Retaliatory eviction in the private rented sector

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This note explains the law in relation to retaliatory ('revenge') eviction and considers evidence around the extent to which it occurs, before explaining attempts to amend the law.

The phrase 'retaliatory eviction' is used to describe situations where private landlords, when faced with a request for repairs, serve their tenants with a section 21 notice in order to terminate the tenancy. Section 21 of the *Housing Act 1988* offers landlords a means of evicting assured shorthold tenants without having to prove fault on the part of the tenant.

Views differ on the prevalence of retaliatory eviction between the representative bodies of landlords and tenants. Citizens Advice and Shelter have actively campaigned for amendments to the law to protect tenants who request repairs and/or seek assistance from environmental health officers in the process. Landlord bodies, such as the Residential Landlords Association (RLA) and the National Landlords Association (NLA), are strongly opposed to the Bill although they agree that tenants should be able to request repairs without fear of eviction.

Sarah Teather secured seventh place in the Private Members' Bill Ballot on 12 June 2014. She subsequently presented the *Tenancies (Reform) Bill 2014-15* on 2 July. The purpose of the Bill was "to protect tenants against retaliatory eviction." It secured 'Government support and the debate on Second Reading took place on 28 November 2014. The Bill failed to complete its Second Reading Stage - a closure motion was agreed to by 60 votes to nil but could not take effect because fewer than 100 Members voted in support. Although this Bill will not progress, on 5 February 2015 the Government published a policy statement setting out an intention to add clauses to the *Deregulation Bill* (currently at Report Stage in the House of Lords) to "protect tenants against the practice of retaliatory eviction." The clauses were added to the Bill on 11 February 2015.

The All Party Parliamentary Group for the Private Rented Sector conducted a short inquiry into retaliatory eviction with the aim of understanding the impact that Sarah Teather's Bill would have on the private rented sector. Written submissions were invited up to 5 November and the report was published on 15 December 2014. The APPG recommended; *inter alia*, that additional research into the issue should be carried out.

Contents

1 Background

In 2012-13 the private rented sector overtook the social rented sector to become the second largest tenure in England housing around 18% of all households (4 million). The sector contains the highest proportion of non-decent homes (33%).[1]

1.1 What is retaliatory eviction?

Retaliatory eviction, also sometimes referred to as revenge eviction, is used to describe the situation where a private landlord serves a section 21 notice on an assured shorthold tenant (seeking to terminate the tenancy) in response to the tenant's request for repairs, or where they have sought assistance from the local authority's environmental health department.

Retaliatory eviction is said to be a by-product of the fact that private landlords can evict assured shorthold tenants without having to establish any 'fault' on the part of the tenant.

1.2 Assured shorthold tenants – security of tenure

The vast majority of private sector tenants in England and Wales have an assured shorthold tenancy. These tenants have no long-term security of tenure. Landlords cannot regain possession of the property within the first six months of the tenancy (unless the tenant is in breach of the agreement) but thereafter, they may regain possession provided the correct notice procedures are followed. It is not necessary for a landlord of an assured shorthold tenant to establish any 'fault' on the part of the tenant in order to regain possession of the property concerned.

For example, if an assured shorthold tenancy is created with a one year fixed-term the tenant may remain in occupation until the end of the fixed-term (assuming no breaches of the agreement). If the landlord wants to regain possession at the end of the fixed-term s/he must serve a section 21 notice (under the *1988 Housing Act*) on the tenant at least 2 months prior to the end of the fixed-term. If the tenant does not move out at the end of the fixed-term the landlord must seek a court order to evict. The landlord of an assured shorthold tenancy does not need to establish any 'grounds' for eviction when using the section 21 procedure – the court must grant a possession order if the correct procedure has been followed.[2] Landlords have the option of using the accelerated possession procedure in order to avoid a court hearing. Information on accelerated possession can be found on the GOV.UK website.[3]

Alternatively, assured shorthold tenants may have a contractual or statutory periodic tenancy. For example, when the initial fixed-term of one year expires and the landlord does not issue a new fixed-term tenancy agreement the tenancy continues (on the same terms) on a statutory periodic basis. It is also open to the landlord to enter into a contractual periodic tenancy with no fixed-term element. A landlord wanting to terminate a contractual or

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1 English Housing Survey 2012-13, February 2014

2 In effect the landlord does not have to establish any 'fault' on the part of the tenant in order to secure an order for possession. However, a section 21 notice will not be valid if the landlord has failed to comply with his/her duties in respect of tenants' deposits or has failed to gain a licence for a licensable house in multiple occupation (HMO).

3 Accessed on 6 October 2014

statutory periodic assured shorthold tenancy can serve a section 21 notice at any time after the expiry of first six months of the tenancy – this gives the tenant at least 2 months' notice of the termination of the tenancy. If the tenant does not vacate the property on the expiry of the notice the landlord must seek a court order to evict. As noted above, the court must grant a possession order if the correct notice procedure has been followed.[4]

The implications for tenants requesting repairs

As a general rule tenants have no defence against a section 21 notice. Surveys commissioned by Shelter have led the organisation to conclude that around 200,000 private tenants have been evicted after asking for repairs to be carried out, or after complaining to a local authority's environmental health department about conditions in their homes.[5] Around one in 12 private tenants in Shelter's survey reported that they were too scared of losing their home to report a problem and/or request improved conditions.[6] Shelter's survey findings are challenged by landlord organisations (see section 3 below).

