

# Briefing



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## Tenants (Reform) Bill 2014-15

### Second Reading Friday 28 November, 2014

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#### Executive Summary

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Citizens Advice welcomes this Bill, which will limit landlord's ability to evict tenants just for asking for basic repairs to their property or otherwise seeking to uphold their rights. We welcome the cross party support it has received.

#### Why support the Bill?

- **The legislation is necessary.** Tenants with an assured shorthold tenancy currently have no legal protection against retaliatory eviction - a landlord can use Section 21 for any reason unless specific procedural rules are flouted, so this protection is long overdue.
- Our evidence demonstrates that retaliatory evictions are a persistent problem.
- Responsible tenants should be able to seek to uphold their basic right to live in a property maintained to a safe and decent standard without fear of eviction.
- The Bill will not prevent landlords evicting tenants in arrears

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#### Contents

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This briefing answers the following questions:

- What is a retaliatory eviction?
- How extensive is the problem of retaliatory eviction?
- Is there sufficient protection for tenants from existing legislation?
- Is this legislation needed?
- What impact would this legislation have on tenants, landlords and lenders' readiness to lend landlords the finance needed for new homes to rent?
- Could the Bill be improved?

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#### What is a 'retaliatory eviction'?

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Citizens Advice welcomes the Tenancy (Reform) Bill 2014, which seeks to prevent a 'revenge' or 'retaliatory eviction' by clarifying when a Section 21 notice cannot be served.

Under the 1988 Housing Act a Section 21 notice allows landlords to regain possession of a property by giving tenants with an assured shorthold tenancy just two months' notice without providing any explanation why.

Citizens Advice evidence demonstrates that the use of Section 21 notices by some landlords to evict tenants who request essential property repairs (or uphold their other rights as tenants) is a persistent problem. Section 21 notices are also used to intimidate tenants and discourage them from seeking to uphold their basic right to live in a property maintained to a safe and decent standard without fear of eviction.

This Bill will not restrict the rights of landlords to evict tenants who are in rent arrears.

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## How extensive is the problem of 'retaliatory eviction'?

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Citizens Advice Bureaux have consistently reported cases of 'retaliatory evictions' since our 2007 report [The Tenants Dilemma](#) first brought the issue to light.

Our data points to a consistent correlation between enquiries from private tenants **not in arrears** about possession action and/or threatened homelessness and enquiries about repairs and maintenance in a minority of cases.

This problem affects hundreds of people each year. Between April and September 2014 3,710 clients sought advice from a Citizens Advice Bureau about possession action from a private landlord **not relating to arrears**. Of these:

- 262 (7 per cent) also sought advice about repairs and maintenance
- 302 (8 per cent) also sought advice about their security of tenure

Between April and September 2014 5,237 tenants of private landlords sought advice from a Citizens Advice Bureau because they had a problem relating to threatened homelessness. Of these:

- 859 (16 per cent) also sought advice about possession action not for arrears
- 246 (5 per cent) also sought advice about repairs and maintenance.

We know that by far the biggest cause of homelessness for private rented tenants is the landlord ending their tenancy agreement, and not always because tenants have fallen behind on their rental payments. In the past year Citizens Advice Bureaux have seen a 38 per cent increase in enquiries about eviction problems in cases where people were up to date on their rent. Most disrepair issues are sorted out amicably between the tenant and landlord. However, where the landlord and tenant relationship has broken down to such an extent that the tenant is seeking advice regarding taking legal action or local authority support to get repairs done, it should not be surprising that a landlord may seek possession from tenants who may be perceived (rightly or wrongly) to be troublesome.

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## Is there already sufficient protection for tenants from existing legislation?

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No.

In practice, there is no defence to an eviction under Section 21 outside a fixed term tenancy or after the first 6 months of a tenancy. The only “defences” to possession sought under a Section 21 notice, retaliatory or not, are procedural issues such as:

- Technical problems with the notice (less than 2 months’ notice given etc.)
- Where the deposit wasn’t protected within 30 days of the start of the tenancy and hasn’t been returned to the tenant
- Where the notice is issued before the Prescribed Information regarding the deposit has been provided to the tenant
- The tenancy is subject to local authority licensing and the landlord has not complied.

We believe that in addition to these very limited restrictions on Section 21, landlords should be prevented from seeking possession of a property for six months if a tenant has taken action to get the landlord to address serious issues relating to health, safety or disrepair.

The RLA has pointed out that according to CMA guidance threatening a tenant with eviction for complaining is a breach of The Consumer Protection from Unfair Trading Regulations 2008. However, threatening a tenant with eviction and lawfully serving a Section 21 notice have different legal definitions. Serving a tenant with a Section 21 notice in a way which is permitted by statute cannot be “the use of harassment, coercion or undue influence”, which is at the centre of the definition in this regulation. There are currently very few procedural legal restrictions on when a Section 21 notice may be served. There is no legal precedent that a claim of harassment would amount to a defence to a private sector possession claim via Section 21 and whilst enforcement agencies can enforce a breach of the regulations, an individual tenant cannot do so.

Other legislation which provides tenants with protection from eviction in certain circumstances include the *Protection from Eviction Act 1977*, which does not apply to assured shorthold tenancies and *the Protection from Harassment Act 1997*, which requires a course of conduct - at least two acts - to be a breach. So a service of a s.21 per se wouldn't be harassment.

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## Is this legislation needed?

