

## Section 21 Notices: New Law, commencing 1 October 2015:

Sections 33 to 40 of the Deregulation Act 2015 ('the Act') introduce significant changes to the way in which assured shorthold tenancies (ASTs) operate from 1 October 2015. Note that these provisions apply only to new ASTs, ie. those granted after 1 October 2015 (not statutory periodic ASTs which arise after this date consequent upon ASTs which were originally granted prior to this date). From 1 October 2018, the rules will affect all ASTs. These rules apply in England, not Wales.



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- 1** Section 33 is intended to prevent 'retaliatory eviction', ie. the situation where a tenant genuinely complains about disrepair and the landlord responds by serving a notice under section 21(1)(b) or (4)(a) of the Housing Act 1988 ('a s21 Notice'). To begin with, a s21 Notice is of no effect where a local housing authority has already served an Improvement Notice or Notice of Emergency Action under the Housing Act 2004 ('a Relevant Notice'); after which, broadly, there is a 6 month embargo on s21 Notices. Further, in certain situations, a s21 Notice will also be rendered invalid when it is served before a Relevant Notice: the conditions are that - the tenant must make a written complaint; the landlord does not then respond satisfactorily (eg. giving a s21 Notice); and, the tenant then complains to the local housing authority which serves Relevant Notice. There is a number of exemptions to this general rule and, notably, private registered providers of social housing are exempted (s34(6)).
- 2** Section 35 now removes the need for a s21 Notice, served under section 21(4)(a), to comply with the requirement that it must expire on the last date of a period of the AST. Two months notice is all that will be needed.
- 3** Section 36 provides, broadly, that a s21 Notice cannot be served in the first 4 months of an AST (but this rule does not apply to a statutory periodic AST or a replacement AST) Does this make it impossible to terminate an AST on the last day of a 6 month fixed term?
- 4** Section 36 also introduces a rule that a possession claim relying on a s21 Notice cannot be issued more than 6 months after the date on which it was served. However, where section 21(4)(b) requires that the date given in the notice is more than 2 months after the date of service, proceedings based on such a s21 Notice cannot be issued more than 4 months after the date on which the s21 Notice was served.

- 5** Section 37 authorises the Secretary of State to prescribe a form of s21 Notice. This has taken place (after one failed attempt: SI 2015/1646, see now SI 2015/1725). Note the prescribed notice applies only to ASTs granted after 1 October 2015 (not statutory periodic assured tenancies which arise after this date consequent upon tenancies which were originally granted prior to this date).
- 6** Section 38 prevents a s21 Notice being given where a landlord is in breach of a 'prescribed requirement'. Here, the new Regulations (SI 2015/1646) provide:
- (i) A valid energy performance certificate (under Regulation 6(5) of the Energy Performance of Buildings (England and Wales) Regulations 2012 must be given to the tenant: the timing of this is unclear but it is advisable to do this before the grant of the AST; and,
  - (ii) A record of any gas safety check (ie under Regulation 36 of the Gas Safety (Installation and use) Regulations 1998) at the premises must be given to every tenant (note: the general 28 day period for compliance is dispensed with for this purpose) and, in particular, a copy of the last record made must be given to any new tenant of premises to which the record relates before that tenant occupies those premises.
- 7** Section 39, similarly, invalidates a s21 Notice given where a landlord has failed to provide 'prescribed information'. The new Regulations (SI 2015/1646) define this information as the Department for Communities and Local Government booklet entitled 'How to rent: the checklist for renting in England'. So, this must always be given to the tenant before serving a s21 Notice. If the booklet is updated during the AST, the new booklet does not need to be provided to the tenant; but, the new booklet must be provided to a tenant who has taken a replacement AST after the date on which the booklet was updated.
- 8** Section 40 provides that a landlord must repay to a tenant any portion of the rent which was paid in advance for a period where a s21 Notice terminates the AST before the end of that period and the tenant has left.

For those now advising their clients about the grant of ASTs, careful attention - in particular - should be paid to paragraphs 3, 6 and 7 above.

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