

# Does the Government's consultation herald the end of assured shorthold tenancies as well as no-fault evictions in England?

The residential rented sector in England and Wales has seen its fair share of changes. The present focus however, is on the so called 'end of no-fault evictions' under section 21 of the Housing Act 1998 (HA).

18 May 2020

The residential rented sector in England and Wales has seen its fair share of changes. There was the radical reversal of assured requirements in 1998, then the sweeping changes imposed by the Deregulation Act 2015 and the recent focus on tenant fees, utility checks, and the Minimum energy efficiency standard (MEES).

The present focus however, is on the so called 'end of no-fault evictions' under section 21 of the Housing Act 1998 (HA). There is no confirmed timetable for the changes but landlord organisations are consulting with government on its possible impact and future implications.

A dual system operates under the HA at present:

- Assured Tenancies - the tenant is given a decent amount of security of tenure.
- Assured Shorthold Tenancies (ASTs) - have less security and can be terminated on around two months' notice by service of a section 21 notice ('Form 6a') as long as it meets the requirements of the HA and more recently the Deregulation Act 2015 (DA).

The key issue is that an AST can be ended even if a tenant is blameless: the landlord has the absolute right to possession if all procedures are followed.

The changes under the DA spawned litigation-a-plenty on the validity and use of the section 21 notice, seriously restricting the ability to use this method to obtain possession. The future and culture of ASTs was in danger as far back as 2015 and now looks to change. The Government's current plan to change the Housing Act will affect all landlords who grant ASTs and will limit rights to serve a section 21 notice.

## A new deal for renting<sup>1</sup>

- The Government's proposals for England are:
  - A new statutory framework - ASTs are abolished and tenants will not be evicted 'without good reason' allowing them to 'put down roots and plan for the future'. A new minimum length of tenancy could be two years.
  - Strengthening the pre-warning given to tenants for no-fault eviction and expanding the fault eviction procedures under the HA.
  - Reforming the court system, re-establishing landlords' confidence in the system.

## No fault evictions

- Changes to include:
  - The possibility of pre-warning a tenant before agreeing to sign a lease on a property that for example, a landlord intends to:
    - sell in the future

- occupy themselves (or their family members)
- The length of notice is likely to be more than two months and generally won't be before the end of the fixed term.

## Fault evictions

- Proposed strengthening of the rent arrears grounds.
- Reforming grounds around domestic violence and anti-social behaviour.
- Making it easier to evict obstructive tenants, for example refusal of access for safety related works.

## Court procedures

- Broadening the current accelerated possession procedure and keeping some evictions 'on paper' only.

One of the real current appeals of using section 21 notices (save for the 'non fault' system of eviction) is the fact it can kick start a court procedure that can be concluded without a hearing, which is all done on paper. This is called the 'accelerated possession procedure'. If the section 21 notice is abolished, so is this procedure as it flows from service of the section 21 notice. They are thinking of widening this so it can be used in any new regime and won't be reliant on a section 21 notice.

## Impact

Essentially this will be the death of the AST. It will be replaced by the Assured Tenancy (either fixed term or periodic) with a likely minimum length of two years. This also means the demise of Starter Tenancies for housing associations and Demoted Assured Tenancies for councils.

Some commentators believe the changes may not go far enough for tenants, who will still be subject to abuse from rogue landlords. Typically this has included impossible rent increases to force out tenants, without repayment of relocation costs; consideration of selling with a tenant in situ; and longer notice periods.

Perhaps most importantly, it won't provide the stable home many tenants crave. Tenant bodies think the Scottish system is much fairer. This is based on open-ended tenancies until the tenant wishes to leave (backed up by comprehensive and robust eviction grounds to protect landlords). There are changes to tenancies in Wales too, with an updating of the Renting Homes (Wales) Act 2016, going through parliament this spring, to take effect in spring 2021. (See panel).

A landlord in the private sector may lose confidence in being able to control lettings. In the extreme this may lead to leaving the sector, which would be a disaster for those who cannot afford to buy or cannot access social housing and need a vibrant rental market<sup>2</sup>. Indeed, social housing may be expected to pick up the fall out from this change.

There is a lot of work to do before any new regime will be ready, not least because the court rule changes have not yet been tackled. As yet there hasn't been any information on whether some tenancies, such as student accommodation or holiday lets, will be excluded from the new regime.

We'll have to wait to see the exact outcome, but with broad public and political support, the scrapping of the 'no fault eviction' seems inevitable.

<sup>1</sup> *A new deal for renting: resettling the balance of rights and responsibilities between landlords and tenants, Government Consultation published 21.7.2019*

<sup>2</sup> *The National Landlord's Association have specified that over 96% of landlords would consider leaving the market without a section 21. Read more [here](#).*

## The Renting Homes (Amendment) (Wales) Bill

The Renting Homes (Amendment) (Wales) Bill was introduced into the Welsh Parliament in February 2020<sup>1</sup>.

The Bill will:

- Increase to six months the period at the start of a new let during which a landlord's notice cannot be issued.
- Increase the minimum notice period a landlord must give when seeking to end a contract where there has been no breach of terms, from two months to six months.

- Protect landlords' property rights with a shorter notice period (one month) if the contract has been breached.

These changes will provide 12 months' security of occupation for tenants where there is no breach of contract, giving greater security (particularly to tenants in the private rented sector), while enabling landlords to regain possession of their property where a tenant is in breach of contract.

The Bill amends the Renting Homes (Wales) Act 2016, affecting over one million people who rent their home in Wales. Should the Bill be passed, the new law will come into force in spring 2021.

<sup>1</sup> <https://gov.wales/new-law-provide-greater-security-occupation-people-who-rent-home-wales-unveiled>

*Turning the tide on tenancies* was published in Spring 2020 *stronger*, ALARM's member journal. ALARM is a membership organisation run by members, for members, supporting risk professionals that support our communities and citizens. For more information, please visit [alarmrisk.com](http://alarmrisk.com).

## Contact



Henrietta Scott

Head of Marketing

PRTeam@brownejacobson.com

+44 (0)330 045 2299

---

## Related expertise