

**Insights**

## **RESIDENTIAL RENTED SECTOR RESET: THE RENTERS (REFORM) BILL**

WHAT ARE THE KEY CHANGES PROPOSED AND DOES THE BILL STAND UP TO SCRUTINY?

Jun 16, 2023

### **SUMMARY**

The Renters (Reform) Bill was introduced to Parliament on 17 May 2023. It proposes an overhaul of the residential tenancy system, intended to put renters in a better position. This note sets out some of the key provisions of the Bill, and some commentary on the proposed changes.

The Renters (Reform) Bill was introduced to Parliament on 17 May 2023. It proposes an overhaul of the residential tenancy system, intended to put renters in a better position. The Bill will be debated in Parliament and is likely to be amended before it becomes law.

The key changes to the residential letting system proposed by the current version of the Bill are:

- All assured fixed-term tenancies to be replaced with a new single system of open-ended 'rolling' tenancies, with rent periods not to exceed one month.
- A limited number of tenancies will be excluded from the new rules, including high rental (exceeding £100,000 per annum) and low rental (less than £1,000 per annum in Greater London) tenancies, certain student accommodation, tenancies exceeding seven years, and Local Authority tenancies.
- Section 21 'no fault' evictions to be scrapped - landlords will only be able evict where an eviction ground applies, and notice periods to be amended.
- Eviction grounds to be amended and expanded. Fines of up to £5,000 to be imposed on landlords for breaching the new rules about letting their properties (fines of up to £30,000 for more serious or repeat breaches).
- A new process for implementing annual rent increases, with the First Tier Tribunal to determine the market rent if a tenant appeals a rent increase.

- No unreasonable refusal to allow pets.
- Further changes to be introduced under separate regulations, including a tenant complaints scheme and a landlord property portal (both expected to be compulsory and funded by landlords).

Timing-wise, the new system will be implemented in two stages, with at least six months' notice from the government of the 'first implementation date' (after the Bill becomes law).

Some more detailed information on the above changes is set out below.

## **'ROLLING' TENANCIES**

- Assured fixed term tenancies will be replaced with a new single system of 'rolling' periodic tenancies, with a rent period not exceeding one month.
- Landlords will not be able to require payment of six or twelve months' rent up front.
- Assured Shorthold Tenancies (ASTs) are being abolished. Landlords will no longer be able to grant 'fixed-term' tenancies.
- Tenants will be able to end their tenancy on two months' notice and there will be no minimum tenancy term.

This is intended to give tenants greater security. Effectively, tenants will have the right to continue renting their property unless and until the landlord can prove that one of a limited number of eviction grounds applies. Tenants will have greater flexibility and will be able to move on short notice. Landlords will have less long term certainty about the status of their tenant.

## **SECTION 21 'NO FAULT' EVICTIONS TO BE SCRAPPED**

- Landlords will no longer be able to use the 'no fault' notice procedure to evict tenants under section 21 of the Housing Act 1988.
- This procedure currently allows landlords to evict tenants without specifying any reason, and is often used to evict troublesome tenants, even where an eviction ground applies (such as rent arrears or anti-social behaviour), because it is quicker and cheaper to secure possession.
- The Bill provides that landlords will only be able to evict a tenant where a specific eviction ground applies. This is likely to make the eviction process slower, and more expensive.

Although this has been generally described as the scrapping of 'no fault' evictions, it is more accurately the scrapping of 'no reason' evictions. A number of eviction grounds will still be available which do not involve any tenant 'fault', such as where the landlord is looking to sell, occupy themselves or redevelop.

## **RENT INCREASE NOTICE PERIOD TO DOUBLE**

- Landlords will need to give tenants at least two months' notice (up from one month) of any rent increase, and the rent cannot be increased more than once a year.
- Currently, if a proposed rent increase cannot be agreed, the landlord can terminate the tenancy using the section 21 notice procedure and re-let. This will no longer be possible, so the statutory rent increase process will become more important.
- Landlords will need to use a prescribed form of rent increase notice; they will not be able to simply agree a new rent with their tenant.
- If the tenant does not agree to the proposed new rent, they can challenge the increase in the First Tier Tribunal.

## **PETS ALLOWED**

- Tenants will generally be able to keep a pet at the property.
- Landlords should respond to any request to keep a pet within six weeks and cannot unreasonably refuse consent.
- Landlords can insist that the tenant takes out, or covers the cost of, pet insurance to cover the risk of damage.

## **EVICTION GROUNDS TO BE AMENDED**

Some existing eviction grounds will be amended, and new grounds will be added. Key changes are:

### **Own occupation**

This ground will be extended to cover a wider range of people connected to the landlord who intend to live in the property themselves, including:

- the landlord;

- their spouse/ civil partner (or someone they live with as if they were married or in a civil partnership); and

the parent/grandparent/sibling/child/grandchild of the landlord or their spouse/partner. Landlords will not be able to use this ground for the first six months of the tenancy.

