



Looking forward – what changes do we need to housing law?

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GARDEN COURT CHAMBERS



8 July 2021



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(1) Section 21 / ground 8

Queen's Speech:

“My Government will help more people to own their own home whilst enhancing the rights of those who rent.”

Background Briefing Notes

● “The Government is committed to building back fairer and having a Better Deal for Renters in England. Later this year we will:

Publish our consultation response on reforming tenancy law to abolish Section 21 ‘no fault’ evictions and improve security for tenants in the private rented sector, as well as strengthening repossession grounds for landlords when they have valid cause.”



(2) Tenancy Deposits

Queen's Speech Background Briefing Notes:

- [we will]:

“Outline proposals for a new ‘lifetime’ tenancy deposit model that eases the burden on tenants when moving from one tenancy to the next, helping improve the experience of those living in the private rental sector”

Tenancy Deposit Reform: A Call for Evidence

“The Government also intends to carry over the existing tenant protections included in the section 21 eviction process (for example for the requirement for landlords to provide evidence that they have protected the tenant’s deposit before an eviction can be granted by the court) into the new tenancy regime. ”



(3) Landlord register

Queen's Speech Background Briefing Notes:

- [we will]:

“Bring forward reforms to drive improvements in standards in rented accommodation, including by ensuring all tenants have a right to redress, and ensuring well targeted, effective enforcement that drives out criminal landlords, for example exploring the merits of a landlord register”

“We will publish a White Paper detailing this reform package in the autumn, and legislation will follow in due course”



(4) Simplification of tenure

Law Commission 2016 recommends identical contracts for all council and housing association tenants (and encourages private sector landlords to emulate)

Reflected in Renting Homes (Wales) Act 2016 “Community landlords”



(5) Care leavers

“Priority need up to 25 for care leavers”



(6) Abolish NRPF

“Rough sleeping can't be eradicated without the removal of this policy.”



(7) Right to request transfer

“Most mega-corp Housing Associations will almost always refuse an emergency transfer with interim TA to any of their secure or assured Social Housing tenants who are then forced to flee / abandon a property (through DA/ ASB / Harassment / Disrepair / Health issues). The tenant to get away from the problem and Emergency TA then has to make a new Part VII homelessness application through HRA 2017. These tenants are almost guaranteed NOT to receive a social housing tenancy in replacement but unaffordable/ insecure Private Rented Sector AST. How can advisors or lawyers ensure these (mostly vulnerable tenants with marginal employment opportunities) can keep their secure or assured status unless they can manage to hold onto their existing tenancy?”



(8) “Settlement agreements”

- LL and T can negotiate terms of departure
- Eg Early departure
- Eg Terms for deposit
- Eg Cross claims rent arrears vs deposit / disrepair



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Should we rethink homelessness appeals?

- Appeals can be brought under section 204 Housing Act 1996 in the county court on a point of law
- Prior to Housing Act 1996 coming in to force, challenges to homelessness decisions were by judicial review
- In section 204 appeals it is essentially public law arguments that are raised
- Fresh evidence is not usually permitted and the court is not typically asked to consider the facts
- The main role is to consider the lawfulness of the local authority's decision
- Most common outcome on a successful appeal is for the county court to order the decision to be quashed



An idea to consider

- What if a separate branch of the tribunal system was created to deal with homelessness appeals – or if appeals were dealt with by the Social Entitlement Chamber?
- Tribunals can hear live evidence if needed and step into the shoes of a decision-maker in terms of remedies
- Inquisitorial process with specialist judges, and potentially additional panel members
- Already some parallel with benefits appeals where ‘mandatory reconsideration’ needs to be exhausted before lodging an appeal
- Could be particularly useful for priority need cases or complex eligibility cases, or for challenging decisions relating to ‘reasonableness’ of accommodation



Some other points

- To work effectively homelessness appeals would need to remain in scope for legal aid (NB can get legal aid in the First-tier Tribunal for some immigration cases and some employment cases, and for others such as welfare benefits ECF may be available)
- Interim remedies; section 204A accommodation?
- Role of Upper Tribunal in appeals on point of law – but from FtT decision
- Statistically appellants do well in benefits and immigration tribunal appeals – data on outcomes in the county courts is harder to find
- Costs implications for appellants, respondents and practitioners?



Thank you

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