

# COVID-19 and Illegal Eviction

## Guide 3

- This guide relates to significant concerns raised within the housing sector, resulting from temporary changes both to changes to legislation and the Court rules, impacting on the speed in which a landlord will be able to regain possession of a property.
- Whilst concerns mostly abound in respect of illegal eviction focus on the private rented sector, the law relates to many forms of occupier protected via the Protection from Eviction Act 1977 ('the Act'). Illegal evictions are by no means confined to the private sector.
- It is categorically not suggested that anything other than a very small minority of landlords will act, or contemplate acting, in a manner which is not just a breach of the law, but socially irresponsible and posing significant risk to public health at this time.
- Illegal eviction is a criminal offence. We are concerned about anecdotal suggestions that illegal evictions are considered as purely a 'civil matter' as this has not been the position for at least 40 years.
- The conflation of a law which is enforced by Local Authorities at prosecution stage<sup>1</sup> and which has also civil remedies, into being a matter considered only as civil in nature, is incorrect.

## Whom benefits from the Protection from Eviction Act 1977?

- Since the vast majority of occupiers will benefit from the above Act, it is much shorter to give examples of those not benefitting from such protection. Please note that 'occupier' is used here, as an umbrella term to combine 'tenant' and 'licensee.' Many occupiers will not be tenants, yet will still have protection. The protection is far wider than the 'specified residential tenants' given additional protection on notices, by the Government.
- The list of excluded occupiers is set out in law<sup>2</sup>. Examples (not exhaustive) include: resident landlord with shared accommodation where the landlord resides in shared

<sup>1</sup> Section 6 Protection from Eviction Act 1977

<sup>2</sup> Section 3A Protection from Eviction Act 1977

accommodation both at the outset and end of the agreement; holiday lets<sup>3</sup>, rent-free accommodation, licensees of hostel accommodation, and accommodation provided to asylum seekers<sup>4</sup>.

- Even 'excluded occupiers' are entitled to at least a reasonable notice before they can be evicted.
- Though not specified in the Protection from Eviction Act, it has been considered that *occupiers of emergency homelessness accommodation* are considered as having too transient a form of occupation, for the Act to apply<sup>5</sup>

## **Rough sleepers and accommodation provided during current pandemic (emergency period)**

- It is feared in relation to many rough-sleepers whom are being given emergency accommodation (following central government grant during the current 'emergency' period) that Local Authorities *may* consider simply evicting such occupiers straight back out on to the streets.
- We are encouraged by Bristol Council's indications that it soon expects to switch focus to finding suitable 'move-on' accommodation for people in this category, not just return to the streets.
- The Authority will in any event have an interim housing duty in any event owed to persons in the situation with 'appearance of Priority Need'<sup>6</sup> (see COVID-19 and Homelessness). Authorities should not simply be evicting persons with an appearance of such a need back on to the streets, and there are legal arguments about whether such should happen at all.
- This however is not likely to directly affect whether such occupants would fall within Protection from Eviction Act itself however, but is relevant to the Authority's legal duties under Housing Act 1996.
- A violent eviction may be a criminal offence, even if there is no civil 'protection from eviction.'<sup>7</sup>

---

<sup>3</sup> So be careful of agencies and websites which define places as 'holiday lets' in their Ts and Cs! (of course, such being officially proscribed by COVID-19 regulations...)

<sup>4</sup> See section 3A. Asylum seekers' housing rights often have their own system and are often outside of the usual housing framework entirely until status is granted; a fact which is often popularly misunderstood.

<sup>5</sup> *Desnousse v Newham London Borough Council* [2006] EWCA Civ 547

<sup>6</sup> Section 188 Housing Act 1996 (section 68 in Wales) – interim accommodation to be provided where an applicant has the 'appearance' of being eligible, homeless and in priority need

<sup>7</sup> Section 6 Criminal Law Act 1977

## What is the nature of the protection?

- Those benefitting from the Act cannot legally be evicted without receiving at least a valid notice, plus the landlord must obtain a Court Order (all applications for Possession Proceedings currently stayed to at least 25<sup>th</sup> June). The landlord must then obtain an eviction warrant if the occupier remains 'in situ' (stays sitting: literally *in the original place*)
- Due to COVID-19, for the 'specified tenants' at present (i.e. including most private, Council and Housing Associations tenants) there must be a Notice Seeking Possession lasting at least three months<sup>8</sup>.
- For occupiers who are not 'specified tenants' but are still entitled to at least basic protection under the Act, they are entitled to a Notice to Quit giving not less than four weeks notice in writing and ending on the last date of a 'complete period of occupation<sup>9</sup>.' Landlord notices need to be on a 'prescribed form.<sup>10</sup>' Joint tenants where a notice has been served by one tenant, or where a tenant has served their own notice, will find their landlord can rely on that notice to commence proceedings.
- The current action taken to delay proceedings, may mean increased likelihood of landlords considering they will 'take the law into their own hands' (or rather, their version of 'the law') and may look to either effect an eviction via a lock change, or conduct themselves in such a way that the tenant feels they are forced to leave in a manner either proscribed by legislation, or alternatively in a harassing manner.

