

# National Private Tenants Organisation

*For professionally managed, secure, decent and affordable privately rented homes  
in sustainable communities*

*Submission on retaliatory eviction to the*  
Department of Energy and Climate Change  
Green Deal Consent Barriers and  
Retaliatory Eviction Working Group

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National Private Tenants Organisation  
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Dedicated to the memory of Christine Mary Baxendale

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## About the National Private Tenants' Organisation

The National Private Tenants' Organisation (NPTO) was formed in September 2011 to provide a national voice for private tenants organisations and individual private tenants in England.

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## Executive Summary

This report is a submission by the National Private Tenants' Organisation (NPTO) to the Department of Energy and Climate Change Green Deal Consent and Retaliatory Evictions Working Group. The report examines the issue of private rented sector landlord retaliatory eviction, the threat of eviction and the fear of eviction in response to tenants' seeking to have their legal rights upheld. There is concern that tenants' requests to landlords for energy efficiency improvement under the proposed Energy Bill Green Deal may be obstructed by landlords using their automatic right to possession (Housing Act 1988 Section 21) of assured shorthold tenancy properties. When minimum energy efficiency standards are introduced under the Bill for private rented property there is also the risk that landlords may take retaliatory action against tenants who report illegally let properties.

The private rented sector (PRS) has the largest proportion of lowest energy efficiency rated homes and has many that fail the 'decent home' standard. Many tenants live in fuel poverty. The success of the Green Deal in the PRS is of great importance.

The report discusses the issue of retaliatory eviction, the threat of eviction and fear of eviction, contributory factors including reasons why landlords may resort to retaliatory eviction, professionalism in the PRS, market forces and possible triggers for eviction. Statistics on Section 21 evictions are also discussed.

Shortcomings in national and local data collection on poor landlord practice including retaliatory eviction are examined. Statistics and evidence of the practice of retaliatory eviction and the threat of eviction are provided from public bodies, academic and non-public body sources, along with sample case studies. The report attempts to collate the vast majority of the available data and information on the issue.

The broad based support for action on the problem is detailed. Possible solutions to prevent retaliatory eviction and the threat of eviction are discussed including existing restrictions on the use of Section 21, possible implications on the PRS of new legislation and evidence on stricter regulation on the size of the PRS in Europe. Information on the existence of legislation on retaliatory eviction in other countries is provided.

Possible long term and medium to short term solutions to retaliatory eviction are discussed. These include improvements to PRS landlord management standards, new legislation, alternatives to new legislation, the collection of data and some short term measures. The report concludes with the NPTO's recommendations for new legislation.

# Introduction and background

## Purpose of the report

The Energy Bill 2011 (HC Bill 206) Chapter 2, contains provisions for regulations to be made in relation to PRS domestic energy efficiency standards (from April 2018), and tenants' reasonable energy efficiency improvement requests to landlords where financial support is available such as the Green Deal and/or the Energy Company Obligation (from April 2016).

This report has been produced as a submission to the Department of Energy and Climate Change (DECC) Green Deal Consent and Retaliatory Evictions Working Group. The report concentrates on the issue of private residential landlord retaliatory eviction of tenants and draws on a wide range of sources. Evidence of retaliatory eviction is provided along with a discussion on possible causes and solutions.

The Working Group will have four meetings and will examine barriers to the above including consent blockages and landlord retaliatory eviction. The Working Group will make recommendations to Ministers for addressing the two barriers (real and perceived) in all affected tenures and property types.

*It is vitally important that retaliatory eviction does not impede the success of the Green Deal in the PRS.*

## Background to the report

The Government's Green Deal proposals aim to improve the energy efficiency of Britain's building stock and reduce greenhouse gas emissions which risk dangerous climate change.

In England there are 3.4 million households in the PRS<sup>1</sup>. There has been a 40% increase in the sector in the last 5 years. Over two-thirds (68 per cent) of new households formed in 2008-09 and 2009-10 were living in the PRS<sup>2</sup>. The PRS has the largest proportion of Standard Assessment Procedure (SAP) band G rated homes of all tenures, 5.8% compared with 3.4% for owner-occupier<sup>3</sup> households, and four times as common as in the social rented sector<sup>4</sup>. According to the English Housing Stock Report for 2009 (published in July 2011), there were still 3.3 million dwellings (all housing stock) in the lowest energy efficiency SAP bands F and G.

The last English Housing Survey 2009-10, reported 31% of PRS households were non-decent<sup>5</sup>. In the PRS 61.4% of homes failing the decent homes standard did so because of Housing, Health and Safety Rating System (HHSRS) serious hazards and 57.7% because of thermal comfort shortcomings<sup>6</sup>. The principles of the decent homes standard are that

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1 Department of Communities and Local Government, *English Housing Survey: Household Report 2009-10*, July 2011

2 Department of Communities and Local Government, *English Housing Survey: Household Report 2009-10*, July 2011

3 Department of Energy and Climate Change, *Energy Bill: Private Rented Sector Regulations 2011*, 2011

4 Department of Communities and Local Government, *English Housing Survey: Headline Report 2009-10*, July 2011

5 Department of Communities and Local Government, *English Housing Survey: Headline Report 2009-10*, July 2011

6 Julie Rugg and David Rhodes, *The Private Rented Sector: its contribution and potential*, 2008

homes must meet the current statutory minimum standard for housing; must be in a reasonable state of repair; must have reasonably modern facilities and services and provide a reasonable degree of thermal comfort.

### The consequences of poor energy efficiency in the PRS

The likely cost to the NHS of poor health resulting from residing in PRS dwellings with SAP band F and G is estimated to be between £35 - £674 million per year<sup>7</sup>. 15% of PRS homes are classified as a Category 1 'excess cold' hazard under the HHSRS<sup>8</sup>

The number of children living in households that are so difficult to keep warm they are a health hazard is estimated at 1.3 million<sup>9</sup>. According to the English Housing Stock Report for 2009 15% of private rented households have damp problems.

In 2009, the number of fuel-poor households in the UK was estimated at around 5.5 million, a rise of around 1 million when compared to 2008, and representing approximately 21 per cent of all UK households<sup>10</sup>. Energy efficiency is one component of one of the three drivers of fuel poverty. Over 40% of tenants in the coldest privately rented homes live in fuel poverty<sup>11</sup>.

In light of the size of the PRS and poor energy efficiency in many homes, large numbers of PRS tenants could make legitimate requests of their landlords for energy efficiency measures under the Green Deal or seek their landlord's consent to approach a Green Deal provider themselves.

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7 Building Research Establishment, *The Health Costs of cold dwellings*, February 2011

8 Consumer Focus, *A private Green Deal*, December 2010

9 Department of Communities and Local Government, *CAB, FoE and ACE communications in relation to Parliamentary question to Greg Barker MP*, 25 Jan 2011

10 Department of Energy and Climate Change, *Annual Report on Fuel Poverty Statistics 2011*, July 2011

11 Department of Energy and Climate Change, *Energy Bill: Green Deal Impact Assessment*, 2010

## The issue of retaliatory eviction

### What is retaliatory eviction?

Retaliatory eviction in response to tenants' requests to landlords for a Green Deal could be a real obstacle to the success of the Green Deal in the PRS.

In relation to proposals in the Energy Bill for all private rented properties from April 2018 to be brought up to SAP E rating, there is the potential for landlords to evict tenants who report illegally let properties to enforcing authorities.

Retaliatory eviction can be said to occur when a PRS landlord seeks possession of a property using Housing Act 1988, Part 1, Chapter 2, Section 21, in response to a legitimate request from a tenant. The request commonly relates to landlords' legal responsibilities with respect to disrepair or health and safety issues but might also relate to other issues. In the context of this report landlords may threaten or carry out retaliatory eviction in response to tenants' reasonable requests for energy efficiency improvements (see reasons for this below).

Section 21 allows landlords of assured shorthold tenancies an automatic right to possession at the end of a fixed term or periodic tenancy (following the initial 6 month period of the tenancy). This is subject to the correct written notice (notice that possession is required). The accelerated possession procedure (form N5B) can be used subject to certain conditions, a court hearing would not be held. A court possession order must be obtained to evict a tenant if they do not leave at the end of the notice period. If the tenant does not leave on the date specified in the order, a warrant for eviction must be obtained for bailiffs to evict a tenant. The bailiffs must give notice of the eviction.

