
Guidance on obtaining possession of property held on assured or assured shorthold tenancies: Section 8 and Section 21 Notices

Different types of tenancy – how to terminate

Landlords cannot evict residential Tenants unless they have obtained a court order for possession. Prior to applying to court, the Landlord must serve a notice on the Tenant advising the Tenant that the Landlord wishes to bring the tenancy to an end. The procedure is different according to the type of tenancy the Tenant has.

1. Assured shorthold tenancy – fixed term expired or nearly expired

1.1 If the Tenant has an assured shorthold tenancy, the fixed term of which has expired or will expire shortly, the Landlord can use the “accelerated” procedure for possession under section 21 of the Housing Act 1988. This is the simplest way of obtaining possession because the Landlord does not need to show any fault on the part of the Tenant or give any other reason for requiring the Tenant to vacate. Section 21 Notices are discussed below.

2. Assured shorthold tenancy – during the fixed term

2.1 If the Tenant has an assured shorthold tenancy whose fixed term still has some time to run, the accelerated procedure cannot be used. Instead, the Landlord must apply for a possession order relying on the grounds set out in Schedule 2 to the Housing Act 1988. The grounds are discussed under the heading “The grounds” below.

2.2 The Landlord’s ability to obtain possession during the fixed term is limited because the Landlord may only rely on grounds 2, 7A, 7B, 8, 10 to 15 (inclusive) and 17 and then only if the Landlord has reserved a right in the tenancy agreement to terminate the tenancy on that particular ground.

2.3 Before the Landlord applies to court he must serve notice on the Tenant under section 8 of the Housing Act 1988. Section 8 Notices are discussed below.

3. Assured tenancy (non-shorthold) – after the fixed term

3.1 The accelerated possession procedure is not available to Landlords of assured tenancies which are not shorthold. Once an assured tenancy has become periodic the Landlord may serve a Section 8 Notice relying on any of the grounds set out below. The procedure is otherwise as set out above in relation to terminating assured tenancies during the fixed term.

4. Assured tenancy (non-shorthold) – during the fixed term

4.1 During the fixed term, the procedure is the same as set out above in relation to termination of assured shorthold tenancies during the fixed term, i.e. a Section 8 Notice must be served. The same limitation applies as to the grounds on which the Landlord can rely.

Section 21 Notices

A Landlord wishing to use the accelerated possession procedure should serve a **Section 21 Notice Seeking Possession** (either the England or Wales version as appropriate) on the Tenant.

The court will make a possession order as long as the Landlord has given the Tenant two months' written notice that they require possession. (Of course, most cases do not go to court and the Tenant will simply vacate the property at the end of the notice period.)

The England version of the Section 21 Notice which must be in the prescribed form ('Form 6A') can be sent to the Tenant under cover of the **Section 21 Covering Letter for a Tenancy in England**. The Wales version of the Section 21 Notice takes the form of a letter so no covering letter is required.

Landlords should note that a Section 21 Notice will not be valid if:

- a) the Landlord has failed to protect the Tenant's tenancy deposit in an authorised tenancy deposit protection scheme. This restriction applies regardless of when the deposit was received, even if the deposit was received before the tenancy deposit legislation came into force in April 2007;
- b) the Landlord should have obtained an HMO (house in multiple occupation) licence for the property and has failed to do so;

In relation to tenancies granted on or after 1 October 2015 in England only there are some further situations in which a Section 21 Notice will be invalid. From 1 October 2018 these conditions will apply to all tenancies in England, regardless of when they were granted. The conditions are:

- a) the tenancy began less than 4 months before the date of the Notice;
- b) the Landlord failed to provide the Tenant with a valid energy performance certificate before the tenancy commenced;
- c) the Landlord failed to provide the Tenant with a current gas safety certificate before the tenancy commenced;
- d) the Landlord has failed to provide the Tenant with a copy of the most recent gas safety certificate;
- e) the Landlord has failed to provide the Tenant with a copy of the publication "How to rent: the checklist for renting in England" published by the Ministry of Housing, Communities and Local Government. This must be the up to date version as at the date the tenancy was granted or renewed (or became periodic);
- f) the local authority has served an improvement notice or an emergency remedial action notice in relation to the property under the Housing Health and Safety Rating System (HHSRS) within the last 6 months;
- g) before service of the Section 21 Notice, the Tenant has made a complaint in writing about the condition of the property which the Landlord has not properly dealt with and, after service of the Section 21 Notice, the local authority serves a notice under the HHSRS.

