

# December Housing Law Update

## Section 21 Notices and Social Housing Fraud

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**The Autumn Statement**

**Parliament asked to look again at the Bedroom Tax**

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## Notice Requiring Possession under Section 21 (s21 Notice)

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It is a long standing practice of landlords to issue a Notice under s21(1) on or before the last day of a fixed term tenancy and serve a Notice under s21(4) for a periodic tenancy (regardless of whether the tenancy ever had a fixed term). In practical terms, a s21(1) notice allowed for possession after two months and a s21(4) notice allowed for possession after two months and must expire at the end of a period (the period being the term for which rent is paid). However, a case recently decided at that Court of Appeal has changed the notice requirements.

Under *Spence v Taylor* [2013] EWCA Civ 1600, if a tenancy has ever had a fixed term, a s21(1) notice will always be an acceptable means of ending a tenancy, even after the fixed term has expired. Conversely, a s21(4) notice – and all the case law developed around it - is only available for tenancies that were **periodic from the outset and have always been so**. Many s21(4) notice cases have failed due to the specificity of dates required. It is predicted that this change will make it easier to comply with the notice requirements and therefore easier to recover possession.

In *Spence*, the tenant had an assured shorthold tenancy for a fixed term of six months with rent payable weekly. The first day of each period was a Monday and the last day was a Sunday. The fixed term tenancy began in February 2006 and became periodic in August 2006. In October 2011 the landlord issued a notice under s21 with an expiry date of 1 January 2012 (a Saturday). The notice also included a saving provision which read “Or (b) at the end of your period of tenancy which will end next after the expiration of two months from the service upon you of this notice.”

Given that the tenancy was periodic at the time of the notice, s21(4) was thought to be the correct notice and would have required that the expiry date be a Sunday. This could have shut the case down but the landlord used the saving provision and followed the timeframe required by a s21(1) notice. The Judge held that the notice was valid because the saving provision provided more than the two months required under s21(1). The tenant argued that the notice was invalid because it included two possible dates for expiry. The judge disagreed and upheld the notice.

Although a seemingly small change, it will have a big impact on possession cases. Landlords should note that the rules have changed and if a tenancy has ever - at some stage - had a fixed term, a notice which gives two months notice is valid, whether it is being served during the fixed or periodic part of the tenancy. A notice which expires at the end of a period of a tenancy is only required for tenancies that were periodic from the outset and have always been so.

## The Prevention of Social Housing Fraud Act

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The Act came into effect on 15 October 2013 and makes it a criminal offence for tenants to sublet or part with possession of their socially rented home. The purpose of the Act is: to deter tenants from committing social housing fraud, incentivise those committing social housing fraud to stop, increase the power of local authorities to investigate social housing fraud and increase the number of recoveries of fraudulently used socially rented homes. The Act is an additional tool against fraudulently used social housing and there is no requirement for social housing providers and local authorities to bring a criminal prosecution.

There are two levels of the offence which carry different sentences - ‘knowingly’ and ‘dishonestly.’ ‘Knowingly’ committing social housing fraud is the lesser of the new offences and carries a maximum penalty of £5000 fine. It is committed when a tenant knows their actions are against the law and in breach of their tenancy agreement. It provides exceptions including when the tenant has acted under threat of violence and when the tenant had the right to transfer the tenancy.

'Dishonestly' committing social housing fraud is the more serious offence and allows for an unlimited fine and up to two years imprisonment. It is committed when a tenant knows their actions are illegal and has done so with intent to defraud the housing provider (for example: to make a profit through subletting). There are no exceptions.

The Act applies in England and Wales only and is enforced by local authorities. LAs may prosecute on behalf of social housing providers in their area and other local authority areas. The Act allows for an 'unlawful profit order' to be paid to the social housing provider from any profit gained by the tenant from subletting. The order can be awarded in either criminal or civil court and is available in addition to any other sanctions (eg; fine, imprisonment or eviction).

Additionally the Act amends the Housing Act of 1988 to remove the 'assured' status of a tenant who parts with possession of their property or sublets the whole of the property. **Their security of tenure cannot be regained by returning to the property.** This allows the housing provider to recover the property via a Notice to Quit.

Finally, the Act allows the Secretary of State to draft regulations regarding access to data relevant to social housing fraud investigations.

### **The Autumn Statement – Housing**

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In the Autumn Statement on 5 December 2013 the Chancellor announced that: (1) councils can raise their borrowing cap and use the money to build more social housing, but it would require them to sell-off their high value council housing; (2) the right to buy would be expanded by £100m; (3) the Discretionary Housing Payment (DHP) budgets for the next two years would be increased by £40m; (4) priority in social housing allocation would be given to those moving to take up work; (5) the Government will provide £1b over the next six years to unlock sites for large housing developments by private builders.

### **Commons Scottish Affairs Committee Calls on Parliament to End the Bedroom Tax**

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In an interim report published on Monday 16 December 2013, the Commons Scottish Affairs Committee called on the Coalition Government to repeal the Bedroom Tax. Further, the Committee asked that, while considering the repeal, the Government suspend the tax for tenants for whom a reasonable alternative offer cannot be made.

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