



Department for
Communities and
Local Government

Giving Crown Tenants Greater Protection Consultation



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About this Consultation

Scope of this consultation

Topic of this consultation:	Giving Crown Tenants Greater Protection
Scope of this consultation:	This consultation invites comments on proposals to amend the provisions of the Housing Act 1988 to bring Crown tenants within the assured tenancy regime
Geographical scope:	England and Wales

Basic Information

To:	This consultation is aimed at: <ul style="list-style-type: none">• existing Crown tenants• government departments with tenants who might be affected by the changes
Responsibility for the Consultation:	This consultation is being run by the Better Rented and Leasehold Sector Division in the Department for Communities and Local Government
Duration:	This consultation runs from 22 July to 10 August 2015
Enquiries (including requests for the paper in an alternative format) to:	For further information about this consultation please e-mail HousingManagement@communities.gsi.gov.uk
How to respond:	Consultation responses should be submitted by email to: HousingManagement@communities.gsi.gov.uk Or by post to: Better Rented and Leasehold Sector Division Department for Communities and Local Government Floor 3 NEQ Fry Building 2 Marsham Street London SW1P 4DF

After the consultation: A summary of the responses to the consultation will be published on the Department's website

Introduction

1. Crown tenants are currently excluded from the assured tenancy regime that applies to most private tenants, and from the protection it offers. This means that the only statutory protection enjoyed by a Crown tenant is that provided by the Protection from Eviction Act 1977, which requires the landlord to give the tenant a minimum of 28 days notice before an order for possession can be granted by the courts.
2. On 18 July 2013, the previous Coalition Government announced an intention to amend legislation to ensure Crown tenants are provided with the same statutory rights as the majority of tenants in the private rented sector.
3. At the same time, the Coalition Government gave a commitment to consult on the detail of the changes and in particular the provision for any appropriate exceptions that might be necessary for operational reasons.
4. We intend to publish our final proposals for implementing this change in the light of responses received to this consultation. We will do this in advance of the Second Reading of Mark Pawsey's Private Member's Bill on Crown tenancies.

Who are Crown tenants?

5. Crown tenants are generally tenants of government departments. Currently the vast majority of Service personnel living in accommodation provided by the Ministry of Defence ('MOD') occupy such properties under a separate licence agreement which is outside the assured tenancy regime. We believe only a relative minority of Service personnel (and some civil servants) may occupy MOD accommodation under Tenancy agreements. However, MOD plan to move Service Families Accommodation from its current licence agreements regime to the assured tenancy regime from 2017.

The current legislative framework

6. With the exception of local authority tenants, the vast majority of tenants fall within the assured tenancy regime created by the Housing Act 1988 ('the 1988 Act'). Since 1997, the default tenancy under the 1988 Act has been the assured shorthold tenancy, which is the tenancy granted to most tenants in the private sector.
7. Assured shorthold tenants enjoy a minimum tenancy term of 6 months. During this period, the landlord may only end the tenancy by obtaining a court order which will require them to prove one of the grounds for possession in Part 1 of Schedule 2 to the 1988 Act. At any other time, the landlord may end the tenancy on 'no fault' grounds, by giving two months notice under s.21 of the 1988 Act and, to gain possession, must obtain a court order.

8. However, paragraph 11 of Schedule 1 provides an exemption from the assured tenancy regime for Crown tenancies, defined as tenancies under which the interest of the landlord belongs to Her Majesty in right of the Crown or to a government department or is held in trust for Her Majesty for the purposes of a government department. Tenancies managed by the Crown Estate Commissioners are not covered by this exemption.
9. The exemption of Crown tenancies from the assured tenancy regime means that, in terms of security of tenure, Crown tenants only have any protection offered in the tenancy agreement or, as a minimum the statutory protection of the Protection from Eviction Act 1977. As stated in paragraph 1 above, this means the landlord must give the tenant a minimum of 28 days notice to end the tenancy and must obtain a court order to gain possession.

Why Crown tenancies were excluded from the assured tenancy regime

10. Until 1997, the default tenancy under the 1988 Act was the 'fully' assured tenancy (the tenancy which continues to be granted by many housing associations) which offers specific and significant protections and rights for tenants. In particular, this type of tenancy can only be terminated by the landlord on specified grounds (set out in Schedule 2 to the 1988 Act), for example where the tenant has failed to pay rent or engaged in anti-social behaviour.
11. It appears from debates on earlier legislation relating to properties owned by government departments, that the Government of the day regarded maintaining flexibility and control over their properties, the occupation of which might often be closely linked to carrying out the functions of those departments, as an important principle. The view led to the conclusion that if Crown tenancies were brought within the assured tenancy regime, that flexibility and control might have been compromised.