There has been debate in relation to Section 21 use and implications under the Human Rights Act 1998, Schedule 1, Part 1, Article 8 '*Right to respect for private and family life*'. This issue is not explored in this report.

Some tenants do not receive energy performance certificates and when they do certificates can be up to 10 years old.

### The threat of retaliatory eviction and tenants' fear of retaliatory eviction

Alongside eviction of tenants the threat of eviction can cause a tenant to withdraw a request of complaint. Unprofessional landlords may also resort to retaliatory harassment.

Tenants may also be frightened of making requests to a landlord because of the possible threat of eviction especially if landlord-tenant relations are poor.

### Statistics on private landlord possession orders

The number of private landlord possession claims in England and Wales leading to an order for possession in the first quarter of 2011 (non-seasonally adjusted) was 4,911 for the accelerated procedure (15,066 orders were made in the year 2010), and 3,809 using the standard procedure (14,656 orders were made in the year 2010)<sup>12</sup>. 6

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<sup>12</sup> Ministry of Justice, *Statistics on mortgage and landlord possession actions in the county courts in England and*

In 2009-10 159,000 PRS tenancies were ended due to landlords asking tenants to leave, this was 8.2% of the total number of tenancies ended in the period. 91,000 (75.2%) tenancies were ended because a landlord wanted to sell the property or use it themselves and 68,000 (42.8%) tenancies were ended for other reasons<sup>13</sup>.

### **Retaliatory eviction: contributory factors**

#### Why would a private residential landlord resort to retaliatory eviction?

Some reasons why landlords may take retaliatory action including eviction:

- Landlords might think that future tenants could be put off by an addition to their energy bills for Green Deal work
- Landlords may not see any direct business benefit to themselves from the Green Deal as it is their tenants who will make savings on energy bills and benefit from warmer homes
- Landlords with many properties may feel that they will be faced with large logistical problems in pursuing the Green Deal process
- Landlords may feel that their valuable time is being taken up approaching a Green Deal Provider and initiating a Green Deal Plan when it may only be a part-time occupation
- Landlords do not believe that energy efficiency improvements would be of interest to future tenants, i.e. it might not be an attraction to future tenants
- There might be a possible loss of rent to landlords whilst improvements are being made
- There might be indirect costs to landlords from the disruption of improvement work
- Landlords might fear that their property could be devalued by work
- The relationship between landlord and tenant may be confrontational and not co-operative
- Rogue landlords may be conducting their business illegally and do not want to draw attention to themselves
- If one tenant in multi-occupied property refuses consent

#### The question of professionalism in the PRS

A lack of professionalism in the PRS can lead to landlords not conducting their business to the highest standards. Unprofessional conduct can be due to wilful illegality or uninformed or casual approach to management.

The Law Commission estimates that just 2.2% of landlords belong to a professional body<sup>14</sup>. The Royal Institution of Chartered Surveyors has reported that around 50% of letting agents are unregulated and significantly fewer than half of all transactions involve a regulated agent<sup>15</sup>.

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*Wales – first quarter 2011*, 12 May 2011

13 Department of Communities and Local Government, *English Housing Survey: Household Report 2009-10*, July 2011

14 Shelter, *A licence to rent?*, August 2009

([http://england.shelter.org.uk/\\_data/assets/pdf\\_file/0004/206779/A\\_Licence\\_to\\_rent\\_Briefing.pdf](http://england.shelter.org.uk/_data/assets/pdf_file/0004/206779/A_Licence_to_rent_Briefing.pdf))

15 Royal Institute Of Chartered Surveyors, *RICS Position paper on the private rented sector (UK) (Regulation of letting agents (UK))*, 20<sup>th</sup> November 2009



The 2008 report by Julia Rugg and David Rhodes (York University) on '*The PRS: its contribution and potential*', reported that 48% of landlords were individuals, 25% were couples. 44% of individuals and couples managed only 1 property and 70% of landlords viewed property as an investment. 60% of individuals and couples had only been letting properties for up to 10 years<sup>16</sup>. Many landlords are only engaged in their letting businesses on a part-time basis.

The 2008 Centre for Housing Policy, University of York (The Rugg Review) review on professionalism and quality in the PRS identified lack of a professional perspective on the part of landlords, coupled with a lack of knowledge of existing legislation.

The English Housing Condition Survey 2006: Private Landlords Survey, (published 2008) on page 5, reported that "*Sideline' landlords with small portfolios continue to dominate the sector, with Buy to Let stimulating the entry of inexperienced small landlords*".

A survey into consumer perceptions of 45 different markets found that based on consumers' recent experiences, the PRS ranked 38 out of the 45<sup>17</sup> (45 being the lowest score). The key performance indicators used to derive this ranking indicate how poorly consumers perceive renting a property compared to other markets.

The Residential Landlord Association supports a professional PRS and believes that bad landlords should be driven out of the sector<sup>18</sup>. Similar views have been expressed by the National Landlords Association<sup>19</sup>. The NPTO supports this view. The Guild of Residential Landlords position has yet to be obtained. The British Property Federation in a press release dated 23/10/2008 said: "No one wants to see retaliatory eviction succeed".

Voluntary landlord accreditation schemes do not cover all local authority areas and unfortunately there is a lack of consistency between schemes. There are at least 80 different types of schemes operating in England according to the UK Accreditation Network (ANUK). There is no compulsion for landlords to join any of the schemes that are available. Such schemes can give tenants confidence in selecting reputable landlords and the NPTO supports them.

### Market forces in the PRS

An imbalance between supply and demand means that there remains a ready supply of tenants for properties owned by landlords who operate in an unprofessional fashion. This means that even where a landlord has a poor reputation locally, they will still be able to find tenants<sup>20</sup>.

### Triggers for retaliatory eviction

Tenant requests for repairs, maintenance, improvements and on health and safety issues appear to be triggers for retaliatory eviction and the threat of eviction.

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16 Julie Rugg and David Rhodes, *The Private Rented Sector: its contribution and potential*, 2008

17 Consumer Focus, *Report on the 2009 Consumer Survey: Market research survey conducted for Consumer Focus, Ipsos MORI*, March/April 2009

18 Residential Landlord Association, *The Rugg Review: Private Sector Review by Julie Rugg: RLA Response* ([www.rla.org.uk/html/ruggreview/RLAresponse.shtml](http://www.rla.org.uk/html/ruggreview/RLAresponse.shtml))

19 Johnny Lighten MBE MA, National Landlord Association, *The Rugg Review*, 18 Feb 2009

20 Julia Rugg and David Rhodes, *The Private Rented Sector: its contribution and potential*, 2008

18.3% of all private renters were dissatisfied with the way their landlord carried out repairs and maintenance, 7.3% were very dissatisfied.

From DCLG data for 2009-10, 32.9% of all private renters were 'all dissatisfied' with repairs because 'landlord does not bother about repairs and maintenance', 56.6% were very dissatisfied. 6.7% were 'all dissatisfied' with repairs because 'landlord carries out only emergency repairs', 3.1% were very dissatisfied<sup>21</sup>.

From DCLG data for 2009-10, 5.4% of private renters felt unsafe in their homes<sup>22</sup>.

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21 DCLG, *English Housing Survey: full household sample: Table FA5441 (S802)*, 2009-10

22 DCLG, *English Housing Survey: full household sample: Table FA5361*, 2009-10

## Evidence of retaliatory evictions and causes

### Difficulties in gathering evidence

#### General lack of data on landlord poor practice and retaliatory eviction in particular

It is difficult to gather evidence on poor practice by landlords in the PRS as local authority Tenancy Relations Officers (TRO) do not collate records nationally and local authorities vary in the level of pro-activity with regard to pursuing problems in the PRS<sup>23</sup>.

Many local authorities do not have basic information on PRS tenant referrals (service requests)<sup>24</sup>.

The scale of formal legal proceedings is likely to under-represent the incidence of difficulties. TROs are likely to favour mediation activity over active sanction.

Most evidence of retaliatory eviction or the threat of retaliatory eviction comes from tenants which is not unexpected as Section 21 possession orders will not necessarily reveal the reasons why landlords seek possession, except perhaps in the case of a tenant disrepair counter-claim. Landlords would also be reluctant to admit to retaliatory eviction. Many tenants may simply move on because they do not believe that their landlord will carry out repairs because they know their tenancy can be easily ended. The lack of national (see discussion below) and local data (see above) in this area constitutes a substantial gap.

