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Mortgage Repossessions (Protection of Tenants Etc.) Bill: Committee Stage Report

Bill No 15 of 2009-10

RESEARCH PAPER 10/15 22 February 2010

This paper summarises the House of Commons Committee Stage of the *Mortgage Repossessions (Protection of Tenants Etc.) Bill*. It supplements Research Paper 10/05 which describes the background to the Bill in detail. The debate on Second Reading took place on 29 January 2010.

In July 2009 the Government announced that it would legislate to ensure that tenants are given adequate notice to vacate their property if their landlord defaults on their mortgage. Over the summer of 2009, the Government consulted on legislative options to achieve this end. On 3 December 2009, Dr Brian Iddon, who drew first place in the Private Members' Bill ballot, announced that he would introduce a Bill to protect private tenants whose landlords default on their mortgage. The Bill has Government support.

Robert Long

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Research Paper 10/15

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Summary

The Committee Stage of the Bill consisted of one sitting and no amendments were tabled.

The debate in the Committee Stage focused on how aspects of the Bill would work in practice, such as the likely interpretation of the Bill's wording by the courts, the delivery of possession notices and the ability of all parties to a possession case to have their circumstances considered by the court. Reference was also made to issues such as data protection, which had been raised at Second Reading, and how these would be covered by guidance that would accompany the Bill if passed.

The sitting was brief and all clauses were ordered to stand to part without a vote.

1 Introduction

The *Mortgage Repossessions (Protection of Tenants Etc.) Bill* was introduced in the House of Commons on 3 December 2009 and had its Second Reading on 29 January 2010.[1] It was then committed to a Public Bill Committee which had its sole sitting on 10 February 2010.

The Bill is both brief and uncontroversial, having support from the Government and across the parties. No amendments were tabled and it was not amended during the course of Committee proceedings.

The Bill has two substantive clauses. Clause 1 enables unauthorised tenants to apply to court to postpone the date of possession when a lender seeks to repossess the property by a period of up to two months. Clause 2 obliges lenders to give notice of the execution of a possession order to the occupier of a property once it has been obtained. This is intended to give tenants a second opportunity to request a postponement of the possession if they have not made such a request already.

Detailed information on the provisions in the Bill and the background to them can be found in Library Research Paper 10/05 which was prepared for the debate on Second Reading. Further material and links to proceedings on the Bill can be found on the Library's Bill Gateway pages.

2 Second Reading

Dr Brian Iddon opened the debate on Second Reading.[2] He discussed the central purpose of the Bill, and also the volume of correspondence he had received since winning the Private Member's Bill ballot. The Second Reading debate discussed several issues not referred to at Committee Stage.

Dr Iddon referred to the support the Bill has received from various housing organisations:

> The Bill has arisen as a result of inquiries and complaints that Crisis, Shelter, Citizens Advice and the Chartered Institute of Housing started to receive in 2007, and I thank all those organisations for their support in introducing the Bill...
>
> The changes proposed in the Bill follow recommendations made by the Select Committee on Communities and Local Government. It has the support of the National Housing Federation and the three national landlord organisations in England and Wales-the Residential Landlords Association, the British Property Federation and the National Landlords Association-where it will be applicable if it finds its way on to the statute book. The Council of Mortgage Lenders has also expressed its support for the principles in the Bill.[3]

He further outlined the problems in the housing market that had given rise to the Bill, and the issue of unauthorised tenancies, including how difficult it is to diagnose the scale of the problem being addressed by the Bill.[4]

Philip Davies referred to concerns raised by the Council of Mortgage Lenders about the Bill, and questioned whether unauthorised tenancies should be abolished to give tenants general protection when their landlords default on their mortgages. He was particularly concerned that tenants who were aware of the first possession hearing who did not ask for a

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1 HC Deb 29 Jan 2010 cc1026-1044 and cc1045-1054
2 *Ibid*. c1026
3 *Ibid*. cc1027-8
4 *Ibid.* cc1028-9

postponement of possession at that stage should not be permitted to wait until a second stage before applying.[5] Members discussed the possibility of ensuring that the Bill was clear that tenants could apply for only a single period of postponement and no more.[6]

