

RENTERS RIGHTS BILL SEMINAR – PART 2

- Chair: Daniel Clarke
- Enforcement: Cara Hall
- Possession: Dominic Preston and Marie Paris
- Tribunal Work: Siobhan McGrath, President of the First Tier Tribunal (Property Chamber)



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Renters' Rights Bill: Grounds for Possession



Marie Paris



POSSESSION PROCEEDINGS

Headline changes:

- New grounds available (see Schedule 1)
- Amendments to existing grounds (see Schedule 1)
- Amendment to notice periods (see Schedule 1)
- Penalties for breach of RRA that will affect ability to gain possession

Otherwise, the procedure will likely be the same

- NOSPs will still be governed by s.8 HA 1988, with s.6 RRA providing that the Secretary of State will publish the prescribed form

NOTICE PERIODS

Mandatory Grounds

Ground	Notice Period
7A	Immediate
4, 7B	2 weeks
5E, 5F, 5G, 8	4 weeks
5A, 5B, 5C, 5D, 5H, 7	2 months
1, 1A, 1B, 2, 2ZA, 2ZB, 2ZC, 2ZD, 4A, 6, 6A, 6B	4 months



NOTICE PERIODS

Discretionary Grounds

Ground	Notice Period
14	Immediate
12, 13, 14, 14ZA, 15, 17	2 weeks
10, 11, 18	4 weeks
9	2 months



PENALTIES

Section 7 HA 1988 will be amended to insert subsection (57B):

“The court may not make an order for possession of a dwelling-house while the landlord (or, in the case of joint landlords, any of the joint landlords) is in breach of section 83(3)(a) of the Renters' Rights Act 2024 in relation to the dwelling-house, unless the ground for possession is Ground 7A in Part 1 of Schedule 2 to this Act or Ground 14 in Part 2 of that Schedule.”

Section 83(3)(a) RRA:

“A person who is a residential landlord in relation to a dwelling is under a duty to ensure that— (a) (b) there is an active landlord entry in the database in respect of the person and an active dwelling entry in the database in respect of the dwelling, and any requirements relating to the entries imposed by regulations under section 79 are complied with.”

So – if the landlord doesn't have an active entry on the database for the property, they are not getting possession unless they can make out an ASB ground

BUT Secretary of State retains power to make Sis that will change the circumstances in which a possession order is not possible if you are in breach



GROUND 1

Occupation by landlord/member of the landlord's family

- Tenancy must have begun at least one year before relevant date
- Landlord that is seeking possession requires the property as the only or principal home
- Exhaustive list of persons who would make out the ground: the landlord; the landlord's spouse or civil partner or a person with whom the landlord lives as if they were married or in a civil partnership; the landlord's—parent; grandparent; sibling; child; grandchild; a child or grandchild of spouse/civil partner/someone living as if they were married/in civil partnership
- Relations of the “half-blood” count!
- If joint landlord, only one of the landlords needs to meet the criteria



GROUND 1A

Sale of Dwelling House

- Have to be selling leasehold or freehold interest or granting lease for term certain of more than 21 years
- Note available if for old Rent Act tenancies
- Current tenancy needs to have begun at least year before relevant date OR at relevant date notice of compulsory acquisition has been given and LL selling to LA
- Not available to social landlords
- "Sell" includes "transfer"



GROUND 1B

Rent-to-Buy

- Have to be selling leasehold or freehold interest / granting lease for term certain of more than 21 years / granting an assured tenancy
- Note available if for old Rent Act tenancies
- Only available to registered social landlords
- Only available where assured tenancy being brought to an end was entered into as a Rent-to-Buy agreement, where period agreed has ended and landlord has complied with the Rent-to-Buy agreement

