

# **TENANCIES (REFORM) BILL**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Tenancies (Reform) Bill. They do not form part of the Bill and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

### **SUMMARY AND BACKGROUND**

3. The Tenancies (Reform) Bill provides protection for assured shorthold tenants in the private rented sector against retaliatory eviction, where such tenants are suffering from poor or unsafe property conditions. This is done by providing that where a relevant notice is served on the landlord in relation to the dwelling, the landlord is prevented from evicting a tenant or tenants by giving a notice under section 21 of the Housing Act 1988 for six months, from the date of service of the relevant notice. For the purposes of the Bill a relevant notice is defined as an improvement notice served under section 11 or section 12 of the Housing Act 2004, a hazard awareness notice served under section 28 or section 29 of the Housing Act 2004 or a notice of emergency remedial action served under section 40(7) of the Housing Act 2004. Section 21 of the Housing Act 1988 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 rely on any grounds for eviction.
4. The Bill also provides the power for the Secretary of State to prescribe legal requirements, which if a landlord of an assured shorthold tenant is in breach of, would prevent that landlord from serving a section 21 notice. Finally, the Bill makes changes to the procedure under section 21 of the Housing Act 1988, by introducing the power to prescribe the form of section 21 notices, by removing the requirement for

notices served under section 21(4) of the Housing Act 1988 to end on the last day of a period of the tenancy and by introducing time restrictions in relation to the giving of section 21 notices and the time period for bringing possession proceedings, following the service of a section 21 notice.

5. The policy rationale for the changes introduced by this Bill is to prevent tenants from feeling unable to complain about poor property conditions because they fear eviction. The Bill should also encourage landlords to keep their property in a decent condition and to comply with all legal obligations placed upon them, in order not to lose their right to rely on section 21. The changes to the section 21 procedure aim to make the eviction process more straightforward for both landlords and tenants.

## **TERRITORIAL EXTENT AND APPLICATION**

6. The Bill extends to England and Wales. However, given that housing matters are now devolved to Wales, the amendments made by the Bill will apply to England only.

## **COMMENTARY**

### **Clause 1:**

7. The effect of this clause is to provide six months protection from eviction under the section 21 procedure, for a tenant occupying a dwelling under an assured shorthold tenancy, where a relevant notice has been served by a local housing authority in relation to a dwelling. Clause 1(1) provides that a landlord may not give a section 21 notice in relation to a dwelling within six months following the date of service of a relevant notice in respect of that dwelling. Clause 1(2) provides that a section 21 notice given in relation to an assured shorthold tenancy of a dwelling is invalid if, before the section 21 notice was given the tenant had made a complaint about the condition of the dwelling, either to the landlord or to the local authority and following the service of the section 21 notice the local authority subsequently serves a relevant notice in relation to the dwelling.

8. Clause 1(3) and 1(4) set out that it is a defence to proceedings for a possession order under section 21 where the tenant has made a complaint to the local housing authority and is waiting for the local housing authority to take a decision or action in relation to the inspecting of a dwelling or the serving of a relevant notice. It is envisaged that when a landlord has been prevented from obtaining possession by virtue of clause 1, the landlord would be required to serve a fresh section 21 notice to regain possession of the dwelling.

9. Clause 1(5) sets out that the protection from eviction provisions do not apply

where a relevant notice has been revoked as a result of being served in error, or quashed, or where the decision of the local authority to take the action to which the notice relates has been reversed or an order in relation to the relevant notice has been made under section 29 of the Senior Courts Act 1981.

10. Clause 1(6) and 1(7) provide that a relevant notice includes a notice that is served in relation to any common parts of the building of which the dwelling forms part, where the landlord has an estate or interest in those common parts and the condition of the common parts is such as to affect the tenant's enjoyment of the dwelling or any common parts which they are entitled to use.

**Clause 2:**

11. Clause 2 provides for certain exemptions from the measures to prevent retaliatory eviction contained in clause 1 of the Bill. These include an exemption where the condition of the dwelling which resulted in the serving of the relevant notice was due to the tenant's breach of their duty to use the dwelling in a tenant-like manner, or breach of an express term of the tenancy to the same effect. There is an exemption where the complaint made by the tenant is totally without merit. It is envisaged that the court considering whether to allow a landlord to obtain possession of the dwelling would use this exemption. There is also an exemption where the landlord has a genuine intention to sell their interest in the dwelling to a person that they are not associated with. Examples of where the landlord would not have a genuine intention to sell include where the landlord intends to sell to a family member or business partner. Furthermore, there are also exemptions where the landlord is a private registered provider of social housing and where a mortgagee (including a receiver who has been appointed by the mortgagee to act on behalf of the landlord is in possession of the landlord's interest in the dwelling) and the mortgagee needs to be able to exercise their power of sale with vacant possession.

**Clause 3:**

12. The effect of this clause is to remove the requirement in relation to a periodic tenancies whereby a notice served under section 21(4)(a) of the Housing Act 1988 requires the date specified in the notice to be the last day of a period of the tenancy.

**Clause 4:**

13. This clause makes changes to the timing for service of section 21 notices and the bringing of possession proceedings in relation to section 21 notices. The effect of the clause is that a notice under section 21(1) or section 21(4) cannot be brought during the first four months of a tenancy, with the exception of replacement tenancies, as defined in section 21(7) of the Housing Act 1988, or tenancies arising under section 5(2) of the Housing Act 1988 (periodic tenancies arising at the end of a fixed-term tenancy). The clause also provides that proceedings for an order for possession may not be brought later than six months from the date of service of a notice under section

21(1) or section 21(4) of the Housing Act 1988.

**Clause 5:**

14. This clause provides the Secretary of State with the power to prescribe legal requirements imposed on landlords, which if a landlord has failed to comply with, the landlord shall be prevented from giving a section 21 notice, until such time as 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.

**Clause 6:**

15. This clause 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 Housing Act 1988.

**Clause 7:**

16. This clause provides that regulations made under the provision in clauses 4 and 5 of the Bill are subject to the negative resolution procedure.

**Clause 8:**

17. The effect of this clause is to provide for the apportionment of rent in the situation where a tenancy is brought to an end under section 21 before the end of a period of the tenancy and tenant has paid rent in advance for this period, during which they will now not be occupying the property for one or more days. The tenant is entitled to an apportionment of the rent they have paid to the landlord, calculated in accordance with a formula. The clause provides that if an apportionment of rent has not been made when the court considers whether to make a possession order under section 21, the court shall order the landlord to pay the apportionment of rent to which the tenant is entitled.

**Clause 9:**

18. This clause sets out that the Bill applies to assured shorthold tenancies granted on or after the day the Act comes into force (but excluding assured shorthold tenancies that arose under section 5(2) of the Housing Act 1988 after the coming into force of the Act, on the coming to an end of a fixed-term assured shorthold tenancy that arose before commencement of the Act.)

**COMMENCEMENT**

19. The Act shall come into force on such day as the Secretary of State may appoint by regulations. When the Act is brought into force it will apply to

*These notes refer to the Tenancies (Reform) Bill  
as introduced in the House of Commons on 2 July 2014 [Bill 19]*

tenancies that are granted after the day appointed by regulations, unless such a tenancy is a statutory periodic tenancy where the original tenancy was granted before the Act is brought into force. However, where the Act has been brought into force it will apply to all assured shorthold tenancies, whether granted before or after the appointed day, three years after the Act comes into force.