Preface

Quiet Enjoyment: protection from rogue landlords, 8th edn; *Manual of Housing Law*, 10th edn and *Homelessness and Allocations*, 10th edn

Background

For the first time, these three books are being published contemporaneously and by the same publisher.

Historically, the first of these books started life as *Housing: security and rent control*, in 1978, originally paired with *Housing: repairs and improvements*, by Tom Hadden (1979). Both were published by Sweet & Maxwell, as have been all subsequent editions of the *Manual of Housing Law* (as it became from the second edition in 1983, expanded to include the material in *Repairs and Improvements*). The first edition of *Quiet Enjoyment, remedies for harassment and illegal eviction*, co-authored with Martin Partington, was published by LAG, also in 1978, a booklet rather than a full-length book. The first edition of *Homelessness and Allocations*, under the title *The Homeless Persons Act*, followed from LAG in 1982. Over the years, I have been joined by a number of co-authors; there was a small number of editions of the LAG books which I did not write. Here I find myself, still writing them just shy of 40 years after they were first published, the books still in use.

Until the mid-1970s, the term 'housing law' was in scant use: it was a term applied to a sub-division of planning law and on occasion merited a mention in landlord and tenant or local government. The subject covered the powers and duties of local authorities, mainly in relation to slum clearance (by area or individual unit), the provision of public housing and related matters such as improvement grants. Reflecting the growth of legal aid, the introduction of law centres and the underlying social demand for rights, housing law began to develop in the early 1970s – largely through the pages of the *LAG Bulletin* (as *Legal Action* was then called) – bringing together all the law as it affected the use of a property as a home, whether derived from private rights or from the public powers and duties conferred or imposed on local authorities, whether formally identified as housing or because it impacted on housing in practice.

At that time, LAG did not publish many full-length books; hence the observation that *Quiet Enjoyment* was initially no more than a booklet. This was one reason why the *Manual* was published by Sweet & Maxwell, one of the two leading legal publishers. Sweet & Maxwell had, however, given the subject a further boost when, in the same year as the first edition of what became the *Manual* was published, it decided to expand the coverage of the *Encyclopaedia of Housing Law and Practice* to reflect the new vision of housing law.

The topics taken into the subject through the efforts of these two publishers included the Rent Acts (governing private sector security and harassment/illegal eviction), leasehold enfranchisement and extension, matrimonial law so far as it affected the family home on domestic breakdown, environmental health (statutory nuisance and other provisions affecting housing), social security, mobile homes, judicial review (enjoying its own period of unprecedented growth, itself in part a reflection of the same rise in rights awareness), as well as some planning law, compulsory purchase, conveyancing, landlord and tenant, contract and tort. Subsequent significant developments include the mass of law directly or indirectly reflecting policies on anti-social behaviour, much of it focused on housing, enhanced long leaseholder rights, human rights and the divergence of housing law as between England and Wales.

Sweet & Maxwell continues to publish the *Encyclopaedia*, along with the *Housing Law Reports*, the *Journal of Housing Law* and *Arden & Partington's Housing Law*; but for a change of direction in relation to titles such as the *Manual*, it would have remained in its list – regardless of legalities, it would not have been right to seek to move it after the publisher had done so much for the subject, as it continues to do through these other titles; and, while I am delighted both to bring the *Manual* 'home' to LAG and to be able to publish it as part of a discrete set, it would be wrong not to mark the departure by expressing my own gratitude for its support for the title over so many years.

Books

The three books have had different aims. Since the 1970s, the *Manual of Housing Law* has sought to provide a guide to housing law as described above, for a fairly wide array of interested individuals: the practitioner starting out in housing law; the non-specialist practitioner who needs occasional but ready access to the subject; lay advisers; students both of housing and of law; housing officers in local authorities and other social housing providers; environmental

health officers working in housing; and, local councillors with a remit or interest in the subject.

Without claiming to describe all the detail of the subject, the intention has remained the same: to enable the reader to understand housing law as a whole, to know where to find it and to know how to apply it, whether to the problems of individuals or to the policies and practices of landlords and local authorities. This has been the essential approach to housing law as a subject: it exists not for its theory but to be applied.

While the focus of *Quiet Enjoyment* and *Homelessness and Allocations* has been on particular – and particularly important – aspects of the subject, that approach is also at their core, although their target audiences have been somewhat different, aimed primarily at actual and emerging specialist practitioners, specialist lay advisers and specialist officers in local authorities rather than students and others: the emphasis has nonetheless throughout been on practical application of the law. Hence, each of them contains specimen documentation to help the adviser bring cases into court as quickly as they usually need (although this did not arrive in *Homelessness and Allocations* until the seventh edition, the second one following the introduction of the right of appeal on a point of law to the county court by Housing Act 1996, before which it was uncommon for judicial review applications to be prepared by anyone other than relatively experienced public law counsel).

