

THE GOVERNMENT WHITE PAPER. REFORM OF THE PRIVATE RENTED SECTOR

BACK TO THE 1970S. WHAT YOU NEED TO KNOW AND POINTS TO CONSIDER

The government has published its proposal for changes to the private rented sector which last saw major reform and market liberalisation in 1988. The present proposals go some way to undoing those reforms and look back to the 1977 Rent Act and earlier anti-free market legislation.

The white paper is a discussion document. It is unlikely to lead to legislation until probably the spring of 2023 and there will be an implementation date for new tenancies 6 months later and for existing tenancies after a further 6 months. You have time to prepare and lobby your MP. The proposed reforms are populist, ill-thought-out, unfair and costly to landlords. They are also likely to cause many small landlords to exit the private rental sector by selling. The net result will be fewer, not more homes to rent in RBK and C with potential for further rent increases. These are the unintended consequences of interfering with a free market which in fact works perfectly well for most landlords and tenants.

No fixed term tenancies

The proposal is that, once in force, the new legislation will create a rolling periodic tenancy. You will not be able to grant a 6 or 12 month AST any more. Once in your property, the tenant will be able to stay for as long as he or she likes, subject to grounds for possession, and will be able to leave giving you two months' notice.

That will lead to the risk of increased voids. Suppose a tenant gives notice on 25th October, expiring on Christmas Day. How is a landlord going to arrange for cleaning and refurbishment until well into the New Year? And he then faces marketing the property in January and February, traditionally bad letting months. The idea is to give tenants the flexibility to leave properties when necessary for work or if the landlord does not keep the property in good condition, but the former can be dealt with by an appropriate relocation clause in the AST and the latter is a matter for local authority enforcement. Doubtless it is cheaper for the government to impose voids on good landlords rather than prosecute the bad ones but it is hardly fair.

A new class of sitting tenant

The government wishes to change the present system which allows the landlord, by serving a Section 21 notice, to regain his property at the end of the agreed term. This perfectly sensible system, which only seeks to hold each party to an agreement freely entered into, is described by the government in deliberately provocative language as a “no fault eviction” and it is to be abolished. Once in force, the new act will allow a tenant, provided he pays the rent and does not otherwise misbehave, to stay in your property forever. You will have the right to remove him on very limited grounds - sale , major refurbishment which cannot be carried out with the tenant in situ, or use of the property for the landlord or a member of his immediate family.

The question of the degree of proof necessary to establish one of these three grounds has not yet been addressed. Back in the bad old days [or maybe not so bad as far as this government is concerned] the courts were full of cases where this type of dispute was litigated. In those days, many tenants were granted legal aid and so had nothing to lose by putting genuine landlords to the cost of expensive court proceedings. For the moment legal aid is not available but if the next government is truly socialist [as opposed to merely opportunistic and populist] that may change. Even if it does not, litigation is going to increase and whatever the government says it is not going to spend money on improving the chaotic and inefficient court system so landlords face not just litigation but a judicial system that is both slow and inefficient making it yet more expensive .

Rent

At present, at the end of the tenancy, you can grant a new tenancy at a new rent. Under the new system you will be able, every 12 months, to ask for a rent increase but if the tenant does not agree to it then the First Tier Property Tribunal will have jurisdiction to hear a dispute – more litigation.

It is worth remembering that rents go up and down. The government appears to think that market conditions only produce the former. They are wrong, remember what happened to rents in RBK and C during COVID and earlier economic downturns. And most sensible landlords, irrespective of market conditions, do not increase rent above the rate of inflation. Why have a void which is costly in time and money on the chance that you might increase the rent as opposed to the certainty of a good tenant paying an inflation only increase? Rents are linked to the economy and regulate themselves. If the government wishes to increase the supply of housing they need to reform the planning system and build more not try and manipulate rents in the private sector.

At the moment the government are not banning the payment of rent up front – a perfectly sensible course to adopt for a let to a foreign student. However, now that tenancies are no longer for a fixed term managing this is going to require more thought. Furthermore, this Brexit government [now, it would appear, on the side of foreign students as opposed to British landlords] has stated that it will keep this area under review.

Other interference

There are other proposals which are designed to interfere with the way in which you want to deal with your rental property

It will be unlawful to adopt a blanket ban on DSS tenants.

That may not be of much concern to most landlords in RBK and C but you will have to justify not letting to a DSS tenant. How is this to work? Yet again it will lead to increased litigation [and surely the DSS claimant is going to be the first beneficiary of any increase in the scope of Legal Aid]. The government is not making it mandatory for a DSS tenant to assign his housing benefit to the landlord. What security does a landlord have? And even if there were financial security why should he be denied the right to say “I don’t want a person on benefits in my property “. Even if he is happy to let to a DSS tenant, it might put him in conflict with other people in the block or neighbours. And even if he is motivated by pure snobbery and does not wish to be involved in an exercise of social engineering, is he not entitled to behave in this way without the risk of being involved in litigation?

You will not be able to deny tenants the right to a pet without a good reason.

This change may be workable in the case of a the letting of a whole house but the majority of lettings in RBK and C are of leasehold flats and they have clauses prohibiting pets [obviously a good reason for refusing] . In some cases the prohibition is qualified and requires the permission of the freeholder. This means any landlord with such a clause will have to spend time asking the freeholder and showing proof that he has done so. You cannot demand more than 5 weeks deposit so pet damage is at the landlord’s risk. In order to mitigate this there will be pet insurance on offer but the terms are unclear and the aggravation and delay in claiming [as on any policy] will be just another inconvenience for the landlord.

There will be a new ombudsman and a registration system for private landlords

Tenants will have recourse to an ombudsman with whom landlords will have to register. Membership will be compulsory and enforceable by the local authority. Nothing is said about cost so far but you can be sure the landlord will have to pay to join; it will be free for the tenant, of course. The scope of the ombudsman to hear complaints, make orders and award compensation appears drawn very widely and will include “complaints about the behaviour of the landlord”. Since cases of disrepair or harassment are already illegal and subject to local authority and even police enforcement action, it is hard to know just what the government have in mind but it is part of the whole populist tone of the legislation to level down landlords and impose unnecessary burdens on them in the hope of currying electoral favour with renters.

Conclusion

We have the inflation, energy price hikes and industrial strife of the 1970s. It appears that this government wishes to take steps to return us towards a private rental sector of the 1970s.

However, nothing has yet been passed into law and the proposals may be modified but landlords should be checking to see how this bill makes its way through parliament and writing to their MP to point out the ill-thought-out and landlord prejudicial aspects of parts of the bill.

Whatever the final outcome change is inevitable and it is going to be more important than ever to ensure that you have the right quality of tenant in your flat and that you have gone through all the new statutory hoops. At Astberrys we are specialists in finding suitable tenants and administering the tenancy process,

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