

Rural news - winter edition: regulating deregulation: changes to obtaining possession of Assured Shorthold Tenancies

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Provisions of the Deregulation Act came into force on 1 October 2015, and have made some comprehensive changes to the procedure for obtaining possession under section 21 of the Housing Act 1988 (as amended). Serving a section 21 notice requiring possession allows landlords of Assured Shorthold Tenancies ('ASTs') to obtain possession at the end of a tenancy, without proof of 'fault'.

The Deregulation Act includes the following consequences:

- There is more 'upfront' work to do when granting an AST. Section 21 notices will not be valid if the landlord has not previously given to the tenant:
- an Energy Performance Certificate;
- a Gas Safety Certificate (if there is a gas supply); and
- a document entitled 'How to Rent: The Checklist for Renting in England'.

These documents can be given to the tenant at any time before a section 21 notice is served, but best practice is to provide the tenant with these documents at the beginning of the tenancy.

- Section 21 notices cannot be given until after four months of the AST have passed. Therefore, the common practice of serving a section 21 Notice at the time the tenancy is granted to bring it to an end at the end of the fixed term will no longer be effective.
- Section 21 notices must now be drafted using a prescribed form, which can be used in respect of any AST, but which must be used for all ASTs granted after 1 October 2015.
- Assured shorthold tenants will now be entitled to repayment of rent when the AST ends before the end of a rental period. For example, if rent is paid in advance on the 1st of each month and a section 21 notice expires on the 14th day, the tenant will be entitled to a repayment of the rent paid for the period from the 15th to the end of the month, calculated on a daily basis.
- It is now open to tenants to argue that a section 21 notice may be invalid if they have complained about disrepair and the landlord has not responded adequately. Under the new 'retaliatory eviction' provisions of the Deregulation Act 2015, an 'Improvement Notice' would have to be served by the local authority before the section 21 notice will actually be invalidated, but nonetheless landlords should ensure that if a tenant complains about disrepair in writing, they give an 'adequate' response within 14 days. An adequate response will set out the landlord's plan of remedial action accompanied by a timetable.
- As a general rule, a section 21 notice can no longer be relied on six months after it is given. A fresh section 21 notice would need to be served before commencing possession proceedings.

It is still critical for tenants to be provided with 'prescribed information' relating to the tenancy deposit scheme within 28 days from receipt of a tenant's deposit.

If you have the misfortune of letting a property to a troublesome tenant who does not vacate voluntarily in accordance with a section 21 notice (or other notice requiring possession), you will need to commence possession proceedings in the local County Court. The proceedings can be expected to go smoothly providing that requirements under the Housing Act 1988 (as amended) have been fully complied with, and that there is

good proof of service of the section 21 notice itself.

We have extensive experience of drafting notices requiring possession and of possession proceedings, so do get in touch if you have any queries or would like us to assist.