
Property Matters

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A consultation not to ignore!

The summer edition of Property Matters reflected on what may replace section 21 of the Housing Act 1988, a proposal by the Government. The consultation about the replacement for section 21 was promised before the summer, but was not published until 21 July. The decision to repeal section 21 has already been made.

The Foreword

The scope of the consultation makes it absolutely clear that this is not a consultation to explore whether section 21 should be repealed, but rather what changes should be made to Schedule 2 of the Housing Act 1988. According to the consultation, Section 21 WILL go.

There would therefore have to be a reason to seek possession of a property. What new grounds might be required or what amendments to existing grounds should be considered? Additionally, it invites views on improvements to the processing of repossession orders through the courts.

The previous Secretary of State, in his foreword, said that the abolition of section 21 will be achieved by removing assured shorthold tenancies from the Housing Act 1988. It was not clear initially whether the assured shorthold tenancy would have additional possession grounds, not available to assured tenancies, but this does not now appear to be the case. All tenancies would then be the fully assured tenancy.

Reaction to the consultation

The impending loss of section 21 has caused much concern for landlords, agents and industry supporting bodies. There have been comments suggesting that this move on top of other recent changes affecting landlords and their agents would spell the end of the private rented sector.

Whilst this might appear to be just empty rhetoric, the real cause of

homelessness are the events leading up to the serving of a section 21. In most cases, these tend to be issues related to non-payment of rent, wanting to sell the property or anti-social behaviour. Although grounds under Schedule 2 are available for these breaches, landlords tend to revert to section 21 either due to the amount of time and expenditure to process a section 8 possession claim through the courts or simply the fact that using a section 21 is less confrontational.

Those supporting tenants are clamouring for the total abolition of section 21. However, for this to be workable, a new court system that actually works is needed. The principle of changing the section 21 seems to have cross-party support so it appears inevitable that reform will happen. Therefore, it is more a question of trying to influence decision making rather than seeking to block it.

New or improved Schedule 2 grounds

The consultation seeks views on amending some existing grounds and considering new grounds. Amongst the highlights are:

- Ground 1 currently allows for the landlord to pre-advise that the landlord or spouse has previously lived at the property and may wish to seek possession. This

could be expanded to a wider group of family members.

- A proposal to introduce a new ground that the landlord intends to sell the property.
- Substantial proposed amendments to the rent arrears mandatory ground 8. These may include reducing the amount of arrears the tenant must be in at the time of the hearing to one month's (currently two months'). Also, if the landlord can prove a persistent pattern of accruing arrears and paying them off then this would be considered a mandatory ground.
- Strengthen the terms of tenancy agreements to allow for easier use for anti-social behaviour and seeking views on the effectiveness of existing anti-social behaviour grounds 7A and 14.

What can you do now?

Taking the Government at face value, the decision to repeal section 21 has already been made. With the new Government, there is a possibility that this could be dropped. However, this seems unlikely.

Accepting the notice will go, efforts should be focused on seeking to influence the alternative proposals.

Responses are welcome until 12 October 2019 from any interested parties. The more responses the greater the chance of a better outcome. The consultation is entitled 'A New Deal for Renting: Resetting the balance of rights and responsibilities between landlords and tenants'. This can be found on the Government website gov.uk.

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