Landlords' repairing obligations

Section 11 of the *1985 Landlord and Tenant Act* places a statutory duty on most landlords[7] to carry out repairs to:

- the structure and exterior of the dwelling;
- basins, sinks, baths and other sanitary installations in the dwelling; and
- heating and hot water installations.[8]

Tenants concerned about standards within their homes can request an inspection by a local authority environmental health officer (EHO). There is no pass or fail standard of housing fitness. When EHOs inspect a dwelling they use the Housing, Health and Safety Rating System (HHSRS) to assess whether there is a risk of *harm* to an actual or potential occupier of a dwelling, which results from any *deficiency* that can give rise to a hazard. If a Category 1 hazard is identified EHOs are required to take enforcement action. They can also take enforcement action in respect of Category 2 hazards where it is deemed necessary. More information on the HHSRS can be found in Library note SN01917: *The Housing Health and Safety Rating System (HHSRS)*.

1.3 The extent of retaliatory eviction

There are no official statistics on retaliatory eviction. This was confirmed by the Minister for Housing, Brandon Lewis, in a Written Answer dated 11 November 2014.[9] As noted above, Shelter estimates that 213,000 private renters were evicted or served with an eviction notice in the last year "because they complained to their landlord, letting agent or council about a problem that wasn't their responsibility." Information on how Shelter reached this estimate is provided below:

> 1. In 2013 Shelter and British Gas commissioned a YouGov poll of 4,544 private renters in England. Fieldwork took place between 11th December 2013 and 16th

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4 Additional information on ending assured shorthold tenancies can be found in a DCLG guide: *Assured and assured shorthold tenancies: a guide for landlords.*

5 *Inside Housing*, "More than 200,000 PRS tenants unfairly evicted", 12 March 2014

6 *ibid*

7 Unless the tenancy is for a fixed term of more than seven years.

8 See: *Repairs: a guide for landlords and tenants*, DCLG (archived)

9 PQ 212213 [Private rented housing: evictions], 11 November 2014

January 2014. The survey was carried out online. The figures have been weighted and are representative of all private renters in England (aged 18+). All population estimates have been calculated by Shelter.

2. 2% of respondents agreed with the statement 'I was evicted or served notice because I asked for a problem in my home to be dealt with that was not my responsibility (eg repairs or conditions) in the last year' or the statement 'I was evicted or served notice because I complained to my local council about a problem in my home to be dealt with that was not my responsibility (eg repairs or conditions) in the last year'. This is equivalent to 213,638 people in England including dependent children. 8% agreed with the statement 'I have not asked for repairs to be carried out and/or conditions improved because of fear of eviction'.

3. The estimates of numbers of people affected have been calculated by Shelter. These estimates are based on 2012-13 figures from Communities and Local Government English Housing Survey which show there are 9.3 million people living in private rented accommodation based on number of households multiplied by mean number of persons per household.

https://www.gov.uk/government/publications/english-housing-survey-2012-to-2013-headline-report[10]

The Residential Landlords Association (RLA) disputes Shelter's estimates of the extent of the problem:

> We strongly refute the suggestion that retaliatory eviction is a wide spread practice and there is no evidence (properly so called) in support of the campaigners' claims. No reliable statistics are kept by anyone and the case is being based on anecdotal evidence from Environmental Health Officers (EHOs) on behalf of local authorities and deductions from other statistical evidence, with all the attendant dangers which go with such an approach. If one looks at the supporting evidence there are wildly varying conclusions from different local authorities and a proper analysis shows that the number of instances anecdotally reported by EHOs in the case of certain authorities are very low.
>
> One would normally expect to see a fairly consistent picture across the country. Why then does one authority, Milton Keynes, claim that in 50% of the cases they deal with there is some suggestion of retaliatory eviction (or a threat of one) whereas in other cases local authorities only report seeing one or two a month. There is simply no clear pattern, (when one would actually expect one) which could call into question the veracity of the supposed evidence in support of the campaign. In some instances the numbers quoted by local EHOs are very low anyway. The evidence served up in support has been very thin.[11]

The RLA has produced its own survey evidence which, it says, counters claims around the prevalence of retaliatory eviction:

> According to the survey of more than 1,760 landlords, some 56 per cent had had to evict tenants from their properties. Almost 90% reported that they had carried out evictions for rent arrears, with another 43% for anti-social behaviour, nearly 40% for damage to the property and 20% for drug-related activity.

