Written evidence submitted by Dr Edward Kirton-Darling and associates to The Renters' Rights Public Bill Committee (RRB02).

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Protecting vulnerable tenants: Reforming the law on protection from eviction

Introduction

We are three legal academics with longstanding interest and expertise in housing law. Together we have undertaken research on the law relating to illegal eviction, and this brief focuses on that law.

We welcome the Renters' Rights Bill and the rights and protections it provides for renters, but, if the most vulnerable renters are to be properly protected, reform is also needed to the outdated, complex, and difficult to enforce law on illegal eviction and harassment.

The Protection from Eviction Act 1977 (the Act) is the source of current protections. Conditions in the private rented sector have changed dramatically since the Act was enacted 50 years ago. This briefing proposes amendments to the Act, as well as the Housing and Planning Act 2016, to modernise the law ensuring it is fit for purpose.

Reform is necessary because:

1) The law on illegal eviction provides a floor of rights for the most vulnerable renters, including those who struggle with literacy or for whom English is not a first language. The law must be effective and easy to enforce so they can claim their rights and can be properly protected.
2) Illegal evictions break down trust in society and lead to extraordinary social costs, as education, employment and health care are disrupted, and local authorities are faced with escalating costs in providing accommodation for the homeless.
3) Local authorities are responsible for enforcing the law and can struggle with its complexity, including challenging evidential requirements like gathering witness evidence from victims and ensuring they take part in the prosecution. The current law contains unnecessary requirements creating barriers to effective enforcement.
4) Abolition of section 21 and depriving landlords of a 'no-fault' ground for eviction, increases the incentive for landlords to 'take the law into their own hands' and evict illegally or harass tenants with the intention of getting them to move out.
5) The cost-of-living crisis and spiralling rents has increased arrears. The backlog in the courts means that landlords may have to wait for a court order, and rather than risk being unable to meet their own financial commitments, may be tempted to break the law.

If introduced, the amendments set out in detail below would:

- Provide one test for whoever is harassing a tenant to get them to leave, meaning that local authorities do not need to go through the complex task of working out

whether or not the person accused of harassment was acting on behalf of the landlord or not;
- Confirm that cutting access to the internet with the intention of making the occupier leave constitutes harassment;
- Ensure that the legal protections extend as broadly as possible, by putting the onus on a landlord to show that a resident is not entitled to the protection in the legislation;
- Simplify the law for enforcers by providing a rebuttable presumption that if you receive rent, you are the landlord – making it easier to prosecute rent-to-rent scams;
- Ensure the police play a proper role in the enforcement of the law, by passing information they receive about potential offences to the relevant local authority;
- Make the law on rent repayment orders (via the tribunal) and compensation for illegal eviction (via the courts) consistent, so that those who use the cheaper and speedier tribunal route are not discriminated against.

Effective law on illegal eviction and harassment, providing a basic floor of rights and deterring criminal behaviour by unscrupulous landlords is an essential part of a fair and well-functioning private rented sector. The law must be clear, so that everyone understands their rights and responsibilities, and it must be straightforward for local authorities to enforce. The amendments complement the Renters' Rights Bill providing a modern law fit for contemporary conditions.

Further valuable reforms could include:

- Introducing sentencing guidelines for offences under the Act to improve consistency and ensure appropriate sentences. This addresses anecdotal evidence that magistrates issue very low fines that fail to provide effective deterrents.
- Ensuring that police training includes compulsory training on the Act and the need to support local authorities as prosecutors.
- Strengthening the law on retaliatory eviction when eviction is threatened in connection with complaints to the local authority about potential offences under the Act.
- Providing greater support from local authorities to enable tenants to pursue Rent Repayment Orders and civil claims.
- Incentivising compliance from landlords, for example, giving landlords an easier way to obtain a determination that rent is owing through an expanded 'rents' jurisdiction in the First Tier Tribunal.

Detailed Amendments to the Protection from Eviction Act 1977

In section 1:

"(a) Omit subsection (3)

(b) In subsection (3A), omit "the landlord of a residential occupier or an agent of the landlord" and insert "a person"

(c) For subsection (3A)(b) substitute – "he persistently withdraws, withholds or interferes with access to services reasonably required for the occupation of the premises in question as a residence"

(c) After subsection (3B), insert –

"(3BA) For the purposes of this subsection, services which are reasonably required for the occupation of the premises as a household include, but are not limited to –

(a) water,

(b) gas,

(c) electricity, and

(d) electronic communications networks and services"

(d) Omit subsection (3C)"

Explanation

The provisions on harassment – contained in s.1(3) (3A) and (3B) of the Act – are complex and confusing, particularly for lay people. It is easier to prove the offence when it is alleged to have been committed by the landlord or their agent. Non-landlords must be proved to have intended to cause the residential occupier to give up occupation or their rights under s.1(3), while prosecutors only need to prove that a landlord (or their agent) knew, or had reasonable cause to believe, that their actions would have that result. Lawyers call tests of intention *mens rea*.

Proving that it was a landlord or their agent who took the action is challenging. There is often deliberate obscurity about the identity of the landlord. Where it is not possible to establish it was the landlord or their agent, prosecutors must establish the higher threshold requiring proof of intent - a very high bar.

