



Department for  
Communities and  
Local Government

# Policy statement on amendment to Deregulation Bill



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February 2015

ISBN: 978-1-4098-4483-9

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The private rented sector is an important and growing part of our housing market. It has overtaken the social rented sector in terms of size and is now the second largest tenure with 1.9 million properties housing 4 million households in England. The quality of privately rented housing has improved rapidly over the past decade.

However, there is a small number of rogue landlords whose behaviour has a detrimental impact on tenants and society more generally. Conversely, it can be difficult for good landlords to evict a tenant in circumstances where it would be legitimate to do so, for example because of non-payment of rent or anti-social behaviour.

This amendment to the Deregulation Bill is designed to be a balanced package of measures that will benefit both tenants and landlords. The amendment covers four areas and will:

- protect tenants against the practice of retaliatory eviction where they have raised a legitimate complaint about the condition of the property and a Local Authority has issued a notice confirming that the repair needs to be carried out to avoid a risk to health and safety (Improvement Notice or Notice of Emergency Remedial Action);
- ensure that tenants are always given at least two months notice before they have to move out of their home. The purpose of this measure is to deal with an approach adopted by a small minority of landlords of serving an eviction notice at the start of a tenancy, which can result in a tenant having to vacate a property with virtually no notice
- make the eviction process more straightforward for landlords in situations where the tenant should be evicted, for example, because of non payment of rent or anti social behaviour through the introduction of a prescribed form notice to reduce errors and removing the need for a landlord to specify the exact date a tenancy comes to an end while retaining the requirement to give two months' notice;
- Provide that where a landlord has failed to comply with certain legal obligations, the tenant cannot be evicted We envisage this will apply to Energy Performance Certificates and Gas Safety Certificates. This restriction on the service of an eviction notice would be lifted as soon as these documents are provided.

## **“Preventing retaliatory eviction**

1. (1) Where a relevant notice is served in relation to a dwelling-house in England, a section 21 notice may not be given in relation to an assured shorthold tenancy of the dwelling-house-
  - (a) within six months beginning with the day of service of the relevant notice, or
  - (b) where the operation of the relevant notice has been suspended, within six months beginning with the day on which the suspension ends.
  
- (2) A section 21 notice given in relation to an assured shorthold tenancy of a dwelling-house in England is invalid where-
  - (a) before the section 21 notice was given, the tenant made a complaint in writing to the landlord regarding the condition of the dwelling-house at the time of the complaint,
  - (b) the landlord-
    - (i) did not provide a response to the complaint within 14 days beginning with the day on which the complaint was given,
    - (ii) provided a response to the complaint that was not an adequate response, or
    - (iii) gave a section 21 notice in relation to the dwelling-house following the complaint,
  - (c) the tenant then made a complaint to the relevant local housing authority about the same, or substantially the same, subject matter as the complaint to the landlord,
  - (d) the relevant local housing authority served a relevant notice in relation to the dwelling-house in response to the complaint, and
  - (e) if the section 21 notice was not given before the tenant’s complaint to the local housing authority, it was given before the service of the relevant notice.
  
- (3) The reference in subsection (2) to an adequate response by the landlord is to a response in writing which-
  - (a) provides a description of the action that the landlord proposes to take to address the complaint, and
  - (b) sets out a reasonable timescale within which that action will be taken.
  
- (4) Subsection (2) applies despite the requirement in paragraph (a) for a complaint to be in writing not having been met where the tenant does not know the landlord’s postal or e-mail address.
  
- (5) Subsection (2) applies despite the requirements in paragraphs (a) and (b) not having been met where the tenant made reasonable efforts to contact the landlord to complain about the condition of the dwelling-house but was unable to do so.
  
- (6) The court must strike out proceedings for an order for possession under section 21 of the Housing Act 1988 in relation to a dwelling-house in England if, before the order is made, the section 21 notice that would otherwise require the court to make an order for possession in relation to the dwelling-house has become invalid under subsection (2).
  
- (7) An order for possession of a dwelling-house in England made under section 21 of the Housing Act 1988 must not be set aside on the ground that a relevant notice

was served in relation to the dwelling-house after the order for possession was made.

(8) Subsection (1) does not apply where the section 21 notice is given after-

- (a) the relevant notice has been wholly revoked under section 16 of the Housing Act 2004 as a result of the notice having been served in error,
- (b) the relevant notice has been quashed under paragraph 15 of Schedule 1 to that Act,
- (c) a decision of the relevant local housing authority to refuse to revoke the relevant notice has been reversed under paragraph 18 of Schedule 1 to that Act, or
- (d) a decision of the relevant local housing authority to take the action to which the relevant notice relates has been reversed under section 45 of that Act.

(9) Subsection (2) does not apply where the operation of the relevant notice has been suspended.

(10) References in this section and section (*Further exemptions to section (Preventing retaliatory eviction)*) to a relevant notice served, or complaint made, in relation to a dwelling-house include a relevant notice served, or complaint made, in relation to any common parts of the building of which the dwelling-house forms a part.

