

OCTOBER 2023



DRIP DRIP... RENTERS (REFORM) BILL WATERED DOWN TO APPEASE LANDLORDS

As most landlords and agents will be aware, the Government has proposed a significant overhaul to current legislation involving assured shorthold tenancies aiming to give further protections and security to renters in the UK.

The changes proposed will be the most significant changes of legislation for private landlords and tenants in the last 30 years.

TABLE OF CONTENTS

Drip drip ...Renters (Reform)
Bill watered down to appease
landlords

Right to Rent scheme
bolstered, with penalties
tripled under new legislation

Top Possession Pitfalls of
Spring 2024

High Court appeal sets the
record straight on prescribed
information relating to deposits

How will changes to the
Minimum Energy Efficiency
Standards (MEES) impact
residential landlords?

The Renters (Reform) Bill was introduced to Parliament in May 2023 and sets out, amongst other things, to abolish section 21 evictions (commonly known as 'no fault evictions'), a proposal that was first introduced back in 2019. It is currently progressing through Parliament, and the Government has indicated that it is committed to passing the Bill into law before the general election which is likely to take place this Autumn.

Aside from the abolition of no-fault evictions, the other aspects to be aware of that are proposed under the Bill include:-

- Ending fixed-term tenancies;
- Renting to tenants with pets;
- Bolstering the section 8 grounds for evicting tenants (the main alternative to section 21 evictions);
- Requirement to join a portal and a new ombudsman scheme;
- Changes to rent reviews and notice periods.

The Bill has been criticised by commentators, and in particular, landlords have expressed concerns about some elements of the Bill. There are concerns that the alternatives to the so-called no-fault eviction claims (i.e. section 8 evictions, which are due to be bolstered somewhat under the proposed legislation) are inadequate and that the court system is already too slow to effectively deal with cases. Further, the introduction of blanket two month notice periods for tenants could be an issue for landlords of student properties who usually rent for a 12-month fixed term rather than just the academic year.

Arguably there will also be knock-on effects following these changes in the rented sector as a whole. If, for example, there is too much risk in renting to students, this could result in landlords leaving the student market and there is already a shortage of supply in that sector.

In late March 2024, proposals were announced which 'water down' the proposed legislation. The proposals include making tenants commit to a minimum 6 month tenancy period, and also an initiative to require the justice secretary to assess how ready the court system is to deal with repossession claims. Many suspect that these suggested tweaks were brought on by objections from backbench Conservative MPs.

The amended Bill is due to return to the House of Commons later this month.



RIGHT TO RENT SCHEME BOLSTERED, WITH PENALTIES TRIPLED UNDER NEW LEGISLATION

From 13 February 2024, new legislation introduced by the government have tripled penalties for landlords who rent properties to illegal migrants to up to £20,000 for repeated breaches. An updated Code of Practice on the right to rent has also been published for landlords and agents to use as guidance.

The right to rent scheme requires residential landlords to undertake checks on the immigration status of prospective tenants and occupiers to check whether they have the right to be in the UK. The new regulations introduced in February 2024 increase the maximum civil penalties for landlords that fail to comply with the rules.

For landlords in non-compliance, fines for the first breach have increased from £80 per lodger to £5,000 per lodger and from £1,000 per occupier to £10,000 per occupier. Repeated offences will increase up to £10,000 per lodger and £20,000 per occupier.

These increased civil penalties will be a stark reminder to landlords of the importance of complying with right to rent checks.

The updated Government guidance on the right to rent scheme is available here: <https://www.gov.uk/government/publications/landlords-guide-to-right-to-rent-checks>

TOP POSSESSION PITFALLS OF SPRING 2024

ABANDONED BELONGINGS

This quarter, we have seen numerous landlords facing abandoned furniture, rubbish, clothes and other belongings left in the property after going through the eviction process. It's important to note that in this situation, the landlord becomes an 'involuntary bailee' and usually must follow legal requirements under the Torts (Interference of Goods) Act 1977 to reduce the risk of a potential claim.

SEVERE DELAYS FOR BAILIFF APPOINTMENTS

The time spent waiting for the court to list a bailiff appointment has never been extremely quick, but recent months have seen these timescales double and we have found ourselves chasing courts across the region for bailiff eviction appointments that should have been listed weeks or even months ago.

