

Guide for advisors – 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 whom benefit from 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.
- It is a **statement of law** that illegal eviction is a criminal offence. We are concerned about anecdotal suggestions that illegal evictions are considered as 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 and which has also civil remedies, into being a matter considered only as civil in nature, is wrong.

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 whom do not have 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' whom were given additional protection on notices, by the Government.
- The list of excluded occupiers is set out in law¹. Examples (not exhaustive) include: resident landlord with shared accommodation where the landlord resides in shared accommodation both at the outset and end of the agreement; holiday lets², rent-free

¹ Section 3A Protection from Eviction Act 1977

² So be careful of agencies and websites which define places as 'holiday lets' in their Ts and Cs!

accommodation, licensees of hostel accommodation, and accommodation provided to asylum seekers³.

- 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.⁴

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'⁵ (see COVID-19 and Homelessness). Authorities should not simply be evicting persons with an appearance of such a need back on to the streets.
- 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'.⁶

What is the nature of the protection?

- Those whom benefit 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

³ 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.

⁴ *Desnousse v Newham London Borough Council* [2006] EWCA Civ 547

⁵ 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

⁶ Section 6 Criminal Law Act 1977

Proceedings currently stayed to at least 25th June). The landlord must then obtain an eviction warrant if the occupier remains 'in situ' (stays sitting).

- Due to COVID-19, for the 'specified tenants' at present (including most private, Council and Housing Associations tenants) there must be a Notice Seeking Possession lasting at least three months, though this came into force only for notices served after 27th March 2020 and pre-existing notices are subject to the previous legislation⁷.
- For occupiers whom 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 occupation⁸.' Landlord notices need to be on a 'prescribed form.'⁹ Joint tenants where a notice has been served, or a tenant whom has served a 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 see 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)¹⁰

⁷ Schedule 29 Coronavirus Act 2020.

⁸ Section 5 Protection from Eviction Act 1977

⁹ Notices to Quit etc (Prescribed Information) Regulations 1988 schedule

¹⁰ For more examples, see e.g. shelter.org.uk or 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 income¹¹. 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 usually set out a particular course of conduct, to bar 'negative' course of conduct (i.e. 'you 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. 'you must allow access/readmit tenant to the property by 4pm...')
- Breaching an injunction, once it has been served on its recipient, could lead to a 'committal' application if breached, e.g. prison or a fine to those committed. Power of arrest can also be attached in cases of violence or threatened violence, meaning that police can arrest with reasonable belief as to breach of term.
- Whilst the Courts have stayed possession action at present, injunctions are not so stayed¹².
- 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)¹³.
- 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 damages¹⁴.
- 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.

¹¹ Legal Aid Sentencing and Punishment of Offenders Act 2012, schedule 1 s33(1) and (6)(b).

¹² CPR PD51Z

¹³

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=

¹⁴ 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.'

The Illegally evicted occupier and rehousing

- Occupiers whom have been illegally evicted should be considered as homeless¹⁵. 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 duty¹⁶.
- 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 plan¹⁷.
- An occupier looking to be given emergency accommodation historically (and usually) needs to demonstrate a 'priority need' to their Authority, to access emergency accommodation¹⁸. The Authorities are supposed to be funding accommodation to prevent roughsleeping for anyone at the present (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.

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.¹⁹

¹⁵ 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

¹⁶ England - Section 189B(2) Housing Act 1996; Wales- section 73(1) Housing (Wales) Act 2014

¹⁷ 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.

¹⁸ England - Section 188(1) Housing Act 1996; section 68(2) Housing (Wales) Act 2014

¹⁹ Protection from Eviction Act 1977 s1(3A)

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 premises²⁰.
- 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 above²¹.

Convictions could lead to prison or fines²². 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.

If within the Bristol City Council area: Bristol City Council have set up a specific Rogue Landlord Unit²³. We would encourage any such queries to be sent to Bristol City Council via email i.e. to 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.

Please do not hesitate to contact Mike Norman miken@bristollawcentre.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. Please note this document is intended as a guide and as such unable to be relied upon or replace formal legal advice.

²⁰ Protection from Eviction Act 1977 s1(2)

²¹ Protection from Eviction Act 1977 s1(3)

²² See, e.g. <https://news.bristol.gov.uk/news/bristol-landlord-fined-for-illegally-evicting-tenant>

²³ <https://www.bristol.gov.uk/housing/report-rogue-landlord>

