



Housing Law Update

Jonathan Manning
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jmanning@4-5.co.uk

Main provisions

- The Bill, if it passes, imposes this central obligation.
 - Section 9A(1) – In a lease to which this section applies of a dwelling in England (see section 9B), there is implied a covenant by the lessor that the dwelling—
 - (a) is fit for human habitation at the time the lease is granted or otherwise created or, if later, at the beginning of the term of the lease, and
 - (b) will remain fit for human habitation during the term of the lease.



Part 1: Housing Standards



Main provisions – Leases

- Leases to which the provisions apply (s.9B(1)) are generally those:
 - under which a dwelling is let wholly or mainly for human habitation if either—
 - (a) it is for a term of less than 7 years, or
 - (b) it is a secure or PRP assured tenancy for fixed term of 7 years or more (s.13(1A, 1B)).
- But leases are excluded if they are excluded from the operation of the s.11 repair covenant by s.14, 1985 Act.



Introduction

- Homes (Fitness for Human Habitation) Bill.
- Second Reading in the House of Lords – 23 November 2018.
- Amends the Landlord and Tenant Act 1985, introducing new ss.9A-C and amending s.10 to require certain properties to be let and kept in habitable condition.
- Not limited to the private sector.
- The original intention to amend the Building Act 1984 to impose liability for breach of building control etc is not being pursued.



Main provisions – Leases

- Also excluded (generally) are leases granted before the Act comes into force (or granted on or after that date pursuant to an agreement or court order made before the commencement date) (s.9B(3)).
- But a periodic or secure tenancy that is in existence on the commencement date are treated differently (s.9B(4)).
 - the implied covenant has effect so that the implied covenant in s.9A(1)(a) (that the property is fit) does not come into effect until 12 months after the Bill comes into force, and
 - The implied covenant in s.9A(1)(b) (that the property will be kept fit) only applies to times falling after the end of that 12 month period.
- The covenants also apply to periodic or secure tenancies coming into existence on the expiry of an earlier lease (s.9B(5)).



Main provisions – Other terms

- The covenants do not require the landlord to remedy problems caused by the tenant, or to reinstate or rebuild after a flood, or to repair tenant's fixtures, or works the landlord is not entitled to do (s.9A(2)-(3)).
- They do apply to common parts in which the lessor has an estate or interest (s.9A(6)).
- The tenant can enforce the covenants by specific performance (s.9A(5)) – the Government appear to have confirmed that legal aid will be available.
- There is an implied access covenant on 24 hours' written notice and at reasonable times of the day (s.9A(7)-(8)).



Tenant Fees Bill

- Payments that are permitted in principle include
 - Rent,
 - Tenancy deposits,
 - Holding deposits,
 - Payments for variations, assignments, novations etc,
 - Payments due in the event of tenant default or early departure, and
 - Payments for council tax, utilities and communication services are all permitted in principle (Sch.1).
- But they are subject to complex anti-avoidance provisions in Schs 1 and 2.



Main provisions – Other terms

- In deciding whether a lease is for less than 7 years, any period of the lease before the date of the grant is excluded (s.9B(8)(a)).
- A landlord's right to determine a lease within 7 years brings the lease within the provisions (s.9B(8)(b)).
- A lessee's option which if exercised would take the lease over 7 years, excludes the lease (s.9B(8)(c)).
- Certain agricultural dwellings are included (s.9C(1))
- Section 10. 1985 Act is amended so that the test of fitness relates to any "prescribed hazard" under HHSRS (Housing Act 2004, Pt 1).



Tenant Fees Bill

- Enforcement is by local authorities
- Civil penalties for breach apply (and criminal penalties for second breaches).



Tenant Fees Bill

- This Bill is also in the House of Lords – report stage is on 5 December 2018.
- The Bill will prohibit certain charges or "prohibited payments" imposed by landlords or letting agents in relation to a tenancy, or the provision of services to the tenancy (including insurance and utilities) (ss,1-2).
- It operates by prohibiting all payments unless they are permitted by Schedule 1 (s.3 and Sch.1).



Part 2: A Housing Court?



Consultation on a specialist Housing Court

- On 13 November 2018, MHCLG issued a consultation document or “call for evidence” entitled *Considering the case for a Housing Court, A Call for Evidence*. The consultation closes on 22 January 2019.
- Para.10 states:
The government wants to explore whether a specialist Housing Court could make it easier for all users of court and tribunal services to resolve disputes, reduce delays and to secure justice in housing cases... Presently, housing cases are heard in a range of settings. The First-tier Tribunal (Property Chamber) deals with a variety of specialised housing and property disputes. However other housing cases, including possession cases and claims for disrepair and dilapidations, are heard in the county court... The processes and procedures involved can often be confusing for tenants, landlords and property owners in leasehold cases.