The knowledge base on this issue needs to be urgently developed.

#### Discussion on supporting evidence contained in national surveys, reports and research

Where responses to questions about tenant satisfaction with landlords do exist e.g. in CLG Survey of English Housing and English Housing Survey data, statistics can be difficult to interpret as satisfaction levels are likely to be tied to expectations, and so may not present an absolute measure of landlords' behaviour. This can also apply to reports which have derived landlord satisfaction data from CLG reports.

There is no specific data on tenants' satisfaction with landlords in the following national reports: 2011 Census in England and Wales; Office of National Statistics *Integrated Household Survey*; Ministry of Justice *Statistics on Mortgage and Landlord possession actions in the county courts in England and Wales*, do not provide data on why Section 21 possession orders were made; CLG *Public attitudes to housing in England: Report based on the results from the British Social Attitudes survey, 5 July 2011* (from British Social Attitudes Survey 2009) and the CLG *English Housing Condition Survey: Private Landlord Survey 2006* (published 2008).

Although the Housing Ombudsman does have a voluntary membership scheme administered by the Independent Housing Ombudsman Ltd, which PRS landlords and agents can join, only 2 case studies were found which related to PRS neither of which related to eviction<sup>25</sup>.

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23 Julie Rugg and David Rhodes, *The Private Rented Sector: its contribution and potential*, 2008

24 Dr Stephen Battersby, *Are Private Sector Tenants Being Protected Adequately?*, June 2011

25 The Housing Ombudsman, <http://www.housing-ombudsman.org.uk/canda.aspx?nm=21>, accessed on 6<sup>th</sup> Aug 2011

Other research relating to professionalism in the PRS does not specifically ask questions about or report on retaliatory eviction making evidence difficult to obtain. For example the Law Commission report *Housing: Encouraging Responsible Letting*, August 2008, did not consult on retaliatory eviction. To date only a small amount of research has been carried out on the specific issue of retaliatory eviction.

The Law Commission consultation *Private Landlords Changing the law on renting-what would it mean for you*, 2002, did ask the question “We are asking whether occupiers should be able to claim compensation if landlords evict them just because occupiers have asked for one of their statutory rights (e.g. rights to repair).” Indicating that it was aware of the problem of retaliatory eviction.

The CLG consultation *The Private Rented Sector: professionalism and quality-consultation*, Feb. 2002, did ask some open questions that resulted in responses that raised the general issue of retaliatory eviction.

CLG data up to 2008 from the Survey of English Housing on satisfaction with landlords, is contained in a number of tables available on a CLG website<sup>26</sup>. CLG data from 2008 from the English Housing Survey on satisfaction with landlords, is contained in a number of tables are available on a CLG website<sup>27</sup>. This data is included in the evidence section below. Case studies from organisations which assist tenants, support the existence of the practice of retaliatory eviction in many geographical area.

A national landlord register would assist in gathering data along with more specific questions in CLG national surveys. NPTO supports the view that the Housing Ombudsman should have a role in any national landlord registration scheme.

It has been reported that: “Preparation for the next English Housing Survey begins next month (April 2011) and has been hit by public spending cuts. In future the number of households included – currently a sample of 17,000 – will be reduced and some subjects will only be looked at occasionally instead of each year. Some councils and housing bodies have complained this will reduce the usefulness of the survey for highlighting problems, especially in the rented sector<sup>28</sup>.”

It is clear that it is difficult to prove that retaliatory eviction has taken place.

## **Public body evidence**

The following evidence from public body sources supports the existence of the practice of landlord retaliatory eviction, threat of eviction and fear by tenants of eviction, across the UK and possible causes.

Of course statistics on their own only provide a one-dimensional view!

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26 <http://www.communities.gov.uk/housing/housingresearch/housingsurveys/surveyofenglishhousing/sehlivetables/satisfactionwithlandlord/>

27 <http://www.communities.gov.uk/housing/housingresearch/housingsurveys/englishhousingsurvey/ehstables/ehshouseholdtables/attitudesandsatisfaction/>

28 Observer, 'Privately rented homes bust despite sector boom', 6 March 2011

CLG (ODPM) Survey of English Housing: Table S803 (C8C[99/00]) *Whether tenants tried to enforce right to repair and reasons for not doing so* (data for 1999/2000)<sup>29</sup>

The following data from the above source demonstrates evidence of fear of retaliatory eviction:

8% of PRS tenants surveyed (in the DCLG Survey of English Housing) who were very dissatisfied with repairs (21.3% of surveyed households were (all) dissatisfied with repairs and 10.1% were very dissatisfied) and did not try to enforce their rights (75% of those (all) dissatisfied with repairs and 67% of those very dissatisfied with repairs did not try to enforce their rights) because they thought their landlord would end their tenancy. 5% of PRS tenants surveyed 'all dissatisfied with repairs' did not try to enforce their rights because they thought their landlord would end their tenancy<sup>30</sup>.

25% of PRS tenants surveyed were very dissatisfied with repairs and did not try to enforce their rights because they did not want to cause trouble with landlords. 21% of PRS tenants surveyed were 'all dissatisfied with repairs' and did not want to cause trouble with landlords<sup>30</sup>.

CLG Survey of English Housing 1998-1999

In the 1998-99 Survey of English Housing 19.7% of PRS households surveyed were dissatisfied with landlords repairs and 8.7% were very dissatisfied with repairs. Of those (all) dissatisfied with repairs, 73.7% did not try to enforce their rights. Of these respondents 3.3% thought their landlord would end their tenancy if they tried to enforce their rights. 23.3% gave this reason as their 2<sup>nd</sup> reason for not trying to enforce their rights.

For information: In 2009-10 159,000 PRS tenancies were ended due to landlords asking tenants to leave, this was 8.2% of the total number of tenancies ended in the period. 91,000 (75.2%) tenancies were ended because a landlord wanted to sell the property or use it themselves and 68,000 (42.8%) tenancies were ended for other reasons.

CLG, *Evaluation of the Impact of HMO Licensing and Selective Licensing*, 27 January 2010 (page 99)

Section 7: Impact of mandatory HMO licensing:

“Another authority was aware that illegal or legal eviction was threatened as a direct result of LA involvement in private rented properties:

“One of the common outcomes of us following up a complaint from all tenants is that they're threatened with eviction, that's becoming more prevalent, tenants with genuine grievances and we're dealing with those grievances but they're getting evicted. (Implementation officer, CS3).”

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<sup>29</sup> DCLG, *Table S803 (C8C[99/00])*

[http://www.communities.gov.uk/housing/housingresearch/housingsurveys/englishhousingsurvey/ehstables/ehshouseholdtables/attitudesandsatisfaction/](http://www.communities.gov.uk/housing/housingresearch/housingsurveys/englishhousingurvey/ehstables/ehshouseholdtables/attitudesandsatisfaction/)

The Scottish Government: Private Sector Housing Issues: Housing (Scotland) Bill: An Analysis of Consultation Responses: Landlord Registration, 2009

The following responses in the report relate to a proposed landlord registration scheme and a requirement for tenants to provide information about landlords.

“2.12 A number of respondents (including Shelter Scotland, NUS Scotland, Consumer Focus Scotland ( CFS), Midlothian Council and Edinburgh University Students' Association ( EUSA)) expressed disquiet about placing any requirement on tenants to provide information, especially if non-compliance carries the threat of criminal offence. Concerns centred on tenants having to choose between committing an offence or risking a landlord ending a tenancy if they provided information about them or report them to a local authority. Whilst noting that tenants are not compellable witnesses, North Ayrshire Council suggests that:”

"Tenants may feel intimidated by the process, or vulnerable that in speaking out against their landlord, they are jeopardising their tenancy."  
(North Ayrshire Council)”

117 consultation responses were received to the consultation.

