



# Housing Act 1988

## 1988 CHAPTER 50

### PART I

#### RENTED ACCOMMODATION

#### CHAPTER IV

#### PROTECTION FROM EVICTION

#### 27 Damages for unlawful eviction.

- (1) This section applies if, at any time after 9th June 1988, a landlord (in this section referred to as “the landlord in default”) or any person acting on behalf of the landlord in default unlawfully deprives the residential occupier of any premises of his occupation of the whole or part of the premises.
- (2) This section also applies if, at any time after 9th June 1988, a landlord (in this section referred to as “the landlord in default”) or any person acting on behalf of the landlord in default—
  - (a) attempts unlawfully to deprive the residential occupier of any premises of his occupation of the whole or part of the premises, or
  - (b) knowing or having reasonable cause to believe that the conduct is likely to cause the residential occupier of any premises—
    - (i) to give up his occupation of the premises or any part thereof, or
    - (ii) to refrain from exercising any right or pursuing any remedy in respect of the premises or any part thereof,does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, and, as a result, the residential occupier gives up his occupation of the premises as a residence.

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*Status: Point in time view as at 06/04/2014.*

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- (3) Subject to the following provisions of this section, where this section applies, the landlord in default shall, by virtue of this section, be liable to pay to the former residential occupier, in respect of his loss of the right to occupy the premises in question as his residence, damages assessed on the basis set out in section 28 below.
- (4) Any liability arising by virtue of subsection (3) above—
- (a) shall be in the nature of a liability in tort; and
  - (b) subject to subsection (5) below, shall be in addition to any liability arising apart from this section (whether in tort, contract or otherwise).
- (5) Nothing in this section affects the right of a residential occupier to enforce any liability which arises apart from this section in respect of his loss of the right to occupy premises as his residence; but damages shall not be awarded both in respect of such a liability and in respect of a liability arising by virtue of this section on account of the same loss.
- (6) No liability shall arise by virtue of subsection (3) above if—
- (a) before the date on which proceedings to enforce the liability are finally disposed of, the former residential occupier is reinstated in the premises in question in such circumstances that he becomes again the residential occupier of them; or
  - (b) at the request of the former residential occupier, a court makes an order (whether in the nature of an injunction or otherwise) as a result of which he is reinstated as mentioned in paragraph (a) above;
- and, for the purposes of paragraph (a) above, proceedings to enforce a liability are finally disposed of on the earliest date by which the proceedings (including any proceedings on or in consequence of an appeal) have been determined and any time for appealing or further appealing has expired, except that if any appeal is abandoned, the proceedings shall be taken to be disposed of on the date of the abandonment.
- (7) If, in proceedings to enforce a liability arising by virtue of subsection (3) above, it appears to the court—
- (a) that, prior to the event which gave rise to the liability, the conduct of the former residential occupier or any person living with him in the premises concerned was such that it is reasonable to mitigate the damages for which the landlord in default would otherwise be liable, or
  - (b) that, before the proceedings were begun, the landlord in default offered to reinstate the former residential occupier in the premises in question and either it was unreasonable of the former residential occupier to refuse that offer or, if he had obtained alternative accommodation before the offer was made, it would have been unreasonable of him to refuse that offer if he had not obtained that accommodation,
- the court may reduce the amount of damages which would otherwise be payable to such amount as it thinks appropriate.
- (8) In proceedings to enforce a liability arising by virtue of subsection (3) above, it shall be a defence for the defendant to prove that he believed, and had reasonable cause to believe—
- (a) that the residential occupier had ceased to reside in the premises in question at the time when he was deprived of occupation as mentioned in subsection (1) above or, as the case may be, when the attempt was made or the acts were done as a result of which he gave up his occupation of those premises; or

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- (b) that, where the liability would otherwise arise by virtue only of the doing of acts or the withdrawal or withholding of services, he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.
- (9) In this section—
- (a) “residential occupier”, in relation to any premises, has the same meaning as in section 1 of the 1977 Act;
  - (b) “the right to occupy”, in relation to a residential occupier, includes any restriction on the right of another person to recover possession of the premises in question;
  - (c) “landlord”, in relation to a residential occupier, means the person who, but for the occupier’s right to occupy, would be entitled to occupation of the premises and any superior landlord under whom that person derives title;
  - (d) “former residential occupier”, in relation to any premises, means the person who was the residential occupier until he was deprived of or gave up his occupation as mentioned in subsection (1) or subsection (2) above (and, in relation to a former residential occupier, “the right to occupy” and “landlord” shall be construed accordingly).