Dr Iddon was confident that the Bill would be interpreted by the courts to mean that only one suspension of a possession order would be possible. He said that clause 1(5) addressed the concern that tenants might not engage in the legal process at the first opportunity, as the court must have regard to their circumstances; he stated, however, that in the majority of cases, the tenant would be unlikely to be aware that proceedings had commenced.[7]

James Duddridge raised the issue of holiday or very short-term lets, which Dr Iddon said would, in his understanding, be outside the scope of the Bill.[8] Mr Duddridge later expressed the hope that the Bill could be amended in Committee to bring these lettings within the Bill's scope.[9]

Mr Duddridge also questioned whether data protection laws would make it difficult to find out the name of tenants, making communication with them over the issue of a possession order potentially difficult. Philip Davies raised other data protection concerns around the information to be contained in letters to tenants.[10]

Bob Russell indicated his support for the Bill[11] and raised the issue of unscrupulous lettings agencies and property companies, and also absentee landlords, and hoped these issues could be discussed in Committee.[12] Bob Spink raised the question of whether Clause 1 would protect tenants not only when mortgage repossession proceedings are in progress, but also when a lender takes proceedings against a tenant as an individual, for instance as a trespasser on the property.[13] Dr Iddon confirmed that tenants in this position would be protected.[14]

The Parliamentary Under-Secretary of State for Communities and Local Government, Shahid Malik, expressed the Government's support for the Bill:

> It would be hard not to support legislation that will help to remove distress and disruption to households who rent in the private sector. The Bill will make the legal process substantially clearer for those tenants affected. It is positive and constructive and enhances protection for those people who rent privately and whose landlords have not requested or received lender consent to let.
>
> As has been evident in the debate, the issue of short-notice eviction of tenants when their landlord falls into arrears and repossession action starts is by no means straightforward. It is legally complex. The gap in legal protection for tenants faced with that situation is not so much an oversight, but an historical result of myriad housing and mortgage laws pertaining to tenants.
>
> My hon. Friend eloquently explained the problem and proposed a solution, and I do not intend to repeat what he said. However, I will say that it appears a no-brainer that the

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5 *Ibid.* c1036
6 *Ibid.* c1038
7 *Ibid*.
8 *Ibid.* cc1029-30
9 *Ibid.* c1033
10 *Ibid*. c1032
11 *Ibid.* c1033
12 *Ibid.* c1034
13 *Ibid.* c1035
14 *Ibid.* c1053

> House should act to ensure that unauthorised private rented sector tenants are offered some form of legal protection. It cannot be right that a tenant enters into a tenancy agreement in good faith, only to discover that the lack of lender consent to let means that in fact they are unauthorised tenants with no rights or protections against the lender.[15]

Stewart Jackson, for the Conservatives, welcomed the Bill but raised concerns about who should send the tenant a notice of possession, the lender or the Court Service.[16] He also repeated concerns previously made by Members about proceedings brought against an individual tenant, and drew attention to data protection issues.

Sarah Teather raised broader issues around the status of the private rented sector and referred to a point made by the Residential Landlords Association in its briefing on the Bill, namely that "if tenants find themselves in a position where they might lose their home without being given any kind of notice period, it undermines both the landlords' ability to provide housing and the reputation of the private rented sector."[17]

3 Committee Stage

The Public Bill Committee held one sitting on 10 February 2010. A full transcript of the Committee's proceedings is available on the Public Bill Committee website.[18]

There were no tabled amendments to the Bill, so the Committee proceeded straight to the clause stand part debate.

3.1 Postponement of a Possession Order

Dr Brian Iddon introduced the debate and emphasised the targeting of the Bill against reluctant or irresponsible landlords, rather than those who responsibly rent out buy-to-let properties.[19] He also emphasised that the period of postponement proposed is up to two months rather than a guaranteed two month period, to give the tenant time to find alternative accommodation while not preventing the lender's right to possession.[20] On the possibility that a tenant could apply twice for a postponement, he said:

> Subsection (4) allows the tenant a second, but not an additional, opportunity to apply for a postponement of possession when the lender applies for a warrant of possession. The tenant may apply directly to the lender for the delay of possession. If that application is refused by the lender, the tenant can pursue the application through the courts.[21]

Expanding further on the subsections of Clause 1, he said:

> Subsection (5) enables the judge to have regard to the circumstances of the tenant. The provision is designed primarily to take into account situations in which tenants may have breached the tenancy through no fault of their own, such as the non-payment of rent when that is caused by a delay in the payment of housing benefit by a local housing authority.

