

Section 21 changes

The section 21 notice is the landlord's best friend, allowing the landlord to seek possession of the rented property for no reason, other than the agreed period of renting has finished. The Deregulation Act 2015 has substantially changed the rules around these notice for.

Since first introduced in 1989 the section 21 notice has survived almost unchanged. It was changed in 1996 so that it had to be in writing, but nothing more serious. Now the Deregulation Act 2015 has made a number of major changes that all landlords need to be aware of.

The first change is to remove the requirement for the periodic version of the notice (the notice under section 21(4)) to end at the end of a period. Before this change there was only one day in the month when the notice could end, now it can end on any day in the month. It still has to be in writing, it still has to be at least two months long and no shorter than a notice to quit. The last point can be ignored from monthly or weekly rentals.

The second change is that the section 21 notice cannot be served within the first four months of the commencement of the original tenancy. If a renewal tenancy is signed up, then this does not reset the 4 month prohibition.

The second part of this change is that once the notice is served, it is ordinarily only valid for six months. This creates a 'use it or lose it' situation. There are situations where the notice might have to be for longer than the normal two months, and in these situations the notice is valid for four months beyond expiry.

The third change is the introduction of a prescribed form for section 21. These must be used for new tenancies created after 1 October 2015 but may be used for any assured shorthold tenancies. There is a single version of the notice for use on both fixed term and periodic agreements.

The fourth change is called prescribed requirements. The regulations specifying these only currently require a gas safety record and an EPC, where these are required by law.

The fifth change is called prescribed information. This should not be confused with the deposit prescribed information. In this case the prescribed information is the 'How to Rent' guide. This has to be given at the outset and again at any form of renewal, if the version of the 'How to Rent' guide has changed since it was originally given.

These new rules around section 21 are bound to catch out the unwary with claims for possession being thrown out for lack of compliance with the new requirements. This means evidence of compliance will be essential to be certain of possession.

Rogue landlords

Following the consultation on proposals about what can be done to tackle rogue landlords, the government have released the responses. Overall the responses show a broad support for tackling poor landlords, but part of this may be those who actually responded.

One interesting proposal was about abandonment, this is where a tenant simply disappears. Just over half of respondents thought a change to the law here was a good idea. The current rules (from the Protection from Eviction Act 1977) allow for repossession where the landlord has 'reasonable' cause to believe the tenant has abandoned the property.

However, this can be difficult to prove and requires the landlord to take a risk as to whether a court would agree that the belief was actually reasonable.

The proposed process would require the landlord to give a written notice, wait four weeks and then consider if the landlord still felt the property had been abandoned.

Even this would not prevent a tenant coming back within a period of six months and claiming that the property was not abandoned. If the court found in favour they would be able to award damages to the tenant in much the same way as currently.

This lack of certainty does little to improve the situation over the current legal position. A landlord would still have to make a judgement and then take a risk of being sued for unlawful eviction.

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