Dr Mike Biles, Housing Ombudsman Service Annual Report and Accounts, 2008

In the Housing Ombudsman Service Annual Report and Accounts for the period 1<sup>st</sup> April 2007 to 31<sup>st</sup> March 2008, the Ombudsman in the *Ombudsman Overview*, the following passage refers to the existence of the practice of retaliatory eviction:

*“Retaliatory eviction*

*Assured and secure tenants in the social housing sector have many rights, including security of tenure. They cannot be dispossessed of their homes unless their landlords follow a set procedure, justify one or more statutory grounds, and obtain an order from the court. Despite this protection I still hear from tenants who are afraid that complaining to me will draw a vindictive reaction from their landlords. Part of the work of my Service is to reassure such tenants that they are entitled to assert their rights without retaliation. We also remind landlords of their responsibility to reassure their tenants that they treat complaints as feedback from which they can learn and so improve service delivery, communications, and ongoing relationships. No such comfort can be offered to many assured shorthold tenants in the PRS. If they complain about the condition of their homes or poor services they can be given notice, and the courts have no discretion and must always order possession. This has come to be known as “retaliatory eviction” and was highlighted this year in the Citizens Advice publication ‘The tenant’s dilemma – Warning: your home is at risk if you dare complain’. Gordon Brown presented the author of the report, Debbie Crewe, with the Sheila McKechnie Foundation’s Consumer Action Award, and this prompted me to write to the Prime Minister in the following terms:*

*“I support Debbie’s campaign to put an end to ‘retaliatory eviction’ and fully endorse the contents of her report and her goal to secure legislative change. Indeed, in 1997, long before I became the Housing Ombudsman I was writing and speaking about the strong likelihood of injustice to tenants in the private rented sector in consequence of the assured shorthold tenancy becoming the default tenure. It simply cannot be right that in our country, in the twenty-first century, a citizen goes in fear of losing his or her home in*

*consequence of exercising rights, especially when there may be a risk to health and even life.<sup>30</sup>*

'Housing and Health', PostNote Number 371, January 2011, House of Parliament, Parliamentary Office of Science and Technology

In the section of the report on private sector issues (page 4), it states that lack of security of tenure in the PRS may lead to tenants not reporting problems to landlords because of fear of eviction (in response to their reports):

*"Private Rented Sector*

*The private rented sector contains the highest proportion of non-decent homes. Property maintenance and energy efficiency in this sector are at the discretion of the landlord. Key issues here are the short duration of tenancy agreements (typically 6 months) and lack of security of tenure. There are concerns that these may contribute to mental health problems and discourage tenants from:*

- *taking up home improvement initiatives;*
- *reporting problems to a landlord, for fear of being evicted;*
- *investing in rented homes".*

'Problems With Rented Home', Amber Valley Borough Council, 2010

The following extract from Amber Valley Borough Council private rented housing webpages, highlights tenants fear of eviction arising from complaints regarding disrepair.

*"Are you experiencing difficulties with your rented home? Thousands of households are happy in their rented home in Amber Valley, but a small proportion are of a poorer standard and give rise to complaints.*

The Council is responsible for addressing disrepair and housing standards in all rented property. The most common complaints relate to damp and mould and a slow response to fixing repairs.

*We appreciate that some people fear being evicted if they complain to the Council. We recognise this and we seek to provide advice to any tenant to tell them what the Council can do. We only contact the landlord with your permission or if the hazards are putting you at risk and we have to act. Many tenants just want some advice to be able to speak to their landlord or letting agent with the confidence of knowing what needs to be done to their home and we never hear from the tenant again."*

## **Non-governmental/public body evidence (including academic research)**

The following sources provide evidence of actual retaliatory eviction, threat of retaliatory eviction and the fear of retaliatory eviction in the UK and possible causes.

Chartered Institute of Environmental Health Survey of Local Authority Regulatory Activity under the Housing Act 2004: Results of questionnaire survey, February 2008

The following findings from the survey highlight the issue of retaliatory eviction.

Factors that influence regulatory activity in the PRS relating to risk of retaliatory eviction of private sector tenants, scored 58 out of 100 in order of importance. 35% of all local authorities in England and Wales responded to the survey.

Local Authorities Coordinators of Regulatory Services and the Association of Tenancy Relations Officers, survey conducted by Crosby, Formby and District Citizens Advice Bureau, 2007

100% of respondents (129 in total) in the survey reported that tenants were reluctant to make use of environmental health and tenancy relations officers services through fear of jeopardising their tenancy, 2% always found this, 46% often and 54% sometimes.

Respondents were asked whether they believed there needs to be security for private tenants when they are exercising their statutory rights. 81% of respondents felt that there was a definite need, 16% felt it was possibly needed and 2% felt it was not needed.

Chartered Institute of Environmental Health (CIEH), Evidence on Retaliatory Eviction submitted to the DECC Green Deal Consent Barriers and Retaliatory Evictions Working Group, September 2011

The following extracts from the above report relate to evidence of landlord retaliatory eviction, the threat of eviction and the fear of retaliatory eviction.

### 2. Wyre Forest (Worcestershire)

**2.1 Officers estimate that as many as 50% of housing complaints result in retaliatory eviction.** The Council also has an initial complaint dropout rate of about 10-20% once tenants are informed that the Council has to inform the landlord first and that the landlord may evict them.

**2.2** This issue is of great concern to officers. The Council is thinking of area-targeting based upon existing stock knowledge of areas where specific issues arise or have been the subject of larger numbers of complaints. This would be by initial letter to all the landlords in that area stating that the Council will be coming to inspect over a period of time and expects the properties to be in a reasonable condition.

### 3. Croydon

**3.1** There have been dozens of cases in the last few years where landlords have threatened the tenant with eviction or actually served them with notice to quit;



approximately one in three cases falls into this category.

#### 4. Milton Keynes

4.1 Officers state that retaliatory eviction is “a very common occurrence...in Milton Keynes”. Although they have not kept formal records until recently, they estimate that their HHSRS activities precipitate at least 1 retaliatory eviction per month.

#### 6. Newark and Sherwood (Nottinghamshire)

6.1 Retaliatory eviction has been a recurring theme experienced in the district. A number of tenants are scared of complaining about poor conditions due to the fear of retaliatory eviction. Since the implementation of the HHSRS the Council has experienced retaliatory evictions occurring once or twice per year. Being mindful of the problem they have amended the letter written to duty holders requiring them to carry out work to address identified hazards, to include the sentence: “May I also advise you that, should the tenant be given notice, this work will still require to be completed before re-letting of the property.”

#### 7. Barrow (Cumbria)

7.1 When landlords ring the Council for advice on how to terminate a tenancy, they are given advice on how to do this lawfully. In some cases the Council will also be dealing with a complaint from the same landlord's tenant, so in these cases they are sometimes able to link the attempt at eviction with the complaint. They also deal with tenants who are worried about complaining in case they lose their tenancy.

7.2 Some matters don't get as far as eviction (lawful or otherwise) as far as they know, but they are aware of allegations made of harassment (not just a direct threat of eviction), which closely follow a Council inspection. The Council warns the landlord against it when the tenants complain.

#### 7.3 Recent data

Since November 2010 the Council has received 158 complaints which have resulted in 104 inspections being carried out under the Housing Act 2004 and they are aware of 8 notices to quit that have been served under section 21 of the Housing Act 1988 following an inspection.

#### 8. East Devon

8.1 The Council has had three instances in the last 18 months of tenants who have been threatened with eviction following interventions by the Environmental Health Department.

8.2 Officers say that they are also finding that “tenants have accepted substandard/poor condition accommodation for low rents and, although they aren't happy about the conditions, they do not complain because they are afraid of making a fuss”.

## Shelter YouGov survey 2011

The YouGov survey, commissioned by Shelter revealed that 16% of private tenants have had issues with their landlord in the last ten years and 41% said they had tried to talk to their landlord but they did nothing. Further research also found that 7% said they did nothing because they were scared of the consequences<sup>31</sup>.

## Research on the Private Rented Sector in Scotland by Donald Houston, Kieran Barr and Jo Dean, Department of Urban Studies, University of Glasgow, 2002

The following extracts from the research provide qualitative evidence of the fear of retaliatory eviction.

Qualitative evidence: Extract from *Annex 2: Summary of findings from each stage of the research: Tenant Perspective* (page 72):

“A2.5: Most tenants reported that their property had some defects, with a significant minority reporting serious disrepair. Experience of reporting problems to landlords was varied, with some tenants receiving a fast response and others severe delays and poor quality work when repairs were done. *A number of tenants were afraid to request repairs, expecting that their tenancy might be jeopardised.*”

Qualitative evidence: Extract from *Housing quality/repairs and maintenance* (page 34):  
“4.33 *Many tenants said that they would not ask their landlord to carry out a repair or replace something for fear of them being served notice (i.e. asked to leave the property).* This was particularly true of younger people, who may lack the confidence and experience of older people, and also were more likely to be moving on soon. Some young people reported not spending very much time in their property, therefore the state of repair was not a high priority to them.”