Consultation on a specialist Housing Court

- Option 2: Making structural changes to the existing courts and property tribunals, *i.e.* whether housing cases currently considered by either should continue to be considered by them or whether to move certain specialist housing cases (non-possession cases) into the Tribunal or from the Tribunal to the county court.
- Option 3: Make changes to the enforcement process in the county court (considered in more detail in Part 2 of the call for evidence) - whether there is a need for more information advising claimants of what they need to do to complete the process, and whether there is a requirement for more information on what the landlord needs to do on the day of eviction, as the enforcement process is not automatic and needs to be applied for.
- Option 4: No changes ('do nothing' option) but strengthen guidance to help users navigate the court and tribunal process. This option would mean that cases would continue to be heard in the county court and Tribunal as at present, but with improved guidance available so that the parties are clear about the procedures involved, as well as their rights and responsibilities.



Consultation on a specialist Housing Court

- The call for evidence is in four parts:
 - Part 1: The private landlord possession action process in the county court
 - Part 2: Enforcing a possession order
 - Part 3: Access to justice and the experience of court and tribunal users
 - Part 4: The case for structural changes to the courts and the property tribunal.
- Part 1 concerns delays in obtaining evictions for rent arrears and whether these are a deterrent to landlords granting longer tenancies.
- Part 2 relates specifically to delays in enforcing possession orders, and refers to the MoJ possession project starting in early 2019 which will look into simplifying processes.



Part 3: Some cases with very little thematic linkage



Consultation on a specialist Housing Court

- Part 3 is a more general question about court and tribunal users' experiences. Para.32 says:
We want to explore whether access to justice for owners, landlords and tenants can be improved. We are aware that some users of the courts and tribunals, particularly tenants, but also landlords with fewer properties, find the process daunting and confusing... We want to understand users' experiences of these processes further.
- Part 4 concerns the possibility of structural change. The paper suggests 4 options:
 - Option 1: Establishing a new, specialist Housing Court. We want to gather views on whether there is merit in bringing all housing issues under a single, specialist Housing Court.



Possession, ASB and Disability

- *Havering LBC v Eales* [2018] EWHC 2423 (QB)
- *C & C v The Governing Body of a School, The Secretary of State for Education (First Interested Party) and The National Autistic Society (Second Interested Party) (SEN)* [2018] UKUT 269 (AAC).
- By Reg.4(1)(c), Equality Act 2010 (Disability) Regulations 2010/2128, any tendency to physical abuse of others cannot qualify as an impairment or therefore as a disability for the purposes of the 2010 Act.



Possession, ASB and Disability

- The same applies to addiction to alcohol, nicotine or any other substance, unless originally the result of prescribed medication or medical treatment (Reg.3(1)).
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- In *X v Governing Body of a School* [2015] UKUT 0007 (AAC); [2015] ELR 133, the Upper Tribunal held (at [101]) that the excluded conditions contained in the 2010 Regulations applied to exclude such matters from the definition of disability whether or not the underlying cause of those excluded conditions was an underlying "legitimate impairment" within the 2010 Act .



Possession, ASB and Disability

- At [90] Judge Rowley said:
 - 90. ...in my judgment the Secretary of State has failed to justify maintaining in force a provision which excludes from the ambit of the protection of the Equality Act children whose behaviour in school is a manifestation of the very condition which calls for special educational provision to be made for them. In that context, to my mind it is repugnant to define as 'criminal or anti-social' the effect of the behaviour of children whose condition (through no fault of their own) manifests itself in particular ways so as to justify treating them differently from children whose condition has other manifestations.
- She therefore, by way of remedy, read the provision down under s.3, HRA 1998, construing it as not applying at all "to children in education who have a recognised condition that is more likely to result in a tendency to physical abuse" (at [95]).



Possession, ASB and Disability

- *Eales* concerned a possession order where ASB was alleged (and found by the DJ) to have been caused by substance abuse albeit that D also had a disability. The medical evidence as recited by the Judge was that the prognosis for the disability was poor unless the addiction issues were addressed.
- The Judge upheld the possession order of non-secure accommodation in those circumstances as proportionate.



Possession, ASB and Disability

- *Paragon Asra Housing Limited v Neville* [2018] EWCA Civ 1712; [2018] HLR 39
 - For a possession order to be made, the court must consider the the proportionality of making it. It must therefore be satisfied that, if it is suspended, the order can be lawfully enforced. Once made, it is binding so that, absent a relevant change of circumstances, the tenant cannot require the court to re-consider proportionality when the landlord seeks to enforce the order.
- *Worthington v Metropolitan Housing Trust* [2018] EWCA Civ 1125
 - Correspondence threatening legal action could amount to a breach of the Protection from Harassment Act 1998.



Possession, ASB and Disability

- *C & C* was an education case concerning the exclusion of children with an ASD or ADHD where they have been violent to staff or other children. It was argued that Reg.4(1) was discriminatory against children whose disability rendered them more likely to have a tendency to physical abuse (Art.14, ECHR read with A2P1 – the right to education).
- The Tribunal found that the justification for the Regulation was not made out, though not questioning the domestic law interpretation of the provision.

