

Guidance on obtaining possession of assured or assured shorthold tenancies

Section 21 Notices

Different types of tenancy – how to obtain possession

Landlords cannot evict residential tenants without a court order for possession. Prior to applying to court, a Landlord must advise the Tenant that the Landlord's tenancy is different according to the type of tenancy.

Landlords who have obtained a court order for possession must serve a notice on the Tenant to bring the tenancy to an end. The procedure for serving a notice is different according to the type of tenancy.

1. Assured shorthold tenancy (AST)

Fixed term tenancy

- 1.1 If the Tenant has a fixed term tenancy which has expired or will expire within the next 4 months, the Landlord can use the "accelerated" procedure for possession. This is the simplest way of obtaining possession and does not require the Landlord to show any fault on the part of the Tenant. The procedure for serving notices requiring the Tenant to leave is discussed below.

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2. Assured shorthold tenancy (AST)

Fixed term tenancy

- 2.1 If the Tenant has a fixed term tenancy which has some time to run, the Landlord must apply to court for possession. The grounds for possession are set out in Schedule 2 to the Housing Act 1988, under the heading "The grounds for possession".

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

- 2.2 The Landlord's ability to apply to court for possession during the fixed term is limited to grounds 2, 7A, 7B, 8, 10 to 15 of Schedule 2 to the Housing Act 1988. The Landlord has reserved a right in the tenancy agreement to apply to court for possession on that particular ground.

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- 2.3 Before the Landlord can apply to court for possession under section 8 of the Housing Act 1988, the Landlord must serve notice on the Tenant under section 21 of the Housing Act 1988. Section 21 Notices are discussed below.

The Landlord must serve notice on the Tenant under section 21 of the Housing Act 1988 before applying to court for possession. Section 21 Notices are discussed below.

3. Assured tenancy (non-shorthold tenancy)

Fixed term tenancy

- 3.1 The accelerated procedure for possession is not available to Landlords of assured tenancies. Once an assured tenancy has become periodic the Landlord can use the accelerated procedure for possession on the grounds set out in Schedule 2 to the Housing Act 1988 in relation to terminating a periodic tenancy.

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4. Assured tenancy (non-shorthold tenancy)

Fixed term tenancy

- 4.1 During the fixed term of an assured tenancy, the Landlord cannot use the accelerated procedure for possession. The procedure for termination of assured tenancies is discussed below. A Section 8 Notice must be served on the Tenant before the Landlord can apply to court for possession which the Landlord is relying on.

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Section 21 Notices

A Landlord wishing to use the accelerated procedure for possession should serve a **Section 21 Notice Seeking Possession** (either a Section 21(1) or Section 21(2) Notice) on the Tenant.

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The court will make a possession order if the Landlord has given the Tenant two months' written notice that they must leave the property by the end of the notice period and the Tenant will simply vacate the property.

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The England version of the Section 21 Notice can be sent to the Tenant under cover of the **Section 21 Covering England**. The Wales version of the Section 21 Notice takes the form of a separate letter.

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Landlords should note that a Section 21 Notice is invalid if:

is invalid if:

- a) the Landlord has failed to protect the Tenant's tenancy deposit in an authorised tenancy deposit scheme. This restriction applies to all tenancies, even if the deposit was received before the tenancy began; and
- b) the Landlord should have obtained a licence for the property (house in multiple occupation) if the property is a house in multiple occupation (HMO) so.

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In relation to tenancies granted on or after 1 October 2018, 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 regardless of when they were granted. The conditions are:

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- a) the tenancy began on or after 1 October 2018 and the Section 21 Notice is served on or after 1 October 2018;
- b) the Landlord failed to provide the Tenant with a valid energy performance certificate before the tenancy began;
- c) the Landlord failed to provide the Tenant with a current gas safety certificate before the tenancy began;
- d) the Landlord has failed to provide the Tenant with a copy of the most recent gas safety certificate before the tenancy began;
- e) the Landlord has failed to provide the Tenant with a copy of the publication "How to rent: the checklist for tenants" published by the Ministry of Housing, Communities and Local Government (the most up to date version as at the date the Section 21 Notice is served or renewed (or became renewed) periodically);
- f) the local authority has served the Tenant with a remedial action notice or an emergency repair notice under the Housing Health and Safety Rating System (HHSRS) in 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 the expiry of the Section 21 Notice, the local authority serves the Tenant with a remedial action notice or an emergency repair notice under the HHSRS in the last 6 months;

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- f) the local authority has served the Tenant with a remedial action notice or an emergency repair notice under the Housing Health and Safety Rating System (HHSRS) in 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 the expiry of the Section 21 Notice, the local authority serves the Tenant with a remedial action notice or an emergency repair notice under the HHSRS in the last 6 months;

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- h) where the Landlord has failed to comply with 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 landlord agent (on their behalf) has not repaid any unlawfully retained holding deposit. Where a tenancy began on or after 1 October 2019, certain

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¹ From 26 March until 30 September 2020, the notice period for a Section 21 Notice is extended to three months under the Coronavirus Act 2020. The notice period for a Section 21 Notice is three months for tenancies in Wales.