(11) But subsection (10) applies only if-

- (a) the landlord has a controlling interest in the common parts in question, and
- (b) the condition of those common parts is such as to affect the tenant's enjoyment of the dwelling-house or of any common parts which the tenant is entitled to use.

(12) In this section and section (*Further exemptions to section (Preventing retaliatory eviction)*) a reference to a complaint to a landlord includes a complaint made to a person acting on behalf of the landlord in relation to the tenancy.

(13) In this section and section (*Further exemptions to section (Preventing retaliatory eviction)*).

“assured shorthold tenancy” means a tenancy within section 19A or 20 of the Housing Act 1988;

“common parts”, in relation to a building, includes-

- (a) the structure and exterior of the building, and
- (b) common facilities provided (whether or not in the building) for persons who include one or more of the occupiers of the building;

“controlling interest” means an interest which is such as to entitle the landlord to decide whether action is taken in relation to a complaint within this section or a relevant notice.

“dwelling-house” has the meaning given by section 45 of the Housing Act 1988;

“relevant local housing authority”, in relation to a dwelling-house, means the local housing authority as defined in section 261(2) and

(3) of the Housing Act 2004 within whose area the dwelling-house is located;

“relevant notice” means-

- (a) a notice served under section 11 of the Housing Act 2004 (improvement notices relating to category 1 hazards),
  - (b) a notice served under section 12 of that Act (improvement notices relating to category 2 hazards), or
  - (c) a notice served under section 40(7) of that Act (emergency remedial action);
- “section 21 notice” means a notice given under section 21(1)(b) or (4)(a) of the Housing Act 1988 (recovery of possession on termination of shorthold tenancy).”

## **2 “Further exemptions to section (Preventing retaliatory eviction)**

(1) Subsections (1) and (2) of section (*Preventing retaliatory eviction*) do not apply where the condition of the dwelling-house or common parts that gave rise to the service of the relevant notice is due to a breach by the tenant of-

- (a) the duty to use the dwelling-house in a tenant-like manner, or
- (b) an express term of the tenancy to the same effect.

(2) Subsections (1) and (2) of section (*Preventing retaliatory eviction*) do not apply where at the time the section 21 notice is given the dwelling-house is genuinely on the market for sale.

(3) For the purposes of subsection (2), a dwelling-house is not genuinely on the market for sale if, in particular, the landlord intends to sell the landlord’s interest in the dwelling-house to-

- (a) a person associated with the landlord,
- (b) a business partner of the landlord,
- (c) a person associated with a business partner of the landlord, or
- (d) a business partner of a person associated with the landlord.

(4) In subsection (3), references to a person who is associated with another person are to be read in accordance with section 178 of the Housing Act 1996.

(5) For the purposes of subsection (3), a business partner of a person (“P”) is a person who is-

- (a) a director, secretary or other officer of a company of which P is also a director, secretary or other officer,
- (b) a director, secretary or other officer of a company in which P has a shareholding or other financial interest,
- (c) a person who has a shareholding or other financial interest in a company of which P is a director, secretary or other officer,
- (d) an employee of P,
- (e) a person by whom P is employed, or
- (f) a partner of a partnership of which P is also a partner.

(6) Subsections (1) and (2) of section (*Preventing retaliatory eviction*) do not apply where the landlord is a private registered provider of social housing.

(7) Subsections (1) and (2) of section (*Preventing retaliatory eviction*) do not apply where-

- (a) the dwelling-house is subject to a mortgage granted before the beginning of the tenancy,
- (b) the mortgagee is entitled to exercise a power of sale conferred on the mortgagee by the mortgage or by section 101 of the Law of Property Act 1925, and
- (c) at the time the section 21 notice is given the mortgagee requires possession of the dwelling-house for the purpose of disposing of it with vacant possession in exercise of that power.

(8) In subsection (7)-

- (a) “mortgage” includes a charge, and
- (b) “mortgagee” includes a receiver appointed by the mortgagee under the terms of the mortgage or in accordance with the Law of Property Act 1925.”

### **3. “Notice to be provided in relation to periodic assured shorthold tenancies**

In section 21 of the Housing Act 1988 (recovery of possession on termination of shorthold tenancy), after subsection (4) insert-

“(4ZA) In the case of a dwelling-house in England, subsection (4)(a) above has effect with the omission of the requirement for the date specified in the notice to be the last day of a period of the tenancy.””

### **4 “Time limits in relation to section 21 notices and proceedings**

(1) Section 21 of the Housing Act 1988 is amended as follows.

(2) After subsection (4A) insert-

“(4B) A notice under subsection (1) or (4) may not be given in relation to an assured shorthold tenancy of a dwelling-house in England-

- (a) in the case of a tenancy which is not a replacement tenancy, within the period of four months beginning with the day on which the tenancy began, and
- (b) in the case of a replacement tenancy, within the period of four months beginning with the day on which the original tenancy began.

(4C) Subsection (4B) does not apply where the tenancy has arisen due to section 5(2).

(4D) Subject to subsection (4E), proceedings for an order for possession under this section in relation to a dwelling-house in England may not be begun after the end of the period of six months beginning with the date on which the notice was given under subsection (1) or (4).