Please note: the rough equivalent of an assured shorthold tenancy in Scotland is the short assured tenancy.

## View from an Environmental Health Practitioner: Landlord-Law Blog, 'Poor housing = poor health', 13/4/2011 (<http://www.landlordlawblog.co.uk/2011/04/13/poor-housing-poor-health/>)

“As an Environmental Health Practitioner with 12 years experience in the private and social rented sector, I can confirm that the worst housing conditions are found in the private rented sector. *Retaliatory evictions are also a major issue.*”

Local Authority Private Sector Housing departments typically receive complaints from tenants who have just moved into properties with no heating systems, leaking roofs and serious dampness problems. When tenants are asked why they would accept properties in such conditions, a common reply is ‘I was desperate’. These complaints often came from single mothers in receipt of housing benefit/ local housing allowance. To make matters worse, the poorest housing conditions I have experienced are from tenants who do not complain because they are unaware of Local Authority services or their rights.

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<sup>31</sup> Shelter, *Shelter research reveals private tenants feel powerless against landlords*, 4h July 2011 ([http://media.shelter.org.uk/home/press\\_releases/shelter\\_research\\_reveals\\_private\\_tenants\\_feel\\_powerless\\_against\\_landlords](http://media.shelter.org.uk/home/press_releases/shelter_research_reveals_private_tenants_feel_powerless_against_landlords))

As there is always a long line of tenants who are willing to rent poor quality accommodation, it makes business sense for those landlords to use retaliatory evictions.

theEHP (www.theEHP.com)”

'Health Impact Assessment of the Leeds Landlord Accreditation Scheme' by J D Swift M.A., B.Sc., F.R.I.P.H. and M Dolman B.Sc.P.G. Dip., M.C.I.E.H, August 2007<sup>32</sup>

In relation to retaliatory eviction the report contains the following:

#### *“Retaliatory Evictions*

*There is increasing evidence that tenants are reluctant to complain to their local housing authority about the condition of their properties when repairs aren't carried out.*

*The law offers little protection to tenants on periodic tenancies who can be evicted under section 21 of the 1988 Housing Act with just 2 months notice.*

*In a recent survey of local authorities (EHJ 2007 vol 22), all respondents reported that tenants are 'often or sometimes' put off from asking councils for help because they don't want to lose their homes. Over 80% said tenants definitely needed more security in order to exercise their statutory rights. According to housing charity Shelter, the end of an assured short hold tenancy is the third main reason people give for being made homeless”.*

'Inquiry into making the most of private rented housing and the role of the sector', response to the National Assembly of Wales Communities and Culture Committee from the Chartered Institute of Environmental Health, 2011

In the CIEH response the following is stated in relation to the fear of retaliatory eviction: “Reactive services (i.e. responding primarily to tenants' complaints) do not address priorities; issues identified in tenant complaints are not necessarily ones which should receive priority attention over other more serious issues which remain unreported. Complaints are generally not made by transient tenants (who frequently occupy high risk properties in multiple occupation) and from tenants who, justifiably or not, fear retaliatory eviction.”

Accreditation Network UK (ANUK) response to The Government (DCLG) response to the Rugg Review Consultation, 6<sup>th</sup> August 2009

The response from ANUK to the question below (from the DCLG consultation on the Rugg Review) highlights tenants' fear of eviction resulting from complaints:

*“We propose that local authorities should be actively encouraged to explore ways in which to improve their engagement with private landlords in their areas.*

*In looking to improve the private rented sector, which approach should be*

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<sup>32</sup> Swift and Doman, *Health Impact Assessment of the Leeds Landlord Accreditation Scheme*, August 2007 ([www.apho.org.uk/resource/view.aspx?RID=48961](http://www.apho.org.uk/resource/view.aspx?RID=48961))

*prioritised [following up on complaints or strategically tackling poor housing conditions in an area]?*

*The strategic approach is vital if standards in the private rented sector are to be improved. There are a number of reasons for this:*

- *Reacting to tenant complaints alone will not raise standards as tenants may not complain about items that might be considered problems. In some cases they may be frightened to complain for fear of eviction but in other cases, particularly with low-level problems, they may be willing to tolerate the conditions.”*

Crisis Policy Briefing: Housing: The Private Rented Sector, August 2010

The following extract from the above briefing in *Issues: 2. Security* (page 4), highlights cases Crisis is aware of in relation to retaliatory eviction:

*“Unfortunately we (Crisis) do also hear of some cases of unscrupulous landlords evicting tenants in retaliation for complaining about standards or repairs.”*

Child Poverty Action Group (CPAG) , Chief Executive Kate Green, October 2007

The following is a statement from the Chief Executive of CPAG in relation to retaliatory eviction:

*“If we cannot offer every family who needs it social housing, we must ensure that social obligations are met in full by the private sector. But the evidence that has emerged about retaliatory evictions show this is not happening<sup>33</sup>.”*

### **Some case studies (19 in total)**

Chartered Institute of Environmental Health, Environmental Health News, 16<sup>th</sup> May 2008

*“Pensioner evicted for seeking repairs”*

*“A 76-year-old pensioner living in an excessively cold rented flat has been evicted after her local council asked her landlord to install double-glazing and repair dangerous electrical faults.*

*Pamela Mann was forced to leave her home of 17 years in Selsay, West Sussex, following an inspection by an EHO from Chichester District Council who found it was excessively cold and had two electrical hazards. The EHO wrote to Ms Mann’s landlord’s letting agent, PMS Lettings, Chichester, urging it to rectify the defects but Ms Mann was issued with a notice to quit in two months.*

*Ms Mann said: ‘Landlords have the right to give you two months notice and they don’t have to pay for repairs. How can they do it? People don’t have a foot to stand on.’ She stressed she had not lodged a complaint with the council but had just wanted to apply for a grant to install double-glazing. ‘When I moved into the flat I spent quite a lot of money on the place, out of my own pocket. I didn’t realise that, after 17 years, the landlord would*

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<sup>33</sup> <http://www.cieh.org/ehn/enh3.aspx?id=6780&terms=retaliatory+eviction>, *Families 'put at risk by evictions'*, 12<sup>th</sup> October 2007

want me out,' she said.

Rob Dunmall, senior EHO, told EHN it was a retaliatory eviction because Ms Mann was evicted for contacting the council. 'We tried to do everything we could to persuade the landlords to take a different stance. But we were unsuccessful in doing so,' he said.

'I think it is totally wrong that a landlord can evict in retaliation. It makes our action toothless.' He added that the law should be changed to allow tenants to complain without fear of eviction. He said landlords could be forced to give a reason for carrying out an eviction or they could be barred from evicting immediately after a complaint was made.

EHN contacted PMS Lettings on numerous occasions for a comment but it failed to provide one."

#### Threat of eviction in response to repair requests, London, 2011

"We are a couple living in London. Our difficulties began when we rented our flat through a large, corporate letting agent that is a member of several professional bodies (details supplied). Because of these professional affiliations, we expected we were safe from mismanagement and slumlords. We were wrong.

Our letting agent manages the property for an absentee landlord, and in the landlord's absence has done a dismal job. Repeated attempts to bring necessary repairs to first the agent, and later the landlord's attention resulted in our being threatened with eviction if we continued to press the issue.

There are many parties in place that theoretically handle situations just like ours, including the council as well as agencies that regulate letting agents. All of them have advised us that unless we're prepared to be evicted, we should not stand up for our legal rights as tenants.

Unfortunately, we can't be more specific because our situation is far from resolved."

#### Tenant threatened with eviction, York, 2011

An assured shorthold tenant (Mr B) who worked full-time, was threatened by a letting agency with eviction because he could not get time off work to allow a gas safety inspection to take place. Mr B. was happy to arrange a visit at another time and understood the importance of gas safety checks. The contractor due to carry out the inspection wrongly claimed that Mr B. had been aggressive.

Source: Scarborough Private Tenants Rights Group, 2011.

#### Tenant frightened about complaining about disrepair, Scarborough, 2010

An assured shorthold tenant (Ms G) who had two previous assured shorthold tenancies ended as the landlords wanted the properties back, was frightened to complain about disrepair including a leaking flat roof in case her present landlord evicted her. Ms G did not have a written tenancy agreement.