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[10] "True scale of revenge evictions exposed by Shelter investigation", Shelter (undated)

[11] *Retaliatory Eviction – the case against regulatory intervention* (2013), RLA, paras 5.1-2

> Just under 30% wanted to regain possession of the property, for example because they needed to sell it for personal reasons.
>
> The RLA says its survey demonstrates that the vast majority of landlords only seek to evict when they really need to.[12]

The RLA also cites findings from the English Housing Survey 2012-13 which found that 84% of private sector tenants were satisfied with their accommodation.[13]

The Communities and Local Government Select Committee conducted a wide-ranging inquiry into the private rented sector over 2013-14. Several bodies submitted evidence to the Committee on the subject of retaliatory eviction. Written evidence from Citizens Advice highlighted "fear" amongst tenants "that a complaint may result in a retaliatory eviction." Citizens Advice referred to a report on the subject published in 2007, *The Tenant's Dilemma* (Debbie Crew).[14] This report contains case studies on CAB clients' experiences when requesting repairs and states "bureaux from around the country regularly report similar cases."[15] The Building and Social Housing Foundation's evidence made the point that the current system works on a "broadly reactive basis" with authorities responding to tenants' complaints. This, the Foundation claims, can result in retaliatory eviction - the evidence goes on to acknowledge that while "the extent of this practice is difficult to quantify, the perceived risk of it is sufficient to make reactive enforcement ineffective."[16]

The Committee was not convinced that a legislative solution was required and instead supported a move to a culture where longer tenancies are the norm and where tenants have greater confidence to ask for repairs and improvements when necessary. A more proactive approach by local authorities was also viewed as a potential solution. The Committee felt that legislation to restrict the use of section 21 notices could be "counter-productive and stunt the market."[17]

The last Labour Government commissioned a review of the private rented sector by Julie Rugg and David Rhodes of the Centre for Housing Policy at the University of York which was published in 2008. Rugg and Rhodes considered evidence on the extent of retaliatory eviction at that time:

> The nature of s21 notices has received increased attention in the last few months following lobbying around the issue of 'retaliatory eviction'. According to a report by the Citizens Advice Bureau: 'As landlords are not required to give reasons, they may legally use this procedure as a retaliation tactic if a tenant tries to get repairs or safety issues addressed' (Crew, 2007). The report provides two forms of evidence. Data from the 1999/2000 SEH [Survey of English Housing] are used to show that, of the 21 per cent of tenants who were dissatisfied with their landlord, 75 per cent had not tried to enforce their rights to get repairs done. Tenants were asked why they had not taken any action, and more than one response could be given. Twenty-one per cent mentioned that they did not want trouble with the landlord, and five per cent mentioned that they thought the landlord would end the tenancy (Bates, 2001).

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12 *Landlords do not evict tenants without reason – says new research*, RLA, 15 August 2014
13 English Housing Survey 2012-13, February 2014, p8
14 HC 50-II, *The Private Rented Sector*, First Report of 2013-14, July 2013, Ev 155
15 *The Tenant's Dilemma,* CAB, Debbie Crew, 2007
16 HC 50-III, *The Private Rented Sector*, First Report of 2013-14, July 2013, Ev 253
17 HC 50-I, *The Private Rented Sector*, First Report of 2013-14, July 2013, para 105

> The second form of evidence used was a postal questionnaire sent to Tenancy Relations Officers (TROs). The officers were asked 'Are tenants put off using help because of fears of jeopardising their tenancy?' Of the 129 TROs who responded, 54 per cent said 'sometimes'. However, this finding has to be viewed in the light of the CAB's own practice when tenants present with problems relating to disrepair: 'any advice about their rights has to come with the warning that exercising those rights may result in the landlord issuing notice to quit' (Crew, 2007). Shelter has indicated that it has a similar policy. If tenants are routinely advised that they may be evicted if they complain, it is unsurprising that TROs find that tenants are put off using help because of fears of jeopardising their tenancy.
>
> A further difficulty with data from the TROs is that it represents opinion on the incidence of a particular problem amongst tenants who are presenting with problems, rather than evidence of a particular eventuality actually taking place. As qualitative evidence, the survey supports the conclusion that many TROs are concerned about the issue, but the task of counting its incidence or indeed of deciding whether a 'retaliatory eviction' has actually taken place is complex. The notice to quit may have nothing to do with complaints about property condition: the tenant could be behind with their rent, for example. It cannot be denied that there will be landlords who evict tenants who complain about property condition; at the same time, it has to be admitted that there are tenants who will claim unfair eviction in the hope that this will improve their chance of getting a social housing tenancy.[18]

Rugg and Rhodes concluded that retaliatory eviction would be best dealt with by "ensuring that landlords who would take this action are removed from the sector."[19]

In light of the conflicting views on the extent of retaliatory eviction, the All Party Parliamentary Group (APPG) for the Private Rented Sector decided to conduct a short inquiry into retaliatory eviction with the aim of understanding the impact that the *Tenancies (Reform) Bill* might have on the sector. Written submissions were invited up to 5 November and the APPG's report, *Tackling Retaliatory Evictions,* was published on 15 December 2014. The APPG said that the volume and differing array of statistics on evictions, particularly in relation to retaliatory eviction, "was bewildering." Obtaining objective data on the issue had proved to be "impossible." The APPG cautioned against legislating in the absence of sound data and instead recommended that the Government should collect more information on the reasons why tenants leave their homes via the English Housing Survey:

> Such an addition should, be part of a much broader discussion about the nature and scope of data related to private rented housing within the Survey. We call on the Department for Communities and Local Government and Office for National Statistics to convene a steering group, in partnership with interested organisations, to undertake a full review of what should be measured concerning private rented housing.[20]

The APPG also recommended:

- A review of the ability of Environmental Health Officers to carry out enforcement activities (in regard to private rented housing).
- A new statutory requirement for prospective tenants to be given details of their rights and responsibilities prior to moving into a property.

