered on the database and made public; how entries may be verified, corrected, and removed; registration fees; and how information on the database can be shared with third parties.

The Department for Levelling Up, Housing and Communities (DLUHC) has published Guidance on the Privately Rented Property Portal (May 2023). This confirms the Government will introduce the Property Portal as soon as possible after the Bill has received Royal Assent.

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176 PQ HL6358 [on Private Rented Housing: Internet], 27 March 2023

177 Renters (Reform) Bill 308 2022-23

The following sections provide a clause-by-clause explanation of the Bill's private rented sector database provisions.

The database (clause 32)

Clause 32 places a duty on the database operator to establish and run a database which contains entries of existing residential landlords, prospective residential landlords and dwellings which are, or are intended to be, let under residential tenancies. The new database will provide the basis for the Property Portal service.

The database must also contain entries in respect of persons who are subject to banning orders, who have been convicted of other offences, who have been financially penalised for other specified breaches, or are subject to other regulatory action, as specified in regulations. This is to replace functions relating to private landlords under the existing database of rogue landlords (see section 3.1)

The database operator (clause 33)

Clause 33 defines the "database operator" as the Secretary of State or a person the Secretary of State has arranged to be the database operator.

The Secretary of State may make regulations to:

- require the database operator to ensure the database has features and functionality specified in the regulations;
- allow the database operator to enter into contracts and other agreements for the purpose of facilitating the operation of the database;
- allow for functions related to the operation of the database to be discharged by other parties, which may include local housing authorities or a lead enforcement authority, either in place of or alongside the database operator; and
- make arrangements necessary to facilitate a smooth transfer from one database operator to another.

Making entries in the database (clause 34)

Clause 34 gives the Secretary of State the power to make regulations relating to making entries on the database. The regulations may:

- set out how, and by whom, entries on the database are to be made;
- require information or documents to be provided;
- impose other requirements, including requirements for the payment of fees; and

- allow an entry to be made before all of the requirements imposed by the regulations have been complied with, provided requirements are complied with within a specified period (not to exceed 28 days from the day on which the entry is made).

A database entry made in accordance with the regulations will be an 'active' entry from the time it is made until it becomes an 'inactive' entry in accordance with regulations under clause 36.

The Bill's Explanatory Notes outline some of the information that will be required to be entered on the database:

> … As well as personal information about the landlord and dwelling, prescribed information will include the details of any other persons involved in the ownership or management of the property, as well as information and evidence relating to property standards. In the immediate term, we expect this will include documents such as gas safety certificates and Electrical Installation Condition Reports.[178]

Requirement to keep active entries up to date (clause 35)

Clause 35 gives the Secretary of State the power to make regulations requiring database entries to be kept up to date. Regulations may stipulate:

- how, and by whom, an active database entry is to be kept up to date;
- information or documents to be provided;
- any other requirements that must be met; and
- the time period within which requirements must be complied with.

Circumstances in which active entries become inactive and vice versa (clause 36)

Clause 36 gives the Secretary of State the power to make regulations about the circumstances in which an active database entry will become an inactive entry, and vice versa. The regulations may require a fee for renewal of entries.

The Bill's Explanatory Notes provide further information about how these provisions will operate:

> … An entry may become 'inactive' and no longer publicly viewable if it expires without renewal, or, under certain circumstances, if a landlord makes a request – for example, if they have sold the property. Once an entry is inactive, either at the landlord's request or because it has expired, the respective dwelling cannot be marketed, advertised or let unless it is made active again. Inactive entries will be archived for 5 years, after which they will be deleted

[178] Explanatory Notes to the Renters (Reform) Bill (Bill 308 of 2022-23), para 238

from the database. Regulations will determine the process for renewals and the procedure applicable to late renewals.[179]

Verification, correction and removal of entries (clause 37)

Clause 37 gives the Secretary of State the power to make regulations about the verification, correction and removal of database entries. The regulations may:

- require a proportion of entries to be verified by local housing authorities or others;
- make provision about how verification is to be carried out;
- authorise the correction of errors in entries and specify by whom such corrections may be made; and
- authorise the removal of entries that do not meet the criteria for inclusion in the database.

Fees for landlord and dwelling entries (clause 38)

The Government intends to charge landlords to register on the database. Clause 38 outlines the criteria which will apply to regulations (made under clauses 34 and 36) that require the payment of a registration fee.

