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### **No-fault evictions violate human rights: Section 21 must end**

The United Kingdom has pledged in front of the international community to respect, protect and fulfil the right to adequate housing. To this day this right has not been incorporated into domestic law but the UK remains bound by international law. This briefing explains why Section 21 of the Housing Act 1988, which permits landlords in England to evict tenants without giving a reason, is in breach of the right to adequate housing.

#### The right to adequate housing in international law: Security of tenure and evictions

The right to adequate housing is guaranteed in international human rights treaties ratified by the UK. These include Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 27(4) of the Convention on the Rights of the Child, Article 5(e) of the International Convention on the Elimination of All Forms of Racial Discrimination, and Articles 13 and 14 of the Convention on the Elimination of all Forms of Discrimination Against Women.

Security of tenure is an essential ingredient of the right to adequate housing, “notwithstanding the type of tenure”, as reminded by the UN Committee on Economic, Social and Cultural Rights.<sup>1</sup> The UN Committee has also established that, “where some evictions may be justifiable, such as in the case of the persistent non-payment of rent or of damage to rented property without any reasonable cause, it is incumbent upon the relevant authorities to ensure that those evictions are carried out in a manner warranted by a law

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<sup>1</sup> CESCR, *General Comment No. 4: The Right to Adequate Housing*, 1991, UN doc: E/1992/23, para. 8.a.

which is compatible with the (ICESCR) and that all the legal recourses and remedies are available to those affected.”<sup>2</sup>

To be in line with international human rights law, national legislation on evictions must respect the principles of reasonableness and proportionality. This means that tenants must be able “to object or lodge an appeal so that the judge might consider the consequences of the eviction and its compatibility” with the ICESCR.<sup>3</sup>

The right to housing is inextricably linked to the protection of the home and the right to a private and family life, recognised in Article 17 of the International Covenant on Civil and Political Rights and Article 8 of the European Convention of Human Rights, which is incorporated into the UK through the Human Rights Act 1998.<sup>4</sup>

The UN Human Rights Committee has declared that every interference with privacy, family, home or correspondence that is provided for by law should be in accordance with the provisions, aims and objectives of international human rights law and should be, in any event, reasonable in the particular circumstances.<sup>5</sup>

As observed by the European Court of Human Rights, “the loss of one’s home is the most extreme form of interference with the right to respect for the home. Any person at risk of an interference of this magnitude should in principle be able to have the proportionality of the

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<sup>2</sup> CESCR, *General Comment No. 7: The Right to Adequate Housing and Forced Evictions*, 1997, UN doc: E/1998/22, para. 11.

<sup>3</sup> CESCR, *Views with regard to communication 5/2015, MBD et al v. Spain*, 2017, UN doc: E/C.12/61/D/5/2015, para. 13.4 and 21.a.

<sup>4</sup> The connection between the right to housing and the right to private and family life in the specific context of mortgage repossessions has been acknowledged by the European Court of Justice: ECJ, *Case C-34/13, Kušionová v. SMART Capital as*, 2014, para. 65.

<sup>5</sup> Human Rights Committee, *General Comment No. 16: The right to respect of privacy, family, home and correspondence, and the protection of honour and reputation*, 1988, UN doc: **HRI/GEN/1/Rev.1**, para. 4.

measure determined by an independent tribunal”.<sup>6</sup> The Court has also said that “particularly weighty reasons of public interest” are required in case of serious interference with the right to private and family life.<sup>7</sup>

Attention must be paid to the individual situation and the consequences of an eviction before deciding whether it is appropriate to proceed, in particular when an eviction could render affected people homeless.<sup>8</sup> Evictions must be prevented until public authorities find suitable alternative rehousing options, such as legalisation of informal habitation, connection to utility services, and effective assistance securing alternative accommodation.<sup>9</sup>

The protection of the right to private and family life extends to public and private properties, as well as privatised social housing units.<sup>10</sup>

### Insecurity of tenure in rental housing in England

Currently the law does not protect tenants if a landlord fails to maintain a property in a standard that is fit for human habitation. The limits contained in Section 8 of the Landlord and Tenant Act 1985 (requirement of paying less than £80 annual rent in London and £52 in the rest of the country) are absolutely dated and leave tenants unprotected in front of socially irresponsible landlords.<sup>11</sup> Section 11 of the Act imposes repairing obligations on

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<sup>6</sup> ECtHR, *McCann v. UK*, 2008, para. 50; *Paulić v. Croatia*, 2009, para. 43; *Zehentner v. Austria*, 2009, para. 59; *Kay et al v. UK*, 2010, para. 68; *Buckland v. UK*, UK, 2012, para. 65; *Rousk v. Sweden*, 2013, para. 137.

<sup>7</sup> ECtHR, *Connors v. UK*, 2004, para. 86.

<sup>8</sup> ECtHR, *Winterstein et al v. France*, 2013, para. 159; *Ivanova and Cherkezov v. Bulgaria*, 2016, para. 58.

<sup>9</sup> ECtHR, *Yordanova et al v. Bulgaria*, 2012, para. 120-134.

<sup>10</sup> ECtHR, *Larkos v. Cyprus*, 1999, para. 31; *Brezec v. Croatia*, 2013, para. 34-36; *Lemo et al v. Croatia*, 2014, para. 29-31.

