

Renters (Reform) Bill 2023: what landlords need to know



On 17 May the government officially unveiled the long-awaited draft Renters (Reform) Bill 2023 (“the Bill”), which seeks to address the housing crisis and to create a fairer rental market, with new measures strengthening the rights of tenants. It follows almost a year after the White Paper “A Fairer Private Rented Sector” and some 4 years after the 2019 Conservative Party Manifesto promising the abolition of “no fault evictions”.

Who will it affect?

The Bill seeks to amend the Housing Act 1988 (“HA 1988”). Accordingly, it will not affect tenancies which are not protected by the HA 1988. That would include residential tenancies granted to companies rather than individuals, tenancies to residential tenants who are not using the property in question as their only or principal home, or tenancies where the rent exceeds £100,000 per annum – as all of those tenancies are outside the scope of the HA 1988. The Bill will also not change the position in respect of Rent Act tenancies.

Under the Bill, fixed term tenancies exceeding 7 years cannot be assured tenancies (and so will be outside the ambit of the Bill).

What does it say?

The key provisions are as follows:

1. Abolition of assured shorthold tenancies. Rather, all such tenancies will be periodic assured tenancies. As

such, it will not be possible to require a tenant to commit to a minimum term.

2. The periods of the tenancy will be the same as those for which the rent is payable, which cannot exceed one month.
3. Tenants will be able to terminate the tenancy on serving two months' notice at any time.
4. Landlords will only be able to seek to terminate the tenancy if they can make out at least one of the statutory grounds. They will need to serve a notice ("section 8 notice") identifying the ground(s) upon which they intend to rely, and then to commence possession proceedings assuming that the tenant does not vacate in the meantime.
5. The statutory grounds will be amended/supplemented. The main changes are:
 1. A new mandatory ground if landlord intends to sell. It remains to be seen what evidence a court will require a landlord to produce to prove its intention to sell. It will also be interesting to see how this will impact on the sales process particularly if there are delays in recovering possession through the court (see further comments below) and whether therefore landlords will try to recover possession before they go under offer;
 2. An amended mandatory ground if the landlord or close member of landlord's family requires the property as their only or principal home. Again, it is unclear what evidence of this will be sufficient to satisfy courts;
 3. Ground 8 (mandatory ground for at least 2 months' rent arrears) will be amended to disregard from the arrears any universal credit payment that the tenant is entitled to receive which has not yet been paid;
 4. A mandatory ground for repeated rent arrears i.e. at least 2 months' rent unpaid on at least 3 separate occasions within a 3 year period. This is intended to address the perceived issue of a tenant paying off or reducing rent arrears shortly before a hearing and avoiding the court making an order for possession on the existing mandatory ground 8. Again, the universal credit disregard will apply;
 5. The discretionary anti-social behaviour ground is supposedly broadened to apply to conduct "capable of causing" instead of "likely to cause" a nuisance or annoyance. This is intended to lower the threshold for proving the ground, although whether the change of wording will make any appreciable difference is debatable and the court will still have discretion as to whether or not to make an order for possession even if it is satisfied that the ground applies.
 6. New notice periods – for example, the notice period for the existing Ground 8 will be increased from 2 to 4 weeks.
6. Contractual rent review provisions will be ineffective. The rent can only be increased once each year by the landlord following the existing (amended) statutory process (section 13 HA 1988). This will entail serving 2 months' notice of its intention to increase the rent, and the tenant has the right to challenge the proposed new rent by applying to the First Tier Tribunal.
7. There will be a term implied into all tenancies that a landlord cannot unreasonably refuse a tenant's request for permission to keep a pet, although a landlord can require a tenant to have insurance in place for any damage caused by a pet or to pay the landlord's reasonable costs of such insurance.
8. A landlord will be required to give a tenant a written statement of terms and information about the tenancy (those terms are to be prescribed by separate regulations).
9. There will be financial penalties for landlords that breach specific provisions within the Bill and some breaches will constitute a criminal offence.
10. Where a deposit has been taken, the court can only make an order for possession if the deposit is held in an authorised scheme and the requirements have been complied with, unless the deposit has been returned. This will re-emphasise the importance of landlords complying with tenancy deposit requirements as otherwise it will impact on their only route to recovering possession. It is not clear whether other existing requirements for a valid section 21 notice (such as serving a valid gas safety certificate, EPC and How to Rent guide) will also be carried across.
11. A new Privately Rented Property Portal containing a register of residential landlords and properties,

including information on the same, is to be created and properties should not be marketed until the registration requirements have been met.

12. A compulsory Ombudsman scheme will be created to investigate and determine tenant complaints.

What does it not say?

The Bill does not include reference to extending the Decent Homes Standard but the guidance note confirms the government's intention to legislate for this in the PRS. A consultation was launched in September 2022 but the government has not yet responded to it.

As to the court reforms, the government says in its guidance note *"Alongside the Renters (Reform) Bill, we are working in partnership with the Ministry of Justice and HM Courts and Tribunals Service, to ensure that, in the small proportion of tenancies where court action is required, court users can use a modern, digital service. This remains a priority for the government. Following the recommendation of the Levelling Up, Housing and Communities Select Committee, we will align the abolition of section 21 and new possession grounds with court improvements. This includes end-to-end digitisation of the process and our work with the courts to explore the prioritisation of certain cases, including anti-social behaviour."* It does therefore appear that the government has taken note of the concerns raised by many in the industry that the current court process for recovering possession is not fit for purpose and that the reforms must happen before the Bill is brought in. However, the devil will be in the detail as to exactly what the court reforms will entail, the timing of those reforms and whether they will make an appreciable difference to the court user's experience, such as to give landlords confidence that they will be able to recover possession within a reasonable time should they need to do so.

The Bill does not seek to impose prohibit blanket bans on renting to tenants in receipt of benefits or with children but the guidance note suggests that it remains its intention to do so, alongside strengthening local council's enforcement powers.

How much notice will landlords get?

The Bill will apply to all new tenancies granted on or after its commencement date. For existing tenancies, it will apply until the expiry of the fixed term or on a date to be set out in regulations. This could mean that landlords have less time to react than had previously been suggested by the government.

What next?

The Bill has only had its first reading in Parliament and so amendments are likely. Criticisms have already been raised by both landlord and tenant representative bodies. On behalf of tenants, concerns include that the new grounds for possession (namely the ability for a landlord to recover possession when it intends to sell or needs the property for itself or a family member) will be subject to abuse and the repeated rent arrears ground is too severe. On behalf of landlords, concerns remain at the ability of the courts to cope with the changes and the lack of certainty when pursuing a claim for possession under one of the discretionary grounds, in particular the anti-social behaviour ground. We will continue to monitor the Bill's progress through Parliament and to report on further developments.

Landlords may want to take this opportunity to review their existing tenancy agreements to ensure that they are as comprehensive as possible, as well as their processes for credit control and complying with tenancy deposit and other statutory requirements (including being able to demonstrate compliance if required to do so).



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