The fee amount is to be either specified through regulations or set by the database operator. It may be calculated to reflect the costs of: 1) establishing and operating the database; 2) enforcement requirements; and 3) any other functions performed by the database operator.

The regulations may stipulate the persons and circumstances in which fees are payable to the database operator. Furthermore, the Secretary of State may direct the database operator to pay all, or part, of the amount it receives in fees to local housing authorities or to the Government.

Restrictions on marketing, advertising and letting dwellings (clause 39)

Clause 39 requires a landlord and their property to be registered on the database before the property can be marketed. Written advertisements for a property must include the unique identifiers which will be allocated to the landlord and property upon registration (see clause 41).

[179] Explanatory Notes to the Renters (Reform) Bill (Bill 308 of 2022-23), para 252

Residential landlords must ensure there are active database entries both for themselves as landlord and for each dwelling they are letting out, and that the entries meet all requirements.

Entries relating to banning orders, offences, financial penalties, etc. (clause 40)

Clause 40 places local housing authorities under a duty to make an entry in the database in respect of:

- a relevant banning order made by that authority;
- a relevant banning order offence following institution of criminal proceedings by that authority; and
- a financial penalty in relation to a relevant banning order offence imposed by that authority.[180]

A further power is given to local housing authorities to make entries in respect of a person who has received a conviction or financial penalty in relation to a banning order offence imposed by person other than a local housing authority.

These database entries can only be made if the period for appealing against any order, conviction, or penalty has expired and any appeal has been determined, withdrawn or abandoned.

This is to replace functions relating to private landlords under the existing database of rogue landlords, under the Housing and Planning Act 2016. (See section 3.1 of the briefing)

Clause 40 also grants the Secretary of the State the power to make regulations that place local housing authorities under a duty, or grant them a power, to make database entries where a person has committed an offence, received a financial penalty, or is subject to regulatory action, provided these relate to conduct which occurred when they were a residential landlord or when they were marketing a property for let in the private rented sector. This would enable the database to include a wider range of offences and regulatory enforcement action.

Detail is also provided, within clause 40, on the information that must and may form part of an entry in the database made under this clause. A local housing authority must take reasonable steps to ensure that any database entry made under this clause is correct and up to date.

[180] For further information on banning orders and banning order offences see: DLUHC, Guidance Banning orders for landlords and property agents under the Housing and Planning Act 2016, 6 April 2018

Allocation of unique identifiers (clause 41)

Clause 41 requires the database operator to allocate a unique identifier – a sequence of letters and/or numbers – to each landlord and dwelling with an entry on the database. This will provide a way of distinguishing different entries on the database. For example, a landlord may create a registration entry for themselves and then make 50 registration entries for each property in their portfolio. The landlord would have their unique landlord identifier and 50 unique dwelling identifiers, each distinguishable from one another and other entries on the database.[181]

Other duties (clause 42)

Clause 42 sets out the general duties of the database operator to enable a smooth and effective running of the database. The database operator must:

- make available a non-digital method of registration for persons who are unable or do not wish to register online;
- ensure that local housing authorities are able to edit the database for the purpose of carrying out their functions;
- ensure breaches of any the requirements in clause 39 can be reported and that reports of breaches are passed on to local housing authorities as appropriate; and
- publish guidance for residential landlords and tenants their rights and obligations regarding the database.

Under subsection (2), the database operator must report to the Secretary of State on the performance of the database, and on any relevant matters or trends with regards to the information contained in the database.

The Bill's Explanatory Notes provide the following example of how the clause would operate:

> **Example: A tenant identifying a property is not registered on the database**
>
> A tenant living in the private rented sector hears about the Privately Rented Property Portal and reviews it to search for their landlord. However, they cannot find an entry for their landlord or for the dwelling they are renting. They report this on the database via a form made available by the database operator. The relevant local housing authority receives a notification about this and is able to follow up with the tenant and with the landlord to edit the database accordingly, and to take enforcement action if they deem appropriate.[182]

[181] Explanatory Notes to the Renters (Reform) Bill (Bill 308 of 2022-23), para 294
[182] Explanatory Notes to the Renters (Reform) Bill (Bill 308 of 2022-23), para 298

Access to the database (clause 43)

Clause 43 provides that the Secretary of State may, by regulations, specify:

- certain information contained in active landlord and dwelling database entries must be made available to public;
- entries pertaining to offences (penalties, convictions or regulatory action) must be linked to corresponding landlord entries;
- the timescale for information on offences to be made publicly available and the circumstances in which such information is to cease to be publicly viewable; and
- the manner and form in which database information is to be made available to the public.