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18 *The Private Rented Sector its Contribution and Potential*, Julie Rugg & David Rhodes, 2008

19 *ibid*

20 APPG on the Private Rented Sector, *Tackling Retaliatory Evictions – Report and Oral Evidence*, 15 December 2014

- A model for tackling a failure to carry out repairs by landlords which is more closely aligned with the procedure followed where a landlord fails to protect a tenant's deposit."

1.4 The Government's position

The Government response to the Communities and Local Government Select Committee's report on the private rented sector was published in October 2013. The Committee's position on retaliatory eviction was accepted alongside an acknowledgement that this issue is "a source of real anxiety for some tenants":

> Tenants must feel able to raise concerns or complaints with their landlords about the homes that they live in, and they must be able to do this without fear of eviction. As set out in recommendation 2 we will consider how to ensure that tenants do not face the threat of eviction because they have asked the landlord to rectify a fault or have asked the council to investigate. We will also produce guidance that sets out clearly the role of public authorities in protecting tenants from illegal eviction.
>
> We also agree that longer tenancies will provide greater security and as we have set out above we are actively promoting them through the Tenants' Charter, and model tenancy agreement which will remove barriers in our work with the sector and mortgage lenders.
>
> We will produce guidance that sets out clearly the role of public authorities in protecting tenants from illegal eviction and harassment.[21]

The Secretary of State, Eric Pickles, announced the publication of a draft Tenants' Charter in October 2013 while a voluntary model tenancy agreement "which landlords and tenants can use for longer tenancies, which will provide extra security and stability for families" was published in September 2014. The *Private rented sector code of practice* on management standards was published in October 2014.[22] Section 4.3.4 of the code covers repairs and maintenance and states: "Tenants must never be evicted for simply requesting repairs to the property."

The Government launched a *Review of property conditions in the private rented sector* in February 2014. The consultation paper contained a section on retaliatory eviction and posed three questions concerning the potential for introducing restrictions on the use of section 21:

> One way of helping to reduce retaliatory evictions may be to introduce restrictions on the use of the section 21 possession procedure by the landlord in certain situations. For example, a restriction could be brought in providing that a section 21 possession notice has no legal force where repairs or improvements have not been carried out to a property. Such a restriction would not have any impact on reputable landlords as they will want to keep their properties in good repair.
>
> There are precedents for placing restrictions on the issuing of section 21 notices. Currently, a section 21 notice has no legal force where:
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> - a landlord or letting agent has not put the tenant's deposit in an approved tenancy deposit scheme;
> - the landlord fails to license the property where legally it should have been licensed.

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21 Cm 8730, October 2013, recommendation 29

22 RICS, *Private rented sector code of practice*, October 2014

> Any change would require very careful consideration as to when the trigger point should be for the introduction of a restriction on these lines and whether it should only apply to more serious cases of disrepair (e.g. where a category 1 hazard under the Housing Health and Safety Rating System has been identified).
>
> We would also need to carefully consider how to prevent spurious or vexatious complaints being made by tenants as a way of preventing landlords from regaining possession using section 21. This may suggest that the trigger point for such a restriction should be following a local authority inspection or even later in the enforcement process. Placing restrictions on the ability of a landlord to issue or rely on a possession notice under section 21 would not, however, prevent the landlord from seeking possession on other grounds where these can be made out. Section 8 of the Housing Act 1988 provides that a landlord may seek possession on a number of grounds, for example, where a tenant is more than 8 weeks in arrears on their rent. None of the landlord's rights under section 8 would be affected by any restriction on using section 21.
>
> **Question 5:** Do you think restrictions should be introduced on the ability of a landlord to issue or rely on a section 21 possession notice in circumstances where a property is in serious disrepair or needs major improvements?
>
> **Question 6:** What would be an appropriate trigger point for introducing such a restriction?
>
> **Question 7:** How could we prevent spurious or vexatious complaints?[23]

Responses to the review were accepted up to 28 March 2014. The Government intends to publish its response to the review in 2015.[24] In the meantime, the Government said it would support the *Tenancies (Reform) Bill* (see below).[25] Following the failure of the Bill to complete its Second Reading the Government announced, on 5 February 2015, that it would amend the *Deregulation Bill* "to protect tenants against the practice of retaliatory eviction."[26]

2 The Tenancies (Reform) Bill 2014-15

Sarah Teather secured seventh place in the Private Members' Bill Ballot on 12 June 2014. She subsequently presented the *Tenancies (Reform) Bill 2014-15* on 2 July. The policy rationale for the Bill was:

> …to prevent tenants from feeling unable to complain about poor property conditions because they fear eviction. The Bill should also encourage landlords to keep their property in a decent condition and to comply with all legal obligations placed upon them, in order not to lose their right to rely on section 21.[27]

In addition to tackling the issue of 'retaliatory eviction' the Bill sought to make changes to the section 21 notice procedure "to make the eviction process more straightforward for both landlords and tenants."

On 11 September 2014 Communities Minister, Stephen Williams, said that the Government would support the Bill:

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23 *Review of property conditions in the private rented sector,* DCLG, February 2014
24 PQ 218368 [Private Rented Sector] 16 December 2014
25 DCLG Press Release, 11 September 2014 [accessed on 6 November 2014]
26 See section 3 of this note.
27 Bill 19-EN 2014-15, para 5

> That's why we're backing Sarah Teather's Bill to outlaw revenge evictions once and for all - ensuring tenants do not face the prospect of losing their home simply because they've asked for essential repairs to be made.[28]

The debate on Second Reading took place on 28 November 2014. A closure motion was agreed to by 60 votes to nil but could not take effect because fewer than 100 Members voted in support.[29] It is unlikely that the Bill will progress (but see section 3 below).

