

Guidance Note: Obtaining Possession of Property by a Landlord of a Short Lease

Held on Assured or Assured Shorthold Tenancies

This Guidance is for England only. It does not cover the new possession procedure under the Housing Act 2016 for Wales.

For Wales, see the Housing (Wales) Act 2016.

1. Different types of tenancy

Landlords cannot evict residential tenants without a court order for possession. Prior to applying to court, a landlord must serve a notice on a tenant advising the tenant that the landlord wishes to evict the tenant and the grounds on which the landlord wishes to do so, according to the type of tenancy that the tenant has.

If a landlord has obtained a court order for possession, the landlord must serve a notice on a tenant advising the tenant of the order. The procedure is different for different types of tenancy.

Assured shorthold tenancy – fixed term

Expired

- 1.1 If the tenant has a fixed term tenancy which has expired or will expire on or after the date on which the landlord applies for possession under the Housing Act 1988, the way of obtaining possession is by serving a Section 8 Notice on the tenant to vacate. For more information see: **Guidance Notes: Obtaining Possession of Property by a Landlord of a Short Lease - S21 Notices**

If a landlord has a fixed term tenancy, the fixed term of which has expired, the landlord can use the “accelerated” procedure under the Housing Act 1988. This is the simplest way of obtaining possession. The landlord does not need to show any grounds for requiring the tenant to vacate. For more information see: **Guidance Notes: Obtaining Possession of Property by a Landlord of a Short Lease - S21 Notices**

2. Assured shorthold tenancy – rolling contract

- 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 under section 2 to the Housing Act 1988. The grounds set out in Schedule 2 to the Housing Act 1988 are discussed under the heading “The grounds” below.
- 2.2 The landlord’s ability to obtain a possession order because the landlord has reserved a right in the tenancy agreement (inclusive) and 17 grounds in the tenancy agreement require prior notice to the tenant. The grounds require prior notice to the tenant.
- 2.3 Before the landlord can apply for a possession order under section 8 of the Housing Act 1988, the landlord must serve a notice on the tenant under section 8 of the Housing Act 1988. Notices are discussed below.

If a landlord has a rolling contract 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 under section 2 to the Housing Act 1988. The grounds set out in Schedule 2 to the Housing Act 1988 are discussed under the heading “The grounds” below.

3. Assured tenancy (non-shorthold)

Expired

- 3.1 The accelerated possession procedure is not available to landlords of assured tenancies which are periodic. The landlord must apply for a possession order under section 2 to the Housing Act 1988. The grounds set out below are discussed under the heading “The grounds” below.

The accelerated possession procedure is not available to landlords of assured tenancies which are periodic. If an assured tenancy has become periodic, the landlord must apply for a possession order under section 2 to the Housing Act 1988. The grounds set out below are discussed under the heading “The grounds” below.

4. Assured tenancy (non-shorthold)

Fixed term

- 4.1 During the fixed term of an assured tenancy, the landlord cannot obtain a possession order under section 8 of the Housing Act 1988. The grounds on which the landlord can obtain a possession order are discussed under the heading “The grounds” below.

The same limitation applies as to the grounds on which the landlord can obtain a possession order during the fixed term, i.e., a possession order cannot be obtained under section 8 of the Housing Act 1988. The same limitation applies as to the grounds on which the landlord can obtain a possession order during the fixed term, i.e., a possession order cannot be obtained under section 8 of the Housing Act 1988.

Section 8 Notices

A landlord should use a Section 8 Notice if they intend to seek a court order for possession of the property.

The Notice must include the grounds for possession proceedings. The grounds below include the most common grounds for possession.

The Notice can be served by hand or sent by recorded delivery. Remember that the notice period begins from the time the tenant receives the letter, not the date it is posted. Always allow a few extra days when calculating the date when the Notice is at least 2 months or (as the case may be) 2 weeks from the date of service.

Landlords should be aware of the **Eviction and Mental Health Act 2020**, which may prevent a landlord from evicting a tenant who has debt problems.

The Grounds in Section 8

The grounds are broken down into two categories: mandatory and discretionary. If they are shown 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 it is reasonable to do so.

Landlords should select the grounds that apply to their case in a Section 8 Notice. Visit <http://www.legislation.gov.uk/ukpga/2020/12/schedule/2> for more information.