## What constitutes a breach?

There are civil and criminal considerations in relation to the Act. As will be seen below, there are two specific offences; one which can be committed by landlords or their agents, and a broader one which would encompass, for example, 'vigilante groups' claiming to act on a landlord's behalf.

Illegal eviction made include, but is not limited to:

- Threatening or using violence or intimidation to harass an occupier out of their home
- Changing the locks and preventing access
- Repeatedly withdrawing essential services
- Acting in a way causing, or which the landlord knows is likely to cause, an occupier to leave (other than by the legal route)<sup>11</sup>

---

<sup>8</sup> Schedule 29 Coronavirus Act 2020 amending various acts. This is a time-limited position, see guides 1 and 2.

<sup>9</sup> Section 5 Protection from Eviction Act 1977

<sup>10</sup> Notices to Quit etc. (Prescribed Information) Regulations 1988 schedule

<sup>11</sup> For more examples, see e.g. [shelter.org.uk](http://shelter.org.uk) or [sheltercymru.org.uk](http://sheltercymru.org.uk) (if in Wales)

# What can be done?

## Occupier action

- Legal Aid is still available for unlawful eviction matters, where someone satisfies a 'means' test on their income<sup>12</sup>. It is possible to assert a right, and if necessary apply for, an injunction to readmit a tenant to the premises and/or prevent the landlord acting in an unlawful manner.
- An interim injunction can be sought on a 'without notice' basis in some cases of urgency. Injunctions can set out a particular course of conduct, to bar 'negative' course of conduct (i.e. 'Defendant must not act in such a way as to cause harassment, alarm or distress...') but in this type of case can also be used to mandate a 'positive' course of action (i.e. 'Defendant must allow access/readmit tenant to the property by 4pm...')
- Breaching an injunction, following service on its recipient, could lead to a 'committal' application if breached, e.g. prison or a fine<sup>13</sup>.
- Whilst the Courts have stayed possession action at present, injunctions are not so stayed<sup>14</sup>.
- In fact, the Courts have listed applications for injunctions as 'work that must be done' in its priority listings (it will be noted that some courts are effectively shut to the public– which could obviously be some distance in rural areas)<sup>15</sup>.
- A landlord committing a breach the Act may also be liable to compensate the occupier for damages in a civil claim. In the current social climate, given the current risks to public health of contributing to difficulties of social distancing, lockdown and potential impact on an occupier finding other accommodation (or even engaging advice, the court system etc. to be readmitted to the property), may all contribute to the Court's consideration of the likely damages<sup>16</sup>.

---

<sup>12</sup> Legal Aid Sentencing and Punishment of Offenders Act 2012, schedule 1 s33(1) and (6)(b).

<sup>13</sup> Section 1(4) Protection from Eviction Act 1977; on indictment, maximum fine of 2 years.

<sup>14</sup> CPR PD51Z

<sup>15</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/877242/Civil\\_court\\_listing\\_priorities\\_1\\_April\\_2020.pdf?utm\\_medium=email&utm\\_source=](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/877242/Civil_court_listing_priorities_1_April_2020.pdf?utm_medium=email&utm_source=)

<sup>16</sup> Damages where a landlord has behaved in a particularly unpleasant or violent way are known as 'aggravated damages' whilst the increase in stress and anxiety to a claimant could also be considered under 'general damages.'

- We would strongly urge an occupier needing to take such action to be directed to a source of legal advice if possible, to see if there may be a possibility of publicly funded or other assistance. Local Authorities have prosecution powers in relation to the Act.