2.1 Preventing retaliatory evictions (clause 1)

Clause 1 of the Bill would prevent a landlord from serving a section 21 notice on a tenant within 6 months of the service of a 'relevant notice' in relation to the dwelling. Relevant notices are defined in sub-clause 1(9) and include improvement notices, hazard awareness notices or a notice of emergency remedial action under the *Housing Act 2004.*

Where a landlord serves a section 21 notice it would be invalid if, before service, the tenant had made a 'relevant complaint' about the dwelling to the landlord or the local housing authority and, since service of the section 21 notice, the housing authority has served an improvement or hazard notice or a notice of emergency remedial action. A 'relevant complaint' is defined as a complaint made to the landlord in writing or to a local housing authority regarding the condition of the dwelling. Complaints may also be made to a person acting on behalf of the landlord in relation to the tenancy.

Tenants would be able to defend a landlord's claim for possession under section 21 of the *1988 Housing Act* by establishing that, prior to the service of the notice, they had made a relevant complaint to the landlord or local housing authority and:

- the authority had not decided whether to inspect the dwelling or common parts; or
- the decision to inspect had been made but not yet carried out; or
- an inspection had been carried out but the decision to serve a notice had not yet been made; or
- the decision to serve a notice had been made but not yet implemented.

Notices served or complaints made in relation to the common parts of a dwelling would also form a 'relevant notice' but only where the landlord has an estate or interest in those common parts, and where their condition affects the tenant's enjoyment of the premises.

The prohibition on service of a section 21 notice within 6 months of a local authority serving a 'relevant notice' would **not** apply where:

- the relevant notice has been revoked (as a result of being served in error); or
- the notice has been quashed under paragraph 15 of Schedule 1 to the 2004 Act; or
- an authority's refusal to revoke the notice has been reversed under paragraph 18 of Schedule 1 to the 2004 Act; or
- an authority's decision to take action to which the notice relates has been reversed under section 45 of the 2004 Act; or

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28 DCLG Press Release, 11 September 2014 [accessed on 6 November 2014]
29 HC Deb 28 November 2014 cc1259-60

- the notice has been subject to an order under section 29 of the Senior Courts Act 1981.

2.2 Further exemptions (clause 2)

Clause 2 contains several exemptions which, if certain conditions are met, mean that a section 21 notice would not be invalid (or could be served within 6 months) even where a 'relevant notice' has been served.

The provisions in clause 1 (sub-clauses (1) to (3)) would not apply if the conditions giving rise to the relevant notice are due to the tenant's failure to use the dwelling in a tenant-like manner, or due to a breach of an express term of the tenancy by the tenant to the same effect.

These provisions would also not apply where the dwelling is 'genuinely on the market for sale.' The Bill (sub-clause 2(4)) describes various circumstances in which a sale will not meet this condition; for example, where the landlord intends to sell to a business partner.

The provisions would not apply where the dwelling is subject to a mortgage granted before the beginning of the tenancy, where the mortgagee is entitled to exercise a power of sale under section 101 of the *Law of Property Act 1925,* and the mortgagee requires possession in order to dispose of it with vacant possession in exercise of that power.

Registered providers of social housing (also referred to a housing associations or registered social landlords) would be exempt from clause 1 (sub-clauses (1) to (3)).

A tenant would not be able to use the defence of having made a relevant complaint in response to a section 21 notice where a court considers the complaint 'is totally without merit.'

2.3 Notice in relation to periodic assured shorthold tenancies (clause 3)

Sub-section 21(4)(a) of the *1988 Housing Act* makes provision for content of the notice which must be served on a tenant before a court will grant an order for possession. Currently, the notice must be in writing and must provide a date “being the last day of a period of the tenancy and not earlier than two months after the date the notice was given.” Clause 3 would insert a new sub-section (4ZA) to remove the requirement, in relation to a periodic tenancies in England, that a notice served under section 21(4)(a) must specify the last day of a period of the tenancy.

The identification of the last day of a period of a tenancy has proved to be a source of confusion and has led, on occasion, to the invalidation of a landlord’s section 21 notice.

2.4 Time limits – section 21 notices and proceedings (clause 4)

Clause 4 makes changes to the timing for service of section 21 notices and the bringing of possession proceedings in relation to section 21 notices.

It would prohibit the service of a section 21 notice in England within four months of the beginning of the tenancy. Where a replacement tenancy is issued (i.e. at the end of a fixed-term) it would not be possible to serve a section 21 notice until four months after the start of the replacement tenancy.

The restriction on service of a section 21 notice would not apply where a periodic tenancy arises following the end of a fixed-term.

The clause also provides that proceedings for an order for possession may not be brought later than six months from the date of service of a notice under section 21(1) or section 21(4) of the *Housing Act 1988*. This would place a specific time limit on the period within which a landlord must start possession proceedings after serving a section 21 notice.

