

Agenda item:

Title of meeting: Cabinet Member for Housing

Date of meeting: 14th July 2015

Subject: Deregulation Act 2015 and the implications to the Private rented Sector

Report by: Owen Buckwell – Head of Property and Housing Service

Wards affected: All

Key decision: No

Full Council decision: No

1. **Purpose of report**

1.1 To consider a motion referred from Council concerning retaliatory evictions in the private rented housing sector

2. **Recommendations**

2.1 **To agree to use Flagship to highlight and publicise legislative changes designed to prevent retaliatory evictions.**

2.2 **To ask officers to work with tenants and landlords to practically implement the changes and improvements to tenants' rights on retaliatory evictions when they become law on 1st October 2015.**

3. **Background**

3.1 On 17th March 2015 Council referred to Housing Cabinet a motion proposed by Councillor Michael Andrewes and seconded by Councillor Leo Madden concerning retaliatory evictions in the private rented housing sector.

3.2 The motion noted:

- The large number of Portsmouth residents who rent in the private sector.
- The need to protect residents who rent in the private sector from "retaliatory evictions" where they have asked for a legitimate repair and the landlord then evicts them.
- That the vast majority of private landlords are responsible and the council has a long and constructive history of working with them for their and their tenants benefit.
- The increasingly widespread practice of "retaliatory evictions" or eviction when the tenant has asked for a legitimate repair to be made.

3.3 The motion asked the Council to:

- support the amendments put in the Deregulation Bill by the Government to prevent retaliatory evictions, following the private members bill by Sarah Teather MP.
- ask the Chief Executive to write to Portsmouth MPs asking them to support the amendments in the last parliamentary stages.
- ask the Cabinet to highlight and publicise the changes in a future issue of Flagship and ask the Council's officers to work with tenants and landlords to practically implement the changes and improvements to tenants' rights on retaliatory evictions and other changes when they become law.

4. **Reasons for recommendations**

4.1 The private rented housing sector in Portsmouth comprises about 25% of the housing stock and accommodates approximately 55,000 residents.

4.2 The Deregulation Bill has passed through Parliament and will come into effect on 1st October 2015. Changes affecting private rented housing sector are set out in Appendix A.

4.3 Whilst detailed guidance on the legislation is awaited it is difficult to be certain about the implications on the private rented housing sector, although it is not anticipated that it will result in landlords leaving the market.

4.4 It is likely that the changes will result in increased demand on the Private Sector Housing Team, as indicated at Appendix A.

5. **Equality impact assessment (EIA)**

5.1 The pre impact assessment has indicated that a full impact assessment is not required.

6. **City Solicitor's comments**

6.1 The supply of good quality, affordable privately rented accommodation is essential to meet local housing need. The legal powers and obligations of the Council to ensure private landlords meet these standards are contained in a variety of legislative acts and orders and the new provisions set out in the Deregulation Act 2015 will further assist the Private Sector Housing Team.

6.2 It is within the cabinet member's power to make the recommendations suggested.

7. Head of Finance comments

7.1 The recommendations contained within this report can be delivered from within existing service cash limits, and are not envisaged to require any additional resource.

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Signed by:
Owen Buckwell – Director of Property and Housing Service.

Appendices:

Appendix A Deregulation Bill - Summary of Changes relating to Retaliatory Eviction

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
Deregulation Act 2015 Chapter 20.	http://www.legislation.gov.uk/ukpga/2015/20/contents/enacted

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by the Cabinet Member for Housing on 14th July 2015.

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Signed by:
Councillor Steve Wemyss
Cabinet Member for Housing

APPENDIX A

Summary of Deregulation Act 2015 relating to Retaliatory Eviction and specific areas affecting the Private Rented Housing Sector.

The Deregulation Bill 2015 was given Royal Assent on Friday 27th March 2015. With the main points of consideration:

1. When a Section 21 notice will be invalid:

A Section 21 notice (Housing Act 1988) served by a landlord enables them to regain possession of a property at the end of an assured short hold tenancy.

Presently a Section 21 Notice is invalid if served before the tenant's deposit has been protected and the tenant has not been provided with the correct documents prescribed in the deposit protection legislation. The Deregulation Act 2015 now introduces additional requirements for the landlord to comply to in order to serve a valid Section 21 Notice.

Crucially these relate to the condition of the property - to prevent against 'retaliatory evictions.