Ground number	Description
1	Recovery of possession by the owner of the property.
2	A mortgage or other financial charge on the property.
3	The property is let as a holiday let and the tenant is not an assured tenant.
4	The property is let as a student let and the tenant is not an assured shorthold tenant.
5	The property is let as a religious building and the tenant is not an assured tenant.
6	The landlord has a right to the property.

Seeking Possession

The earliest date upon which the landlord can begin proceedings for possession depends on the grounds relied on. The table of grounds below shows the earliest date.

The Notice must be served on the tenant by hand or sent by recorded delivery. Remember that the notice period begins from the time the tenant receives the letter, not the date it is posted. Always allow a few extra days when calculating the date when the Notice is at least 2 months or (as the case may be) 2 weeks from the date of service.

Landlords should be aware of the **Eviction and Mental Health Act 2020**, which may prevent a landlord from evicting a tenant who has debt problems. The "Breathing Space Moratorium" below.

Section 8 Act 1988

Grounds 1-8 are "mandatory", which means that if they are shown 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 it is reasonable to do so.

Landlords should select the grounds that apply to their case in a Section 8 Notice. Visit <http://www.legislation.gov.uk/ukpga/2020/12/schedule/2> for more information.

	Earliest date for beginning proceedings
Ground 1: Recovery of possession by the owner of the property.	At least 2 months
Ground 2: A mortgage or other financial charge on the property.	At least 2 months
Ground 3: The property is let as a holiday let and the tenant is not an assured tenant.	At least 2 weeks
Ground 4: The property is let as a student let and the tenant is not an assured shorthold tenant.	At least 2 weeks
Ground 5: The property is let as a religious building and the tenant is not an assured tenant.	At least 2 months
Ground 6: The landlord has a right to the property.	At least 2 months

7	The former tenant has a right to occupy the property with a right to sublet.	There is a person occupying the property who is not a tenant.	At least 2 months
7A	Criminal damage to the property.	Or affecting the enjoyment of the property.	At least 1 month
7B	Immigration or nationality issues.	And only).	At least 2 weeks
8	Serious rent arrears or possession proceedings.	Notice of notice and possession proceedings.	At least 2 weeks
9	Suitable alternative accommodation is available.	Is available.	At least 2 months
10	Rent arrears or possession proceedings both when the tenant is in possession and when the landlord is in possession.	Is both when the tenant is in possession and when the landlord is in possession.	At least 2 weeks
11	Persistent breach of the tenancy agreement.	Is a breach of the tenancy agreement.	At least 2 weeks
12	Breach of a condition of the tenancy agreement.	Is a breach of the tenancy agreement.	At least 2 weeks
13	The condition of the common parts has deteriorated because of the behaviour of the tenant or anyone living there.	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 harassment.	Activity.	Immediately after serving Section 8 Notice
14ZA	Criminal offence (England only).	(England only).	At least 2 weeks
14A	Domestic violence.	Is a domestic violence offence.	At least 2 weeks
15	The condition of the property has deteriorated because of the tenant or anyone living there.	Has deteriorated because of the tenant or anyone living there.	At least 2 weeks
16	Recovery of possession.	Is a recovery of possession.	At least 2 months
17	The landlord has made a false statement.	Has made a false statement.	At least 2 weeks

Breathing Space Moratorium

Tenants who are in rent arrears may qualify for a breathing space moratorium. This provides a temporary moratorium on enforcement action known as “the breathing space” and is managed by the Insolvency Service.

During the breathing space moratorium:

- take enforcement action on the grounds of rent arrears;
- contact the tenant or anyone living there to discuss the arrears;

Someone in difficulty may qualify for a breathing space moratorium. This provides a temporary moratorium on enforcement action known as “the breathing space” and is managed by the Insolvency Service.

cannot:

- take enforcement action on the grounds of rent arrears by serving a S8 notice on the tenant;
- contact the tenant or anyone living there to go through the tenant’s debt adviser;

- issue proceedings for possession of the property (the breathing space period).

The Insolvency Service will come to an end.

Possession proceedings

If the Tenant has breached the lease by the date of the court proceedings, the landlord may have no option but to start court proceedings for possession. **Standard Possession Procedure (for Section 8 notices)**

where a s8 notice has already been served before the tenant has vacated the property during the breathing space period.

by the landlord when the breathing space period ends.

If the Tenant has paid the rent arrears or remedied the relevant breach by the date of the notice, the landlord may have no option but to start court proceedings for possession. **Standard Possession Procedure (for Section 8 notices)**