The database operator must give database access to lead enforcement authorities, local housing authorities, local weights and measures authorities in England, mayoral combined authorities, and the Greater London Authority.

Disclosure by database operator etc (clause 44)

Clause 44 allows the Secretary of State to make regulations to specify when information on the database can be shared with third parties, the manner and form in which information may be shared, and restrictions on the use and further disclosure of information shared.

A person who knowingly or recklessly discloses information on the database in contravention of this clause, or regulations made under this clause, will be liable on conviction to a fine.

The Bill's Explanatory Notes provide the following example of how the clause could operate in practice:

> **Example: Fire safety investigation**
>
> A fire service has been alerted to an obstructed fire escape at a block of four flats. The flats are occupied by private renters, each with a different landlord, and it is not clear who is responsible - landlord(s), freeholder or managing agent(s) (or if responsibility is shared) - for the non-domestic parts of the premises. To determine who is responsible and must comply with duties under The Regulatory Reform (Fire Safety) Order 2005, the fire service must contact the landlord. To facilitate situations like this, the database regulations may stipulate that the disclosure of private information is necessary for fire services to exercise their statutory functions. The regulations may also specify that landlord addresses may only be shared with fire services under specific data sharing agreements that prohibit the further disclosure of the information.[183]

[183] Explanatory Notes to the Renters (Reform) Bill (Bill 308 of 2022-23), para 319

Use of information from the database (clause 45)

Clause 45 limits the purposes for which a lead enforcement authority, a local housing authority, a local weights and measures authority, a mayoral combined authority and the Greater London Authority can use information obtained from the database.

Removal of entries from database (clause 46)

Clause 46 sets out when entries on the database should be removed entirely from the database. This is intended to protect personal data by ensuring that data is only retained for the period that it is useful and necessary.

Financial penalties (clause 47)

Clause 47 gives local housing authorities the power to impose financial penalties on a person that has:

- breached the requirements imposed by clause 39 (restrictions on marketing, advertising and letting dwellings without database entries), in which case a maximum financial penalty of up to £5,000 applies; or
- committed an offence under clause 48, in which case a maximum financial penalty of up to £30,000 applies.

Subsection (3) sets out the circumstances in which more than one penalty could be imposed for the same conduct

The Secretary of State may issue guidance for local housing authorities on how to exercise their functions under this clause and require them to have regard to such guidance.

The Secretary of State may change the maximum amounts of the financial penalties by regulations to account for inflation.

Schedule 3 to the Bill sets out the process a local housing authority must follow to impose a financial penalty. This includes the issuing of penalty notices, the means for a person to appeal, and how an unpaid penalty is recovered. Local housing authorities may use the proceeds of financial penalties to meet the costs of their private rented sector enforcement functions.

The Bill's Explanatory Notes provide the following example of how the clause would operate:

> **Example: Failure to register a property on the database**
>
> A landlord fails to register a property on the database but advertises the property for let within the private rented sector. The local authority becomes aware that the property is being advertised to let. The local housing authority determines that the responsible landlord has not been penalised for this offence previously and that no proceedings are underway to penalise them for

> the offence. The local housing authority then decides to issue a notice of intent, followed by a financial penalty, on the responsible landlord for the property, due to a breach of the requirements relating to the database.[184]

Offences (clause 48)

Clause 48 defines the offences of

- knowingly or recklessly providing false or misleading information in relation to meeting a requirement relating to the database; and
- continuing and repeat breaches of requirements imposed by Clause 39 (restrictions on marketing, advertising and letting dwellings without database entries).

A person convicted of an offence under this clause is liable to a fine.

Subsection (10) adds the provision of false and misleading information and continuing and repeat breaches offences to section 40 of the Housing and Planning Act 2016, meaning that a tenant or local housing authority may apply for a rent repayment order against the landlord under Chapter 4, Part 2 of the HPA 2016.[185]

The Bill's explanatory notes provide the following example of how the clause would operate:

> **Example: Failure to register a property on the database – offence**
>
> A landlord is found to have let a property whilst it is unregistered on the database. The enforcing local housing authority finds evidence that the same landlord was convicted for knowingly or recklessly providing false information three years earlier. The previous offence was not appealed by the landlord. The local housing authority then prosecutes the landlord for a repeated breach of the database's requirements and serves the landlord with a civil penalty notice of up to £30,000.[186]

Power to direct database operator and local housing authorities (clause 49)

Clause 49 gives the Secretary of State the power to give directions to the database operator and local housing authorities on how to carry out the functions imposed on them by or under Chapter 3 of the Bill. Directions may require that a function is only to be carried out after consultation with the Secretary of State, or with the consent of the Secretary of State.