Status

It is this central approach of practical application which generated the proposition that the fundamental starting-point in relation to any housing law problem or discussion requires identification of the *status* of the occupier, which is to say the class of occupational right both at common law and under statute which determines the body of rights, duties and remedies to which the occupation is subject, without which the occupier's entitlements are unknown and, of as much importance, without which the implications are uncertain as to how a problem or other matter should be addressed so as to achieve the greatest gain in living conditions for the occupier while averting the worst consequences, in particular eviction and rent increases.

The number of statuses has long been a problem. Even during the 1970s, there were Rent Act protected and statutory tenancies subject to full and partial exceptions, furnished tenants, tenants with resident landlords, restricted contracts, tenants and licensees

exempt from any protection, Rent (Agriculture) Act 1976 tenancies and licences for tied workers in agriculture and forestry, as well as residual controlled tenancies dating from before repeal of the previous security and rent regime in 1957. Moreover, there were housing association tenancies within rent regulation but outside security and other lettings wholly outside both, primarily local authority tenancies but also those from other bodies, such as New Town Development Corporations and the Crown.

The Housing Act 1980 introduced the secure tenancy for most public sector tenants – and licensees – as well as for those in the remainder of the social rented sector, ie housing associations and trusts, together with its own schedule of exceptions, full and qualified; at the same time, it sought to revivify the private rented sector by means, first, of new protected shorthold tenancies and, secondly, a class of new-build letting called assured tenancy, modelled on the security available to business tenants under the Landlord and Tenant Act 1954 Part 2, the latter of which attracted negligible interest. In addition, the 1980 Act brought tenants of the Crown into Rent Act security and rent control if the property was under the management of the Crown Estate Commissioners.

In 1988, the modern assured tenancy was introduced for the fully private sector as well as for housing association and trust tenants, together with assured shorthold tenancies and assured agricultural occupancies, again subject to their own exceptions; the regime also replaced the short-lived new-build 1980 Act predecessor of the same name. In 1996, introductory tenancies were added to the secure tenancy regime. Subsequent developments include demoted tenancies (from both secure and assured status) and family intervention tenancies. In 2011, the dawn of putative localism brought with it the flexible tenancy – in effect, a shorthold secure tenancy albeit for somewhat longer periods than usual in the private sector. The year 2016 brought the distinction between old (existing) secure tenancies and new secure tenancies (which are not secure at all), which is, as it were, still waiting at the platform for the government to set in motion.

I should add that, obviously, this reflects wholesale disregard in England for the Law Commission's *Renting Homes: The Final Report* (2006), the proposals by Martin Partington and his team, *inter alia* to reduce the number of available forms of rental occupation of residential property to two (standard contract and secure contract) and for model contract terms. These were, however, taken up by the Welsh Government, which accepted the recommendations (revisited in *Renting Homes: a better way for Wales*, May 2013) and enacted them

in the Renting Homes (Wales) Act 2016, also yet to be brought into force.

As I wrote in the Introduction to the ninth edition of the *Manual*:

> ... [H]ousing law is a subject in a state of constant evolution (if not revolution) and, if this history is anything to go by, is probably destined so to remain. ... That makes it difficult to keep up with. Furthermore, law is rarely retrospective. Accordingly, one set of rules does not replace another, so much as two (or ten) sets co-exist for a period. And, as this is about where people live, that can commonly mean decades rather than years.

Concept, complexity and consistency

Although housing law's approach is practical rather than theoretical, that does not mean that there is no underlying concept: its *purpose* was to seek a housing focus for housing cases, however they were categorised in law, to ensure that decisions reflect awareness that what is in issue is someone's home, not merely property, local authority discretion or an abstract interpretation of statute. This is not to say that the subject is one that 'belongs' exclusively to occupiers, although there was undoubtedly a significant element in its origins which was intended to redress an historical imbalance; the idea was to ensure that all those involved in housing share that purpose as a common, guiding principle, not only to enhance the rights of occupiers but to help all the subject's 'clients' or 'constituents' better to understand how housing cases are likely to be treated in the courts and housing law itself is likely to develop.

