

Guidance Note: Obtaining Possession of Premises by Landlord
Short

Held on Assured or Assured Shorthold Tenancies

*This Guidance is for England only. For Wales, see the **Obtaining Possession of Premises by Landlord (Wales) Act 2016**.*

Obtaining Possession of Premises by Landlord (Wales) Act 2016.

1. Different types of tenancy

Landlords cannot evict residential tenants without a court order for possession. Prior to applying to court, the landlord must serve a notice on the tenant that the landlord wishes to end the tenancy. The procedure is different according to the type of tenancy.

Landlords cannot evict residential tenants without a court order for possession. Prior to applying to court, the landlord must serve a notice on a tenant advising them that the tenancy is to come to an end. The procedure is different according to the type of tenancy.

Assured shorthold tenancy – fixed term

Fixed term

- 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 section 8 of the Housing Act 1988, the landlord does not need to show any other reason for requiring the tenant to vacate. For more information see: **Guidance Notes: Obtaining Possession of Premises by Landlord - S21 Notices**

If the tenant has a fixed term tenancy, the fixed term of which has expired or will expire on or after the date on which the landlord uses the “accelerated” procedure under section 8 of the Housing Act 1988. This is the simplest procedure. The landlord does not need to show any other reason for requiring the tenant to vacate. For more information see: **Guidance Notes: Obtaining Possession of Premises by Landlord - 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 on the grounds set out in Schedule 2 to the Housing Act 1988. “The grounds” below.
- 2.2 The landlord’s ability to evict a tenant during the fixed term is limited because the landlord must show that one or more of grounds 2, 7, 7A, 7B, 8, 10 to 15 of Schedule 2 to the Housing Act 1988 apply. The landlord has reserved a right in the tenancy agreement to evict the tenant on that particular ground. Certain grounds require prior notice to be served on the tenant before the landlord can apply for a possession order.
- 2.3 Before the landlord can apply for a possession order under section 8 of the Housing Act 1988, the landlord must serve notice on the tenant under section 21 of the Housing Act 1988. Notices are discussed below.

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3. Assured tenancy (non-shorthold)

Fixed term

- 3.1 The accelerated possession procedure is not available to landlords of assured tenancies which are periodic. If the tenancy is periodic the landlord must apply for a possession order under section 2 to the Housing Act 1988 on the grounds set out below. For more information see: **Guidance Notes: Obtaining Possession of Premises by Landlord - S21 Notices**

The accelerated possession procedure is not available to landlords of assured tenancies which are periodic. If the tenancy is periodic the landlord must apply for a possession order under section 2 to the Housing Act 1988 on the grounds set out below. For more information see: **Guidance Notes: Obtaining Possession of Premises by Landlord - S21 Notices**

4. Assured tenancy (non-shorthold) – rolling contract

Fixed term

- 4.1 During the fixed term of an assured tenancy, the landlord must show that one or more of grounds 2, 7, 7A, 7B, 8, 10 to 15 of Schedule 2 to the Housing Act 1988 apply. The landlord has reserved a right in the tenancy agreement to evict the tenant on that particular ground. Certain grounds require prior notice to be served on the tenant before the landlord can apply for a possession order.

The same limitation applies as to the grounds on which the landlord can apply for a possession order during the fixed term, i.e., a possession order can only be granted if the same limitation applies as to the grounds on which the landlord can apply for a possession order.

Section 8 Notices

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

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 expires (it is at least 2 months or (as the case may be) 2 weeks from the date of service).

Landlords should be aware that the **Mental Health Act 1983** may prevent a landlord from evicting a tenant who has debt problems.

The Grounds in Schedule 2

The grounds are broken down into two categories: mandatory and discretionary. If the grounds are mandatory, the court must make an order for possession if the landlord can prove the grounds. If the grounds are discretionary, the court will only make an order if it is reasonable to do so.

Landlords should select the grounds they rely on in their Section 8 Notice. You can find the full text of the grounds at <http://www.legislation.gov.uk/ukpga/1988/14/schedule/2>.