GROUNDNS 2ZA, 2ZB, 2ZC, 2ZD, 2ZE

Superior Lease Grounds

- 2ZA: Where landlord holds interest in the property under a superior tenancy, where superior landlord has given valid notice to terminate tenancy meaning that superior tenancy will end within 12 months of relevant date (if joint landlords, one must meet criteria at 2ZA(b), e.g., social landlord)
- 2ZB: Where landlord holds interest under a superior tenancy with a fixed term lease of more than 21 years, the fixed term is due to expire within 12 months of relevant date, OR if the superior tenancy continues after fixed term ended, proper notice to terminate it has been served and is due to expire within 12 months of relevant date
- 2ZC: Landlord became landlord under section 18 HA 1988 no more than 6 months before commencement of possession proceedings, and the previous landlord was one of the listed categories (e.g. registered social landlord)
- 2ZD: Landlord became landlord under section 18 HA 1988 no more than 6 months before commencement of possession proceedings, as a result of a superior tenancy which was a fixed term tenancy of a term certain of more than 21 years coming to an end on the expiry of the fixed term, within the period of 12 months ending with the date on which the fixed term would have expired if the tenancy had not come to an end, OR after the expiry of the fixed term, as a result of a valid notice to terminate the tenancy.

GROUNDNS 6A

Redevelopment

Must meet all conditions:

- Landlord must be relevant social landlord
- The Property (home) was made available to current tenant or predecessor in title to enable redevelopment of previous home
- Previous home has to have been only or principal home of tenant/PiT
- Previous home was let by registered social landlord or (non-private) registered provider of social housing
- Alternative accommodation that is either previous home (must be affordable) or new home (must be affordable and in appropriate location and not overcrowded) is available when possession order takes effect
- Alternative accommodation is let as separate dwelling with adequate security of tenure

What is adequate security? Either assured or seems to the court to be reasonably equivalent to assured

What is affordable? No more expensive than previous home before RD, and reasonably suitable to the means of the tenant

What is appropriate location? Reasonably close to previous home or reasonably suitable to means of the tenant/family regarding proximity to work (nothing else!)

GROUNDNS 6B

Landlord in breach

Available where:

- Dwelling house being let causes landlord to be in breach of a banning order (or would do)
- There is an improvement notice requiring remedial works due to overcrowding
- Prohibition order prevents dwelling house/communal areas being used for a purpose consistent with occupation of the tenant
- HMO where licence refused or revoked
- HMO/licenced property where occupied by more than the maximum permitted number of households
- Compliance with planning enforcement notice/injunction would be incompatible with continued occupation of tenant

CHANGES TO EXISTING GROUNDS

Ground 3 (holiday lets) gone!

Ground 8:

- Amended by paragraph 24, Schedule 2 RRA
- New Ground 8 will read:

“Both at the date of the service of the notice under section 8 of this Act relating to the proceedings for possession and at the date of the hearing—

(a) if rent is payable weekly or fortnightly, at least [thirteen] weeks rent is unpaid;

(b) if rent is payable monthly, at least [three] months rent is unpaid;

and for the purpose of this ground “rent” means rent lawfully due from the tenant.”

When calculating how much rent is unpaid for the purpose of this ground, if the tenant is entitled to receive an amount for housing as part of an award of universal credit under Part 1 of the Welfare Reform Act 2012, any amount that was unpaid only because the tenant had not yet received the payment of that award is to be ignored.

CHANGES TO EXISTING GROUNDS

Ground 7 – Death of the Tenant

The tenancy has devolved on a person (the "new tenant") under the will or intestacy of the former tenant and the proceedings for the recovery of possession are begun not later than twelve months after the death of the former tenant or, if the court so directs, after the date on which, in the opinion of the court, the landlord or, in the case of joint landlords, any one of them became aware of the former tenant's death.

But, if the new tenant is occupying the dwelling-house as the new tenant's only or principal home immediately before the death of the former tenant, an order for possession on this Ground may not be made unless—

- (a) the tenancy has previously devolved on the former tenant under a will or intestacy (whenever that devolution occurred), or
- (b) the tenancy is a special tenancy immediately before the death of the former tenant.

“Special tenancy” includes ones granted by private registered provider of social housing, rent to buy, section 193 accommodation, supported accommodation, meets conditions (a), (b), (d) and (e) in Ground 5H



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Renters' Rights Bill: *Enforcement*



Cara Hall



LOCAL AUTHORITY ENFORCEMENT

Clause 107 of the Bill provides that “it is the duty of every local housing authority to enforce the landlord legislation in the area.” The Bill implements expansive investigatory and enforcement powers in respect of a wide range of different breaches.

Landlord legislation = Chapters 3 and 6 of Part 1 of the Bill, Part 2 of the Bill, sections 1 and 1A PEA 1977 and Chapter 1 of Part 1 HA 1988.