Source: Scarborough Private Tenants Rights Group, 2011.

Shelter Campaigns Briefing 'A licence to rent?', 06/08/2009

“Jane was renting with her two young children. After their carbon monoxide alarm had sounded and the family had all been admitted to hospital with breathing difficulties, it became clear that the boiler had been leaking. The landlord refused to fit a new boiler and asked Jane and her family to leave the property. He was clearly in breach of legal obligations, but is probably still letting unsafe properties.”

Chartered Institute of Environmental Health (CIEH). Evidence on Retaliatory Eviction submitted to the DECC Green Deal Consent Barriers and Retaliatory Evictions Working Group, September 2011

“The landlord was procrastinating (faulty fire alarm panel, suspected subsidence and leaks) until the tenant decided enough was enough, so contacted us. The landlord got very irritated with the tenant for contacting the council. The work is still outstanding and the tenant is gingerly informing us that the landlord has done nothing and stating that he doesn't want to 'make waves', i.e. to be evicted. Unfortunately for the tenant there are Category 1 hazards, so the outstanding work cannot be ignored and the tenant may yet be evicted by the landlord”.

Source: CIEH members from Croydon.

“Officers wrote informally to a landlord concerning some disrepair. The letter was dated 21 July 2011. The landlord responded on 22 July – the day after – by serving a Section 21 notice on the tenant. The Council is now considering the tenant's application under homelessness legislation”.

Source: CIEH members from Milton Keynes.

“The case concerns a 1st floor 2 bedroom flat managed by an Agent. The tenant came to us as she was without heating in her bedrooms, as well as old storage heaters in the kitchen, dining room and sitting room (which did not work). She obviously did not want to go through another winter without heating, particularly now she had a baby son. A category 1 hazard was rated on excess cold. She had lived in the property since 2008. She had contacted the Agents but they had not done anything about the heating, so she called us. The Agents claim they were unaware of the complaint and when speaking to the landlord he was not happy (to say the least) that the tenant had contacted the council when she had no response from the Agent, which he regarded as an “act of disloyalty”. As far as the Council is aware she has been a good tenant and the flat (apart from the heating issues) was immaculate”.

“Within 3 days of a Council visit the landlord had served a Section 21 eviction notice on the tenant, leaving her very distressed. He was very overt in wanting her to leave for getting the Council involved.”

Source: CIEH members from Wiltshire.

“In a recent case, we were contacted towards the end of 2010 by the tenant of a privately rented 3 bedroom, semi-detached property, who had asked the landlord, who lived across the road, to carry out repairs, to no avail. She was concerned about retaliatory eviction,

and an initial visit was carried out before serving notices to see whether the matters complained about were actionable under the HHSRS. Subsequently a formal inspection took place which identified hazards of:

Category 1 - Excess cold (no heating other than a defective open fire in the living room nor any thermal insulation to the property).

Category 2 - Damp and Mould, Food Safety, Falls on the levels.

These hazards were brought to the owner's agent's attention in October 2010, and after some initial work was commenced, the tenant was served with notice to quit under the Housing Act 1988. She and her family were re-housed in social rented accommodation as a priority by Newark and Sherwood Homes, an arm's length management organisation."

Source: CIEH members from Newark and Sherwood (Nottinghamshire).

"A former public house was converted into 5 flats without planning or building regulation approval. Tenants moved in and one particular couple reported problems to their landlord who did nothing. The tenants went to a solicitor who advised them to withhold rent until repairs were undertaken and they also complained to the Council who started enforcement action under the Housing Act 2004. The landlord asked them to pay rent or leave and subsequently harassed the tenants (including threats of violence) over a period of time and on one occasion they returned home to find the locks had been changed. The Council undertook an investigation into the harassment/unlawful eviction. The landlord initially did not cooperate and the Council had to arrange for the police to facilitate PACE interviews by making an arrest and attempting another. In the longer term the Council prosecuted and the CAB sought and won damages for the tenants. After the locks were changed the tenants did manage to get back into their flat but due to continued problems with the landlord decided to leave. The Council has prosecuted twice including one time under the Protection from Eviction Act. The Council is confident in this case that the landlord's actions were due at least in part to the Council's intervention but is also likely to be linked to the tenants' withholding rent."

Source: CIEH members from Barrow (Cumbria).

"A tenant complained to the Council of repairs not being undertaken and the Council commenced enforcement action. The landlord rang the Council for advice and said she could not afford to do repairs and would prefer to terminate the tenancy. She was advised of the legal process for doing this and has served a notice to quit. The tenant is seeking Council accommodation and at the same time the Council has started enforcement action under the Housing Act 2004 and is investigating complaints from the tenant of harassment by the landlord which is yet to be determined. Again the Council is confident the landlord's actions are due in part to the Council's intervention."

Source: CIEH members from Barrow (Cumbria).

Crosby, Formby and District Citizens Advice Bureau CAB), Tenant's dilemma: Warning your home is at risk if you dare complain, June 2007

In England and Wales in 2010-2011 the CAB advised on 504,535 problems relating to housing<sup>34</sup>.

The following case studies are taken from:

[http://www.citizensadvice.org.uk/print/index/pressoffice/press\\_index/press\\_20070613.htm](http://www.citizensadvice.org.uk/print/index/pressoffice/press_index/press_20070613.htm).

Case 1. A CAB in Cornwall reported an elderly couple with long term health problems who had repeatedly told their landlord about problems with persistent mould growth on the walls. He supplied a dehumidifier and advised the clients to use a strong bleach solution on a

fortnightly basis. The client was fed up with having to do this and was also concerned that the bleach could be affecting his wife's health. They would like to insist on proper action being taken but fear that the landlord would serve notice if they did.

Case 2. A CAB in Yorkshire reported a couple with an 18 month old baby who had moved into their private rented three bedroom property two years previously. The house was in serious disrepair: windows were cracked, one bedroom and the bathroom windows were boarded up and a shower had been installed in the main bedroom with no associated ventilation. The immersion heater had wiring hanging off the wall, secured insufficiently with black tape and the gas fire in the living room had been condemned by a gas engineer. The landlord replaced the gas fire with a two bar electric heater but their home was still cold. As the bathroom was unusable the baby was bathed in kitchen sink, which was increasingly unsuitable as the child grew. The family were living in conditions which were a health risk, especially for the baby. However, they were concerned that if they sought the help of the Environmental Health Department they ran the risk of eviction.

**These fears are in many cases well grounded as clients have taken action and have been served Notice to Quit as a result:**

Case 3. A couple with four children living in the Merseyside area had moved into their flat in September 2006. They were already tenants of the landlord but as their last property was in such bad disrepair the landlord agreed to move them to another of his many properties. This property was extremely cold and damp with a black mould deposit coating the ceilings and walls. The windows were in severe disrepair and didn't close properly and there were structural defects to the living room walls. Since the boiler had broken down they were without heat or hot water over the winter months and relied on one Calor gas heater, which was having an adverse affect on the damp. 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 put things right, despite numerous requests. The client therefore sought help from the Environmental Health Department. However the landlord then retaliated by serving the client with a Section 21 Notice. This family had to be re-housed by the local authority under their homelessness duty.

Case 4. A CAB in East Sussex reported a couple who had been renting their accommodation for over five years. Over that period they estimated that they had spent

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34 Citizens Advice Bureau, [http://www.citizensadvice.org.uk/index/pressoffice/press\\_statistics.htm](http://www.citizensadvice.org.uk/index/pressoffice/press_statistics.htm), 2011



£5,000 – £7,000 of their own money on improving the property including installing a new back door and retiling the kitchen and bathroom. The property is badly in need of repairs and modernisation and Environmental Health had requested the landlord to sort out damp and security problems. However the work had not been carried out and the tenants therefore called in Environmental Health who carried out an inspection and sent a list of repairs needed to the landlord with a copy to the tenants. The landlord promptly issued both the clients and the occupant of the upper flat with Notices to Quit.

Case 5. A CAB in West Sussex reported a couple with two young children whose property was in serious disrepair. When the landlord refused to carry out essential repairs, the clients complained to Environmental Health who issued a schedule of works to be done. The landlord then served a Section 21 Notice on the clients. When the bureau contacted the homelessness department on the clients' behalf, the homelessness officer said it was common practice for landlords to seek to evict tenants who involved Environmental Health.