(4E) Where-

- (a) a notice under subsection (4) has been given in relation to a dwelling-house in England, and
- (b) paragraph (b) of that subsection requires the date specified in the notice to be more than two months after the date the notice was given, proceedings for an order

for possession under this section may not be begun after the end of the period of four months beginning with the date specified in the notice.”

(3) In subsection (6), for “subsection” substitute “subsections (4B)(b) and”.

## **5 “Prescribed form of section 21 notices**

In section 21 of the Housing Act 1988, after subsection (7) insert-

“(8) The Secretary of State may by regulations made by statutory instrument prescribe the form of a notice under subsection (1) or (4) given in relation to an assured shorthold tenancy of a dwelling-house in England.

(9) A statutory instrument containing regulations made under subsection (8) is subject to annulment in pursuance of a resolution of either House of Parliament.”

## **6 “Compliance with prescribed legal requirements**

After section 21 of the Housing Act 1988 insert-

### **“21A Compliance with prescribed legal requirements**

(1) A notice under subsection (1) or (4) of section 21 may not be given in relation to an assured shorthold tenancy of a dwelling-house in England at a time when the landlord is in breach of a prescribed requirement.

(2) The requirements that may be prescribed are requirements imposed on landlords by any enactment and which relate to-

- (a) the condition of dwelling-houses or their common parts,
- (b) the health and safety of occupiers of dwelling-houses, or
- (c) the energy performance of dwelling-houses.

(3) In subsection (2) “enactment” includes an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978.

(4) For the purposes of subsection (2)(a) “.common parts” has the same meaning as in Ground 13 in Part 2 of Schedule 2.

(5) A statutory instrument containing regulations made under this section is subject to annulment in pursuance of a resolution of either House of Parliament.”

## **7 “Requirement for landlord to provide prescribed information**

After section 21A of the Housing Act 1988 insert-

### **“21B Requirement for landlord to provide prescribed information**

(1) The Secretary of State may by regulations require information about the rights and responsibilities of a landlord and a tenant under an assured shorthold tenancy of dwelling house in England or any related matters) to be given by a landlord under such a tenancy, or a person acting on behalf of such a landlord, to the tenant under such a tenancy.

(2) Regulations under subsection (1) may-

- (a) require the information to be given in the form of a document produced by the Secretary of State or another person,

- (b) provide that the document to be given is the version that has effect at the time the requirement applies, and
- (c) specify cases where the requirement does not apply.

(3) A notice under subsection (1) or (4) of section 21 may not be given in relation to an assured shorthold tenancy of a dwelling-house in England at a time when the landlord is in breach of a requirement imposed by regulations under subsection (1).

(4) A statutory instrument containing regulations made under subsection (1) is subject to annulment in pursuance of a resolution of either House of Parliament.”

8. **“Repayment of rent where tenancy ends before end of a period**

After section 21B of the Housing Act 1988 insert-

**“21C Repayment of rent where tenancy ends before end of a period**

(1) A tenant under an assured shorthold tenancy of a dwelling-house in England is entitled to a repayment of rent from the landlord where-

- (a) as a result of the service of a notice under section 21 the tenancy is brought to an end before the end of a period of the tenancy,
- (b) the tenant has paid rent in advance for that period, and
- (c) the tenant was not in occupation of the dwelling-house for one or more whole days of that period.

(2) The amount of repayment to which a tenant is entitled under subsection (1) is to be calculated in accordance with the following formula-

$$R \times D/P$$

where-

R is the rent paid for the final period;

D is the number of whole days of the final period for which the tenant was not in occupation of the dwelling-house; and

P is the number of whole days in that period.

(3) If the repayment of rent described in subsections (1) and (2) has not been made when the court makes an order for possession under section 21, the court must order the landlord to repay the amount of rent to which the tenant is entitled.

(4) Nothing in this section affects any other right of the tenant to a repayment of rent from the landlord.”

9 **“Application of sections (Preventing retaliatory eviction) to (Repayment of rent where tenancy ends before end of a period)**

(1) Subject to subsections (2) and (3), a provision of sections (*Preventing retaliatory eviction*) to (*Repayment of rent where tenancy ends before end of a period*) applies only to an assured shorthold tenancy of a dwelling-house in England granted on or after the day on which the provision comes into force.

(2) Subject to subsection (3), a provision of sections (*Preventing retaliatory eviction*) to (*Repayment of rent where tenancy ends before end of a period*) does not apply to an assured shorthold tenancy that came into being under section 5(2) of the Housing Act 1988 after the commencement of that provision and on the coming to an end of an assured shorthold tenancy that was granted before the commencement of that provision.

(3) At the end of the period of three years beginning with the coming into force of a provision of sections (*Preventing retaliatory eviction*) to (*Compliance with prescribed legal requirements*) or section (*Repayment of rent where tenancy ends before end of a period*), that provision also applies to any assured shorthold tenancy of a dwelling-house in England-

(a) which is in existence at that time, and

(b) to which that provision does not otherwise apply by virtue of subsection (1) or (2)".