

Serving of Section 21 Eviction Notices – Deregulation Act 2015

Department for Communities and Local Government

RPC rating: fit for purpose

The IA is now fit for purpose as a result of the Department's response to the RPC's initial review. As first submitted, the IA was not fit for purpose.

Description of proposal

A section 21 notice explains to a tenant that the landlord requires possession of their property. There are a small number of landlords in the private rented sector who:

- Poorly maintain their properties and evict tenants who reasonably request a repair or an improvement (known as 'retaliatory eviction'); or
- Evict tenants with no notice following the end of the tenancy period. This is contrary to the policy intention of Section 21 (b) of the Housing Act 1988, which requires landlords to give tenants at least two months' notice if they intend to seek possession of the property. The IA explains that a loophole in the legislation arose from the fact that possession notices served under section 21 are valid for 12 months. As a result, landlords could issue a section 21 notice at the start of a fixed term tenancy of less than 12 months, and then allow tenants to stay on beyond the fixed period, but with no security of tenure.

The Department has amended the Deregulation Act 2015 to tackle these detrimental practices by specifying that:

- a) a tenant cannot be evicted where a local authority has issued an Improvement Notice or a notice of remedial action following an inspection; and
- b) a section 21 notice cannot be served less than two months before the end of a fixed term tenancy.

Impacts of proposal

Following advice from the RPC, the Department has provided a separate IA on the proposals relating to the pro-forma and documents required to issue a section 21 notice.

Costs

The Department estimates that 2% of England's 1.4 million landlords practice retaliatory eviction. For the remaining 1.37 million landlords, the only cost is ascertaining that the legislation does not affect them. The Department estimates that 15 minutes in total will be needed for landlords to familiarise themselves with this legislation, and the proposals relating to the pro-forma and documents required to issue a section 21 notice. These are the only costs for 98% of landlords. In relation to this proposal in isolation, for the remaining 2% of landlords, the Department estimates a greater familiarisation time of 45 minutes. Landlord time costs have been taken from ASHE data on average letting agent hourly income uplifted by a factor of 1.3, as per HMT Green Book methodology. On this basis, the Department estimates a one-off cost to business of £4.8 million.

Benefits

The Department explains that part a) will benefit tenants "*by stopping retaliatory eviction in situations where there is legitimate need for a repair and this has been confirmed by the local authority*" (page 10). The Department explains that a) may also benefit landlords as evidence from a YouGov survey of 4,544 private renters carried out in January 2014 suggests that 12% of tenants, 480,000 tenants nationally, have not asked for repairs or have not challenged rent increases because they were concerned about being evicted. The Department explains that this may increase the cost of carrying out the necessary repairs to landlords, as it would be more cost effective to have a repair completed at an early stage.

Part b) will benefit tenants who would otherwise be forced to leave a property with no notice and those who would otherwise have been issued a notice early in their tenancy and have thereby been forced to live with the uncertainty of eviction so early into their tenancy.

The Department explains that they have not been able to monetise any of these benefits.

The RPC validates the estimated equivalent annual net cost to business (EANCB) of £0.6 million. This will be a qualifying regulatory provision that will score under the business impact target.

Quality of submission

The present submission sufficiently deals with the issues raised in the initial review notice of 2 February 2016 as follows:

- The IA explains that there are no ongoing costs to landlords. This is because the proposal does not introduce any new requirements on landlords in respect of their repairing obligations. The proposal prevents landlords from evicting a tenant where the tenant has made a legitimate request for repair, and the landlord has failed to adequately deal with the request or responds by issuing a section 21 notice. Under this scenario the landlord would currently be in breach of their repair obligations under the Housing Act 2004 (pages 8-9) but could nevertheless evict the tenant via a section 21 notice. The assessment that there are no ongoing costs to landlords under the proposal, therefore, appears reasonable.
- The IA explains that it will take a total of 15 minutes for 98% of landlords to familiarise themselves with this proposal and for all landlords to familiarise themselves with the related proposal in relation to the pro-forma and the documents required to issue a section 21 notice (page 21). The IA also explains that it will take 45 minutes for the 2% of landlords who have issued a section 21 notice at the start of a tenancy or plan to engage in retaliatory eviction to familiarise themselves with this proposal (page 14). These assumptions were verified as reasonable by both the National Landlord Association and Residential Landlord Association (page 14).

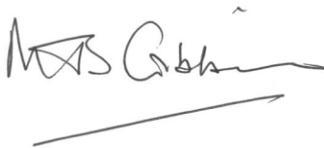
The small and micro business assessment (SaMBA) explains that 95% of landlords own between one and four properties. While these data do not provide information on the number of employees, it is highly likely that they are small and micro businesses. Therefore, the Department explains that “*exempting these businesses would result in policy failing to meet its objectives of reducing retaliatory evictions and other exploitative behaviour, or have the desired effect in simplifying the eviction process*” (page 17). This appears reasonable.

Departmental assessment

Classification	Qualifying regulatory provision (IN)
Equivalent annual net cost to business (EANCB)	£0.6 million
Business net present value	−£4.8 million
Societal net present value	−£4.8 million

RPC assessment¹

Classification	Qualifying regulatory provision (IN)
EANCB – RPC validated	£0.6 million
Small and micro business assessment	Sufficient
RPC rating (of initial submission)	Not fit for purpose



Michael Gibbons CBE, Chairman

¹ The RPC verification of the estimated equivalent annual net cost to business (EANCB) and assessment of whether the measure is a qualifying regulatory provision are based on current working assumptions.