

EXPLANATORY MEMORANDUM TO
THE ASSURED TENANCIES AND AGRICULTURAL OCCUPANCIES (FORMS)
(ENGLAND) (AMENDMENT) REGULATIONS 2019

2019 No. 915

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The instrument updates Form No. 6A, the required form of notice for a landlord seeking possession of a property under section 21 of the Housing Act 1988, to ensure that it reflects a new restriction introduced by the Tenant Fees Act 2019. Section 21 of the Housing Act 1998 enables private landlords to regain possession of their properties without having to establish fault on the part of the tenant (“section 21 eviction”). A minor amendment has been made to provide more detail on when a restriction on terminating a tenancy under section 21 of the Housing Act 1988 is made by section 75 of the Housing Act 2004 which relates to unlicensed Houses in Multiple Occupation. It also updates Form No. 6A to include information for tenants on the homelessness support services available to them should they be at risk of homelessness following receipt of a notice seeking possession.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to the negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 There are three changes to Form No 6A by this instrument. First, they will update the form to reflect a new restriction on landlords to prevent them using section 21 of the

Housing Act 1988 to evict a tenant until any prohibited payments or unlawfully charged holding deposit has been repaid or applied with the consent of the relevant person to the rent or deposit, as per section 17 of the Tenant Fees Act 2019. Secondly, a minor amendment has been made to provide more detail on when a restriction on terminating a tenancy under section 21 of the Housing Act 1988 is made by section 75 of the Housing Act 2004 which relates to unlicensed Houses in Multiple Occupation. Thirdly, the form will be updated to provide information for tenants on the homelessness support services available to them should they be at risk of homelessness following receipt of Form No. 6A.

7. Policy background

What is being done and why?

- 7.1 Section 21 of the Housing Act 1998 enables private landlords to regain possession of their properties without having to establish fault on the part of the tenant. Landlords must serve notice on the tenant giving a minimum two months' notice of intention to seek possession. The Secretary of State for Housing, Communities and Local Government has the power under section 21(8) of the Housing Act 1988 to prescribe the form of notice for section 21 evictions. For tenancies granted on or after 1st October 2015, the notice must be served using Form No. 6A.
- 7.2 The first required change to Form No. 6A relates to the Tenant Fees Act 2019. The Act delivers the 2017 Conservative manifesto commitment to ban letting fees paid by tenants in England and introduces other measures to improve fairness, transparency, competition and affordability in the private rented sector.
- 7.3 As part of the scrutiny of the draft Bill, The Housing, Communities and Local Government Committee recommended that it include a provision that prevents landlords from recovering possession until any prohibited payments have been repaid to the tenant. The Government accepted this recommendation and agreed that including this provision in the Bill would afford tenants additional protection and serve as a further deterrent to non-compliance for landlords and letting agents.
- 7.4 On 2 May 2018, the Tenant Fees Bill was introduced to the House of Commons with a new restriction to ensure that a tenant or relevant person cannot be evicted using the section 21 eviction procedure where a landlord or letting agent has not repaid an outstanding prohibited payment.
- 7.5 Similarly, this means that a landlord cannot evict a tenant if a holding deposit paid to reserve a property whilst preparations for a tenancy agreement are untaken has been unlawfully held where it should have been returned to the tenant or relevant person.
- 7.6 Landlords or letting agents are not prevented from using the section 21 eviction procedure if they have returned a prohibited payment or holding deposit, or where they have, with the consent of the tenant or relevant person, applied it to the rent or deposit. This instrument does not affect a landlord's ability to seek to evict tenants using section 8 of the Housing Act 1988.
- 7.7 Under the Tenant Fees Act 2019, a "relevant person" is a tenant, or person acting on behalf of a tenant, or a person who has guaranteed the payment of rent by a tenant. Excluded is a local Authority, the greater London authority or someone acting on either Authorities behalf.

