Written Evidence

Further to our oral evidence on 22.10.24, we write to expand on certain points which were discussed and to identify some areas where we think there may be drafting errors.

Clause 17

At Clause 17, creating new section 16M in the 1988 Housing Act, there is a drafting issue as to when the restricted period starts to run.

Section 16M(2) provides that a person relies on a ground in schedule 2 where:

> (a) they serve on the tenant a section 8 notice, or a purported notice of possession; and
> (b) where not having served a section 8 notice or purported notice of possession, they file a claim form or particulars of claim for the purposes of beginning possession proceedings on a schedule 2 ground.

Section 16M(4) identifies "the restricted period" where Ground 1 or 1A is relied upon:

> (a) it starts on the date the section 8 notice or purported notice of possession, and ends 12 months after the date specified in the notice as the earliest date on which possession proceedings could begin; or, it is
> (b) a period of 12 months from the date of filing with the court a claim form or particulars of claim relying on Ground 1 or 1A

While section 16M(4)(b) makes reference to 16M(2)(b) ("(see subsection (2)(b))") it is not conditional on 16(2)(b) applying.

The result is that a restricted period will be for 12 months from expiry date of the section 8 Notice/NOP, unless the landlord issues a possession claim relying on grounds 1 or 1A, in which case, the restricted period will be 12 months from the date of issue.

This may be intended, in which case the reference to 16M(2)(b) should be removed. Or if not intended, then 16(4)(b) should be made conditional on the circumstances set out in 16M(2)(b) applying.

However, there is also a question is to whether issue of a claim on grounds 1 or 1A without service of a section 8 notice beforehand should be permitted at all. It is hard to see a policy reason why this should be possible.

Grounds 1 and 1A

Use of Grounds 1 and 1A by the landlord entails the 12 month restricted period during which the property cannot be re-let.

The penalties for breach of this are:

> (a) Prosecution for an offence by the local authority; or
> (b) Civil penalty demanded by local authority.

In addition, a Rent Repayment Order offence will have been committed, enabling tenants to seek a rent repayment order (although it is not clear if this would be the former tenants, or the tenants to whom the property has been re-let).

These are all effective penalties (subject to the local authority taking action).

However, there is no particular mechanism for local authorities to identify where there has been a breach.

It would appear that unless the former tenants against whom the landlord had used Ground 1 or 1A become aware that the property has been re-let or is being advertised for let within the restricted period, and those former tenants then notify the local authority, the local authority will not be aware of the breach.

This is clearly wholly reliant on happenstance as to awareness and the willingness of the former tenants to come forward even if they become aware. The threat of penalties for breach is of little weight if the landlord reasonably perceives that the risk of a penalty is low.

A proposal to mitigate this and increase the risk of a penalty, is that use of Ground 1 or 1A whether in section 8 notice or in possession proceedings by the landlord should be required to be notified to and recorded on the Landlord Database against the property entry.

If this is public information then prospective tenants would be able to identify that the re-let is during the restricted period and the existence of a restricted period could be identified and monitored by the local authority.

Clause 26

In order to make the "no rental bidding war" provisions work, one also needs to regulate the amount of rent which can be paid in advance. Otherwise prospective tenants will simply compete on that point.

One way of doing this would be to make it unlawful for a landlord to demand or accept more than one month's rent in advance in respect of a tenancy or licence of residential accommodation.

Where a landlord or agent takes an amount of rent in advance which exceeds one month, the excess would be a prohibited payment under the Tenant Fees Act 2019, and can be recovered by the tenant. The landlord/agent may also be subject to a civil penalty (maximum £5,000).

One way to achieve this is as follows:

"Clause 26 is amended as follows:

On page 36, insert new (5) between current (4) and (5) and renumber:

"(5) In Schedule 1 (permitted payments), after paragraph (1) insert –

"(1A) But if the amount of rent payable in advance of any period of the tenancy exceeds one month's rent, the amount of the excess is a prohibited payment.""

