

# Demise of 'no fault' evictions and its impact on rural landlords

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The Demise of the Section 21 Notice: Does a 'new deal for renting' mean a bad deal for rural landlords?

**Could a 'new deal for renting' mean a bad deal for rural landlords given the demise of the so-called 'no fault' evictions for tenants? Charlotte Brackley and Gemma Richards, of Barlow Robbins LLP, find out.**

In April earlier this year, the government announced it would bring an end to so called no fault evictions for tenants.

The consultation process has now closed and whilst the outcome is awaited, this article will consider how the abolition of this key management tool may impact rural landlords.

It will also as provide some 'do's' and 'don'ts' for those who want to review their portfolio of residential tenants before the law changes.

## **Current system**

No fault evictions for residential tenants were introduced under Section 21 of the Housing Act 1988.

This mechanism was introduced by the Housing Act 1988 that allows landlords to recover their residential properties simply by giving a tenant a minimum of two months' written notice terminating the tenancy in accordance with the terms of their fixed term or periodic tenancy agreement.

As this is a no-fault notice, a landlord does not need to provide evidence of breach by the tenant to serve it (such as non-payment of rent).

This flexibility means that landlords can manage their properties – refurbish them, reallocate them, redevelop them and sell them when they need to.

Compared to the expensive court-based process for regaining possession under the Section 8 procedure, recovering possession under Section 21 is streamlined.

However, the ease and the frequency with which residential tenants can be evicted is one of the main drivers behind the proposed reforms.

### **What is proposed?**

The government wants to scrap the Section 21 Notice to redress the balance in the residential lettings market and provide tenants with more stability and security.

The proposed change in the law would see landlords instead having to rely on a breach of the terms of the tenancy agreement by the tenant under Section 8 of the Housing Act.

The CLA's Andrew Shirley regards this as a "sledgehammer to crack a nut". His comments highlight the difference between the urban and rural residential lettings markets, where tenants are already more likely to stay in one place for longer.

He states that: "The reality is that in rural areas the average residential tenancy exceeds eight years, compared with the urban figure of less than three, and tenants in the countryside enjoy a higher level of satisfaction and a greater sense of community".

The government has also suggested that the Section 8 procedure be expanded to enable landlords to take back possession of residential properties in limited circumstances.

If they want to sell them (which is sensible provided it can be done at sufficient speed and with sufficient certainty of outcome to satisfy the buyer) or move back into them (which seems to be geared to 'accidental' landlords).

### **What does this mean for landlords?**

Unless a tenant is in breach of the terms of their tenancy, a residential landlord will not be able to recover possession.

Residential tenancies will become secure and landlords will have to think carefully before entering into new tenancies.

What is certain is that landlords will no longer be able to rely on Section 21 to guarantee vacant possession on sale and to manage out problem tenants.

Landlords will need to start thinking now if they will want to reorganise the occupation of cottages on a farm or estate to accommodate, for example, family members, beneficiaries and employees in the short to medium term.

It remains to be seen whether expansion of the Section 8 eviction procedure will offer sufficient flexibility to landlords.

The government hopes that one of the resulting changes will be a more stable rental market which landlords will want to invest in.

Leaving to one side the additional Stamp Duty Land Tax payable when acquiring a buy-to-let and all the other red tape that landlords face, the Central Association of Agricultural Valuers believe that the proposals could lead to rural properties being left empty and sold.

It also believes that landowners could shift their focus from Assured Shorthold tenancies to holiday lets to avoid being stuck with tenancies that they cannot terminate and tenants that they might not want long term.

They point to Scotland where the removal of no-fault evictions has already come into effect and where, they say, fewer properties are now available for this reason.

### **What does this mean for agricultural tenants with sub-let cottages?**

It is common place for agricultural tenants to sub-let residential properties on their holdings.

However, when Section 21 is abolished, unless a sub-tenant is in breach of the terms of their tenancy it will be impossible for an agricultural tenant to guarantee vacant possession of a sub-let cottage at the end of their own tenancy.

The only way to regain possession would be if the sub-tenant breached the tenancy or if the sub-tenant decided to leave of their own volition.

If vacant possession cannot be given, a tenant may be liable to a claim by the landlord.

### **Dos and Don'ts for landlords**

Do

- Review each existing tenancy and identify those where a Section 21 Notice could be served if necessary

- Carefully consider the strategy for your residential portfolio, now and for the next generation (for example, if you have good tenants, a guaranteed income stream and no voids may be to your advantage now, but may not fit with future development plans)
- Talk to agricultural tenants about their sub-lettings so that these can be managed, particularly where the agricultural tenancy will come to an end in a few years' time
- keep an eye on the press so that you know when any new legislation is to come into force and the expiry of any transition period (which might be your last chance to use the Section 21 Notice)

Don't

- Fail to use the Section 21 Notice (if necessary) before it disappears
- Take on any new tenants without vetting them carefully, as you could be stuck with them indefinitely