

The Renters (Reform) Bill: implications for family lawyers



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An end to “no fault eviction” may be nudging closer to reality, but there will still be avenues for landlords, and the Bill is at an early stage

The end of “no fault eviction” in the private rented sector in England was promised by Theresa May’s government in April 2019, and the Renters (Reform) Bill 2023 will, when passed, finally bring this policy into effect. Tenants hope the bill will end unfair evictions and provide them with more stable homes. Meanwhile landlords have complained that the reforms are leading to a reduction in the supply of homes available to rent, and they are wary of losing the right to evict tenants without having to prove a reason for doing so.

When the plans were announced in 2019, the government focussed on the benefits for families who rented, with then Prime Minister Theresa May stating that landlords would “no longer be able to unexpectedly evict families with only eight weeks’ notice”.

In this article we outline the most important parts of the bill for family law practitioners. These changes apply only in England as housing is a devolved issue and separate tenancy laws apply in other parts of the UK.

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Abolition of section 21 notices and changes to evictions

The most prominent aspect of the reforms is the abolition of section 21 notices. These are the notices given by landlords to assured shorthold tenants to require them to leave without giving any specific reason.

The entire category of “assured shorthold tenancy”, the tenancy type which makes up an overwhelming majority of private sector lettings, will be scrapped, with the result that private renters will have the similar security of tenure to housing association tenants.

Section 21 notices are popular with landlords who want to recover possession to sell their properties or remove a tenant they consider unsuitable. A section 21 notice (a reference to notice being given under s21 of the Housing Act 1988) must give a minimum of two months’ notice. There are formal requirements and various prerequisites for a valid section 21 notice, including that any deposit taken by the landlord must have been protected with a government-approved scheme. If these rules are complied with, tenants cannot prevent their eviction.

In the future, landlords who wish to recover vacant possession of a property will need to serve a notice seeking possession under s8 of the Housing Act 1988. Section 8 notices must cite one or more of the grounds for possession, which are set out in Schedule 2 to the Act.

The grounds include rent arrears, a breach of tenancy agreement, the tenant causing nuisance and several more niche situations. Importantly, not all of these grounds involve any “fault” by the tenant. There is a ground available to landlords who wish to move into the property themselves.

The Renters (Reform) Bill balances out the abolition of section 21 notices by strengthening the grounds for possession.

The existing right for landlords to obtain possession for the property to be used for them or their spouse or civil partner is expanded to include close family members. A new ground 1A will be added, giving landlords a specific right to evict tenants because they intend to sell. These grounds will be available after six months has passed

from the start of a tenancy, and where a tenant leaves following service of a notice under ground 1A, the landlord is prohibited from letting or marketing the property for three months.

The existing rent arrears grounds will be supplemented with new “Ground 8A”, which will apply when a tenant is in at least two months’ arrears on three separate occasions over the three-year period prior to service of the notice.

New Ground 6A will allow a landlord to seek possession if, for example, the landlord is in breach of a local authority enforcement notice or the landlord has been refused a property licence.

These changes are particularly significant because they all relate to “mandatory grounds” – where a mandatory ground is established (both at the time the notice was given and at the date of the court hearing) the court must make a possession order against the tenant. In contrast other discretionary grounds give the court a discretion to make a possession order if it is reasonable to do so.

The expanded and strengthened grounds for possession will allow landlords to evict tenants easily in certain situations.

Other changes to tenancies

Currently, fixed term tenancies are common in the private sector but after the reforms take effect fixed term assured tenancies will no longer be allowed, and all tenancies will be periodic. The periods will be monthly or not longer than 28 days. Tenants will be able to end the tenancy by giving two months’ notice to quit.

Landlords will only be able to increase rent annually using the statutory notice procedure set out in s13 of the Housing Act 1988, and the notice period will be increased from one to two months. Tenants can challenge a rent increase in the First-tier Tribunal (Property Chamber). Landlords will no longer be able to rely on rent review clauses in their tenancy agreements.

What else will the Bill do?

The Bill contains various other measures affecting the private rented sector, and the government has indicated that additional measures will be introduced to Parliament before the next general election.

There will be a new term implied into assured tenancies that a tenant may keep a pet with the landlord’s consent unless the landlord’s refusal is reasonable. Landlords will be able to require tenants to obtain insurance to cover pet damage and the Tenant Fees Act 2019 will be amended to make this a permitted payment. This does not amount to a right to keep a pet, but it will significantly improve tenants’ chances of being permitted a pet.

For the first time, private landlords will be required to join a “redress scheme”, which will allow tenants to escalate complaints to a neutral body with the power to make legally binding decisions and awards. The Bill provides for the creation of a new database, membership of which will be mandatory for landlords.

There are additional measures to punish landlords for illegal evictions and wrongful service of notices on tenants.

Implications for family breakdown and housing for children

Overall, private sector tenancies should become more secure and stable, but an assured tenancy in the private sector will still not be reliably a tenancy for life. Where judges are considering housing options for children it would be reasonable to consider an assured tenancy with a private sector landlord will have similar security to a tenancy with a social landlord. However, much will depend on the identity of the landlord – an institutional private sector landlord is much less likely to want to sell a house compared to a private investor. An investment fund also cannot decide to move a family member in. This means that in real terms, not all private sector tenants will enjoy equal security of tenure.

Nothing in the Bill affects the court’s power to transfer a tenancy under Schedule 7 to the Family Law Act 1996, but landlords might be more likely to object to a vesting order when they perceive themselves to be “stuck” indefinitely with the replacement tenant. The Family Court must give landlords an opportunity to make representations before making an order to transfer a tenancy.

Another problematic area for tenancies and relationship breakdown arises out of the right of any one joint tenant to give a notice to terminate the tenancy which is binding on all tenants. The bill as drafted would not change this, but it does specify that two months “notice to quit” must be given by tenants. That will at least provide a bit more time for tenants to make new arrangements.

Conclusion

The Bill is still at an early stage of passage through Parliament, and significant amendments are likely. Political commentators suggest that that the Bill will not be passed until late 2023 or early 2024. The government has committed to giving at least six months’ notice of the initial implementation after royal assent, and then existing tenancies will not be brought into the new regime for a further 12 months after that. For the time being, private sector tenants remain very much at risk of “no fault” eviction.

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