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15 *Ibid.* c1039
16 *Ibid.* c1049
17 *Ibid.* c1052
18 *Mortgage Repossessions (Protection of Tenants Etc.) Bill*, Public Bill Committee page
19 PBC Deb 10 February 2010 c4
20 *Ibid.*, c5
21 *Ibid.*

> Subsection (6) recognises the concerns raised by lenders, who say that they should be able to receive rent from any tenant within the two-month notice period. Subsection (7) makes it clear—again, in response to lenders' concerns—that receipt of such rent does not create any tenancy obligations between lender and tenant.[22]

Stewart Jackson, for the Conservatives, said that it was "self-evident that we do not have a problem with the Bill, because we have not tabled any amendments; nor have any other hon. Members."[23] However, he raised several issues for Dr Iddon and the Minister to consider in their remarks:

> One of the issues is the word "a". It reminds me a bit of Bill Clinton's problem with Monica Lewinsky—what the meaning of "is" is. The meaning of "a" is important. What is its meaning under clause 1(4)? The issue was raised by my hon. Friend the Member for Shipley (Philip Davies), regarding how many opportunities within the two months a tenant will have to make an application under the clause. Perhaps the hon. Member for Bolton, South-East will give some attention to that matter in his remarks.

Dr Iddon responded to this issue:

> The word "a" and the use and meaning of it in the Bill was raised on Second Reading. We took the criticisms seriously and I consulted the legal people in the Department for Communities and Local Government. They are aware of the criticisms and I am assured that in a court of law the judge will interpret the word "a" as meaning "only one". We do not think there is any doubt about that. We appreciate the concerns of the lenders, as represented by the Council for Mortgage Lenders, for example. I have met a representative of that organisation and people from the Department have met the organisation's representatives several times and tried to reassure them on that point.[24]

Stewart Jackson also raised the question of the extent to which borrowers and lenders would have their interests considered by the courts:

> Another concern, which the Building Societies Association had, was about the need for the court to consider the specific circumstances not only of the tenant, but of the borrower and the lender. The association was concerned about whether the discretion of those parties would be fettered by the clause as it relates to the Financial Services Authority's ruling in reference code 13.6.1 of "Mortgages and Home Finance: Conduct of Business Sourcebook", or MCOB, in respect of treating borrowers in arrears fairly. The hon. Gentleman might wish to consider that matter too.[25]

Mr Jackson stressed that while the issues he raised were relatively minor they were also important:

> The issues that I have raised are only minor, but they are nevertheless important to tease out; the fact that we have not tabled any amendments does not suggest that they are not pertinent issues. I commend the Council of Mortgage Lenders and the Building Societies Association for generally supporting the proposals in the Bill. However, they are right to say that there is a trilateral relationship between the landlord, the tenant and the lender. All the interests need to be properly protected when difficult situations arise.[26]

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22 *Ibid*.
23 *Ibid.*, c6
24 *Ibid.*, c9
25 *Ibid.*, cc6-7
26 *Ibid.*, c7

The Parliamentary Under-Secretary of State for Communities and Local Government, Barbara Follett, emphasised the Government's unreserved support for the Bill.[27] She further stated that this support was based on the Government's consultation exercise on the repossession and the protection of tenants issued in August 2009, the response to which has not yet been published.[28] She then responded to the concern, raised by Stewart Jackson, about the need for the court to consider the specific circumstances of the borrower and the lender, as well as the tenant, in reaching a decision on whether to postpone a possession order:

> Regarding the Building Societies Association's concern, judges have discretion in such cases. They do not have to take only delay into account; they can also take into account lender and borrower circumstances. The lender would expect a court hearing to state the lender's case. A judge can refuse to grant possession if necessary. I hope that those rather garbled pieces of inspiration were sufficiently clear for the hon. Member for Peterborough. If they were not, I will attempt to address them in more detail in writing.[29]