## **28 The measure of damages.**

- (1) The basis for the assessment of damages referred to in section 27(3) above is the difference in value, determined as at the time immediately before the residential occupier ceased to occupy the premises in question as his residence, between—
- (a) the value of the interest of the landlord in default determined on the assumption that the residential occupier continues to have the same right to occupy the premises as before that time; and
  - (b) the value of that interest determined on the assumption that the residential occupier has ceased to have that right.
- (2) In relation to any premises, any reference in this section to the interest of the landlord in default is a reference to his interest in the building in which the premises in question are comprised (whether or not that building contains any other premises) together with its curtilage.
- (3) For the purposes of the valuations referred to in subsection (1) above, it shall be assumed—
- (a) that the landlord in default is selling his interest on the open market to a willing buyer;
  - (b) that neither the residential occupier nor any member of his family wishes to buy; and
  - (c) that it is unlawful to carry out any substantial development of any of the land in which the landlord’s interest subsists or to demolish the whole or part of any building on that land.
- (4) In this section “the landlord in default” has the same meaning as in section 27 above and subsection (9) of that section applies in relation to this section as it applies in relation to that.
- (5) Section 113 of the <sup>M1</sup>Housing Act 1985 (meaning of “members of a person’s family”) applies for the purposes of subsection (3)(b) above.

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- (6) The reference in subsection (3)(c) above to substantial development of any of the land in which the landlord’s interest subsists is a reference to any development other than—
- (a) development for which planning permission is granted by a general development order for the time being in force and which is carried out so as to comply with any condition or limitation subject to which planning permission is so granted; or
  - (b) a change of use resulting in the building referred to in subsection (2) above or any part of it being used as, or as part of, one or more dwelling-houses;
- and in this subsection “general development order”<sup>F1</sup> has the meaning given in section 56(6) of the Town and Country Planning Act 1990] and other expressions have the same meaning as in that Act.

#### Textual Amendments

**F1** Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1\), s. 4, Sch. 2 para. 79\(1\)](#)

#### Marginal Citations

**M1** [1985 c. 68.](#)

## 29 Offences of harassment.

- (1) In section 1 of the 1977 Act (unlawful eviction and harassment of occupier), with respect to acts done after the commencement of this Act, subsection (3) shall have effect with the substitution, for the word “calculated”, of the word “likely”.
- (2) After that subsection there shall be inserted the following subsections—
  - “(3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—
    - (a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or
    - (b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,
 and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.
  - (3B) A person shall not be guilty of an offence under subsection (3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.
  - (3C) In subsection (3A) above “landlord”, in relation to a residential occupier of any premises, means the person who, but for—
    - (a) the residential occupier’s right to remain in occupation of the premises, or
    - (b) a restriction on the person’s right to recover possession of the premises,
 would be entitled to occupation of the premises and any superior landlord under whom that person derives title.”

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### **30 Variation of scope of 1977 ss. 3 and 4.**

- (1) In section 3 of the 1977 Act (prohibition of eviction without due process of law), in subsection (1) for the words “not a statutorily protected tenancy” there shall be substituted “neither a statutorily protected tenancy nor an excluded tenancy”.
- (2) After subsection (2A) of that section there shall be inserted the following subsections—
  - “(2B) Subsections (1) and (2) above apply in relation to any premises occupied as a dwelling under a licence, other than an excluded licence, as they apply in relation to premises let as a dwelling under a tenancy, and in those subsections the expressions “let” and “tenancy” shall be construed accordingly.
  - (2C) References in the preceding provisions of this section and section 4(2A) below to an excluded tenancy do not apply to—
    - (a) a tenancy entered into before the date on which the Housing Act 1988 came into force, or
    - (b) a tenancy entered into on or after that date but pursuant to a contract made before that date, but, subject to that, “excluded tenancy” and “excluded licence” shall be construed in accordance with section 3A below.”
- (3) In section 4 of the 1977 Act (special provisions for agricultural employees) after subsection (2) there shall be inserted the following subsection—
  - “(2A) In accordance with section 3(2B) above, any reference in subsections (1) and (2) above to the tenant under the former tenancy includes a reference to the licensee under a licence (other than an excluded licence) which has come to an end (being a licence to occupy premises as a dwelling); and in the following provisions of this section the expressions “tenancy” and “rent” and any other expressions referable to a tenancy shall be construed accordingly.”

### **31 Excluded tenancies and licences.**

After section 3 of the 1977 Act there shall be inserted the following section—

#### **“3A Excluded tenancies and licences.**

- (1) Any reference in this Act to an excluded tenancy or an excluded licence is a reference to a tenancy or licence which is excluded by virtue of any of the following provisions of this section.
- (2) A tenancy or licence is excluded if—
  - (a) under its terms the occupier shares any accommodation with the landlord or licensor; and
  - (b) immediately before the tenancy or licence was granted and also at the time it comes to an end, the landlord or licensor occupied as his only or principal home premises of which the whole or part of the shared accommodation formed part.
- (3) A tenancy or licence is also excluded if—
  - (a) under its terms the occupier shares any accommodation with a member of the family of the landlord or licensor;