This amendment creates a single offence of harassment, which applies to landlords and non-landlords alike, using the current *mens rea* formulation in s.1(3)(A). Landlords and agents will be unaffected by the change, but it will be easier to prosecute those who may be acting on behalf of the landlord but that relationship is informal or deliberately obscured from authorities.

It clarifies that a landlord who is not responsible for provision of such services, but who interferes with access to them can commit the offence (for example by turning off mains water taps or cutting through telephone lines providing internet access). s.1 (3BA)d clarifies the services which are reasonably required for the occupation of the premises as a household, including access to electronic communications networks and services, as defined in section 32 of the Communications Act 2003. Ensuring greater clarity on which services might be considered reasonably required for the occupation of the premises as a whole, it permits other services to be included, but ensures that fundamental services (including internet access) cannot be regarded as unnecessary for the reasonable occupation of a home.

Insert:

"(4) In section 3A, after subsection (9) insert –

"(10) In any proceedings under any of the relevant statutory provisions in this Act, it shall be for the accused to prove that the tenancy or licence is excluded by virtue of subsections (2) or (3) above."

(5) After section 4 insert –

"4A In any action under Part 1 of this Act (including where a Financial Penalty Notice (FPN) is issued) there is a rebuttable presumption that the person to whom the residential occupier pays rent or other payments in respect of occupation of a dwelling is the landlord of the property."

(6) After section 7 insert –

"7A (1) Where a constable has reasonable cause to believe that an offence under the Protection from Eviction Act 1977 has occurred the constable must within 24 hours notify the authority named in section 6 as responsible for prosecution of offences in the area with the following information:

(a) the address where the alleged offence has happened;
(b) if known, the name of the landlord;
(c) if known, the name of the residential occupier;
(d) any facts known to the constable about the alleged offence.

(2) A police force has the power to assist an authority included in section 6 in the exercise their functions under this Act.""

Explanation

There are situations in which there is no need for notice or a court order for the eviction to be legal, although there must be compliance with the contractual provisions. This can get very complex for lay people. This clause will reverse the burden of proof and require the landlord to prove someone is excluded from the protection of the Act. It mirrors the reversal of proof in s.40 of the Health and Safety at Work Act 1974. The defendant will only need to prove the issue on the balance of probabilities – they will not need to prove it beyond reasonable doubt.

One of the biggest problems faced by residential occupiers and prosecutors is identifying the landlord. The current law encourages behaviour which obscures the identity of landlords. The new clause amends the Act to provide a rebuttable presumption in any action under the Act that the person the residential occupier pays rent to is the landlord of the property. The inclusion of 'other payments in respect of occupation of a dwelling' is taken from the wording in the Housing Act 2004, s.132(4).

There are extensive complaints from local authorities and others that police ignorance of the law does not assist and can obstruct effective prosecutions. A recent example is *Wu v. Chelmsford City Council* [2023] EWCA Civ Crim 338. The landlord attended the property and changed the locks without notice. The victim phoned the police, who 'attended and told [the victim] that the issues was a civil matter and then left.' The landlord was eventually

successfully prosecuted by the local authority. The new clause amends the Act to require that if police become aware of potential offences of illegal eviction and harassment they notify the relevant local authority. It adds a power for police to assist the local authority in its investigation and prosecution of offences under the Act.

Housing and Planning Act 2016

New Clause: Rent Repayment Orders

Insert –

"In section 43 (making of rent repayment order) –

(a) for subsection (1) substitute –

"(1) Apart from offences for which subsection (1A) applies, the First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).

(b) after subsection (1) insert –

"(1A) The First Tier Tribunal may make a rent repayment order if satisfied on the balance of probabilities that the landlord has committed an offence under section 1(2), (3) or (3A) of the Protection from Eviction Act 1977 (whether or not the landlord has been convicted).

(c) at the end of subsection (3) insert— "(d) section 46A (where an order is made against more than one landlord or there has been a previous order).""

Explanation

Under the Housing and Planning Act 2016 residential occupiers can apply to the First Tier Tribunal for a Rent Repayment Order (RRO) where they are able to prove beyond reasonable doubt that an offence under the Act has occurred. Even if the offence of harassment is simplified as recommended above, RRO applicants are still faced with the difficulty of the criminal standard of proof. For the other offences in s.43(1) proving the offence is much more straight forward e.g. the landlord does not have a licence. This difficulty means many applicants for the RRO for breach of the 1977 Act often fail.

It also means that there is a different test for tenants seeking a financial remedy for illegal eviction depending on whether a tenant goes to the county court (balance of probabilities) or the tribunal (beyond reasonable doubt), and this amendment would ensure it was consistent across both jurisdictions, reducing complexity. By this amendment the level of proof is lowered to the balance of probabilities for 1977 Act offences.

Renters' Rights Bill 2024

We note that clause 101 as currently drafted provides that unlawful eviction is an offence which can extend to others involved in a company where it is committed by a company, but harassment under the PfEA is not. We would suggest that clause 101(4)(a) should include any offence under s.1 of the 1977 Act.

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