Case 6. A CAB in East London reported a client whose flat was in serious disrepair. She reported this to the council who deemed the property not fit for human habitation. When the landlord found out that the client had reported the problem, he issued a Notice to Quit. However he offered to let the tenant stay as long as she agreed to a rent increase of £110 per week to cover the costs of the repair.

Case 7. A CAB in Hertfordshire reported a client whose landlord served a Section 21 Notice two days after she complained about damp. He also told the client she would not get back her £1,000 deposit unless she rectified the damp problem.

#### Case from the London Borough of Brent 2011

A private rented tenant reported the serious and widespread disrepair in his house to Brent Borough Council who then contacted the landlord.

The landlord responded by threatening to throw all the tenants out of the house unless our client got back to Brent and told them not to inspect. There are several flats in the house and the tenant did not want to be responsible for them all losing their homes so they got back to Brent Borough Council and told them not to inspect and the Council agreed not to inspect.

The tenant went back to the landlord to say that he had told the council not to inspect but asked the landlord to do the repairs anyway. The landlord then gave him two months' notice to leave.

## Support for action on retaliatory eviction

### National Landlord Association (NLA)

In an article in the Guardian newspaper on 13<sup>th</sup> June 2007, NLA Spokesperson Simon Gordon said: "Of course we (NLA) do not support retaliatory eviction in these circumstances (tenant damage to property) and landlords of this type do not join

organisations like the NLA anyway. It's just important to remember that protection should be a balance between landlord and tenant.”

#### Members of Parliament: EDM from Parliament session 2007-08

EDM 727 '*Retaliatory Eviction by Private Sector Landlords*', addressed the wider issue of retaliatory eviction and was signed by 101 MPs.

#### Citizens Advice Bureau campaign on retaliatory eviction

The CAB campaign against retaliatory eviction has been supported by:

- Chartered Institute of Environmental Health
- Local Authorities' Co-ordinators of Regulatory Services
- Housing Ombudsman
- Child Poverty Action Group
- Shelter
- Association of Tenancy Relations Officers

#### The campaign for a a minimum energy efficiency standard for private rented properties, 2011

A joint statement by campaign members contains the following:

“Encouraging tenants to demand energy efficiency improvements from their landlord without giving them greater security of tenure risks pushing tenants and landlords into conflict and could even see tenants evicted as a result.”

Also contained in the statement is the following demand:

“Give tenants security against retaliatory eviction when they make energy efficiency requests of landlords.”

The statement has been signed by:

All Party Parliamentary Fuel Poverty & Energy Efficiency Group  
Age UK  
Association for the Conservation of Energy  
Blackpool Residents Federation  
Brent Private Tenants' Rights Group  
Bristol Council  
Camden Council  
Camden Federation of Private Tenants  
Centre for Sustainable Energy  
Chartered Institute of Environmental Health  
Child Poverty Action Group  
Citizens Advice  
Consumer Focus  
Crisis  
Disability Alliance  
End Fuel Poverty Coalition  
Federation of Private Residents Associations

Friends of the Earth  
Housing Law Practitioners Association  
Islington Council  
Macmillan Cancer Support  
Manchester City Council  
National Childbirth Trust  
National Energy Action  
National Home Improvement Council  
National Pensioners Convention  
North West Tenants & Residents Assembly  
People & Planet  
St Helens Community Empowerment Network  
Scarborough Private Tenants Rights Group  
Stop Climate Chaos  
Town and Country Planning Association  
UK Business Council for Sustainable Energy  
UK Public Health Association  
UNISON  
WWF - UK  
38 Degrees

#### Statement by Grant Shapps MP as Shadow Housing Minister, 2008

The following comments by then Shadow Housing Minister Grant Shapps MP were reported in Environmental Health News on 27<sup>th</sup> June 2008:

“Shadow housing minister Grant Shapps has warned that any measure to prevent retaliatory evictions must not harm the rental market.

He says in a letter to housing campaigner Debbie Crew that he is keen to address the issue but legislators must be careful to avoid negative knock-on effects.

‘My main concern with the private rented sector is that we don’t legislate too much and end up strangling the market with red tape,’ he writes.

*But Mr Shapps adds that it is vital tenants can ask for repairs and maintenance on their property without risking eviction.<sup>35</sup>”*

#### Support from the legal profession

Debra Wilson a partner at Anthony Gold and a member of the Law Society housing law committee stated on 15/07/2010: “There is a need for further debate about retaliatory evictions, even if the better regulation framework has been discarded.”<sup>36</sup>

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35 Grant Shapps MP Shadow Housing Minister, *Environmental Health News* (<http://www.cieh.org/ehn/ehn3.aspx?id=12746>), 27<sup>th</sup> June 2008

36 Debra Wilson, <http://www.lawgazette.co.uk/opinion/comment/scrapping-regulation-reform-private-landlords-shows-no-foresight>, July 2010

## Possible solutions to prevent retaliatory eviction and the threat of eviction

### Background

#### Housing Act 2004 restrictions on the use of Section 21

The Housing Act 2004 set a number of restrictions on the use of Section 21 which could be considered as a model for dealing with retaliatory eviction in relation to the Green Deal, these are:

Housing Act 2004, Chapter 4 Tenancy Deposit Schemes, Section 215:

#### 215 Sanctions for non-compliance

(1) If a tenancy deposit has been paid in connection with a shorthold tenancy, no section 21 notice may be given in relation to the tenancy at a time when—

(a) the deposit is not being held in accordance with an authorised scheme, or  
(b) the initial requirements of such a scheme (see section 213(4)) have not been complied with in relation to the deposit.

(2) If section 213(6) is not complied with in relation to a deposit given in connection with a shorthold tenancy, no section 21 notice may be given in relation to the tenancy until such time as section 213(6)(a) is complied with.

(3) If any deposit given in connection with a shorthold tenancy could not be lawfully required as a result of section 213(7), no section 21 notice may be given in relation to the tenancy until such time as the property in question is returned to the person by whom it was given as a deposit.

(4) In subsection (3) “deposit” has the meaning given by section 213(8).

(5) In this section a “section 21 notice” means a notice under section 21(1)(b) or (4)(a) of the Housing Act 1988 (recovery of possession on termination of shorthold tenancy).

Housing Act 2004, Part 2, Licensing of houses in multiple occupation, Section 75:

#### 75 Other consequences of operating unlicensed HMOs: restriction on terminating tenancies

(1) No section 21 notice may be given in relation to a shorthold tenancy of a part of an unlicensed HMO so long as it remains such an HMO.

(2) In this section—

\* a “section 21 notice” means a notice under section 21(1)(b) or (4)(a) of the Housing Act 1988 (c. 50) (recovery of possession on termination of shorthold tenancy);

\* a “shorthold tenancy” means an assured shorthold tenancy within the meaning of

Chapter 2 of Part 1 of that Act;

\* “unlicensed HMO” has the same meaning as in section 73 of this Act.

Housing Act 2004, Part 3, Selective licensing of other residential accommodation, Section 98:

98 Other consequences of operating unlicensed houses: restriction on terminating tenancies

(1) No section 21 notice may be given in relation to a shorthold tenancy of the whole or part of an unlicensed house so long as it remains such a house.

(2) In this section—

\* a “section 21 notice” means a notice under section 21(1)(b) or (4)(a) of the Housing Act 1988 (c. 50) (recovery of possession on termination of shorthold tenancy);

\* a “shorthold tenancy” means an assured shorthold tenancy within the meaning of Chapter 2 of Part 1 of that Act;

\* “unlicensed house” has the same meaning as in section 96 of this Act.

2004 Housing Act Interim and Final Management Orders

Where a property ought to be licensed but there is no prospect of this happening in the near future, or a licence is being revoked, a local authority will have to apply to the Residential Property Tribunal to take over the management of the property with an Interim Management Order. This can also be done where a landlord threatens to evict occupiers in order to avoid licensing.

The above information has been included in this report to illustrate the legal powers available in certain circumstances to stop un-professional landlords evicting tenants to protect themselves for legal action.

N5B: Section 21 Accelerated possession procedure (for information):

A written tenancy agreement is required to use the accelerated possession procedure (plus other conditions).

