

The Deregulation Act 2015

Some good, some bad and some very ugly

Assured Shorthold Tenancies (ASTs) were designed to be simple forms of tenancy, with a straightforward termination process. Then lawyers got involved. That led to a change in 1997 that made them even simpler. Then government got involved, most recently with the much-anticipated [Deregulation Act 2015](#) which received Royal Assent on 26 March 2015 (the Act).

Its introduction says it is “An Act to make provision for the reduction of burdens resulting from legislation for businesses or other organisations or for individuals”. Landlords could be forgiven for thinking the Act might therefore make their lives easier. In an area of law which is already heavily regulated, this unfortunately-named Act introduces an avalanche of new rules, restrictions and obligations.

There is some good news in the Act for landlords, for example some simplification of the law relating to the giving of notice when a landlord wants to recover possession of an AST property.

There is also some bad news, for example the inclusion of infelicitous language that will give rise to new uncertainties, problems and challenges.

And, there is some very ugly news for landlords, most notably the increased number of hurdles that must be overcome to be able to serve a valid two-month notice under section 21 of the Housing Act 1988.

Although the Act covers a wide range of areas of law, this briefing focuses on the key implications for the property sector and will be followed by a series of articles which will explore each area in greater depth. This briefing considers the law as it affects England and Wales, although it will be seen that some parts of the Act currently only apply in England. In some cases the Act relies on further legislation being drafted and implemented, making it unclear as to what the future hurdles might be.

Tenancy deposits

Several key amendments to the tenancy deposit protection legislation came into force on 26 March 2015. Unusually, the provisions are retrospective and are treated as having had effect since 6 April 2007.

Deposits received before 6 April 2007

For deposits received for a fixed term tenancy before 6 April 2007 which subsequently became a statutory periodic tenancy after that date, it was for a while unclear whether the deposit had to be protected and whether a section 21 possession notice could be served if it had not been.

Regardless of what might previously have been the position, landlords now have until **23 June 2015** to protect the deposit and serve the prescribed information on the tenant.

Deposits received on or after 6 April 2007

The provisions in the Act in essence provide that so long as the landlord has complied with the deposit protection scheme requirements for the original tenancy (that is, register the deposit in a government authorised scheme and serve prescribed information on the tenant), if a subsequent tenancy arises either as a statutory periodic tenancy or a renewal tenancy, the landlord will be treated as having complied with the requirements in connection with the new tenancy.

Section 21 notices and possession

A number of provisions in the Act restrict a landlord's ability to serve a section 21 notice seeking possession in certain circumstances. These provisions affect England only. They are due to come into force later in 2015 (July and October).

Retaliatory evictions

Perhaps most significantly, the Act introduces the controversial concept of retaliatory evictions. The provisions relating to retaliatory evictions are aimed to address situations in which the landlord serves a section 21 notice after the tenant has complained about the condition of the property.

Where the tenant has made a written complaint to the landlord about the state of repair of the property before a section 21 notice is given and the landlord has not responded, or its response is inadequate, a tenant may contact the local authority. If the local authority chooses to serve an enforcement notice, the landlord's ability to recover possession under section 21 will be restricted.

No notice at the beginning of a tenancy

The Act prevents a landlord from serving a section 21 notice in the first four months of an AST. This is designed to stop the practice of serving notice at the time of granting the tenancy, so that tenants are actually given two months' notice before the end of the tenancy.

No notice unless statutory obligations complied with

A landlord will be prevented from serving a section 21 notice where it has failed to comply with certain statutory obligations, which will be set by regulations but are likely to concern, for instance, Energy Performance and Gas Safety Certificates, or it has breached the new requirement under the Act to provide information to the tenant about the respective rights and responsibilities of the landlord and tenant.

Rent refund

Where a section 21 notice has been served to notify a tenant that a landlord wants to recover possession of the property, the new provisions give a tenant a statutory right to claim back, for the period after the tenancy came to an end, any rent that has been paid in advance.

New prescribed form of notice

In terms of the section 21 notice itself, the form will be prescribed by regulations and the date on which the tenancy comes to an end no longer has to be specified as the last day of a period of the tenancy.

London residential short-term lets

The Act amends previous legislation which required Londoners who wished to rent out their home for less than 90 consecutive nights to apply for planning permission from their borough council.

The new provisions, which will come into force on 26 May 2015, allow a person to let out residential premises in London for up to 90 days per calendar year. The government retains the power to direct that the provisions do not apply to particular residential premises or a particular area if they consider it necessary to protect the amenity of the locality. It should be noted that while the change affects the planning position, it may not interfere with the landlord and tenant position if a lease prevents such short-term letting.

Comment

Although the Act would appear to simplify many contentious issues surrounding ASTs, especially the protection of deposits, it remains to be seen whether new problems and questions will arise. The Act was finalised with a day to spare before Parliament was dissolved for the election and it is to be hoped that the clarity of the drafting has not suffered as a result. Our briefings which will follow in the coming weeks will explore the detail of the new rules and seek to identify any difficulties.

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