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fees which are prohibited until 31 May 2020, and

In relation to tenancies granted in their agent is not registered or pro

In relation to assured shorthold September 2019 in Wales a Sec landlord or letting agent (acting on returned an unlawfully retained ho

Section 8 Notices

A Landlord should use the Section 8 Wales version as appropriate) to possession.

The Notice must inform the Tenant possession proceedings. The earliest grounds below includes details of t

The Notice can be handed to the that the notice period given in paragraph receives the Letter, not when the calculating the date in paragraph weeks from the date the Tenant re

The grounds in Schedule 2 of the

The grounds are briefly summarised if they are shown by the Landlord possession. The other grounds a possession order if the court thinks

Landlords should study the wording Section 8 Notice. What follows is 7B, 14ZA and 14A) can be found a

| Ground number | |
|---------------|--|
| 1 | Recovery by previous occupier. |
| 2 | A mortgagee is claiming |
| 3 | The property was previously let and has since been let on an assured (season). |
| 4 | The property was previously let on an assured |
| 5 | The property is needed |
| 6 | The Landlord intends to |
| 7 | The former Tenant has |

Fees Act 2019 can still be charged unlawful.

will be invalid if the Landlord or Smart Wales.

and or renewed on or after the 01 valid if at the time of service, the paid any unlawfully charged fees or

possession (either the England or intends to seek a court order for

upon which the Landlord can begin the grounds relied on. The table of

must be by recorded delivery. Remember begins from the time the Tenant days allow a few extra days when months or (as the case may be) 2

are “mandatory”, which means that the court must make an order for that the court will only make a

fully before citing any of them in a the full text (excluding grounds 7A, <http://www.gov.uk/ukpga/1988/50/schedule/2>.

| | Earliest date for beginning proceedings |
|--|---|
| Recovery by previous owner | At least 2 months |
| | At least 2 months |
| Property let and has since been let on an assured (season) | At least 2 weeks |
| Property let and has since been let on an assured | At least 2 weeks |
| Property needed for religious purposes | At least 2 months |
| | At least 2 months |
| Former Tenant has a right to occupy | At least 2 months |



| | | | |
|------|--|---|--|
| | right to succeed). | | |
| 7A | Criminal offence con | e property. | At least 1 month |
| 7B | Immigration status o | | At least 2 weeks |
| 8 | Serious rent arrears must owe at least two months' rent at the date of the court proceedings. If the rent is payable weekly, quarterly or yearly then the arrears must be at least three months and six weeks. | Monthly, the Tenant must owe at least two months' rent at the date of the court proceedings. If the rent is payable weekly, quarterly or yearly then the arrears must be at least three months and six weeks. | At least 2 weeks |
| 9 | Suitable alternative a | ble. | At least 2 months |
| 10 | Rent arrears. There must be at least two months' rent in arrears at the date the Section 8 Notice is served. | When the Section 8 Notice is served and the court proceedings are issued. | At least 2 weeks |
| 11 | Persistent delay in p | | At least 2 weeks |
| 12 | Breach of an obligati | ment. | At least 2 weeks |
| 13 | The condition of the property has deteriorated because of disrepair by anyone living there. | Common parts has deteriorated because of disrepair by the Tenant or anyone living there. | At least 2 weeks |
| 14 | Nuisance, annoyanc | | Immediately after serving Section 8 Notice |
| 14ZA | Criminal offence con | only). | At least 2 weeks |
| 14A | Domestic violence. | | At least 2 weeks |
| 15 | The condition of the property has deteriorated because of disrepair by the Tenant. | and because of ill-treatment by the Tenant. | At least 2 weeks |
| 16 | Recovery from forme | | At least 2 months |
| 17 | The Landlord was i | ncertainty by a false statement. | At least 2 weeks |

Possession proceedings

If the Tenant has not left the property or remedied the relevant breach by the date given in the Section 8 Notice, the Landlord may have no option but to start court proceedings. Please refer to our guidance on using the Accelerated Procedure (for Section 8 cases) to obtain Possession.

If the Tenant has not left the property or remedied the relevant breach by the date given in the Section 8 Notice, the Landlord may have no option but to start court proceedings. Please refer to our guidance on using the Standard Procedure (for Section 8 cases) to obtain Possession.