The exponential growth in the number of statuses, this most fundamental aspect of housing law and its key structural foundation, has, however, posed a continuing problem in terms both of this purpose and of these books; it has complicated the subject and made it more and more difficult to understand, to write about and to apply, especially as tenancies can and do last for a very long time indeed and tenants may remain in the same accommodation not merely for years but for decades, which means that even law which ceased to apply to new tenancies 20–30 years ago may still be applicable to some older tenants (or their successors) and may still need to be considered. Moreover, old laws may sometimes remain applicable to a new tenancy granted to an existing tenant, in the same or different premises, to prevent tenants being talked into exchanging one set of rights for another, less favourable set.

Status is, however, not the only source of complexity and obfuscation. Central governments of all parties have micro-managed housing law, using it both as an economic tool, which may be expected, and as a political football, responding to populist perceptions without regard to its purpose: this has been particularly acute in the areas of immigration and anti-social behaviour. Given that it is only rarely, and only more recently, that this involves the removal of existing rights, this piles more and more layers of law on top of one another, so that rights turn not merely on status, but increasingly on when something occurred, eg the array of rules governing discharge of duty to homeless applicants depending on when an application was made. There is also something of a ping-pong between criminal and civil law: at points in time, functions which may properly be thought to belong to the criminal law – again, in particular in relation to anti-social behaviour – have been passed to local authorities and other social housing providers, while measures to tackle unlawful immigration have been handed out not only to those landlords but to all; at other times, functions which have historically been issues of civil law – eg trespass and unlawful sub-letting – have been criminalised.

Nor is it only governments who have lost sight of any central concept of housing law: courts have increasingly been led by so-called 'merits', that most subjective of approaches, without regard to the need to preserve any kind of over-arching principle or consistency of approach. Sometimes, this has been motivated by the best of intentions – to jettison archaic rules which are unacceptable in a more modern, human rights-oriented climate. Sometimes, it has been solely motivated by consideration of cost to the public purse. Sometimes, it has been motivated by a largely uninformed assumption as to what will advance the interests of housing. Sometimes, a return to abstract interpretation has countered the positive gains that a housing focus has otherwise achieved – for example in relation to the powers of local authorities to enforce standards in the (ever-increasing and much troubled) private sector.

This is not the place to pursue an analysis of these developments. While it has always been true that the outcome of very few cases has ever been capable of certain prediction, it is now the position, more widely than at any time I have known in my career as legal practitioner and writer, that how an issue will be determined by the courts depends predominantly upon who determines it and how the merits are perceived. Even leaving aside the effects of constant legislative change, this undermines consistency and increases the complexity of housing law. Sad to say, housing is being reduced to a set of detailed

rules, not dissimilar to the intricacies of social security legislation, a subject with which it is increasingly coming to have in common an absence of access to qualified advice.

Current editions

This, then, is the climate in which these new editions are published and in which they have had to be re-considered. In earlier editions, chapter 1 of the *Manual* tied classes of occupation to their security of tenure, which is their first and foremost concern: by the last edition, the growth of statuses meant that this approach had become too unwieldy and it had proved necessary to separate class of occupation from security and eviction, a problem that further developments would have exacerbated. Moreover, a substantial chunk of *Quiet Enjoyment* – a subject to which status is critical – would need to be given over to describing the numerous different ways in which people occupy rented accommodation, adding to its length, even though much of its readership is sufficiently familiar with most of them not to need more than occasional reference to the issue. Aspects of homelessness law itself also depend on status: in particular, whether someone is homeless (defined in terms of rights of occupation) and whether someone is intentionally homeless (often turning on whether there was a right to remain in accommodation). It is also central to the new assessment and initial help duties which will come in with the Homelessness Reduction Act 2017.

As the books are now all under one roof and published together, it has been possible to introduce an element of rationalisation: status in *Quiet Enjoyment* now relies exclusively on the *Manual*, affording more space for the considerable body of new law which has emerged over the last few years to reflect the resurgence in private renting and to control the abuses to which it has given rise: I no more foresaw that *Quiet Enjoyment*, newly suffixed *Protection from rogue landlords*, would come back into its own any the more than I ever expected to see the term 'rogue landlords' enshrined in statute. *Homelessness and Allocations* also relies on the *Manual* for status where appropriate, as well as for other questions, eg whether a valid section 21 notice has been served on an assured shorthold tenant.

The *Manual* provides an introduction to the new laws protecting tenants from abuse; *Quiet Enjoyment* considers them in close detail. Both have been restructured. The *Manual*, as mentioned, had already separated out classes of occupation from security of tenure and eviction; in addition, protection from rogue landlords has now been

separated out from anti-social behaviour, which is more largely about the conduct of occupiers. The *Manual* includes a wholly new chapter on mobile homes and houseboats, a subject which had slipped out of coverage but that needs to be brought back in as more and more people resort to them as a permanent home for want of being able to afford either owner-occupation or even renting. Naturally, the book continues coverage of rents, other rights (such as leasehold enfranchisement and right to buy), domestic breakdown, regulation of social landlords and housing conditions, including contract and tort, housing standards, environmental health, overcrowding, multiple occupation and licensing.