Clause 55 is amended as follows:

On page 78, in (3)

(a) In subsection (3)(b), delete full stop and insert ", or";

(b) After subsection (3)(b) insert "(c) invite or encourage any person to offer to pay rent in advance of an amount exceeding one month's stated rent."

(1) At clause (4) for "(3)(a) or (b)", substitute "(3)(a), (b) or (c)".

Clause 30
As things stand, a landlord can grant a tenancy for a term of 7 years plus a day, with a "landlord only" break clause exercisable on two months rolling notice after the first six months. This would create a tenancy which was completely outside all of the reforms in this Bill (and the Tenant Fees Act 2019!) and, in effect, re-creates s.21, Housing Act 1988 evictions (no fault/notice only).

Such a tenancy is *very* likely to become the norm. The entire history of housing law shows us that landlords always try to avoid the protections Parliament creates.

The reason clause 30 is included is to deal with the fact that certain kinds of shared ownership lease (and certain forms of normal long lease) have accidentally been treated as assured shorthold tenancies. Clause 30, as it stands, does solve that problem, but at the cost of creating an enormous loophole.

The better approach is to amend Sch.1, Housing Act 1988, so as to provide that a tenancy to which sections 76 and 77, Commonhold and Leasehold Reform Act 2002 applies, is not an assured tenancy. Then delete clause 30 entirely. That would correct the oddities around shared ownership/long leases without creating the loophole that we identify.

Clause 100
There is a phenomenon in the private rented sector known as "rent to rent". The freeholder of a building grants a lease (usually for less than 7 years, so as to avoid the need to register it at the Land Registry) to a company (which they control). That company then lets to the occupational tenants. As the law stands, there is no possibility of a rent repayment order being effective in that scenario. That is because the Supreme Court has held that a rent repayment order can only be granted against the immediate landlord of the tenant (*Rakusen v Jepsen* [2023] UKSC 9). Needless to say, the company in this model is an entity of straw (£1 value).

This clause seeks to overturn that decision so that, where the freeholder commits and offence, it is possible to seen an RRO against them as well as/instead of the intermediate company. In that regard, it is welcome and seems to be effective.

The difficulty is that *Rakusen* also held that the rent had to be paid *directly* by the tenant to the person against whom the RRO was sought. So the intermediate company would still mean that no RRO could be made against the freeholder, notwithstanding the changes in clause 100.

A way needs to be found to make clear that a sum equivalent to rent can be recovered, even if the person against whom the RRO is sought did not *directly* receive the rent.

Homelessness
As noted in oral evidence, the Bill removes various references to "assured shorthold tenancies" in numerous Acts of Parliament. One consequence of this is that a duty to assist certain homeless persons in defined circumstances has – apparently accidentally – been removed.

The solution is to retain s.195A Housing Act 1996. Section 195A provides that where an applicant had accepted a private rented sector offer and subsequently makes an application because he or she is homeless or threatened with homelessness, within two years from accepting the private rented sector, homelessness accommodation duties will be owed to the applicant regardless of whether he or she has a priority need. Whilst it is less likely that an

applicant will receive a notice for possession within two years of the tenancy, this amendment retains the provision where that does occur.

One way to achieve this is as follows

"Clause 24, page 33 is amended as follows:

Delete Clause 24(2)(c) and replace (d) with (c).

Delete Clause 24(4)."

As the same time, the s.188 Housing Act 1996 duty to secure interim accommodation for an applicant who falls within s.195A should also be retained. One way of achieving this is as follows

"S*chedule 2, page 177, is amended as follows:*

Line 12, delete para 33 and renumber.

Insert between paras 35 and 36:

"In section 195A (Re-application after private rented sector), in subsection (2), for "notice under section 21 of the Housing Act 988 (orders for possession on expiry on termination of assured shorthold tenancy)" substitute "notice under section 8 of the Housing Act 1988 (notice of proceedings for possession)".

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