

# LANDLORD AND TENANT NEWSLETTER

September 2015

## NEW PRESCRIBED SECTION 21 NOTICE

In our last newsletter we identified the power given by the Deregulation Act 2015 to the Secretary of State to require a prescribed form of section 21 notice to be used.

The Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 ('The Regulations') comes into force on 1 October 2015 and provides a prescribed form of section 21 notice that must be used when bringing an assured shorthold tenancy to an end whether under s.21(1) or s.21(4). It also confers further onerous requirements landlords must comply with before a section 21 notice can be validly served.

These Regulations only apply to assured shorthold tenancies of a dwelling house in England, granted on or after 1 October 2015, but the new prescribed section 21 notice should be used to end all assured shorthold tenancies as of 1 October 2015.

The prescribed form of section 21 notice is set out in the Schedule of the Regulations and overall, should cause little problems to landlords and agents. It will resolve many difficulties landlords often find themselves in where a technicality prevents an incorrect notice being served.

Careful thought must still be given to ensure the date of service of the notice is calculated correctly.

## ADDITIONAL REQUIREMENTS FOR LANDLORDS

Regulations 2 and 3 set out requirements that landlords and agents must now comply with for all new tenancies entered into on or after 1 October 2015 (not periodic tenancies where the original term was entered into before 1 October 2015).

We think 'a new tenancy' will mean a fixed term tenancy, a contractual periodic tenancy, a renewal agreement, or a periodic tenancy following expiry of a fixed term entered into on or after 1 October 2015:

1. Landlords must have given a tenant a copy of the energy performance certificate and a copy of the gas safety certificate (where relevant) before a valid section 21 notice can be served.

We think landlords and agents should revise their assured shorthold tenancies and renewal agreements where possible so that both certificates are referred to and appended to the agreement, in order to avoid any arguments about service of these certificates.

2. Landlords must also give to tenants a copy of the Government's booklet "How to rent: the checklist for renting in England". A copy is available for download from [www.gov.uk/government/publications/how-to-rent](http://www.gov.uk/government/publications/how-to-rent). A failure to provide this booklet will prevent a valid section 21 notice being served.

The how to rent guide must be given in hard copy format, unless the tenant has notified the landlord or agent of an email address at which the tenant is content to accept service of notices and other documents given under or in connection with the tenancy.

We foresee another potential problem that could arise here if a tenant disputes the validity of a section 21 notice because the how to rent guide was not given in hard copy format.

Something further for landlords to get their heads around is the requirement to give a tenant an updated version of the guide, if one is published before a replacement tenancy is entered into.

A replacement tenancy is a tenancy where the landlord and the tenant are the same, and the property is the same or substantially the same. We think this could therefore cover both periodic tenancies and renewal tenancies.

Clearly it will be impractical for landlords to continuously check for updated versions of the guide and so we recommend the how to rent guide be appended to the assured shorthold tenancy agreement and referred to in the body of the agreement, and then the most up to date version should be served with the section 21 notice.

#### Steps to take:

1. All new tenancies entered into on or after 1 October 2015 should append these documents to the AST (or where relevant in the case of the gas safety certificate);
2. We recommend these documents and the most up to date version of the guide be served again with the section 21 notice to avoid being caught out;
3. Tenancy agreements should record an email address for service of these documents on a tenant but notices for possession should not be served by email.

## OTHER IMPORTANT REMINDERS

The Deregulation Act 2015 made important changes to the Housing Act 2004, which came into force on 1 July 2015. Landlords and agents must no longer serve a section 21 notice in the first four months of the tenancy, and any previous practice of serving a section 21 notice at the start of the tenancy must have stopped.

A section 21 notice now also has a shelf life of six months, so landlords and agents must be proactive in commencing possession proceedings before it expires. The six months starts from the date the section 21 notice is issued, and not from the date it expires. The shelf life is four months where a section 21(4) notice must give longer than two months' notice.

Also coming into force on 1 October 2015, is the part of the Deregulation Act 2015 that relates to retaliatory eviction. A section 21 notice will be invalid if a tenant makes a complaint in writing to a landlord about the condition of a property, and the landlord does not provide a response within 14 days, provide an adequate response, or gives a section 21 notice following the complaint, and the tenant then complains to the relevant housing authority who serves a notice on the landlord. This may have limited effect but it is important to be aware of this change.

## **SMOKE AND CARBON MONOXIDE UPDATE**

You will have come across the new regulations (Smoke and Carbon Monoxide Alarm (England) Regulations 2015) requiring landlords to install working smoke and carbon monoxide alarms in rented properties.

These Regulations are currently in draft form and were expected to come into force on 1 October 2015.

A smoke alarm will need to be fitted on each storey of a property where there is a room used wholly or partly as living accommodation, and a carbon monoxide alarm will need to be fitted in any room which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance. Bathrooms and lavatories are included as a room that is used as living accommodation and a 'room' includes a hall or landing.

Landlords will need to check both alarms to make sure they are in proper working order on the day the tenancy begins and this requirement applies to new tenancies granted on or after 1 October 2015 but does not apply to statutory periodic tenancies or renewal tenancies entered into on or after 1 October 2015 where the landlord and the tenant have not changed, and the premises being let are the same or substantially the same as those let under the earlier agreement.

To clarify, all rented properties must have carbon monoxide and smoke alarms fitted, but the requirement to check these are in proper working order on the day the tenancy begins only applies to new tenancy granted on or after 1 October 2015.

These Regulations were not passed by the House of Lords because amongst other concerns, the Regulations did not give landlords enough time to comply. The draft Regulations are due to go back to the House of Lords shortly.

In the meantime, we recommend all landlords and agents begin complying with the intended Regulations by 1 October 2015 as originally planned. As with the Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 above, we suggest your assured shorthold tenancy agreements are revised to refer to the check that must be made, and to append evidence of the check to the agreement.

**Please contact us if you require any advice on this ever changing area of law:**

**Claire Whiteman                      clw@deanwilson.co.uk                      01273 249229**

**Gabrielle Moffatt                      grm@deanwilson.co.uk                      01273 249253**

**Alina Khan                                      ak@deanwilson.co.uk                      01273 249297**