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184 Explanatory Notes to the Renters (Reform) Bill (Bill 308 of 2022-23), para 438

185 A rent repayment order is an order made by the First-tier Tribunal requiring a landlord to repay a specified amount of rent. For further information see: DLUHC, Rent repayment orders under the Housing and Planning Act 2016: Guidance for Local Housing Authorities, 6 April 2017

186 Explanatory Notes to the Renters (Reform) Bill (Bill 308 of 2022-23), para 449

Entries under section 40: minor and consequential amendments (clause 50)

Clause 50 amends the Housing and Planning Act 2016 with regards to database entries relating to banning orders and banning order offences. In short, entries relating to residential landlords will be carried across to the new private rented sector database. Entries relating to property agents and others will remain on the rogue landlord database.

Regulations (clause 56)

Regulations under Part 2 of the Bill can include:

- consequential, supplementary, incidental, transitional or saving provisions;
- different provisions for different purposes or areas; and
- exceptions to provisions.

Regulations made under the following clauses will be subject to the affirmative procedure: clauses 23, 24, 25, 39(4), 40(6), 43 and 44(2).

All other regulations made under Part 2 will be subject to the negative procedure.

3.3 Comment

The private rented sector Property Portal has been broadly welcomed.

The Levelling Up, Housing and Communities (LUHC) Committee inquiry report (February 2023) on reforming the private rented sector said the Property Portal had potential to "be revolutionary, provided it is designed and implemented properly and holds the right information." The Committee recommended the portal should include: all gas and electrical safety certificates and reports; any other reports generated by tradespeople; energy performance data; and details of ombudsman membership and membership of a deposit protection scheme. It also proposed the Government should act now to digitise the certificates and other reports to be uploaded to the portal.[187]

The LUHC Committee found strong support for the Property Portal, especially among local government representatives.[188] The Local Government

[187] House of Commons Levelling Up, Housing and Communities Committee, Reforming the Private Rented Sector, 9 February 2023, HC 624 2022–23, Conclusions and recommendations, para 12

[188] House of Commons Levelling Up, Housing and Communities Committee, Reforming the Private Rented Sector, 9 February 2023, HC 624 2022–23, para 85

Association (LGA) considers the Property Portal will improve access to data and information on the private rented sector, which in turn will assist local authorities to undertake effective enforcement activity to improve standards in the sector.[189] The Renters Reform Coalition has campaigned for a national landlord register on this basis.[190]

Shelter supports the Property Portal but wants it to include information on: 1) rent levels, so that tenants can check their rent against average rents in their area and more easily challenge unfair rent increases; and 2) the condition of properties. Shelter has also emphasised that local authorities must be provided with adequate, ring-fenced resource and capacity to enforce the Bill's provisions.[191]

Generation Rent has called for tenants to be provided with rent repayment orders in all cases when landlords fail to register on the Property Portal, not just where they have repeatedly failed to do so. It has also called for eviction notices to be entered on the portal, and for up-to-date energy performance certificates and gas safety certificates to be mandatory for registration.[192]

Witnesses to the LUHC Committee inquiry expressed concern about ensuring the validity and accuracy of the information entered on the Property Portal, and of the potential costs falling to local housing authorities from it.[193] The National Residential Landlords Association (NRLA) said the portal would provide landlords with an opportunity to demonstrate to tenants and prospective tenants their compliance with their legal obligations. However, it noted that a survey of around 3,000 landlords and letting agents found that over 60% of landlords felt the portal would impose costs on responsible landlords but would have a limited impact on tackling rogue landlords.[194]

189 'Renters' Reform Bill: LGA statement', LGA, 17 May 2023

190 'Calls for landlord register backed by coalition', CIEH, 15 April 2021

191 Shelter, Briefing: The Renters (Reform) Bill, May 2023, pp3-4

192 'The Renters (Reform) Bill: Our Verdict', Generation Rent, 19 May 2023

193 House of Commons Levelling Up, Housing and Communities Committee, Reforming the Private Rented Sector, 9 February 2023, HC 624 2022-23, paras 87-88

194 Written evidence submitted by the National Residential Landlords Association [RRS 207], August 2022

4 Enforcement authorities

4.1 The Bill's provisions

Local housing authorities: a general enforcement duty (clause 58)

Clause 58 would place a new duty on all housing authorities in England to enforce landlord legislation in their areas. Landlord legislation is defined in subsection 4 as Part 2 of the Renters (Reform) Bill (covering landlord redress schemes and the private rented sector database); sections 1 and 1A of the Protection from Eviction Act 1977; and Chapter 1 of Part 1 of the Housing Act 1988.

