

Deregulation Act 2015

The Deregulation Bill 2015 passed the House of Lords final reading on the 12 February 2015 and now only needs to be accepted by the House of Commons and receive Royal Assent before it is live and active. Several parts are triggered by the receiving of Royal Assent so will be immediately in force.

This is a large piece of legislation covering a wide range of issues but for the rented property world the parts of interest are 30 to 41.

These sections deal with four core issues. The first are some small amendments in respect of the prescribed information. The second is the actions needed in respect of deposit protection on a renewal. The third is new rules about retaliatory evictions and the fourth is new rules around section 21 notices.

The first change to the prescribed information seeks to simply clarify three roles. Those of the landlord, the 'initial agent' and the current agent. This has presumably been drafted to cope with a situation where the original compliance was through an agent who is no longer involved in the property and a second agent, or the landlord, arranges a renewal.

The second change confirms that any tenancy granted as an assured shorthold, since 6 April 2007, should have a protected deposit. It also alters section 21 of the Housing Act 1988 to clarify that this notice cannot be used at any time when the deposit is not protected, basically mirroring section 215 of the Housing Act 2004. The one clarification it gives is that this rule applies even to tenancies that were granted before 2007. If the deposit was last received before 6 April 2007 then compliance within 30 days of receipt is ignored. For deposits last received after 6 April 2007 then the compliance must have been within 30 days of the last receipt. This change interacts with change three.

Change three is in section 32 of the Deregulation Bill and proposes three new clauses in the Housing Act 2004 dealing with deposit protection and renewals. These changes were talked about in the last Property Matters so will not be covered.

Basically they remove the requirement for new deposit protection compliance following a renewal of the tenancy.

Section 33 to 41 are all dealing with the fourth, and largest, group of changes. These are the new retaliatory evictions rules, including new rules around section 21 notices, some of which are effectively needed to make the retaliatory evictions provisions work.

To claim a retaliatory eviction the tenant must normally have notified the landlord (or agent) in writing of the need for repair in the property or any common parts they have a right to use. They also have to get the local authority to inspect and find issues that justify service of a formal improvement notice or emergency remedial action.

If such a notice is served the landlord cannot serve a section 21 notice for six months from the date of the formal notice. If the formal notice is suspended, perhaps because the property needs to be vacant to do the works, the section 21 notice is prohibited for six months after the suspension is lifted.

Section 35 simply removes the requirement for a section 21(4) notice to end at the end of a period of the tenancy (England only). Following the *Spencer v Taylor* judgement this is of far less value.

Section 36 introduces a 'life span' for a section 21 notice with a requirement to use it in six months (roughly four months from expiry), or it lapses. There are also provisions allowing for a prescribed form for section 21 and for prescribed information to be needed too. The prescribed information will be around the rights and responsibilities of the landlord and tenant.

Similarly are 'prescribed requirements' that allow for the condition of the dwelling, the health and safety of the occupiers and the energy performance to be considered in the validity of the notice.

Section 40 clarifies that if a tenant leaves before the end of a period of the tenancy for which they have paid, a pro rata refund must be given.

Overall the changes will certainly make it more complex for landlords to recover possession via section 21.

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