Ground number	Description
1	Recovery of possession by the owner or a person entitled to possession.
2	A mortgagee in possession.
3	The property is let for a holiday let and the tenant is on an assured tenancy.
4	The property is let as a student let and the tenant is on an assured shorthold tenancy.
5	The property is let for religious purposes and the tenant is on an assured shorthold tenancy.
6	The landlord or a person entitled to possession has a right of first refusal.
7	The landlord or a person entitled to possession has a right of first refusal.

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 expires (it is at least 2 months or (as the case may be) 2 weeks from the date of service).

Landlords should be aware that the **Mental Health Act 1983** may prevent a landlord from evicting a tenant who has debt problems. The "Breathing Space Moratorium" below.

The Mental Health Act 1983

Grounds 1-8 are "mandatory", which means that if the court is satisfied, the court must make an order for possession. If the grounds are discretionary, meaning that the court will only make an order if it is reasonable to do so.

Landlords should select the grounds they rely on in their Section 8 Notice. You can find the full text of the grounds at <http://www.legislation.gov.uk/ukpga/1988/14/schedule/2>.

	Earliest date for beginning proceedings
Ground 1: Recovery of possession by the owner or a person entitled to possession.	At least 2 months
Ground 2: A mortgagee in possession.	At least 2 months
Ground 3: The property is let for a holiday let and the tenant is on an assured tenancy.	At least 2 weeks
Ground 4: The property is let as a student let and the tenant is on an assured shorthold tenancy.	At least 2 weeks
Ground 5: The property is let for religious purposes and the tenant is on an assured shorthold tenancy.	At least 2 months
Ground 6: The landlord or a person entitled to possession has a right of first refusal.	At least 2 months
Ground 7: The landlord or a person entitled to possession has a right of first refusal.	At least 2 months

7A	Criminal damage to property.	or affecting the	At least 1 month
7B	Immigration	and only).	At least 2 weeks
8	Serious rent possession	ice of notice and	At least 2 weeks
9	Suitable alternative accommodation is available.		At least 2 months
10	Rent arrears and Section 8 issues could arise	ers both when the when the landlord	At least 2 weeks
11	Persistent default		At least 2 weeks
12	Breach of a licence agreement.	cy 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 the behaviour of	At least 2 weeks
14	Nuisance, annoyance or interference with the quiet enjoyment of the property.	tivity.	Immediately after serving Section 8 Notice
14ZA	Criminal offence (England only).	(England only).	At least 2 weeks
14A	Domestic violence		At least 2 weeks
15	The condition of the property has deteriorated because of the tenant or anyone living there	has deteriorated tenant or anyone	At least 2 weeks
16	Recovery from a previous possession order		At least 2 months
17	The landlord has made a false statement in support of the tenancy by a	the tenancy by a	At least 2 weeks

Breathing Space Moratorium

Tenants who are in rent arrears may qualify for a breathing space moratorium. This provision is 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 to discuss the arrears;
- issue proceedings for possession (except in the case of a tenant who has vacated the property during the breathing space).

A tenant who is experiencing difficulty may qualify for a breathing space moratorium. This is a period of up to 60 days. This is known as “the breathing space” and is managed by the Insolvency Service.

During the breathing space moratorium:

- a landlord cannot:
- take enforcement action for rent arrears by serving a S8 notice on the tenant;
- contact the tenant to discuss the arrears; or
- go through the tenant’s debt adviser;
- issue a possession claim (even if a s8 notice has already been served before the tenant has vacated the property during the breathing space).

The Insolvency Service comes to an end.

Possession procedure

If the Tenant has breached by the date court proceedings are started, the landlord may have no option but to start court proceedings. For more information, refer to the guidance on using **the Standard Possession Procedure (for Section 8 and 21 notices)**.

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paid the rent arrears or remedied the relevant breach, the landlord may have no option but to start court proceedings. For more information, refer to the guidance on using **the Standard Possession Procedure**.

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