Enforcement = financial penalties or summary criminal conviction.

A vertical decorative image on the left side of the slide, showing a white, ornate architectural detail, possibly a ceiling or wall molding, with intricate scrollwork and floral patterns.

INVESTIGATORY POWERS

To assist with enforcement, Local Authorities have been given broad investigatory powers as set out in clauses 114 – 129 of the Bill, giving local authorities powers to obtain specified information from relevant persons (including by making an application to the court) or to enter business or residential premises for the purposes of any function under specified legislation or where an offence is reasonably suspected.

It is worth having a look at to ensure you are able to explain the local authority's own powers to it when they inevitably do not do as required!



ENFORCEMENT AGAINST WHO?

Some provisions only apply to landlords, while others apply to “relevant persons”, defined in new section 16M HA 1988 (inserted by cl 19) as the landlord, a person acting on behalf of the landlord otherwise than as a legal representative, or a person purporting to act on behalf of a landlord.

it will be important to consider the wording of each provision in each case and also the status of the person in breach as there are some defences built in for persons who are not landlords.

SECTION 16D HA 1988, as inserted by clause 14 of the Bill

Section 16D provides that a landlord must give to his tenant a written statement of such terms of the tenancy as specified by the Secretary of State following a surrender and regrant



Section 16I HA 1988, as inserted by clause 17 of the Bill - if satisfied beyond reasonable doubt that the landlord has contravened section 16D
Financial penalty \leq £7k

SECTION 16E HA 1988, as inserted by clause 15 of the Bill

At (1), prohibits a relevant person from:

- (a) Purporting to let a property for a fixed term;
- (b) Purporting to bring a tenancy to an end by service of a notice to quit;
- (c) Purporting to bring a tenancy to an end orally;
- (d) Serving a purported notice of possession, as defined in the new section 16M of the Housing Act 1988 (see cl 19 of the Bill);
- (e) Relying on a ground in schedule 2 where the landlord does not reasonably believe that the landlord may be able to obtain an order for possession on that ground;

(2) and (3) prohibit reletting and marketing the premises for a term of 21 years or less following reliance on grounds 1 or 1A



Section 16I HA 1988, as inserted by clause 17 of the Bill - if satisfied beyond reasonable doubt that the landlord has contravened section 16E(1)(a) – (d) OR that the person contravened (1)(e) AND the tenant surrendered their tenancy within four months of the contravention without a possession order.

Financial penalty ≤ £7k

SECTION 16J HA 1988, as inserted by clause 17 of the Bill

A relevant person is guilty of an offence if:

- (1) They rely on a ground in schedule 2, knowing that the landlord would not be able to obtain an order for possession on that ground, or being reckless as to whether the landlord would be able to do so AND the tenant surrenders the tenancy within four months of the date the ground was relied on, without an order for possession: (slightly different to a breach of 16E(1)(e)).
- (2) They contravene section 16E(2) or 16E(3) eg marketing or letting the property following a possession order on grounds 1 or 1A
- (3) A financial penalty has been imposed on the person and the conduct continues after 28 days of the imposition of that penalty.
- (4) The landlord conducts themselves in a manner giving rise to liability to a financial penalty under section 16I (as discussed) and within five years of that conduct, is imposed with another penalty for different conduct or is convicted off an offence under this section.



Liable on summary conviction to a fine (section 16J HA 1988)

OR

If satisfied of an offence beyond reasonable doubt, a financial penalty \leq £40,000 (section 16K HA 1988, as inserted by Clause 17 of the Bill)

A rent repayment order can also be sought for breach of 16J(1) – (3).

Do not have to have been a tenant at the time the offence under (1) or (2) was committed to seek an RRO

Clauses 35 and 36 of the Bill

Clause 35: discrimination
relating to children

Clause 36: discrimination
relating to benefits status



Clause 42 - if satisfied on
the balance of
probabilities
Financial penalty of \leq £7k

Clause 58 of the Bill

(1) A relevant person must not advertise or offer in writing the proposed letting unless the rent that is to be payable under the letting is a specific amount and the advertisement or offer states that proposed rent

(2) A relevant person must not invite or encourage any person to offer to pay an amount in excess of the proposed rent or accept an offer to pay an amount in excess of the proposed rent