In relation to tenancies granted or renewed on or after the 01 June 2019 in England only there is a further situation where a Section 21 Notice will be invalid:

- a) where the Landlord is prevented under section 17 of the Tenant Fees Act 2019. Under the Tenant Fees Act 2019, a Section 21 Notice will be invalid if

the Landlord or letting agent (acting on their behalf) has not repaid any unlawfully charged fees or returned an unlawfully retained holding deposit. Where a tenancy agreement was entered into before 01 June 2019, certain fees which are prohibited under the Tenant Fees Act 2019 can still be charged until 31 May 2020, after which they will be unlawful.

Similar provisions prohibiting Landlords and letting agents from serving a notice to gain possession of the property if a prohibited payment has been received and not been fully refunded are contained within the Renting Homes (Fees etc.) (Wales) Act 2019 which is due to come into force 01 September 2019.

In relation to tenancies granted in Wales, a Section 21 Notice will be invalid if the Landlord or their agent is not registered or properly licensed with Rent Smart Wales.

Section 8 Notices

A Landlord should use the **Section 8 Notice Seeking Possession** (either the England or Wales version as appropriate) to inform the Tenant that it intends to seek a court order for possession.

The Notice must inform the Tenant of the earliest date upon which the Landlord can begin possession proceedings. The earliest date depends on the grounds relied on. The table of grounds below includes details of the earliest date.

The Notice can be handed to the Tenant in person or sent by recorded delivery. Remember that the notice period given in paragraph 5 of the Notice begins from the time the Tenant receives the Letter, not when the Letter was posted. Always allow a few extra days when calculating the date in paragraph 5, so that it is at least 2 months or (as the case may be) 2 weeks from the date the Tenant receives the Notice.

The grounds in Schedule 2 of the Housing Act 1988

The grounds are briefly summarised below. Grounds 1-8 are “mandatory”, which means that if they are shown by the Landlord to be satisfied, the court must make an order for possession. The other grounds are discretionary, meaning that the court will only make a possession order if the court thinks it is reasonable to do so.

Landlords should study the wording of the grounds carefully before citing any of them in a Section 8 Notice. What follows is only a short summary – the full text (excluding grounds 7A, 7B, 14ZA and 14A) can be found at <http://www.legislation.gov.uk/ukpga/1988/50/schedule/2>.

Ground number	Description	Earliest date for beginning proceedings
1	Recovery by previous owner occupier or intending owner occupier.	At least 2 months
2	A mortgagee is claiming possession.	At least 2 months
3	The property was previously used for a holiday let and has since been let on an assured tenancy (presumably out of season).	At least 2 weeks

4	The property was previously used a student let and has since been let on an assured shorthold tenancy.	At least 2 weeks
5	The property is needed for use by a minister of religion.	At least 2 months
6	The Landlord intends to redevelop the property.	At least 2 months
7	The former Tenant has died (unless there is a person with a right to succeed).	At least 2 months
7A	Criminal offence committed at or affecting the property.	At least 1 month
7B	Immigration status of tenant (England only).	At least 2 weeks
8	Serious rent arrears. If rent is payable monthly, the Tenant must owe at least two months' rent when the Landlord serves the Section 8 Notice and must still owe two months' rent at the date of the court hearing. If the rent is payable weekly, quarterly or yearly there must be rent arrears of eight weeks, three months and six months respectively.	At least 2 weeks
9	Suitable alternative accommodation is available.	At least 2 months
10	Rent arrears. There must be arrears both when the Section 8 Notice is served and when the Landlord issues court proceedings.	At least 2 weeks
11	Persistent delay in paying rent.	At least 2 weeks
12	Breach of an obligation in the tenancy agreement.	At least 2 weeks
13	The condition of the property any of the common parts has deteriorated because of the behaviour of the Tenant or anyone living there.	At least 2 weeks
14	Nuisance, annoyance or criminal activity.	Immediately after serving Section 8 Notice
14ZA	Criminal offence committed at a riot (England only).	At least 2 weeks
14A	Domestic violence.	At least 2 weeks
15	The condition of the furniture has deteriorated because of ill-treatment by the Tenant or anyone living there.	At least 2 weeks
16	Recovery from former employee.	At least 2 months
17	The Landlord was induced to grant the tenancy by a false statement.	At least 2 weeks

Possession proceedings

If the Tenant has not left the property or paid the rent arrears or remedied the relevant breach by the date given in the Section 21 or Section 8 Notice, the Landlord may have no option but to start court proceedings for possession. Please refer to our guidance on using

the Accelerated Procedure (for Section 21 cases) and the Standard Procedure (for Section 8 cases) to obtain Possession.