### **Sale of property**

This is a new ground that will apply where a landlord intends to sell. Landlords will not be able to use this ground for the first six months of the tenancy.

### **Sale by mortgagee**

This ground will be extended so that mortgagees with a power of sale can evict a tenant to sell the property with vacant possession even if the mortgage was entered into after the tenancy started. Currently, mortgagees can only rely on this ground where the tenancy was entered into after the mortgage.

### **Redevelopment**

This ground already applies where a landlord intends to demolish or reconstruct the whole or a substantial part of the property. It will be amended so that landlords will not be able to use it during the first six months of the tenancy.

### **Rent arrears**

This ground will still apply where a tenant is in two months' arrears at the time of the eviction notice and the court possession hearing. The Bill increases the notice period for evictions under this ground to four weeks (up from two) which effectively allows tenants more time to clear their arrears to avoid eviction.

**Repeated rent arrears** This is a new ground that will apply where the tenant has been in at least two months' rent arrears, three or more times within a three-year period. It will help close the current tenant loophole which enables a tenant to avoid eviction under the rent arrears grounds by clearing the arrears by the time of the court possession hearing.

### **Anti-social behaviour**

This ground is to be amended so that it will apply where a tenant, or someone living at the property, is guilty of conduct causing or 'capable of causing' (rather than 'likely to cause') a nuisance or annoyance.

The amendment is intended to lower the bar for proving anti-social behaviour. Although currently landlords can use the section 21 'no reason' procedure to evict, so in reality landlords will be worse off under the new rules.

The ground is discretionary, so judges must consider whether eviction is a reasonable and proportionate response.

## **STUDENT ACCOMMODATION EXEMPTION**

- Certain 'Purpose-Built Student Accommodation' will be exempt from the new 'rolling' tenancies regime.
- Based on the Bill as currently drafted, this exemption only applies to a limited number of student accommodation lettings, such as halls of residence run by universities or other educational establishments, and a limited number of other associations set out in separate regulations. Those providers will continue to be able to grant fixed 12-month tenancies to students to align with the academic year.
- Private landlords of student houses will generally not be exempt. If they continue to let to students, this must be on open-ended tenancies, which students can end on two months' notice, with no ability to guarantee getting the property back empty before the next academic year.

## **STATEMENT OF TERMS**

- Landlords will have to give their tenants a 'statement of terms' regarding the tenancy before it starts. Landlords will also be required to say where they are reserving the right to rely on certain eviction grounds.
- The relevant information regarding the tenancy to be included in the statement will be set out in separate regulations, and further details are awaited.

## **PROHIBITIONS**

A landlord must not:

- Attempt to let a property for a fixed term
- Attempt to terminate a tenancy by a 'notice to quit' (without specifying any eviction ground)
- Give the tenant a notice to terminate a tenancy based on an eviction ground which does not apply
- Give the tenant a notice based on an eviction ground where advance notice must be given before the tenancy starts that the landlord may rely on that ground, and no such advance

notice was given

- Give the tenant a notice within the first six months relying on a ground which cannot be used within that initial period (e.g. own occupation, sale or redevelopment)
- Re-let, market or authorise a letting agent to re-let the property, within three months of a termination notice where the landlord has obtained possession upon the grounds of own occupation or sale

## **LANDLORD FINANCIAL PENALTIES**

Local housing authorities may impose fines of up to £5,000 on landlords who:

- fail to give the tenant the required Statement of Terms and information; or
- breach certain prohibitions listed above.

Fines of up to £30,000 can be imposed where:

- a tenant leaves based on an eviction notice which specified a ground which the landlord knew (or should have known) they could not rely on;
- a fine is imposed, and the relevant conduct continues for over 28 days;
- the landlord commits repeat breaches within a five-year period; and/or
- there is an unlawful eviction.

The local housing authority will be able to enforce the fines as if they were a court order.

## **TENANCY DEPOSIT RULES**

- Under the current rules, a landlord cannot serve or rely on a section 21 'no reason' eviction notice where it has not complied with the tenancy deposit rules.
- The Bill proposes that, where an eviction ground applies, the court will only be able to make a possession order if a tenancy deposit has been protected under an authorised scheme and the requirements of that scheme have been complied with. These restrictions will not apply to certain grounds, e.g. where tenant has committed a serious offence or antisocial behaviour.
- A landlord will also still be able to evict if they have returned the deposit to the tenant in full, or with any deductions agreed between the landlord and tenant.

# FURTHER CHANGES TO COME

## TENANT COMPLAINTS SCHEME

The Bill proposes that the Secretary of state 'may' make separate regulations requiring a residential landlord to be a member of 'a landlord redress scheme'. This will be a forum for tenant complaints to be resolved.

Under the proposed scheme, a complaint made by a 'prospective, current or former residential tenant' against a landlord, will be investigated and determined by someone independent.