INADEQUATE NOTICE PERIOD DUE TO SERVICE TIME

When attempting to serve notices themselves, often landlords and agents forget that it is vital to calculate the date for expiry of a s21 or s8 notice based on receipt of the notice (not posting!) which can sometimes be 2 or 3 working days. We would always recommend adding a few days as a safety net to make sure that there is no question that the requisite notice period has been given.

HIGH COURT APPEAL SETS THE RECORD STRAIGHT ON PRESCRIBED INFORMATION RELATING TO DEPOSITS

The High Court has dismissed an appeal against a case setting a precedent in the realm of deposit protection claims. The case is particularly interesting on the issue of whether mistakes on the prescribed information served (e.g. lack of signature) invalidates the prescribed information such that the legislation has been breached and a claim for compensation arises.

In this case, the tenant paid a deposit of £3,300 which was duly protected by the landlord, and the landlord then sent a cover letter enclosing a form containing prescribed information about the deposit. The prescribed information was unsigned, and the tenant argued that therefore the landlord failed to comply with the relevant legislation. The documentation also contained an error, whereby an incorrect numbered reference to the tenancy agreement was included. The tenant argued that this meant that the legislation had not been complied with, and made a claim for more than £120,000 in compensation under the Housing Act 1988.

So did the failure to sign and an error in the certificate mean the legislation had been breached?

The court ultimately held that the lack of signature upon the certificate of prescribed information did not invalidate the certificate. The certificate had been provided under a cover letter signed by the agent of the landlord, and the information given was in a form “substantially to the same effect” as the legislation required. The failure to sign the certificate was not, therefore, fatal to the validity of the certificate.

With regards to the mistake with the tenancy agreement reference, the Court found that if the reasonable recipient receiving the notice would understand the correct information which was intended to have been given, that satisfies the legislation requirements. In this situation, if a reasonable tenant would receive the notice and understand the reference and which clause was being referred to, then the legislation has been complied with.

This case will be a relief to residential landlords on how the court will approach technical claims for compensation under the tenancy deposit legislation.



HOW WILL CHANGES TO THE MINIMUM ENERGY EFFICIENCY STANDARDS (MEES) IMPACT RESIDENTIAL LANDLORDS?

Minimum Energy Efficiency Standards (MEES) were introduced by the Government in 2018 and require every property to have an Energy Performance Certificate (EPC) rating of E or above in order to be privately rented. Since 2020 there have also been plans to increase the minimum energy efficiency standard to an EPC rating of C, although the Government eventually scrapped this idea in September 2023.

While this may have been a relief for landlords who may not need to worry about renovating properties in line with changes to MEES in the imminent future, an impetus to increase them is bound to be an ongoing conversation in light of the Government's commitment to reaching Net Zero by 2050 and amid concerns amongst many regarding tenant living conditions.

The EPC is an increasingly important document that landlords will have to review carefully when deciding whether they want to purchase a property on a buy-to-let basis. It will show the current and potential energy efficiency rating of the property which will indicate whether a property is worth investing in at the time. It will also provide details of recommendations of works that can be done to increase a property's energy efficiency, which will give buyers an idea of how much they will need to invest in a property to meet the required standard.

A property's EPC rating is also relevant to the overall value of the property. It therefore plays a part in assessing rental value as well as the sale value. The rating will also be considered by mortgage companies when deciding whether or not to lend and the terms of a mortgage.

Landlords ought to appreciate the importance of EPC's and note that this is likely to grow even more so going forward.

If you would like to discuss or need any help or support on any of the issues above then please contact the Machins' Team on 01582 514 000 or by using the email address below.

We offer fixed fees for s21 and s8 possession claims up to and including the first possession hearing. Please email Holly Baker for a copy of our fixed fee schedule or to find out more.



Holly Baker
holly.baker@machins.co.uk

Machins Solicitors LLP have offices in Berkhamsted and Luton. We are one of the leading law firms in Hertfordshire and Bedfordshire and recognise the need to establish a proper relationship with our clients which allows us to understand individual requirements and to give effective practical advice in a pragmatic, cost effective way. We provide specialist advice and assistance both for businesses and individuals.