

Sea change for s.21 Notices: by way of update Part 4

We have previously considered, in some detail, the changes to be wrought to assured shorthold tenancies by the Deregulation Act 2015 including in relation to both s.21 Notices and deposits.

The deposit provisions have been in force for some time but the critical changes to s.21 Notices do not take effect until 1 October 2015.

These changes include (i) a prohibition on service of a notice pending compliance with certain prescribed regulations; (ii) the removal of the requirement for a notice in respect of a periodic tenancy to expire on the last day of a period of the tenancy and (iii) the introduction of a prescribed form of s.21 Notice.

As to the new prescribed form of Notice, there has been power to create such a document since 1 July 2015 but it has only just been published as a schedule to the new Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 (SI 2015/1646).

Its publication warrants reconsideration of some of the new provisions and also first merits sounding a note of caution as to when the provisions apply and to which tenancies.

Applicability of the new provisions

The new provisions at present only apply to assured shorthold tenancies created on or after 1 October 2015. So for any new tenancy created on or after that date, the new prescribed form of notice will need to be used, you will have to comply with new prescribed regulations and in respect of periodic tenancies you will only have to give two months' notice expiring on any day.

So what about existing tenancies?

In respect of tenancies created before 1 October 2015, the old rules still apply. You do not need to use the prescribed form of notice, the new prescribed regulations do not apply and any notice served in respect of a periodic tenancy not preceded by a fixed

term must expire on a last day of a period of the tenancy.

Further, where a tenancy was created prior to 1 October 2015 but after that date rolls over into a statutory periodic tenancy, the new provisions will also not apply.

However, from 1 October 2018, the new provisions will apply to any assured shorthold tenancy which then exists.



The new prescribed notice

The new prescribed form of notice is very straightforward, merely requiring the landlord to fill in the landlord and tenant information and give a date after which possession is required.

The new notice includes helpful notes indicating, amongst other things, the circumstances in which it should not be used. These in turn reflect some of the other new provisions; in particular that no s.21 Notice can be served in the first four months of any first tenancy and a s.21 notice is only valid for 6 months after the date of service.

There appears to be an error in the notes on the prescribed form as to the period of validity of a s.21 notice served in respect of a periodic tenancy. The notes suggest that such a notice is valid for only 4 months. The Deregulation Act states that it is valid for 6 months. We hope that this is cured before the new rules come into force on 1 October 2015. In the interim Registered Providers should seek legal advice if considering serving any prescribed form of s.21 Notice in respect of a periodic tenancy.

Prescribed Regulations

The Deregulation Act 2015 introduced a new s.21A to the Housing Act 1988. This provided that no s.21 Notice can be served if a landlord is in breach of certain prescribed legal requirements. Those requirements have now been set out in the statutory instrument referred to above (SI 2015/1646).

This provides that before a s.21 notice can be served, every landlord must have provided an energy performance certificate to the tenant and also a gas safety certificate. In respect of the latter, there is no requirement for this to have been done within the period of 28 days specified in the gas safety regulations: so as long as the certificate has been supplied that will be sufficient. If the requirements are not met the s.21 notice will be invalid and any possession proceedings based upon it will be liable to be dismissed.

There is also a requirement for landlords to provide tenants with certain prescribed information comprising a government guide to renting ("How to Rent: the checklist for renting in England"). However, this is only a requirement imposed upon private landlords. Private Registered Providers of Social Housing are, mercifully, spared another regulatory burden.

A final instalment will follow...

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