See:

[http://hmctsformfinder.direct.gov.uk/HMCTS/GetForm.do?court\\_forms\\_id=618](http://hmctsformfinder.direct.gov.uk/HMCTS/GetForm.do?court_forms_id=618)

Effect on the PRS of a legislative approach to tackling retaliatory eviction

Despite deregulation of the PRS e.g. in the Housing Acts 1988 and 1996 there does not appear to have been any substantial increase (only around 2%) in the size of the PRS relative to the total housing stock.

**Table: Relative size of PRS to total housing stock in England**

Year	PRS (furnished and unfurnished) (thousands of households)	All housing stock (thousands of households)	PRS as a percentage of all housing stock (%)
1981	1904	17225	11.05
2008	2982	21407	13.9
Difference (%)			2.05 (percentage difference between 1981 and 2008)

Source: DCLG: Trends in tenure and cross tenure topics (general): Table S1011: Trends in tenure: 1981 to 2008, England (1981-1991 DOE Labour Force Survey Housing Trailer; 1992-2008 ONS Labour Force Survey; 2008-09 onwards: DCLG English Housing Survey, full household sample<sup>37</sup>).

The PRS has increased in size from around 1.3 million in 2001 to 2.4 million in 2005 to 3.4 million in 2010, this could be a result of lack of social housing and the un-affordability for many of home ownership. In other words many households have no other choice than to rent in the PRS. There has been a decrease in the number of owner occupied households from a peak of 14.8 million in 2005 and 2006 to 14.5 million in 2009-10. In 2000 the number of social renters was around 3.9 million, in 2009-10 it was around 3.7 million. The size of the social housing sector has remained on the whole static<sup>38</sup>.

In relation to deregulation of the PRS and growth in the sector, a Shelter report of 2005 stated: *“Yet, despite deregulation, the buy-to-let boom, and other factors such as rising house prices, a more flexible labour market and an increase in one-person households, the sector has grown only marginally over the last 10 years. Around half a million households were added to the private rented sector between 1988 and 1995, but this was a time of growth in the overall number of households. The last five years have seen small year-on-year increases in both the number of households and the proportion of households renting privately<sup>39</sup>.”*

According to 2006 data, in regulated PRSs in Europe the PRS is bigger than in England, for example in Germany the PRS comprises 55% of all housing stock and in France the PRS comprises 40% of all housing stock. It can be seen from these figures that greater regulation does not necessarily mean a smaller PRS.

### Laws in other parts of the world on retaliatory eviction

Several countries around the world have specific legislation to deal with retaliatory eviction which could be worth considering in developing any legislation in England and Wales.

<sup>37</sup> DCLG,

<http://www.communities.gov.uk/housing/housingresearch/housingsurveys/englishhousingsurvey/ehstables/ehshouseholdtables/tenure trends/>

<sup>38</sup> DCLG, English Housing Survey: Headline Report 2009-10

<sup>39</sup> Shelter, *Safe and secure? The private rented sector and security of tenure*, May 2005

These countries are:

- Australia
  - New South Wales
  - Queensland
  - Tasmania
  - South Australia
  - Victoria
  - Western Australia
- New Zealand
- United States of America
  - Alaska
  - Arizona
  - California
  - Connecticut
  - Delaware
  - District of Columbia
  - Florida
  - Hawaii
  - Illinois
  - Iowa
  - Kansas
  - Kentucky
  - Maine
  - Maryland
  - Massachusetts
  - Michigan
  - Minnesota
  - Mississippi
  - Montana
  - Nebraska
  - Nevada
  - New Hampshire
  - New Jersey
  - New Mexico
  - New York
  - North Carolina
  - Ohio
  - Oregon
  - Pennsylvania
  - Rhode Island
  - South Carolina
  - South Dakota
  - Tennessee
  - Texas
  - Vermont
  - Virginia

- Washington
- West Virginia
- Wisconsin

Details on how legislation works in these countries can be found in 'The tenant's dilemma Warning: your home is at risk if you dare complain' by Debbie Crew Crosby, Formby and District CAB, June 2007 ([http://www.citizensadvice.org.uk/print/index/pressoffice/press\\_index/press\\_20070613.htm](http://www.citizensadvice.org.uk/print/index/pressoffice/press_index/press_20070613.htm)).

## **Discussion on possible solutions to retaliatory eviction**

### LONG TERM

#### PRS landlord management standards

In the long-term an improvement in the standards of management in the PRS could have the effect of helping to drive out rogue landlords and thus helping reduce the incidence of retaliatory eviction and the threat of retaliatory eviction.

To this end a national landlord register has been recommended and regulation of letting and management agents.

#### Legislation

Professional landlords having nothing to fear from new legislation which could push up standards. Listed below are options for legislative safeguards.

- A moratorium on the use of Section 21 commencing when a tenant requests that a landlord applies for a Green Deal or a tenant seeks permission from a landlord to apply for a Green Deal, and expiring on the completion of work under a Green Deal or when the process to address a refusal of consent from a landlord (e.g. a court or tribunal decision) has been completed. To prevent retaliatory eviction at the end of the time frame outline above a 2 month additional moratorium could be imposed on the use of Section 21
- Letting and management agents should be included in legislation
- Protection from retaliatory eviction and threat of retaliatory eviction is required when minimum energy efficiency standards are introduced for private rented sector dwellings
- Addressing the broader issue of retaliatory eviction and relevant to the Green Deal, use of Section 21 could be restricted to professional landlords e.g. landlords who are members of professional landlords organisations e.g. the NLA or RLA or voluntary landlord accreditation schemes. If a national landlord register were to be introduced membership could be a prerequisite for the use of Section 21

#### Alternatives to new legislation

- An alternative to new legislation could be to confer discretionary powers on County Court Judges in Section 21 proceedings to deny a possession order if it can be determined that retaliatory eviction has occurred. There could be problems in



gathering evidential proof of retaliatory eviction

- Referral of Section 21 possession claims to the Residential Property Tribunal Service (RPTS) for a judgement (for further information on the RPTS please visit: <http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/residential-property/>)

### Collection of data on retaliatory eviction, threat of eviction and fear of eviction

Better national and local data collection would greatly help dealing with retaliatory eviction and the threat of eviction.

#### MEDIUM TO SHORT TERM

Measures which could help reduce the incidence of retaliatory eviction, the threat of eviction and tenants' fear of retaliatory eviction could include:

- The development of voluntary landlord accreditation schemes
- Better Local Authority enforcement of existing housing legislation and better collection of services requests data. Pro-active local authority inspections
- A better take-up of existing landlord Housing Act 2004 licensing schemes
- Better advice to tenants on their legal rights

### Conclusions

Retaliatory eviction, the threat or fear of eviction in response to tenants' reasonable requests of landlords for energy efficiency improvements, must not stand in the way of the success of the Green Deal. The PRS must have the same opportunity as all other tenures.

Many households do not have any choice but to rent in the PRS due to lack of social housing and being unable to purchase their own home. The PRS has an important role to play in meeting housing need, unfortunately many PRS properties do not meet the decent home standard and have poor energy efficiency.

There is clear evidence of retaliatory eviction, the threat of eviction and fear of eviction. The lack of national and local data on landlord management practice and actual retaliatory (legal) eviction hampers an accurate assessment of the extent of the problem. Further research is needed.

It is clear that an improvement in PRS landlord management could help eliminate bad practice and that alternatives to new legislation can be considered to deal with retaliatory eviction. A precedent on restrictions on the use of Section 21 has been set in the Housing Act 2004 in relation to a tenant's deposit and HMO and selective licensing. Many countries already have legislation to protect tenants from retaliatory eviction.

Less regulation in the PRS has not led to a significant increase in the size of the PRS and more regulated private sectors in other countries exist alongside large PRSs.

On balance the NPTO supports a regulatory approach i.e. new legislation supported by a range of non-regulatory measures to eliminate the practice of retaliatory eviction and poor landlord practice. Such legislation could be introduced as regulations under the Energy Bill and could place a restriction on the use of Section 21 where there is evidence that a landlord has unreasonably withheld consent and attempted to evict a tenant in retaliation.

Tenants' energy efficiency improvements regulations could be introduced as per Energy Bill Chapter 2, Section 47 (Sanctions) to prevent retaliatory eviction in response to a tenant's request for Green Deal energy improvement measures. A national landlord register should also be introduced alongside better collection of national and local data on poor landlord practice. Resources should be made available to help better enforcement of existing legislation.

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