### **The Illegally evicted occupier and rehousing**

- Occupiers whom have been illegally evicted should be considered as homeless<sup>17</sup>. This means that the Local Authority are likely to owe a duty at a minimum, to take 'reasonable steps' to secure accommodation for such persons via the 'relief homelessness duty'<sup>18</sup>.
- The duties do not necessarily exclude assisting an illegally evicted occupier to be right to be readmitted to the previous property, though this needs to be carefully balanced against the reasonableness of that occupation particularly given that an occupier may well be reluctant to do so (e.g. harassment or violence).
- Reasonableness of returning, as well as practical access to support for re-entry, should be carefully considered before identifying such a course as a step in considering how an Authority sets out its personalised plan<sup>19</sup>.
- An occupier looking to be given emergency accommodation historically (and usually) needs to demonstrate a 'priority need' to their Authority, to access emergency accommodation<sup>20</sup>. The Authorities are in any event supposed to be funding accommodation to prevent rough sleeping for anyone at the present (and for further consideration of the Priority Need issue, see 'COVID-19 and homelessness').
- We understand that the situation in Bristol is that the Authority are working with MHLCG to increase capacity, having experienced significant difficulties at the start of the emergency period.

---

<sup>17</sup> England - Section 175(2)(a) Housing Act 1996: having legal right to occupy accommodation, but being unable secure entry to it. Wales- section 55(2)(a) Housing (Wales) Act 2014

<sup>18</sup> England - Section 189B(2) Housing Act 1996; Wales- section 73(1) Housing (Wales) Act 2014

<sup>19</sup> England – Section 189A(4) Housing Act 1996. Personalised housing plans are not mandatory in Wales. Both jurisdictions can have duties ended for Applicants 'failure to cooperate' if not engaging with 'reasonable steps', again a positive required action to obtain an injunction may face substantial problems for both legal and practical reasons.

<sup>20</sup> England - Section 188(1) Housing Act 1996; section 68(2) Housing (Wales) Act 2014

## **Local Authority action**

- Local Authorities have prosecution powers available to them in relation to harassment offences under the act

## **Landlord or agent**

If the landlord, or his agent, does something likely to interfere with peace or comfort of the residential occupier or members of household, or persistently withdraws services, knowing 'or with reasonable cause to believe' it will make the residential occupier give up the occupation of the premises, he will be guilty of an offence.<sup>21</sup>

## **General offence**

There are two general offences:

- If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises<sup>22</sup>.
- If any person unlawfully deprives or attempting to deprive residential occupiers of their premises by doing calculate acts to interfere with peace or comfort of occupier or household, persistently withdrawing services, as above<sup>23</sup>.

Convictions could lead to prison or fines<sup>24</sup>. In the event that there is a 'licensing' scheme in operation- e.g. for particular Houses of Multiple Occupation, or in a 'selective licensing area' (e.g. St George), landlord's conduct will be relevant to the question of whether they should be granted a licence or not on first or renewal application.

If within the Bristol City Council area: Bristol City Council have set up a specific Rogue Landlord Unit<sup>25</sup>. We would encourage any such queries to be sent to Bristol City Council via email i.e. to [private.housing@bristol.gov.uk](mailto:private.housing@bristol.gov.uk).

## **Police action**

- If the eviction is 'violent' within the meaning of section 6 Criminal Law Act 1977, this is prosecuted by the police rather than the Local Authority.
- Whilst section 6 Protection from Eviction Act 1977 doesn't mandate that police can prosecute Protection from Eviction Act matters, evictions may of course include

---

<sup>21</sup> Protection from Eviction Act 1977 s1(3A) <sup>22</sup>

Protection from Eviction Act 1977 s1(2) <sup>23</sup>

Protection from Eviction Act 1977 s1(3)

<sup>24</sup> See, e.g. <https://news.bristol.gov.uk/news/bristol-landlord-fined-for-illegally-evicting-tenant>

<sup>25</sup> <https://www.bristol.gov.uk/housing/report-rogue-landlord>

other criminal offences in any event, as well as more straightforward breaches of the peace (e.g. the tenant having a right to re-entry).

- The lack of power to prosecute Protection from Eviction Act offences appears to have led to anecdotal evidence that these matters are treated as inherently civil in nature, or worse, the landlord is in the right.

*Please do not hesitate to contact Bristol Law Centre housing department [Housing@bristolawcentre.org.uk](mailto:Housing@bristolawcentre.org.uk) if there are any queries in relation to the above, or if there is a client/service user whom may benefit from specialist legal advice.*

*Bristol Law Centre has a contract with the Legal Aid Agency allowing us to provide publicly funded advice and representation in appropriate cases.*

*This document covers any known changes up to 17<sup>th</sup> May 2020. Please note this document is intended as guidance and as such is unable to be relied upon or replace formal legal advice.*