Clause 59 - if satisfied on the balance of probabilities
Financial penalty of \leq £7k

Clause 83 of the Bill

Restrictions on marketing, advertising and/or letting dwellings where there is no active landlord on the database or no active dwelling entry on the data base



Clause 92 - if satisfied beyond reasonable doubt
Financial penalty of \leq £7k

Clause 93 of the Bill

A person commits an offence if

(1) the person knowingly or recklessly provides information to the database operator which is

false or misleading in a material respect in purported compliance with a requirement imposed by regulations under this Chapter

(2) A relevant penalty has been imposed and the conduct continues 28 days after the imposition

(3) A relevant penalty has been imposed in respect of breach of clause 83 (previous slide) and the person engages in conduct which constitutes a different breach within five years of the penalty.

(4) A relevant penalty has been imposed in respect of an offence under this section OR convicted of such an offence, and the person breaches section 83 (previous slide) within 5 years of the penalty/conviction.



Liable to a fine on conviction (clause 93)

OR

if satisfied beyond reasonable doubt
Financial penalty of ≤ £40k (clause 92)

A rent repayment order can also be sought for an offence under 93(1)

A rent repayment order can also be sought for an offence under 93(2) PROVIDED that the relevant penalty was imposed for breach of clause 83(3) (continued breaches re database)

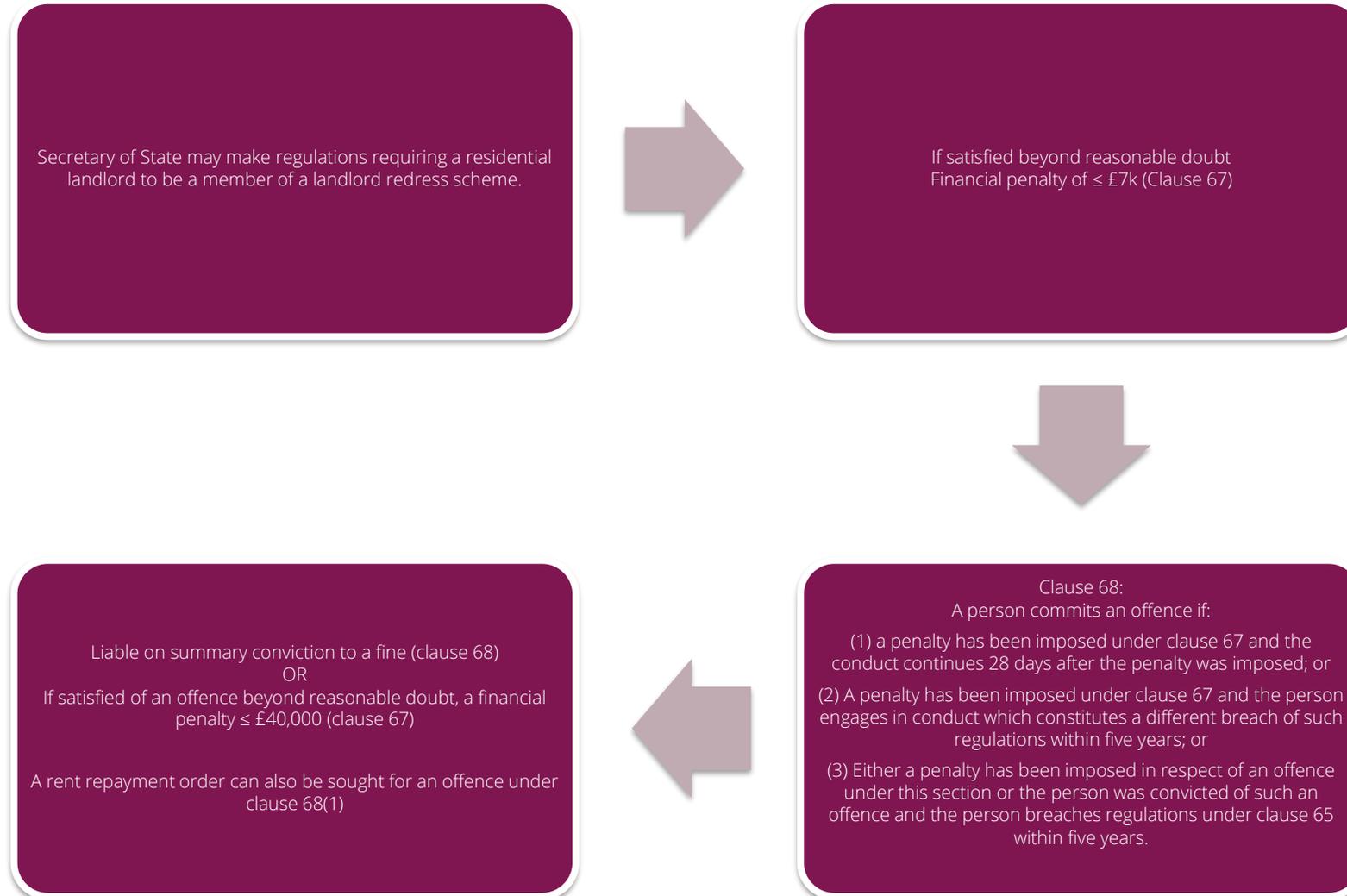
Section 1 Protection from Eviction Act 1977

