

EXPLANATORY MEMORANDUM TO
THE ASSURED SHORTHOLD TENANCY NOTICES AND PRESCRIBED
REQUIREMENTS (ENGLAND) REGULATIONS 2015

2015 No. 1646

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

- 2. Purpose of the instrument**

2.1 This instrument introduces a new prescribed form for a notice under section 21 (1) or (4) of the Housing Act 1988 (“the Act”) informing a tenant that the landlord intends to seek recovery of possession of a property let on an assured shorthold tenancy (“a section 21 notice”). Further, the instrument specifies existing obligations (to provide tenants with an energy performance certificate and a gas safety certificate) with which landlords must comply if they wish to make use of the section 21 eviction procedure. The instrument also introduces a requirement on landlords to provide tenants with a copy of the Department for Communities and Local Government’s booklet entitled “How to rent: the checklist for renting in England”. Where landlords have not provided the booklet they will not be permitted to use the section 21 eviction procedure.

- 3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 The “How to rent: the checklist for renting in England” will be available free of charge to landlords from www.gov.uk/government/publications/how-to-rent. As landlords are engaged in the business of property letting, we expect them to have their own information technology facilities and we will not be providing paper copies of the booklet to them. Landlords who do not have their own information technology facilities may make use of free publicly available information technology facilities, such as those found in public libraries.

- 4. Legislative Context**

4.1 Section 21 of the Act currently provides a “no-fault” eviction procedure in the case of assured shorthold tenancies, whereby provided the landlord gives tenants the prescribed amount of notice, they do not need to prove any breach of a condition of the tenancy.

4.2 Section 21(8) of the Act (as inserted by section 37 of the Deregulation Act 2015) provides the Secretary of State with the power to prescribe a form for the serving of notices under section 21(1) or section 21(4) of the Act.

4.3 Section 21A of the Act (as inserted by section 38 of the Deregulation Act 2015) provides the Secretary of State with the power to prescribe legal requirements imposed on landlords by any enactment, so that if a landlord fails to comply with those requirements, the landlord shall be prevented from giving a section 21 notice until the landlord has complied with the relevant legal obligation. These requirements include those requirements in relation to the condition of dwellings or their common parts, the health and safety of occupiers of dwellings, and the energy performance of dwellings.

4.4 The requirements prescribed for the purpose of section 21A of the Act are the requirement to provide tenants with an energy performance certificate under regulation 6(5) of the Energy Performance of Buildings (England and Wales) Regulations 2012 and the requirement to provide tenants with a gas safety certificate under regulation 36 of the Gas Safety (Installation and Use) Regulations 1998. Under regulation 36, landlords are required to provide the certificate to tenants within 28 days of carrying out a safety check. This time period has been dis-applied in relation to the use of the no fault eviction procedure in the regulations. Therefore as long as the landlord has carried out a safety check and provided a certificate, they are not prohibited from using the no fault eviction procedure (although they may be subject to sanction under the 1998 Regulations for failure to comply with them). No section 21 notice may be given where a landlord has failed to comply with either of these requirements.

4.5 Section 21B of the Act (as inserted by section 39 of the Deregulation Act 2015) provides the Secretary of State with the power to make regulations requiring a landlord, or a person acting on a landlord's behalf, under an assured shorthold tenancy, to provide a tenant with such information as may be prescribed, regarding the rights and responsibilities of a landlord and tenant. No section 21 notice may be given where a landlord has failed to comply with this requirement, until such time as the prescribed information is provided to the tenant.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Government supports a secure, stable and sustainable housing sector. This is across owner-occupiers, and the social and private rented sector. For the private rental sector, our aspiration is a bigger, better private rented sector. That is: to increase supply and thus keep down rents, improve standards, and empower both landlords and tenants. This is why we are mandating that with all new tenancies, landlords issue tenants with a copy of the Government's How to Rent guide.

7.2 The Government is concerned about the unnecessary expenditure for landlords and the burden on the courts created by the lack of a standard section 21 notice. The Government wishes to improve this process. Currently where a landlord wishes to serve a tenant with a section 21 notice, there is no standard form for this notice. Lack of certainty over notice periods has led to a large number of notices being deemed to be defective and treated as invalid by the courts. As a result, landlords have to spend additional time and resources serving new notices and seeking legal advice.

7.3 Non-regulatory alternatives are not considered feasible in relation to the requirement to provide an energy performance certificate, gas safety certificate and the “How to rent” checklist because the landlords which are being targeted often may have little concern for the well-being of their tenants and are unlikely to be receptive to self regulatory policy solutions. The intention is to adopt the least regulatory approach to encourage landlords to comply with existing obligations – a mechanism which we have found to be effective in a different context

8. Consultation outcome

8.1 Five roundtable discussions, involving a wide range of landlord bodies, tenant and leaseholder groups and the lettings and management industry were held in summer 2015 to develop the policy. The attendees were Shelter, Crisis, Generation Rent, the British Property Federation, Landlord Action, Residential Landlords Association, Association of Residential Letting Agents, Royal Institution of Chartered Surveyors, the National Landlords Association, and the National Approved Letting Scheme.

9. Guidance

9.1 We will be publishing guidance to industry on the use of the new section 21 form on 1 October 2015 on <https://www.gov.uk>.

10. Impact

10.1 The impact on business, charities or voluntary bodies is described in the Impact Assessment.

10.2 The impact on the public sector is nil.

10.3 A combined Impact Assessment on the retaliatory eviction provisions contained in the Deregulation Act 2015 and the provisions contained in these regulations was submitted to the Regulatory Policy Committee (“RPC”) in February earlier this year. Following a request from the RPC to create a separate Impact Assessment for the provisions contained in the primary and secondary legislation, a new Impact Assessment for these regulations was drafted and has now been submitted to the RPC. We have annexed this Impact Assessment to the Explanatory Memorandum and expect approval from the RPC within six weeks.

11. Regulating small business

11.1 Data suggests that 74% of all private sector landlords own one property and 95% own between one and four properties. It is highly likely that these landlords will either be a small or a micro business; therefore, exempting these businesses would result in a failure to meet the policy objectives of preventing retaliatory eviction and simplifying the courts process and simplifying the eviction process. We estimate that the impact on each landlord should be minimal, with the main upfront cost being the time taken to become familiar with the regulations.

12. Monitoring & review

12.1 Sections 28 - 32 of the Small Business, Enterprise and Employment Act 2015 impose a new statutory requirement to include a review clause in secondary legislation which regulates business. As a result of this requirement a statutory review of the regulations will be conducted within 5 years of the 1 October 2015 and within every five years after that.

12.2 In addition to the statutory reviews, in order to monitor the operation and effectiveness of the new section 21 form and the level of compliance with the regulations by landlords, an interim review will be conducted in Autumn 2016. The outcome of the review will also inform whether the Secretary of State exercises his power under section 41 of the Deregulation Act 2015 to extend the regulations to all assured shorthold tenancies from 1 October 2018.

13. Contact

Mark Malvisi at the Department for Communities and Local Government, tel: 0303 444 3220 or e-mail: mark.malvisi@communities.gsi.gov.uk, can answer any queries regarding this instrument.