Why the exemption is being reviewed

12. From the end of February 1997, the 'fully' assured tenancy ceased to be the default tenancy under the assured tenancy regime. Instead the assured short hold tenancy became the default tenancy. This type of tenancy offers significantly more flexibility for landlords, providing as it does the option of terminating a tenancy on 'no fault' grounds with two months notice, once the initial six months (or fixed term, if longer) has come to an end. The Government considers therefore that, in general, departments should now be able to manage their tenancies with sufficient flexibility within the assured tenancy regime.

Way forward

13. A change would require amendment of the 1988 Act to remove most Crown tenants from the list of tenancies which cannot be assured tenancies in paragraph 11 to Schedule 1. This will ensure that such tenants are able to enjoy the same protection that is available to tenants in the private rented sector.
14. In practice MOD seek to give Service personnel who occupy MOD accommodation greater security. Service personnel who occupy MOD accommodation under a licence agreement may be asked to vacate at any time within 6 months, for operational reasons, and unless a breach of that licence agreement has occurred, occupants are given 93 days (3 months) notice to vacate, which compares favourably with the statutory 2 months for private tenants. However this is not part of the legislative framework. The changes we are proposing would give tenants of government departments statutory protection.
15. In addition, MOD is proposing in future, to move away from granting licences to Service families in their Service Families Accommodation and instead grant them tenancies. Our proposal to remove the exemption of Crown tenancies from the list of tenancies which cannot be assured tenancies would therefore ensure that these families can be granted assured tenancies (rather than Crown tenancies) and therefore benefit from the protection of the assured tenancy regime.
16. We recognise, however, that there may be circumstances where there are compelling operational reasons why a Crown tenancy may need to be ended within the initial six months or with less notice than is required for assured shorthold tenants under the provisions of the 1988 Act.
17. We are therefore proposing to provide for some Crown tenancies to continue to be excluded from the assured tenancy regime in certain specified circumstances. Following initial consultation with relevant government departments, we have highlighted the following circumstances in which we consider that an exclusion may be necessary based on MOD plans to move to offering tenancies in Service Families Accommodation from 2017. For contextual purposes, we have also included details of MOD provided accommodation that are occupied by Service personnel under a licence agreement:
 - a) **Single Living Accommodation** occupied by Service personnel under a licence agreement. MOD, and the single Services (Royal Navy, Army and Royal Air Force) in particular often need to move Service personnel as and when required for operational effectiveness, and at very short notice. Exempting occupants of Service Living Accommodation which are similar to student halls of residence from the assured tenancy regime where the arrangements for the occupation constitute a tenancy would ensure MOD will be able to move Service personnel who have been deployed at very short notice and this exception would help maintain operational effectiveness and make the best use of military accommodation

- b) **Properties in the MOD wider estate** –The totality of this wider estate is still being mapped but could include MOD provided accommodation on training areas (and outside of training areas) that is occupied under a licence agreement as well as through tenancies. Currently, we believe all of these accommodations should be exempted on the basis that its occupants may need to be moved at short notice for operational reasons
- c) **Properties acquired by the Secretary of State for Transport** within the Limits of Land to Be Acquired or Used under the High Speed Rail (London - West Midlands) Hybrid Bill or within the Limits of Land to be Acquired or Used under any other Bill or proposed Bill to authorise works for a high speed railway line in Great Britain

Question 1: Are there any other circumstances in which it would be appropriate to make an exception? And if so, what is the reason for making this exception?

18. We recognise that in some cases, it may not always be clear from the outset of the tenancy that it is one that should be excluded from the assured tenancy regime. Rather than attempting to close off all the potential exclusions, we could create a new mandatory ground for possession in Schedule 2 to the 1988 Act to enable a landlord to obtain possession of a Crown tenancy if there are compelling operational reasons.
19. This would help ensure that, in cases where an assured shorthold tenancy has been granted but it later becomes apparent that the department would need possession of the property in the initial six months, the landlord would be able to apply to the court for possession under the new ground provided in Schedule 2 to the 1988 Act. Making the new ground mandatory would also ensure that the department would be able to get a possession order from the courts expeditiously just as they would have done if they were seeking possession of a property let as a Crown tenancy.

Question 2: Are there likely to be any adverse consequences from adopting any of these options that we should be aware of?

20. We also recognise that it may not be possible to identify all the situations in which it could be necessary to bring a Crown tenancy to an end quickly for compelling operational reasons and that further situations may become apparent at a later date. Accordingly, we would also intend to take a regulation making power to specify further exceptions in future, should the need arise.
21. The legislative changes would not have retrospective effect. They would apply only to Crown tenancies granted after the date on which the amendment comes into force. Crown tenancies granted before the commencement of the provisions would continue to be exempt from the assured tenancy regime.

How to tell us your views

22. We welcome your views on these proposals. Please send your comments by 10 August 2015 to: HousingManagement@communities.gsi.gov.uk