Quiet Enjoyment for the first time separates out eviction and harassment, as the law on the latter grows to reflect increased awareness of the many different ways that some people set out to distress others and seeks to protect victims. Mobile homes and houseboats are also afforded treatment. There are wholly new chapters on tenancy deposits, licensing of landlords, banning orders and a range of additional duties in respect of rented property many of which impact on a landlord's rights to take advantage of reduced security but which, in turn, may in practice give rise to additional unacceptable and unlawful conduct towards tenants when they are enforced, eg duties in relation to gas, fire, electricity and smoke alarms. As before, there are separate chapters on bringing civil and criminal proceedings, and the traditional collection of case reports on awards of damages is retained and updated, albeit now to be found in an appendix.

The *Manual* also outlines homelessness and allocations law, which *Homelessness and Allocations* addresses fully. The structure of the latter has not changed: an introduction to policy, an outline of the law, detailed consideration of the key concepts – eligibility, homelessness, priority need, intentionality, local connection, protection of property – followed by chapters on enquiries and decisions (including review), discharge of homelessness duties, allocations, enforcement by way of appeal to the county court and judicial review, other provisions to which recourse may need to be had in order to secure housing by way of social and child care provisions, strategy, practice, aid and advice, and criminal offences.

The two key changes since the last edition are the separate development of homelessness in Wales under the Housing (Wales) Act 2014 Part 2, and the Homelessness Reduction Act 2017, through which England adopted some of the changes which Wales had already introduced. The new duties in England include the extension from 28 days to 56 of the period during which a person is threatened with

homelessness (dating, where appropriate and as qualified, from service of a valid notice under Housing Act 1988 s21), the introduction of a new assessment duty and consideration of support to ensure that applicants have or retain suitable accommodation, including reasonable steps to be taken by authorities to help applicants secure that accommodation does not cease to be available for their occupation, as well as a new initial duty requiring authorities to take reasonable steps for 56 days to help applicants to secure accommodation, regardless of whether they are in priority need. These developments have added to the increasing complexity of the subject and result in significant changes to chapter 10, on discharge.

Otherwise, the book continues the approach taken in previous editions so far as concerns the development of the law: every detail of homelessness and allocations law is recorded, analysed and applied; nothing which has gone before, however revised by the courts, has been wholly abandoned even if relegated to footnote or analysis reduced to reflect current lack of importance; nothing is divorced from its history and evolution. Experience has shown that cases come back again and again – as true as it may well be of other areas of law, homelessness and allocations have a marked tendency to shift with the winds: nothing is ever finally overruled or permanently irrelevant.

In addition to the structural changes and coverage of new law, in both England and Wales, the opportunity has been taken to reconsider the text of each book. Too often, later editions take for granted what has been written previously, focusing instead on the need to bring books up to date: these books have been no less guilty of this than others. It is not merely that it can leave text feeling stale so much as it can cause a loss of focus or even coherence: the branches can so change the tree that it is not the same picture at all. I have therefore undertaken a line by line – and paragraph by paragraph – revision which I hope will recover some of the freshness which I strove to achieve 'back in the day'.

I extend my thanks to my co-authors, to LAG and, in particular, our publisher Esther Pilger, as well as to colleagues in Chambers and on other publications with which I am associated, and, as always, to my very long-standing writing partners – and friends – Professors Martin Partington CBE, QC (Hon) and Caroline Hunter. My wife and daughter have suffered the stresses and strains of my legal writing – including these books – for far too long for either thanks or apology to make up for what it has cost them. Finally, I should like to dedicate this set of books to the late Pat Reddin, since the early

1970s the go-to housing surveyor of choice in housing disrepair cases both for tenants and for social landlords, who died in April 2015: he is missed both as professional colleague and close friend over the whole of the time-span I have been discussing in this Preface; he remains uppermost in my thoughts and emotions.

The law is predominantly stated as at 30 April 2017, although it has been possible to add a small number of subsequent amendments during the publication process. Two key developments which were due prior to the General Election, which these books have therefore been unable to accommodate, are: the commencement of the Homelessness Reduction Act 2017 (for which no date had been set); and, the introduction of banning orders under the Housing and Planning Act 2016 ss14 and 15 (which had been expected to be implemented from 1 October 2017), although the provisions of each have been fully described so far as available.

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