Unlawful eviction: clause 60 inserts
a new section 1A into PEA 1977



Liable to a fine or imprisonment on
conviction (section 1 PEA 1977)
OR
if satisfied beyond reasonable
doubt
Financial penalty of \leq £40k (section
1A PEA 1977)

Clause 65 of the Bill





PROVISIONS APPLYING TO ALL FINANCIAL PENALTIES

Financial penalties can be imposed jointly if two or more people have breached the relevant provisions

All provisions providing for financial penalties give the Secretary of State the power to give guidance to local authorities about the exercise of their functions under the relevant sections, which LA must take account of.

The Local Authority can apply the proceeds of any financial penalties to meeting the costs and expenses in carrying out its enforcement functions or otherwise in relation to the PRS. It will be in the Local Authorities' interests to spend it or the proceeds will have to be paid to the Secretary of State.



PROVISIONS APPLYING TO ALL OFFENCES

No financial penalty can be imposed if the person has been convicted of an offence or if criminal proceedings have been instituted, and vice versa (no conviction if financial penalty imposed) for the same conduct. It is either/or, not both UNLESS a financial penalty has been imposed and the conduct continues after 28 days or there is a further breach after 5 years, at which point EITHER a further financial penalty can be imposed or criminal proceedings instigated. Important to consider the requirements of each offence.

Where an offence is by a body corporate and is attributable to an officer of that body, that officer and the body both commit the offence. Slightly different involvement of the officer needs for the different offences so consider each section carefully.