<sup>11</sup> Karen Buck’s Homes (Fitness for Human Habitation) Bill 2017-19 is seeking to amend relevant sections of the Landlord and Tenant Act 1985. Report stage in the House of Commons is scheduled to take place on 26 October 2018.

landlords but it requires “disrepair”. Damp, mould or exposed asbestos not causing structural damage would not be covered.

The latest edition of the English Housing Survey, commissioned by the Ministry of Housing, Communities and Local Government, shows that in 2016/17 the private rental sector has the highest proportion of homes with at least one indicator of poor housing: 38%. More than one quarter (27%) of privately rented homes failed the decent home standard in 2016, for 20% in the case of owner-occupied homes and 13% in the social housing sector.<sup>12</sup>

In this context, tenants expose themselves to the risk of eviction if they take legal action because Section 21 of the Housing Act 1988 permits landlords to evict tenants with no fault and without giving a reason.

The National Audit Office has reported that the ending of private sector tenancies is the biggest single driver of statutory homelessness in England.<sup>13</sup> Based on the cross reference of 2017-2018 data from the Ministry of Justice and the Ministry of Housing, Communities and Local Government, Generation Rent has found a tight correlation between homelessness and Section 21 evictions: 92% in London and 88% outside of London.<sup>14</sup> A study by the Cambridge Centre for Housing and Planning Research found that 80% of private sector evictions in 2015 were no-fault evictions under Section 21.<sup>15</sup>

Section 21 is incompatible with the principle of security of tenure and the proportionality assessment in eviction procedures. Other jurisdictions show that the requirement of proportionality is perfectly compatible with respecting the right to private property. For

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<sup>12</sup> Ministry of Housing, Communities and Local Government, *English Housing Survey 2016/17*.

<sup>13</sup> National Audit Office, *Homelessness*, 2017, p. 6.

<sup>14</sup> Generation Rent, *No-fault evictions drive up homelessness*, August 2018; Ministry of Justice, *Mortgage and landlord possession statistics quarterly: April to June 2018*, August 2018; Ministry of Housing, Communities & Local Government, *Statutory homelessness and prevention and relief, October to December (Q4) 2017: England*, Statistical release of March 2018.

<sup>15</sup> JRF and CCHP, *Poverty, Evictions and Forced Moves*, 2017.

example, the Private Housing (Tenancies) (Scotland) Act 2016 distinguishes between “mandatory” and “discretionary” grounds of eviction; with the latter, landlords must prove that relevant circumstances exist but the court will only grant recovery of possession orders if it considers it is reasonable to do so.<sup>16</sup> In San Francisco (USA), one of the most expensive cities for renters, tenants that are evicted with no fault have a right to a relocation payment from the landlord.<sup>17</sup> In South Africa, the court usually urges public authorities to report on their capacity to provide alternative accommodation to those in need who would otherwise be rendered homeless by the eviction. Authorities are expected to determine occupants’ needs by engaging with them meaningfully regarding their circumstances, particularly whether they can afford alternative private housing options. Where occupants cannot afford the available private housing and their eviction would lead to homelessness, it would not be just and equitable for a judge to grant an eviction order. In these circumstances, the court would make the eviction order contingent on public provision of alternative accommodation. Where authorities are not immediately able to do so, some degree of tolerance is expected of private landlords until the authorities are able to provide alternative accommodation.<sup>18</sup> In the Netherlands and Germany, a proportionality assessment is available in ordinary termination procedures in the form of a defence right. Courts are entitled to take tenants’ personal circumstances into account to balance the interests of landlords and tenants, and assess the proportionality of the lease termination.<sup>19</sup>

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<sup>16</sup> Private Housing (Tenancies) (Scotland) Act 2016, Schedule 3.

<sup>17</sup> City and County of San Francisco, Rent Ordinance: <https://sfrb.org/ordinance-regulations> See also Generation Rent, *Secure tenancies, strong families, stable communities: reforming private renting*, October 2016.

<sup>18</sup> *Molusi and Others v. Voges NO and Others*, 2016 (3) SA 370 (CC), para. 30-36; *City of Johannesburg Metropolitan Municipality v. Blue Moonlight Properties 39 (Pty) Ltd and Another*, 2012 (2) SA 104 (CC); *Occupiers of 51 Olivia Road, Berea Township and 197 Main Street, Johannesburg v. City of Johannesburg* 2008 (3) 208 (CC); *Port Elizabeth Municipality v. Various Occupiers* 2005 (1) SA 217 (CC).

<sup>19</sup> Michel Vols, Marvin Kiehl and Julian Sidoli del Ceno, “Human Rights and Protection against Eviction in Anti-social Behaviour Cases in the Netherlands and Germany”, *European Journal of Comparative Law and Governance*, 2:2, 2015, pp. 167- 168, 172-175, 180.

Recommendation

To comply with international human rights law and principles, English law must be amended to impose greater duties on landlords to ensure the **fitness of habitation** of properties and to enhance tenant security by **abolishing no-fault evictions** of Section 21.

*Just Fair works to realise a fairer and more just society in the UK by monitoring and advocating for the protection of economic and social rights.*

*Generation Rent campaigns with private renters for professionally managed, secure, decent and affordable privately rented homes.*