Deregulation Act 2015.

Section 33(1):

States that where a relevant notice is served, a section 21 notice may not be given

- (a) within 6 months beginning with the day of service of the relevant notice or
- (b) where the operation of the relevant notice has been suspended, within 6 months beginning with the day on which the suspension ends.

Section 33(2):

A section 21 is invalid, where before a Section 21 is served, the tenant made a complaint to the landlord regarding the condition of the dwelling house and at the time of the complaint and the landlord didn't:

- provide a response to the complaint within 14 days beginning with the day on which the complaint was given,
- provided a response to the complaint that was an adequate response.

Adequate response under this section would be:

- provide a description of the action that the landlord proposes to take to address the complaint, and
- sets out a reasonable timescale for the action to be taken.

Making a complaint to the Private Sector Housing Team.

The tenant can involve the Private Sector Housing Team (PSHT), by them making a complaint about the same or substantially the same subject matter as the complaint to the landlord.

If following an investigation, the best course of action is to serve a relevant notice, in which a relevant notice means:

- a notice served under section 11 of the Housing Act 2004 (improvement notices relating to category 1 hazards),
- a notice served under section 12 of that Act (improvement notices relating to category 2 hazards), or
- a notice served under section 40(7) of that Act (emergency remedial action)

Any section 21 notice served after the relevant notice has been issued would be invalid.

It also appears that a tenant can complain directly to the authority or if the authority is being pro-active in inspecting properties in their area and if a relevant notice is served, then a section 21 cannot be served. However, we are still waiting guidance to clarify this point.

Other relevant points:

There are some safeguards aimed at preventing both the tenants abusing the new powers and landlords finding they are unable to manage their property assets. These include:

- A tenant cannot rely on disrepair where the disrepair is caused by the tenant.
- A landlord can still serve a section 21 notice, if the property is genuinely being marketed for sale.

The provisions do not apply if a lender is seeking vacant possession to sell, provided the mortgage was granted prior to the commencement of the tenancy. At present, the new provisions will only apply to tenancies created after the provisions of the new Act come into force.

Existing tenants will not therefore be able to rely on these provisions at the present time. However, landlords should note that the Act does provide that the provisions will apply to all assured short hold tenancies 3 years after the provisions come into force

Implications to the Private Sector Housing Team:

The PSHT could be under more pressure from tenants to use the enforcement powers available to ensure that they can stay in the property.

The Housing Act 2004, does state that the authority MUST take the most appropriate enforcement action to remove high risk hazards, but our current policy allows officers to work with landlords, prior to the service of any notice.

If we were compelled to serve more notices, then this would increase pressure on officers, increasing the time in dealing with specific complaints; more challenges to the notice through the first-tier tribunal and more prosecutions taken.

2. Others areas under this clause:

Providing prescribed legal requirements:

Section 38 of the Act inserts a new section 21A Housing Act 1988. This will prevent a section 21 notice from being service if the landlord is in breach of certain legal requirements. Secondary legislation is required to provide the detail of this but it is likely to include gas safety certificates and providing EPCs. Meeting the requirements belatedly may still enable a section 21 to be served.

Implications to the Private Sector Housing Team:

The Private Sector Housing Team already deals with the gas and EPC information and this should not be a major problem.

Rent repayment:

Where a section 21 notice 'ends' a tenancy other than at the end of a period of the tenancy and rent for that period has been paid in advance, the landlord must pay the rent back to the tenant, pro rata for each full day the property is unoccupied.

All of this will only apply to new tenancies granted on or after the date of commencement. After three years from commencement, it will apply to all ASTs.

Timing of serving a section 21 notice.

No section 21 notice can be served within the first 4 months of the short hold tenancy, thus ending the all too widespread practice of serving a section 21 at the time the tenancy agreement is signed (though I'd still say that was probably caught by the deposit rules). The proposals also make it clear that possession proceedings cannot begin before 6 months from the start of the tenancy.

Summary of Implications of the legislation for the Private Sector Housing Team:

Overall the new areas covered within the Deregulation Bill, will provide tenants with more security from poor landlords, but it will also create more pressure on the Private Sector Housing Team in dealing with the possible increase in complaints and a greater demand on taking enforcement action against landlords.

But importantly, the new legislation should not cause major damage to the private rented market, with landlords moving out from the market due to this specific legislation.