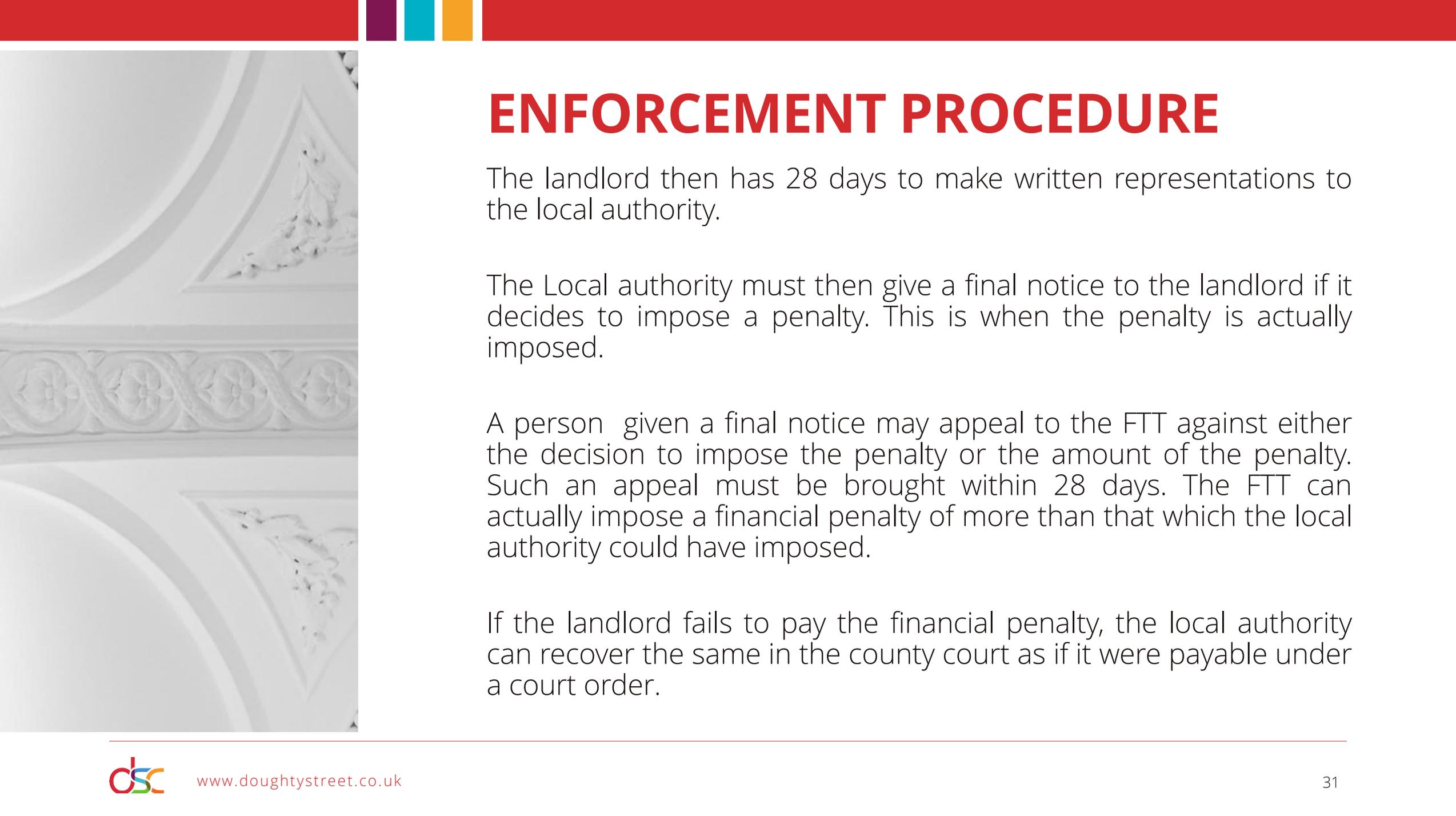
Penalty on conviction of any offences = a fine (save for breach of s 1 PEA 1977)



ENFORCEMENT PROCEDURE

Clause 18 inserts a new schedule 2ZA into the Housing Act 1988 to deal with the imposition of financial penalties for new sections inserted into HA 1988 by the Bill . This is also set out in Schedule 5 of the Bill for breaches that fall under the Bill, and Schedule A1 PEA 1977 for breaches of section 1 PEA 1977. Existing provisions continue to apply in respect of licensing.

First, the LA must give the landlord a notice of intent before imposing any financial penalty: this must be within 6 months of when the LA has sufficient evidence of the conduct to which the financial penalty relates. If conduct is ongoing, notice may be given at any time or within 6 months of the last day the conduct occurs.



ENFORCEMENT PROCEDURE

The landlord then has 28 days to make written representations to the local authority.

The Local authority must then give a final notice to the landlord if it decides to impose a penalty. This is when the penalty is actually imposed.

A person given a final notice may appeal to the FTT against either the decision to impose the penalty or the amount of the penalty. Such an appeal must be brought within 28 days. The FTT can actually impose a financial penalty of more than that which the local authority could have imposed.

If the landlord fails to pay the financial penalty, the local authority can recover the same in the county court as if it were payable under a court order.



RENT REPAYMENT ORDERS

Clause 99 amends Section 40 of the Housing and Planning Act 2016 so that rent repayment orders can be sought for new offences under section 16J HA 1988 or under the Bill itself.

Limitation" for seeking an RRO also increased from 12 months to two years.