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- (b) immediately before the tenancy or licence was granted and also at the time it comes to an end, the member of the family of the landlord or licensor occupied as his only or principal home premises of which the whole or part of the shared accommodation formed part; and
  - (c) immediately before the tenancy or licence was granted and also at the time it comes to an end, the landlord or licensor occupied as his only or principal home premises in the same building as the shared accommodation and that building is not a purpose-built block of flats.
- (4) For the purposes of subsections (2) and (3) above, an occupier shares accommodation with another person if he has the use of it in common with that person (whether or not also in common with others) and any reference in those subsections to shared accommodation shall be construed accordingly, and if, in relation to any tenancy or licence, there is at any time more than one person who is the landlord or licensor, any reference in those subsections to the landlord or licensor shall be construed as a reference to any one of those persons.
- (5) In subsections (2) to (4) above—
- (a) “accommodation” includes neither an area used for storage nor a staircase, passage, corridor or other means of access;
  - (b) “occupier” means, in relation to a tenancy, the tenant and, in relation to a licence, the licensee; and
  - (c) “purpose-built block of flats” has the same meaning as in Part III of Schedule 1 to the Housing Act 1988;
- and section 113 of the Housing Act 1985 shall apply to determine whether a person is for the purposes of subsection (3) above a member of another’s family as it applies for the purposes of Part IV of that Act.
- (6) A tenancy or licence is excluded if it was granted as a temporary expedient to a person who entered the premises in question or any other premises as a trespasser (whether or not, before the beginning of that tenancy or licence, another tenancy or licence to occupy the premises or any other premises had been granted to him).
- (7) A tenancy or licence is excluded if—
- (a) it confers on the tenant or licensee the right to occupy the premises for a holiday only; or
  - (b) it is granted otherwise than for money or money’s worth.
- (8) A licence is excluded if it confers rights of occupation in a hostel, within the meaning of the Housing Act 1985, which is provided by—
- (a) the council of a county, district or London Borough, the Common Council of the City of London, the Council of the Isles of Scilly, the Inner London Education Authority, a joint authority within the meaning of the Local Government Act 1985 or a residuary body within the meaning of that Act;
  - (b) a development corporation within the meaning of the New Towns Act 1981;
  - (c) the Commission for the New Towns;
  - (d) an urban development corporation established by an order under section 135 of the Local Government, Planning and Land Act 1980;

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- (e) a housing action trust established under Part III of the Housing Act 1988;
- (f) the Development Board for Rural Wales;
- (g) the Housing Corporation or Housing for Wales;
- (h) a housing trust which is a charity or a registered housing association, within the meaning of the Housing Associations Act 1985; or
- (i) any other person who is, or who belongs to a class of person which is, specified in an order made by the Secretary of State.

(9) The power to make an order under subsection (8)(i) above shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

### **32 Notice to quit etc.**

(1) In section 5 of the 1977 Act (validity of notices to quit) at the beginning of subsection (1) there shall be inserted the words “Subject to subsection (1B) below”.

(2) After subsection (1) of that section there shall be inserted the following subsections—

“(1A) Subject to subsection (1B) below, no notice by a licensor or a licensee to determine a periodic licence to occupy premises as a dwelling (whether the licence was granted before or after the passing of this Act) shall be valid unless—

- (a) it is in writing and contains such information as may be prescribed, and
- (b) it is given not less than 4 weeks before the date on which it is to take effect.

(1B) Nothing in subsection (1) or subsection (1A) above applies to—

- (a) premises let on an excluded tenancy which is entered into on or after the date on which the Housing Act 1988 came into force unless it is entered into pursuant to a contract made before that date; or
- (b) premises occupied under an excluded licence.”

### **33 Interpretation of Chapter IV and the 1977 Act.**

(1) In this Chapter “the 1977 Act” means the <sup>M2</sup>Protection from Eviction Act 1977.

(2) In section 8 of the 1977 Act (interpretation) at the end of subsection (1) (statutory protected tenancy) there shall be inserted—

“(e) an assured tenancy or assured agricultural occupancy under Part I of the Housing Act 1988.”

(3) At the end of that section there shall be added the following subsections—

“(4) In this Act “excluded tenancy” and “excluded licence” have the meaning assigned by section 3A of this Act.

(5) If, on or after the date on which the Housing Act 1988 came into force, the terms of an excluded tenancy or excluded licence entered into before that date are varied, then—

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- (a) if the variation affects the amount of the rent which is payable under the tenancy or licence, the tenancy or licence shall be treated for the purposes of sections 3(2C) and 5(1B) above as a new tenancy or licence entered into at the time of the variation; and
  - (b) if the variation does not affect the amount of the rent which is so payable, nothing in this Act shall affect the determination of the question whether the variation is such as to give rise to a new tenancy or licence.
- (6) Any reference in subsection (5) above to a variation affecting the amount of the rent which is payable under a tenancy or licence does not include a reference to—
- (a) a reduction or increase effected under Part III or Part VI of the Rent Act 1977 (rents under regulated tenancies and housing association tenancies), section 78 of that Act (power of rent tribunal in relation to restricted contracts) or sections 11 to 14 of the Rent (Agriculture) Act 1976; or
  - (b) a variation which is made by the parties and has the effect of making the rent expressed to be payable under the tenancy or licence the same as a rent for the dwelling which is entered in the register under Part IV or section 79 of the Rent Act 1977.”

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**Marginal Citations**

M2 1977 c. 43.



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