

THE DEREGULATION ACT 2015 PREVENTING RETALIATORY EVICTIONS

ARLA
Arbon House,
6 Tournament Court,
Edgehill Drive, Warwick,
Warwickshire, **CV34 6LG**

For more advice call the
ARLA Legal Helpline:
0330 124 1212
*Members only

VIEW THE DEREGULATION ACT 2015 IN FULL:

[www.legislation.gov.uk/
ukpga/2015/20/contents/
enacted](http://www.legislation.gov.uk/ukpga/2015/20/contents/enacted)

THE CONTEXT

The aim of the Housing and Development section of the Deregulation Act 2015 is to encourage landlords to keep their property in a decent condition and prevent tenants from feeling unable to complain about poor or unsafe property conditions because they fear eviction.

THE CHANGES

The Act introduces new rules designed to prevent retaliatory evictions whereby a landlord evicts a tenant by the use of the Section 21 procedure simply because they have made a legitimate complaint about the condition of the property.

The new rules affect **England only** and come into force on **1 October 2015**.

ELIGIBILITY

The provisions for retaliatory eviction in the Deregulation Act 2015 apply to all assured shorthold tenancies created after 1 October 2015, and also fixed term replacement tenancies created after 1 October 2015. The provisions do not apply where a periodic tenancy arises after 1 October 2015, on the coming to an end of a fixed term tenancy which was entered into before 1 October 2015.

NOTE: From October 2018 (three years after the new rules come into force) they will apply to all tenancies, regardless of when they began.

WHAT DOES THIS MEAN?

The new rules restrict a landlord's ability to serve a Section 21 Notice to recover possession of their property if:

- 1). The tenant has made a written complaint to the landlord or agent about the condition of their property or any common parts of the property (hallways, stairs, and gardens) which tenants have the right to use.

The Act says that agents and tenants must put repair requests and resulting actions in writing. As a result, agents should put a written repair reporting structure in place to ensure no repairs or complaints are missed.

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NOTE: A tenant's complaint does not need to be in writing if they do not know the postal or email address of the landlord or agent. Landlords and agents should therefore ensure that tenants know how to contact them so they have evidence about whether or not a complaint was received and what that complaint stated.

NOTE: Under the Property Ombudsman Code of Practice for Residential Letting Agents, agents must keep clear and full written records of their relationship with landlords and tenants for at least six years. Those records must be produced when required by the Property Ombudsman.

2). The landlord or their agent has not provided an adequate written response within 14 days or responded by serving a Section 21 Notice.

An adequate response is one that is in writing and provides a description of the action that the landlord or agent proposes to take to address the complaint and the time-scale in which they plan to do this.

NOTE: If a Section 21 Notice has been served before a complaint arises then the Notice will be valid and can be relied upon in court.

3). After no adequate written response was received the tenant then complains to the relevant local authority who have decided to serve a Relevant Notice in respect of the property or have carried out emergency remedial action themselves using their powers under HHSRS - the Housing Health and Safety Rating System.

A Relevant Notice is an Improvement Notice (Category 1 or Category 2 health and safety hazard) or an Emergency Remedial Action Notice.

NOTE: It will be up to the local authority as to how they determine what is a Category 1 or Category 2 hazard based on the tenant and property they are accessing. However, in general terms, Category 1 hazards represent an immediate threat to the health or safety of a tenant such as the property not having adequate heating. Category 2 hazards signify less urgent threats to the health or safety of a tenant and could include a scuffed carpet in the living room.

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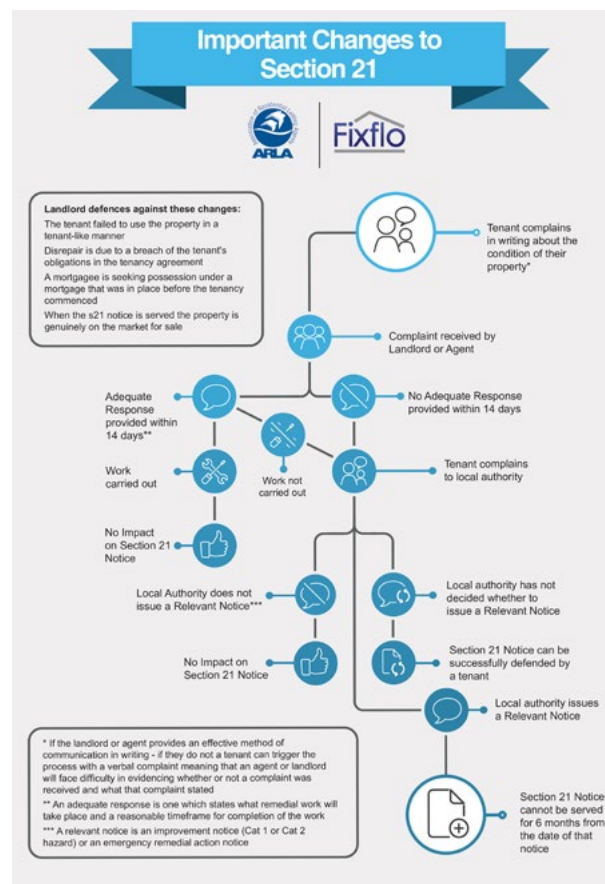
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If the Local Authority issues a Relevant Notice, a Section 21 Notice cannot be served for 6 months from the date of that notice.

NOTE: If the Relevant Notice is suspended for any reason, you cannot serve a Section 21 Notice for six months after the suspension is lifted.

Where the local authority has served an improvement notice or notice of emergency remedial action, the tenant is protected from eviction for 6 months from the date of service of that notice, regardless of whether they raise the issue with the landlord first. Where tenants are seeking to have a s.21 notice that has already been served to be found invalid, they need to have raised the complaint with the landlord first.

This Fixflo infographic shows the potential impact on serving a Section 21 Notice when a tenant complains in writing about the condition of their property: arla.co.uk/media/1042830/fixflo-section-21-no-print-marks.pdf



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PROTECTION FOR LANDLORDS AGAINST THE CHANGES

There are various circumstances where the tenant is not supported by the new rules:

- If the tenant failed to use the property in a tenant-like manner.

NOTE: A tenant-like manner is when a tenant takes proper care of the property. For instance, tenants must unstop the sink when it is blocked by their waste and turn off the water and empty the boiler if they go away for the winter. Tenants must also ensure that they, their family and any guests do not damage the property. If they do, the tenant must repair it.

- The bad condition of the property is due to breach of the tenant's responsibilities in the tenancy agreement.
- When the Section 21 Notice is served the property is genuinely on the market for sale.

NOTE: This means where the landlord intends to sell the property to an independent third party. It does not include where the landlord intends to sell to a family member, business partner or anyone directly linked to the business partner.

- The landlord is a private registered provider of social housing.
- The property was mortgaged before the tenancy was granted and the mortgage lender wishes to exercise their power of sale and requires the property to be vacant.

THE IMPACT

Any failure to deal with complaints and repairs could become a serious and very expensive issue because a poorly maintained property means landlords may not be able to regain possession of their rental property for six months (i.e. from the date on which a local authority serves an improvement notice).

FURTHER INFORMATION

Further information and advice can be found by contacting the ARLA members' legal helpline on: 0330 124 1212.

The Deregulation Act 2015 can be read in full here:

www.legislation.gov.uk/ukpga/2015/20/contents/enacted

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