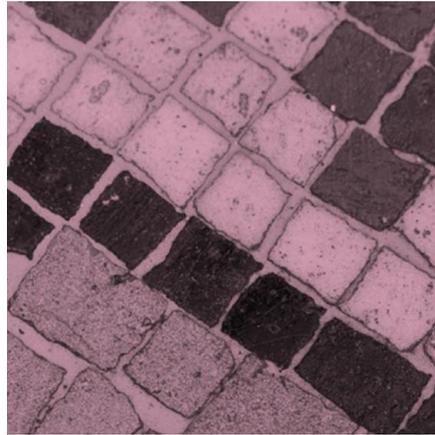
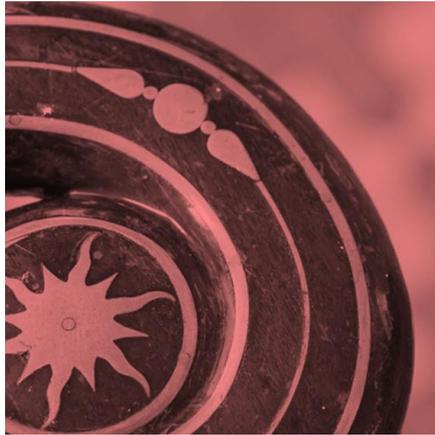
Clause 103 amends section 30 of the Housing and Planning Act so that the FTT can make an RRO where an offence has been committed by a landlord or any superior landlord.

Clause 104 inserts a new section 51A into the Housing and Planning Act 2016 so that both a body corporate and an individual officer can be treated as having committed the offence and liable for the RRO.

FINALLY, A NOTE ON GAS SAFETY

At Part 1, I was asked specifically about whether the Bill addresses enforcement of Gas Safety given that section 21 is going to be abolished. Of course, challenging the lack of a GSC in the context of section 21 claims was not a good mechanism for enforcement of these requirements in any event.

There are no provisions in the Bill dealing directly with Gas Safety and it seems existing mechanisms will apply eg complaining to the Health and Safety Executive (HSE) who can serve an improvement notice or prosecute landlords who do not meet their gas safety obligations.





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Renters' Rights Bill
*Grounds of Possession:
The Protected Sectors*



Dominic Preston



THE PROTECTED SECTORS – GROUNDS OF POSSESSION

- Students
 - Grounds 4 and 4A (Sch 2, HA 1988)
- 'Tied' Accommodation – Now wider grounds covering accommodation for key workers
 - Grounds 5, 5A, 5B, 5C and 5D
- Supported accommodation
 - Grounds 5E, 5F and 18
 - Ground 5H – stepping stone accommodation
- Homelessness – s. 193 accommodation
 - New Ground 5G

PROTECTED SECTORS - GENERAL POINTS

- Protected sectors *also* benefit from exclusions from security per Sch 1
 - Covered in seminar 1
- Grounds 4, 5 to 5H and 18 require pre-grant notices:
 - Notices must be in pre-grant 'statement of terms' (s. 16D(3))
 - In the absence of notice in the statement of terms:
 - It is a breach of the 'landlord duty' to make a claim on any of those grounds (HA. 88, s. 16E(1)(f)).
 - Such a breach can lead to a fine (HA 88, s. 16I(1)(a)).
- Ground 4A also requires pre-grant notice but failure does not have same consequences
- Schedule 2 (HA 88) includes a new Part V:
 - Para 12 – definitions – notably definition of 'relevant date'
 - Para 13 – Power given to SofS to amend definitions and descriptors in Grds 2ZA, 2ZC, 5C, 5H, 6B and 7



STUDENT ACCOMMODATION – GROUND 4

- ***Reminder:*** New sch. 1 para 8 excludes from security of tenure any tenancy granted
 - ***by*** certain specified landlords (including private landlords signed up to relevant code of conduct)
 - ***to*** person pursuing or intending to pursue course of study
- Mandatory Ground 4 – intended to preserve supply. Applies if:
 - In the preceding 12 months, the property had previously been let on a tenancy covered by sch. 1, para 8
 - Notice of intended use was included in pre-grant ‘notice of terms’



STUDENTS – MANDATORY GROUND 4A

- All tenants are either *full time* students at start of tenancy (or landlord reasonably believes they will become students during tenancy)
- Student is on a course listed in Sch 6 of the Education Reform Act 1988 (degree, post-grad, teacher training or similar)
- Prior written notice of intention to use Ground 4A was given to at least one of the tenants (no need to be in 'statement of terms')
- Time between contract and start of tenancy is 6 months or less
- Landlord intends to regrant property to other students after recovery of property
- Section 8 notice requires possession between 1st June and 30th September (or is dispensed with by the court)



KEY WORKER ACCOMMODATION

Summary of grounds:

- Grd 5 – let to minister of religion
- Grd 5A – *grant to agricultural workers*
- Grd 5B – accommodation is generally used for *'persons who meet requirements connected with their employment'*
- Grd 5C – Tenancy granted *'in consequence of tenant's work or employment'*
- Grd 5D –
 - Tenancy let to tenant who meets requirements set by landlord that are *'connected with their employment'*;
 - tenant no longer meets those requirements; and
 - tenancy was granted by registered social landlord

ABOVE GROUNDS ALL REQUIRE PRE-GRANT NOTICE OF INTENDED USE IN
'STATEMENT OF TERMS'



GROUND 5C – KEY POINTS

- Previously discretionary ground 16 – now moved to mandatory 5C
- Applies if tenancy let in consequence of tenant's work or employment
- Applies to self-employed as well as employees
- Applies to someone who holds office of 'constable' (but with modifications)
- Landlord and 'employer' need not be the same
- Applies if:
 - Tenant's employment has ceased; or
 - property was intended only for an *'early period of the tenant's employment'*, that period has come to an end and the property is now wanted by landlord for another employee or worker engaged by the same 'employer'.



SUPPORTED ACCOMMODATION: NEW GROUNDS

Summary of new grounds for supported accommodation sector:

- **Grd 5E** – supported accommodation let to tenant for unconnected reasons
- **Grd 5F** – Let as supported accommodation
- **Grd 18** – *Discretionary* ground: let as supported accommodation and tenant has ‘unreasonably refused’ to cooperate with provision of support services
- **Ground 5H** – stepping stone accommodation
 - Note – extensive set of conditions for ground to be made out
 - Aimed at charities and social landlords providing specialist accommodation where tenant meets certain eligibility conditions set by landlord
 - E.g. refuges; prisoners on parole; recently released mental health patients



MEANING OF SUPPORTED ACCOMMODATION

A dwelling-house is supported accommodation if:

- It is let by a housing association, private registered provider of housing, a registered charity, or a voluntary organisation *and*
- the tenant receives care, support or supervision provided by:
 - The landlord or the landlord's agent; *or*
 - A third party but the tenant has been admitted into the accommodation in order to meet a need for care, support or supervision.

(Sch. 2, part V, para 12)



SUPPORTED ACCOMMODATION: GROUND 5F CONTAINS MULTIPLE GROUNDS OF POSSESSION

Applies if property was supported accommodation when the tenancy was granted *and*:

- a. Granted to secure support for a limited period and that period has expired
- b. Third party provides support services but support has ended or is not being provided and landlord cannot source support from someone else
- c. Funding for support or accommodation was from third party, landlord cannot find alternative funding and it is not reasonable for landlord to provide accommodation or support itself
- d. Landlord or project would be financially threatened and at time possession is required (by s.8 notice) landlord is unable to secure alternative funding



SUPPORTED ACCOMMODATION – GROUND 5F – MULTIPLE GROUNDS (CONT.)

Applies if property was supported accommodation when tenancy was granted and:

- e. Tenant does not need level of support being provided
- f. Tenant does not need *any* support services
- g. Support services do not meet tenant's needs
- h. Accommodation has adaptations for persons with particular needs and tenant does not have those needs
- i. Accommodation is physically unsuitable for someone with tenant's needs

HOMELESSNESS – NEW GROUND 5G

- Aim: recovery of section 193 temporary accommodation secured in private sector. Applies if:
 - There was 'a' period of occupation that was in pursuance of HA. 1996, s 193 duty
 - Local authority has notified landlord that property is no longer required for that purpose; and
 - *the relevant date is no more than 12 months after the date on which the local housing authority gave the landlord such notice*
- 'Relevant date' is date possession is required in s. 8 notice (sch. 2, pt V, para 12) or date proceedings are issued if the court dispenses with need for s. 8 notice
- Section 8 notice relying on ground 5G must give at least 4 weeks notice of requiring possession (s.8(4AA))
- In consequence, section 8 notice must be served within 48 weeks of L/A giving landlord notice that accommodation is no longer required



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*Renters' Rights Bill
Tribunal work: How
the bill is going to
affect rents & the role
of the Tribunal*



Siobhan McGrath, President of the FTT (Property Chamber)