Dr Iddon responded to questions around the delivery of notices to tenants raised during the debate on Second Reading:

> As for who delivers the envelopes, under the current rules either the lender or the Courts Service can do that. However, I and others believe that it is best if the lender delivers the envelopes. Envelopes from courts are likely to be branded, and we must consider the fact that the tenant might not want people who live in the same property or in the vicinity to know of their difficulty. Moreover, a branded envelope from a court might just raise curiosity, as a result of which someone else might open it. We consider that envelopes that are not branded in such a way are preferable, which is why it is best if the lenders send them out.[30]

Peter Worthing had raised a concern about the security of unauthorised tenants where a possession order is not sought:

> The only question that has been floating around my mind may not be directly relevant to the Bill, but it is of interest. In respect of an unauthorised tenancy, what if the person who grants the mortgage has said to the person who has taken it, "You are not allowed to let or sub-let without our permission, and we are not going to give such permission. We require you to regularise the position without seeking a possession order"? Will the Bill apply in such circumstances? The issue is not vital to whether the clause is acceptable; it is just on my mind.[31]

Closing the discussion on clause 1, Dr Iddon responded to this point:

> I want to respond to the hon. Member for Worthing, West on whether there is another way of maintaining the tenant in the same property, by regulating the situation legally. Curiously, just yesterday I received a letter about a person who became an unauthorised tenant, without knowing so until the procedure had started. The situation was worked around in such a way that the landlord became an accepted buy-to-let landlord.

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27 *Ibid.*, c7

28 Department for Communities and Local Government, *Lender repossession of residential property: protection of tenants*, August 2009

29 PBC Deb 10 February 2010 c8

30 PBC Deb 10 February 2010 c9

31 *Ibid.*, c9

> In such cases, higher interest is payable on commercial buy-to-let mortgages; indeed, there will probably be a higher arrangement fee. That happened to the person who wrote to me. The two people in the property became authorised tenants instead of unauthorised tenants, so there are ways to unravel the situation. That is obviously the best outcome for the lender, who does not have to sell the property, and for the tenant, who does not have to leave the property.[32]

As a final point, Dr Iddon referred to the data protection issue raised during Second Reading,[33] stating that it would be covered by guidance issued under the Bill.[34]

3.2 Notice of the Execution of a Possession Order

Dr Iddon spoke briefly on clause 2, indicating its intention to introduce "a new light-touch process for lenders that will oblige them to give notice of the execution of the possession order to the occupier of the property. That will give the tenant or tenants a second opportunity in the process to request a delay in possession if they have failed to act at the first opportunity."[35] No other Members spoke on the clause.

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32 *Ibid*., c10
33 HC Deb 29 Jan 2010 c1032
34 PBC Deb 10 February 2010 c10
35 *Ibid*.

Appendix 1 – Members of the Committee

Chairman: Dr. William McCrea

Austin, John *(Erith and Thamesmead)* (Lab)

Bottomley, Peter *(Worthing, West)* (Con)

Buck, Ms Karen *(Regent's Park and Kensington, North)* (Lab)

Curry, Mr. David *(Skipton and Ripon)* (Con)

Duddridge, James *(Rochford and Southend, East)* (Con)

Efford, Clive *(Eltham)* (Lab)

Follett, Barbara *(Parliamentary Under-Secretary of State for Communities and Local Government)*

Gerrard, Mr. Neil *(Walthamstow)* (Lab)

Iddon, Dr. Brian *(Bolton, South-East)* (Lab)

Jackson, Mr. Stewart *(Peterborough)* (Con)

Leigh, Mr. Edward *(Gainsborough)* (Con)

McCafferty, Chris *(Calder Valley)* (Lab)

Marris, Rob *(Wolverhampton, South-West)* (Lab)

Russell, Bob *(Colchester)* (LD)

Taylor, Matthew *(Truro and St. Austell)* (LD)

Turner, Mr. Neil *(Wigan)* (Lab)

Committee Clerk: Sarah Davies