The landlord can be required to:

- provide an apology or explanation;
- pay compensation; and/or
- take other action to resolve the tenant's complaint A decision under the scheme is intended to be enforceable as if it were a court order. The proposed scheme is likely to be compulsory and all residential landlords will need to pay to a membership fee to cover the costs of administering the scheme. Fines of up to £5,000 could be imposed on landlords who fail to join the scheme when they are required to do so. Fines of up to £30,000 could be imposed on landlords who continue to breach the membership scheme requirements for 28 days after a fine is imposed, or for repeated breaches.

## LANDLORD DATABASE

The Bill proposes that separate regulations will be made to introduce a compulsory landlord database. This will contain information about whether a landlord has:

- been subject to a banning order;
- had a financial penalty imposed; and/or
- been convicted of an offence. This is also likely to include a requirement for a landlord to pay a fee to cover the costs of establishing and operating the database. Landlords will not be able to market a residential property until they have registered on the database. Fines of up to £5,000 can be imposed on landlords who fail to register on the landlord database when they are required to do so. Fines of up to £30,000 can be imposed on landlords who provide false information to the database, continue any breach 28 days after a fine has been imposed, or are guilty of repeated breaches.

## WHAT MEASURES HAVE NOT BEEN INCLUDED IN THE BILL?

The government's plans for reforming the private rented sector were set out in their June 2022 white paper "A fairer private rented sector", which included a number of legislative commitments that are not provided for in the Bill, including:

- A statutory "decent home standard" to apply to the Private Rented Sector
- Making it illegal for landlords and agents to have a blanket ban on renting to tenants in receipt of benefits or with children
- Strengthening councils' enforcement powers and introducing a requirement on them to report on enforcement activity Michael Gove announced on 17 May 2023 that the above measures will be legislated for "in this Parliament". He also announced the proposal to align the abolition of section 21 and new possession grounds, with court improvements including 'end-to-end digitisation of the process' and 'prioritisation of certain cases, including anti-social behaviour'. There are no further details on how the court system would be upgraded to achieve this and the time-scales for implementation.

## COMMENTARY

- It is a laudable aim to improve the position for renters, particularly those who have suffered at the hands of 'rogue' landlords.
- A key aspect to the success of these reforms will be the ability for 'good' landlords to evict troublesome tenants quickly and cost-effectively, particularly tenants guilty of anti-social behaviour or those in significant rent arrears. The Bill does not address how this can be achieved. The courts are already over-burdened and simply cannot cope with a huge influx of residential tenancy disputes. If the process is too slow, expensive and uncertain, private lettings will become considerably riskier. This could lead to market rents increasing to offset that risk.
- Abolishing fixed-term tenancies will make letting to students less attractive to private landlords. The explanatory notes to the Bill say that "Purpose-Built Student Accommodation (PBSA) will be exempt from these changes as long as the provider is registered for government-approved codes." PBSA is not defined in the Bill, and this exemption needs clarification. There are calls for the proposed exemption to be extended to all private landlords of student accommodation in order to avoid exacerbating the current supply issues. The prospect of having to grant open-ended tenancies to students, who could end the agreement on two months' notice may be too much of a risk to take, and could lead to an exodus of private student landlords.
- Further details on the proposed compulsory 'landlord redress scheme'/'tenant complaint scheme' are needed in order to understand how this will impact residential landlords, and the



sector generally. It is currently unclear what the level of membership fee might be, who would administer the compulsory scheme, and how any costs incurred on the dispute resolution process might be recovered if a tenant raises an unsubstantiated complaint. If the membership scheme fees are high, with little ability to recover costs from tenants who raise unfounded complaints, this scheme could end up being a charter for tenants' complaints, at landlords' expense. A compulsory landlord-funded membership scheme means that 'good' landlords could effectively end up subsidising the costs of resolving complaints against 'rogue' landlords.

- The draft Bill does not go as far as imposing rent caps. Market forces will still determine the level to which the rent can be increased each year. The requirement to use a formal rent increase notice procedure will place an additional administrative burden on landlords. There is little detail in the draft Bill about how the Tribunal might cope with an influx of rent increase disputes. With interest rates and mortgage rates still rising, if landlords cannot increase their rent quickly and cost-effectively to cover their own cost increases, landlords could end up out of pocket and face significant cashflow issues.
- There is no doubt that the Bill is 'tenant-friendly' and places more burdens, costs and risks on residential landlords, including potential fines of up to £30,000 for breaches of the new rules. Some residential property landlords are already grappling with the impact of rising inflation and mortgage rates, tax disincentives against second homes and MEES regulations which may require them to incur costs to improve the energy efficiency of their properties. It remains to be seen whether the combination of these factors, together with the additional risks and burdens to be introduced by the Renters Reform Bill will discourage residential landlords from the sector altogether. If so, this could lead to supply issues and/or increased market rents to off-set the new risks involved. This could end up hurting the very renters the Bill aims to protect.

## **RELATED PRACTICE AREAS**

- Real Estate Disputes

## MEET THE TEAM



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