- 7.8 The Bill was approved by Parliament and received Royal Assent on 12 February 2019. The provisions of the Act apply to new applicable tenancy agreements entered into, (i.e. signed) on and after 1 June 2019. There is a transitional period of 12 months where the provisions of the Act will not apply to tenancies that were entered into prior to 1 June 2019 (“pre-commencement tenancies”). Relevant persons with pre-commencement tenancies will continue to be bound by their current contract terms for a period of 12 months and landlords of pre-commencement tenancies will not be restricted by section 17 of the Tenant Fees Act 2019 until after the transitional period on 31 May 2020.
- 7.9 The second required change to the form is in relation to information on homelessness support services. Government data shows that one of the primary reasons why people become homeless is due to ending of assured shorthold tenancies. People often only present themselves as homeless at crisis point, and the additional information in the updated Form No. 6A will allow them to reach out for support at an earlier stage.
- 7.10 Making people, who are at risk of becoming homeless more aware of local authority provisions could improve the uptake of people directly accessing local authorities for preventive support. The changes introduced through this instrument will provide people who are at risk of homelessness with guidance as to the local authority support services available to them to prevent their homelessness.
- 7.11 Finally, A minor amendment has been made to provide more detail on when a restriction on terminating a tenancy under section 21 of the Housing Act 1988 is made by section 75 of the Housing Act 2004 which relates to unlicensed Houses in Multiple Occupation.
- 8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**
- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the written statement requirements under the European Union (Withdrawal) Act.
- 9. Consolidation**
- 9.1 It is not intended to consolidate the relevant legislation.
- 10. Consultation outcome**
- 10.1 It was not necessary to undertake further consultation on the changes in the instrument because the provisions of the Bill have been subject to pre-legislative scrutiny by the Housing, Communities and Local Government Committee and Parliamentary debate in both the House of Commons and House of Lords.
- 11. Guidance**
- 11.1 The Government has published guidance on Form No. 6A at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/515661/Notes_to_Form_6A_FINAL.PDF. This will be updated alongside the instrument coming into force to reflect the changes.
- 11.2 On 1 April 2019, Government published consumer guidance for landlords, letting agents and tenants on the Tenant Fees Act 2019 which includes references to the new restriction on section 21 evictions under section 17 of the Tenant Fees Act 2019. This guidance is available at <https://www.gov.uk/government/collections/tenant-fees-act>.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the updates proposed are minor drafting changes and are only intended to reflect legislative change resulting from the Tenant Fees Act 2019, provide the existing support services available for people at risk of becoming homeless on the form No. 6A and make a minor amendment to provide more detail on when a restriction on terminating a tenancy under section 21 of the Housing Act 1988 is made by section 75 of the Housing Act 2004 which relates to unlicensed Houses in Multiple Occupation.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses was that it was not necessary to take specific action as this new restriction on section 21 evictions will only apply when a landlord or letting agents are in breach of the Tenant Fees Act 2019. The proposed changes will support such small businesses from inadvertently committing a further breach of the Tenant Fees Act 2019 by bringing their attention to the additional restriction on the notice form used to start the procedure.

14. Monitoring & review

- 14.1 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 the Minister for Housing and Homelessness, Heather Wheeler MP has made the following statement that it is not appropriate to undertake a review of this instrument due to the proposed changes being minor and the principal regulations the Assured Tenancies and Agricultural Occupancies (Forms) (England) Regulations 2015/620 contain a review clause which requires review from time to time of form No. 6A.

15. Contact

- 15.1 Nigel Bousfield at the Ministry of Housing, Communities and Local Government Telephone: 030344 42645 or email: Nigel.Bousfield@communities.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Rosie Gray at the Ministry of Housing, Communities and Local Government Telephone: 0303 44 41615 or email: Rosie.Gray@communities.gov.uk can be contacted with any queries regarding the instrument.
- 15.3 Dawn Eastmead, Deputy Director for Private Rented Sector, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.4 Heather Wheeler MP at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.