It is not unusual for landlords to serve a section 21 notice at the very beginning of a fixed-term tenancy.[30] This practice could undermine the provisions in clauses 1 and 2 of the Bill which, for example, invalidate a section 21 notice where the tenant has made a relevant complaint beforehand. The provisions in clause 4 would prohibit this practice.

2.5 Compliance with prescribed legal requirements (clause 5)

Clause 5 would give the Secretary of State power to prescribe requirements (in England) relating to the condition of dwellings (including energy performance) and the health and safety of the occupants which, were a landlord to be in breach, would prevent them from serving a section 21 notice until the requirement was complied with.

2.6 Prescribed form of section 21 notices (clause 6)

The Secretary of State would gain a regulation making power to prescribe the form of a section 21 notice in England.

Regulations made under clauses 4 and 5 would be subject to the negative procedure **clause 7**).

2.7 Apportionment of rent (clause 8)

Clause 8 would provide for apportionment of rent where a tenancy is brought to an end before the end of a period of the tenancy (under section 21) and tenant has paid rent in advance for this period. The tenant would be entitled to an apportionment of the rent paid to the landlord calculated in accordance with a formula. The clause provides that if an apportionment of rent has not been made, when a court considers whether to make a possession order under section 21 it would be obliged to order the landlord to pay the apportionment of rent to the tenant.

2.8 Application (clause 9)

The Bill's provisions would not apply retrospectively. Clause 9 would provide for the Bill's provisions to apply to assured shorthold tenancies granted **on or after** the date on which it is brought into force. The provisions would also not apply to periodic assured shorthold tenancies arising due to the expiry of a fixed-term tenancy entered into before the date of commencement.

3 Government amendments to the Deregulation Bill

In light of the failure of the *Tenancies (Reform) Bill* to complete its Second Reading, Baronesses Bakewell and Grender and Lords Stoneham and Tope tabled amendments to insert clauses 1 and 2 of Sarah Teather's Bill into the *Deregulation Bill* during its Report Stage in the House of Lords. On 5 February 2015 the Government published a policy statement in which it set out an intention to amend the Bill to:

> …protect tenants against the practice of retaliatory eviction where they have raised a legitimate complaint about the condition of the property and a Local Authority has

[30] Note that the notice cannot take effect until the fixed-term (minimum 6 months) has expired.

> issued a notice confirming that the repair needs to be carried out to avoid a risk to health and safety (Improvement Notice or Notice of Emergency Remedial Action).[31]

The Government amendments are included in the policy statement. The amendments were added to the Bill on 11 February 2015.[32] The amendments largely replicate the intentions of Sarah Teather's Bill. In addition to tackling retaliatory eviction, the Government is also acting to make the eviction process more straightforward for landlords. The amendments are explained in the sections below.

Preventing retaliatory eviction

This new clause will prohibit the service of a section 21 notice in England within six months of the service of a 'relevant notice' or, where the operation of the 'relevant notice' has been suspended, within six months starting from the date on which the suspension ends. A relevant notice is defined as:

- an improvement notice relating to a category 1 hazard; [33]
- an improvement notice relating to a category 2 hazard; [34] or
- an emergency remedial action notice.[35]

Section 21 notices will be rendered invalid where, before issue, the tenant makes a complaint in writing to the landlord regarding the condition of the property and the landlord does not respond within 14 days, or does not provide an adequate response, or issues a section 21 notice in response to the complaint, and the tenant then complains (on the same basis) to the local authority resulting in the authority issuing a 'relevant notice.'

The provisions are very similar to those in Sarah's Teather's Bill save that the Government has omitted Hazard Awareness Notices from the list of 'relevant notices' on the grounds that these indicate 'a relatively small risk to the tenant's health and safety.'[36]

The protection from eviction will only apply if the authority has confirmed that there is a potential health and safety risk and where the tenant requested a repair before the section 21 notice was served.[37]

In moving the amendment Lord Ahmad of Wimbledon said:

> …the amendment provides that, by the time that the possession case comes to court, a local authority will need to have carried out an inspection or, where it has carried out an inspection, will need to have decided whether there is a defect that poses a risk to the tenant's health and safety. If the local authority fails to do so, a tenant will not have a defence to the proceedings on the grounds of retaliatory eviction.[38]

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31 DCLG, *Policy Statement on amendment to the Deregulation Bill*, 5 February 2015
32 HL Deb 11 February 2015 cc1264-89
33 Served under section 11 of the *2004 Housing Act*.
34 Served under section 12 of the *2004 Housing Act*.
35 Served under section 40(7) of the *2004 Housing Act*.
36 HL Deb 11 February 2015 c1270
37 *Ibid.,*
38 HL Deb 11 February 2015 c1271

Exemptions to preventing retaliatory eviction

As with the Sarah Teather Bill, this clause covers situations in which the provisions in the previous clause will not apply, e.g. where the repair required is due to the tenant's actions and where the property is genuinely on the market for sale.