Authorities may take enforcement action for breaches occurring outside their areas.

Local housing authorities: duty to notify (clause 59)

Clause 59 would place notification duties on local housing authorities where they plan to take enforcement action in another authority's geographical area.

Lead enforcement authority (clauses 60 to 62)

Clause 60 would give the Secretary of State power to appoint a lead enforcement authority with a duty to oversee the operation of the landlord provisions for which it is responsible. The Bill's Explanatory Notes draw a comparison with the work of the Powys Council as lead authority for the Estate Agents Act 1979, and Bristol City Council as lead authority for the Tenant Fees Act 2019.[195]

Clause 61 sets out the general duties and powers of a lead enforcement authority. Briefly, this would cover issuing guidance and providing information and advice to local housing authorities to assist them in carrying out enforcement activities consistently.

[195] See: National Trading Standards Estate and Letting Agency Team - National Trading Standards [accessed 25 May 2023]

Clause 62 would allow the lead enforcement authority to enforce provisions for which it is responsible. The clause sets out in what circumstance it should do so and the processes it would follow.

The Explanatory Notes observe that some local housing authorities "may lack the capacity and capability" for enforcement work "in particularly complex or high-profile cases."[196] In these instances "A lead enforcement authority provides an opportunity to create a centre of expertise on the relevant legislation and can act as a backstop for enforcement."[197]

4.2 Comment

Disparities in enforcement activity amongst local authorities is a longstanding concern of both tenant and landlord representative bodies. Discussion on enforcement during the LUHC Committee's inquiry into reforming the private rented sector mainly focused on enforcement activity around standards within the sector.

The Bill does not address standards, but evidence received on enforcement work may have wider implications. For example, councillors from Canterbury and Cherwell said enforcement activity was mainly reactive, they rely on tenants to report problems.

The London Renters Union (LRU) said enforcing housing standards in the sector "was often not seen as a political priority by local authorities, given the cuts to funding."[198]

In the white paper A fairer private rented sector, the Government said it would conduct a new burdens assessment to assess the impact of the proposals on local government, and, where necessary, fully fund the net additional cost of all new burdens.[199] The Housing Minister, Rachel Maclean responded to a parliamentary question on funding for additional burdens on 22 May 2023 saying an impact assessment had been submitted for review:

> We have submitted our Impact Assessment for review by the Regulatory Policy Committee. This is a significant document and they now need time to scrutinise it. We will publish it once that process has finished. I look forward to discussing these issues during the passage of the Bill.[200]

196 Explanatory Notes to the Renters (Reform) Bill (Bill 308 of 2022-23) (PDF), para 514

197 As above.

198 Levelling Up, Housing and Communities Committee, Reforming the private rented sector, 9 February 2023, HC 624 2022-23, para 72

199 DLUHC, A fairer private rented sector, 16 June 2022, p20

200 PQ 185631 [Renters (Reform) Bill] 22 May 2023

5 Supported and temporary accommodation

5.1 Government policy on temporary and supported housing (clause 63)

Clause 63 would place a duty on the Secretary of State to prepare a report setting out Government policy on safety and quality standards in supported housing and temporary accommodation.[201] This report must cover how these standards will be developed, overseen and enforced, who is responsible for this, how information about local housing authorities' relevant functions should be shared by or with them, and how the Secretary of State proposes to implement this policy.

The Supported Housing (Regulatory Oversight) Bill, which is currently before Parliament, will give local authorities powers to enforce against poor quality supported housing through a licensing scheme and introduce new National Supported Housing Standards.[202]

[201] Temporary accommodation is provided by local authorities in pursuance of their duties towards homeless households under Part 7 of the Housing Act 1996.

[202] The Supported Housing (Regulated Oversight) Bill 2022-23: progress of the Bill - House of Commons Library

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