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Absolutely. This legislation is needed to protect all tenants who currently have to risk eviction or homelessness every time they ask for basic repairs to their home.

Our evidence suggests hundreds of people are affected by ‘retaliatory evictions’ every year.

Tenants are helpless if served with a Section 21 notice. When tenants seek advice from a Citizens Advice Bureau about a landlord’s failure to address maintenance problems in a property, our advisors inform the tenant that if the landlord responds by serving a possession notice they will be within their rights to do so. Many tenants at this stage choose not to pursue their complaint.

This abuse of power has gone on far too long. Below are a number of case studies from 2006 to the present, provided by Citizens Advice Bureaux across the country:

*\*In Wales, the Welsh Government is legislating separately on this devolved matter through reforms to the standard tenancy contracts under the Renting Homes Bill which will be laid in 2015. The Tenancy*

*(Reform) Bill gives the opportunity for PRS tenants in England and Wales to have greater protection from rogue landlords.*

## **Case Studies**

In September 2006 a couple with four children living in Merseyside moved into a new property owned by their existing landlord because their previous property was in a bad state of disrepair. This property was extremely cold and damp and had structural problems so they were without heat or hot water over the winter months and relied on one Calor gas heater, which made the damp worse. The 14 year old child slept on the sofa as the bedroom was covered in mould. His brother aged six had severe asthma which was aggravated by the living conditions. The landlord had refused to make repairs, despite numerous requests so the couple sought help from the Environmental Health Department. Within weeks of them doing so the landlord served the client with a Section 21 Notice. This family had to be re-housed by the local authority under their homelessness duty.

Citizens Advice helped a woman and her daughter after they asked their landlord for repairs to their privately rented home, as they were getting electric shocks in the shower. An electrician told them it was not safe for them to live in the flat because there was an electric current running through it. When the mother pursued the landlord to fix the problem he evicted them.

Alex works full-time and lived alone in a rented flat expecting his fiancée and 1 year old child to join him. His 6-month tenancy ended in September 2013 and from then on ran on a monthly basis. There was an extreme damp and mould problem. The walls had turned green and Alex's clothes were being destroyed by the extremely poor conditions. He complained to the local authority's environmental health team who put the landlord on notice of the required repairs. The landlord responded by returning Alex's deposit and giving him a Section 21 notice to quit.

Maria, a single mother, approached a bureau in Surrey for help in November 2013. She and her daughter had lived in their flat for three years. A severe crack developed in the walls causing water to penetrate her home. She complained to her local environmental health team and the landlord eventually fixed the problem. However, between reporting the problem and the repair being completed she was issued with a Section 21 notice to quit. Even though the landlord fixed the property, Maria still lost her home as a result.

In February, Zara came to her local Citizens Advice Bureau in London for help after reporting several repair issues repeatedly to her landlord to no avail. She has four children and was worried about severe mould in the bathroom and children's bedrooms could be damaging their health. It had already caused the window frames to rot and damaged several of their belongings. That wasn't the only issue. Zara couldn't cook for the children because the oven door was missing and the cooker was broken. The bureau helped her to send a complaint with accompanying pictures to the local Environmental Health Officer, who inspected the property and issued an informal notice for improvements to the landlord. Shortly afterwards the landlord issued the tenant with a Section 21 eviction notice and she was forced to move out of the property.

The legislation will give tenants the confidence to uphold their rights. In 2007 Crosby, Formby and District CAB carried out a national survey of Environmental Health Officers and Tenancy Relations Officers in Local Authorities. 90 per cent said that in their professional opinion tenants were often or sometimes put off using help from environmental health and tenancy relations officers to pursue repairs because they didn't want to put their tenancy in jeopardy.

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## What impact would this legislation have on tenants, landlords and lenders' readiness to lend landlords the finance needed for new homes to rent?

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The Bill will increase the confidence of tenants to have their basic rights upheld and make it easier for them to pursue enforcement action if a landlord refuses to maintain a property to an acceptable standard.

It will increase the competitive advantage of good landlords who invest in and maintain their properties.

The legislation does not restrict the rights of landlords to evict tenants who are in rent arrears. Therefore it won't affect landlords' ability to raise revenue from their property. Citizens Advice Bureaux do receive requests for help from tenants who have withheld rent in response to a landlords' inaction on a maintenance issue in an attempt to put pressure on them to carry out repairs. Tenants do not generally have the right to do this, although there is a complex procedure they could follow to use current rent to pay for essential repairs. Damages for breach of contract based on a landlord's failure to undertake repairs can be used as a defence and counterclaim to possession brought on rent arrears grounds in some circumstances. This Bill would prevent tenants taking this action as a last resort.

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## Could the Bill be improved?

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The Tenancy (Reform) Bill 2014 represents a rare opportunity to introduce sensible, much needed protection to tenants in specific circumstances to allow them to uphold their right to live in a property maintained to a safe and decent standard without fear of eviction.

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## About the Citizens Advice service

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- ✚ Citizens Advice's charitable aim is to make society fairer by providing the advice people need for the problems they face; and improving the policies and practices that affect people's lives
- ✚ 340 Citizens Advice Bureaux provide free, confidential and impartial advice from 3300 locations across England and Wales
- ✚ Last year Citizens Advice Bureaux helped 2 million clients with 5.5 million problems
- ✚ Last year the Citizens Advice Consumer service answered 1.2 million calls
- ✚ Last year there were 16 million visitors to our advice website [www.adviceguide.org.uk](http://www.adviceguide.org.uk).