Notices in relation to periodic assured shorthold tenancies

This clause is the same as clause 3 of Sarah Teather's Bill (see section 2.3 above). Lord Ahmad, on moving the amendment, said:

> Secondly, as I have already said, the eviction notice makes the process more straightforward for landlords in situations where the tenant can be legitimately evicted. It does so through the introduction of a prescribed notice to reduce errors and by removing the need for the date specified in a notice served under Section 21(4) to be the last day of a period of the tenancy, while retaining the requirement to give two months' notice. The Government are keen to ensure that we take forward a balanced package of amendments that will help both landlords and tenants.[39]

Time limits in relation to section 21 notices and proceedings

This clause is very similar to clause 4 of Sarah Teather's Bill (see section 2.4 above) – Lord Ahmad said:

> First, they [*the new clauses*] ensure that tenants are always given at least two months' notice before they have to move out of their home. A small minority of landlords and letting agents have adopted the practice of serving the eviction notice at the start of a tenancy—a point that I made earlier.[40]

Prescribed form of section 21 notices

As with clause 6 of Sarah Teather's Bill, this clause gives the Secretary of State power to make regulations to prescribe the form of a section 21 notice. Lord Ahmad said the aim of this 'prescribed notice' was to assist landlords and 'reduce errors.'[41]

Compliance with prescribed legal requirements

This replicates the intentions of clause 5 of Sarah Teather's Bill (see section 2.5 above). Lord Ahmad said:

> …the amendments provide that where a landlord has failed to comply with certain legal obligations, a tenant cannot be evicted using the Section 21 procedure. We envisage that this will apply to existing legal obligations, as I have already mentioned, in relation to energy performance certificates and the annual gas safety certificate.[42]

Requirement on landlord to provide prescribed information

This was not covered in Sarah Teather's Bill. The clause will give the Secretary of State regulation making power specifying information that a landlord will be required to provide to an assured shorthold tenant about their respective rights and responsibilities. If this information is not provided the landlord will be prevented from serving a section 21 notice.

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39 HL Deb 11 February 2015 c1272
40 HL Deb 11 February 2015 c1272
41 HL Deb 11 February 2015 c1271
42 HL Deb 11 February 2015 c1272

Repayment of rent where tenancy ends before end of a period

This clause replicates the intentions of clause 8 of Sarah Teather's Bill (see section 2.7 above).

Application of sections (Preventing retaliatory eviction) to (Repayment of rent where tenancy ends before end of a period)

This clause is the same as clause 9 of Sarah Teather's Bill (see section 2.8 above).

4 Reactions

There is universal condemnation of retaliatory eviction across the industry but the *Tenancy (Reform) Bill's* provisions proved controversial. It attracted broad support across local government and tenant representative bodies; however, private landlords and their representative organisations are strongly opposed. One of the key arguments focuses on the extent of the problem – this issue is covered in section **1.3** of this note. The following sections cover other issues raised in relation to measures to tackle retaliatory eviction.

Is retaliatory eviction already illegal?

The Residential Landlords Association (RLA) argues that retaliatory eviction is already illegal and that there is no need to legislate in this area:

> In June, the Competition and Markets Authority issued guidance on the relationship between landlords and tenants. This guidance makes clear that under the terms of the 2008 Unfair Trading Regulations, coming from the Consumer Protection Act, it is a breach of these where "any commercial practice that, in the context of the particular circumstances, intimidates or exploits consumers such as to risk (or be likely to restrict) their ability to make free or informed choices in relation to a product, and which cause or are likely to cause the average consumer to take a different transactional decision. These are known as aggressive practices.
>
> In the examples of what could constitute aggressive practices it includes, "Threatening the tenant with eviction to dissuade them from exercising rights they have under the tenancy agreement or in law, for example where they wish to make a complaint to a local authority about the condition of the property, or seek damages for disrepair."[43]

The RLA has also highlighted existing protections for tenants where a landlord harasses or illegally evicts a tenant – these are criminal offences. The *Protection from Harassment Act 1997* requires a course of conduct thus it seems unlikely that the service of a section 21 notice on its own would amount to harassment.

A potential issue with these 'remedies' is that affected tenants would need to prove that they had been threatened or harassed in association with a request for a repair. However, a landlord might simply respond to such a request with the service of a section 21 notice. Threats and harassment are not a necessary condition of retaliatory eviction. In addition, tenants cannot enforce breaches of the Unfair Trading Regulations – this is a matter for local authority trading standards officers.[44]

Sufficient protection for tenants?

ARLA's evidence to the APPG's inquiry into retaliatory eviction argues that tenants cannot be evicted during the first six months of the tenancy and, if a tenant complains to the local

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[43] *Retaliatory Evictions Already Illegal in Private Rented Housing*, RLA, 2014

[44] The Nearly Legal housing law website has a detailed analysis of the RLA's claims around the illegality of retaliatory eviction [accessed on 24 November 2014]

authority resulting in the service of an improvement or hazard awareness notice, the landlord still has to carry out the work even if the tenant is evicted. ARLA makes the point that eviction is an expensive process for landlords – in addition to court costs there are void costs and re-letting fees – leading ARLA to conclude "it is probable that retaliatory eviction is likely to cost landlords more money than merely remedying any problem.[45]

Impact on the PRS market

Landlords regard section 21 as a cornerstone of the private rented sector – the RLA argues that restrictions on its use will have the unintended consequence of a loss of market confidence which, in turn, will impact on buy-to-let investment "at a time when the private rented sector is the only area of growth in rented homes."[46]

ARLA has said:

> …at a time when we are seeing the first institutional investors entering the market, it is important to have stability in the fundamental legislation that underpins the sector. Otherwise, institutional investment in the sector, a key priority of all political parties, could be set back by many years.[47]

The APPG welcomed evidence submitted by the Council of Mortgage Lenders indicating that the proposed measures would not be likely to have an adverse impact on the industry's willingness to finance the buy-to-let sector.[48]

Supporters of the Bill (and Government amendments to the *Deregulation Bill*) argue that it will have no impact on the majority of law abiding landlords who carry out their repairing duties: "The Bill will only inhibit rogue landlords: only those landlords that flout their existing legal responsibilities will be affected."[49]

Spurious complaints

Landlord bodies fear that tenants will be encouraged to request repairs or an EHO inspection in response to action taken to tackle rent arrears or other tenancy breaches with the aim of invalidating a section 21 notice.[50] In response, Shelter argues that tenants will have to prove that they made a complaint about conditions before the service of a section 21 notice. Shelter also argues that local authorities only issue improvement notices where a landlord is already in breach of their repair/maintenance duties – thus, in Shelter's view, a prohibition on the service of a section 21 notice for a period of 6 months would be reasonable.[51] During the debate on the Government amendments Lord Ahmad confirmed that landlords will not be prevented from seeking a possession order to evict using other Grounds set out in Schedule 2 to the *1988 Housing Act:*

> Landlords would be able to evict tenants who should be evicted—for example, because of rent arrears or anti-social behaviour. We have not made any changes to the eviction procedure under Section 8 of the Housing Act 1988. The courts will be

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45 ARLA evidence to the APPG Inquiry, October 2013
46 *Retaliatory Eviction – the case against regulatory intervention,* RLA, 2013
47 ARLA evidence to the APPG Inquiry, October 2013
48 APPG on the Private Rented Sector, *Tackling Retaliatory Evictions – Report and Oral Evidence*, 15 December 2014
49 *The Tenancies (Reform) Bill – what doesn't it do?*, Shelter, 14 October 2014 [accessed on 6 November 2014]
50 *Retaliatory Eviction – the case against regulatory intervention,* RLA, 2013
51 *The Tenancies (Reform) Bill – what doesn't it do?*, Shelter, 14 October 2014 [accessed on 6 November 2014]

> able to dismiss a claim as unfounded if, for example, they consider a tenant to be in breach of their duty to use the property in a tenant-like manner.[52]

Lord Ahmad also confirmed that tenants will still be liable to pay rent:

> My noble friend Lord Howard asked about tenants who stop paying rent once they have made a complaint. I assure my noble friend that in this regard the amendment under no circumstances permits the tenant to stop paying rent, and the tenant will be obliged to pay. It provides that a Section 21 eviction notice can be invalidated only if a tenant's complaint is supported by confirmation from the local authority. Indeed, if a Section 21 eviction notice cannot be served for a specified period, the tenant is still contractually obliged to continue paying rent. Failure to do so, as I said in my opening remarks, would leave them liable to eviction under Section 8 of the Housing Act 1988.[53]

Lord Ahmad rejected several claims that the measures would enable tenants to delay the point of eviction for 10 or 12 months:

> My noble friend Lord Howard talked also about the possibility of a 12-month delay. We do not perceive that this would be the case. If the council has carried out an inspection by the time the case comes to court, which, as I said, would be a period of up to four months, the tenant would have no defence to the Section 21 proceedings.
>
> […]
>
> My noble friend Lord Howard referred to tenants being allowed to block evictions for up to 10 months. The maximum period will be six months from the date that the local authority serves the relevant notice.[54]

Timing of complaints & delaying the inevitable?

Tom Tyson of Zenith Chambers has suggested that the Bill's provisions may "amount only to a delaying mechanism placed on the landlord, for an apparent maximum period of 6 months."[55] The point is also made that if a landlord attends to the requirements in an improvement notice the tenant may still be evicted after the property has been improved.

Questions have been raised around the fact that a written complaint by a tenant does not necessarily mean that a landlord is in breach of his/her section 11 repairing obligations.[56]

Alternative approaches

The RLA suggested that the focus should be on "improving and better enforcing the powers already available." Specifically, the RLA has raised:

- an extension to the Unfair Trading Regulations to cover retaliatory eviction;
- making it a legal requirement when issuing a tenancy agreement (contract) for a landlord to supply tenants with details of their rights;[57]
- placing the common law defence of illegality on a statutory footing.[58]

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52 HL Deb 11 February 2015 c1284-5

53 HL Deb 11 February 2015 c1284

54 HL Deb 11 February 2015 c1284

55 *Teather's Tether – Will the Tenancies (Reform) Bill be a sticker?* Zenith Chambers

56 Nearly Legal website (accessed 6 November 2014)

57 Currently there is no obligation on a landlord to issue a written tenancy agreement in respect of an assured shorthold tenancy. The Government has acted on this suggestion by including a requirement on landlords to provide certain prescribed information to tenants.

ARLA believes the Government should be focusing on greater regulation for the sector as a whole "rather than looking to find legislative solutions to specific problems." There is a view that the amendments will not tackle unscrupulous landlords who let substandard and poorly managed accommodation.[59]

[58] *Retaliatory Evictions Already Illegal in Private Rented Housing*, RLA, 2014
[59] ARLA evidence to the APPG Inquiry, October 2013