

## Guidance on obtaining possession of assured or assured shorthold tenancies: Section 21

## held on assured or assured shorthold tenancies

### 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 intention is to end the tenancy. The procedure for obtaining possession 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 end the tenancy to an end. The procedure for obtaining possession 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, 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. Notices requiring the Tenant to leave are discussed below.

If the Tenant has a fixed term tenancy, the fixed term of which has expired or will expire, the Landlord can use the "accelerated" procedure for possession 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 possession. Notices requiring the Tenant to leave are discussed below.

#### 2. Assured shorthold tenancy (AST)

#### Fixed term tenancy

- 2.1 If the Tenant has a fixed term tenancy whose fixed term still has some time to run, 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".

If the Tenant has a fixed term tenancy whose fixed term still has some time to run, the Landlord cannot use the "accelerated" procedure. 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 obtain possession during the fixed term is limited because the Landlord can only rely on grounds 2, 7 (in England only), 7A, 7B, 8, 10 to 15 (including 10A) of the Housing Act 1988. Only if the Landlord has reserved a right in the tenancy agreement to terminate the tenancy on that particular ground. Certain grounds require a Section 8 Notice to have been served on the Tenant before the Landlord can apply to court for possession.

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

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#### 3. Assured tenancy (non-shorthold tenancy)

#### Fixed term

- 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 Section 8 Notice relying on any of the grounds set out in Schedule 2 to the Housing Act 1988. This is otherwise as set out above in relation to termination of assured shorthold tenancies during the fixed term.

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#### 4. Assured tenancy (non-shorthold tenancy)

#### Fixed term

- 4.1 During the fixed term of an assured tenancy, the same procedure for termination of assured shorthold tenancies applies. A Section 8 Notice must be served on the Tenant before the Landlord can apply to court for possession. Notices are discussed below.

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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 the fixed term or periodic version as appropriate) 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 (Form 6A') can be sent to the Tenant in the prescribed form ('Form 6A'). The Wales version of the Section 21 Notice takes the form of a letter and so no covering letter is required.

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Landlords should note that a Section 21 Notice will be invalid if:

Landlords should note that a Section 21 Notice will be invalid if:

- a) the Landlord has not provided a valid energy performance certificate (EPC) for the property, regardless of when the EPC was issued, before the tenancy began;
- b) the Landlord should have obtained a licence for the property or other licence for the property before the tenancy began;

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In relation to tenancies in England and Wales a Section 21 Notice will be invalid:

the Landlord should have obtained a licence for the property or other licence for the property before the tenancy began;

- a) the tenancy began on or after 1 October 2015 and the Landlord has not provided a valid energy performance certificate (EPC) for the property before the tenancy began;
- b) the Landlord failed to provide a valid energy performance certificate (EPC) for the property before the tenancy began;
- c) the Landlord has failed to provide a valid gas safety certificate for the property before the tenancy began;
- d) the Landlord has failed to provide a copy of the publication "How to rent: the checklist for tenants" published by the Ministry of Housing, Communities and Local Government, as at the most recent version as at the time of service, to the Tenant;
- e) the local authority has issued a remedial action notice or a Housing Health and Safety Rating System (HHSRS) Category 1 or 2 notice for the property within the last 6 months;
- f) the Landlord has not provided a copy of the publication "How to rent: the checklist for tenants" published by the Ministry of Housing, Communities and Local Government, as at the most recent version as at the time of service, to the Tenant;

the Landlord has not provided a valid energy performance certificate (EPC) for the property before the tenancy began;

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

the Landlord failed to provide a valid energy performance certificate (EPC) for the property before the tenancy began;

In relation to assured shorthold tenancies granted in Wales a Section 21 Notice will be invalid if, at the time of service, the Landlord has not repaid any unlawfully retained holding deposit.

the Landlord has failed to provide a valid gas safety certificate for the property before the tenancy began;

**Section 8 Notices**

the Landlord has failed to provide a copy of the publication "How to rent: the checklist for tenants" published by the Ministry of Housing, Communities and Local Government, as at the most recent version as at the time of service, to the Tenant;

A Landlord should use the Section 8 Notice (either the England or Wales version as appropriate) to seek a court order for possession.

the local authority has issued a remedial action notice or a Housing Health and Safety Rating System (HHSRS) Category 1 or 2 notice for the property within the last 6 months;

<sup>1</sup> Until 31 May 2021 the two-month notice period was extended to six months under the Coronavirus Act 2020. Until 30 June 2021 the two-month notice period was extended to six months under the Coronavirus Act 2020.

charged fees or returned an unlawfully retained holding deposit by the Tenant Fees Act 2019.

the Landlord or their agent is not registered or properly registered with Smart Wales.

the Landlord has not repaid any unlawfully retained holding deposit.

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The Notice must inform the Tenant of the grounds on which the Landlord can begin possession proceedings. The earliest date on which the Landlord can begin possession proceedings is set out in the table of grounds below includes details of the grounds on which the Landlord can begin possession proceedings.

The Notice can be handed to the Tenant by recorded delivery. Remember that the notice period given in paragraph 2 begins from the time the Tenant receives the Letter, not when the Landlord sends it. There are 2 weeks from the date the Tenant receives the Letter, not when the Landlord sends it.

Landlords should be aware of **The Tenant Fees Act 2019** and **The Rent and Mental Health Crisis Moratorium (Wales) Regulations 2020**, which may prevent a landlord from serving a Section 8 Notice whilst the Tenant who has problems with their rent.

## **The grounds in Schedule 2 of the Housing Act 1988**

The grounds are briefly summarised below if they are shown by the Landlord in the Section 8 Notice. The other grounds are not shown as they are not mandatory. The court must make an order for possession if the court thinks it is appropriate to do so.

Landlords should study the wording of the grounds in the Section 8 Notice. What follows is a summary of the grounds – the full text can be found at <http://www.legislation.gov.uk/ukpga/1988/11/schedule/2>

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are “mandatory”, which means that the court must make an order for possession if the court thinks it is appropriate to do so.

ully before citing any of them in a Section 8 Notice – the full text can be found at <http://www.legislation.gov.uk/ukpga/1988/11/schedule/2>

Ground number	Description	Earliest date for beginning proceedings (from 29 August 2020 – 31 May 2021 in England)	Earliest date for beginning proceedings (from 29 September 2020 – 30 June 2021 in Wales)
1	Recovery by previous occupier or intending occupier.	2	At least 6 months
2	A mortgagee is in possession.	2	At least 6 months
3	The property was used for a holiday let since been let on a tenancy (presumably season).	2	At least 6 months
4	The property was used a student let and been let on an shorthold tenancy.	2	At least 6 months
5	The property is needed for the landlord's own use.	2	At least 6 months

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	by a minister of religion		months	months
6	The Landlord intends to redevelop the property	2	At least 6 months	At least 6 months
7	The former Tenant (unless there is a personal right to succeed).	2	At least 3 months	At least 6 months
7A	Criminal offence committed affecting the property.	1	At least 1 month	At least 1 month
7B	Immigration status (England only).	2	At least 3 months	N/A
8	Serious rent arrears. Rent payable monthly, the tenant must owe at least two months' rent when the Landlord serves the Section 8 Notice and still owe two months' rent at the date of the court hearing. Rent is payable weekly or yearly there must be arrears of eight weeks or six months and six months respectively.	2	At least: a) 4 weeks where arrears are at least 6 months b) 6 months where arrears are less than 6 months	At least 6 months
9	Suitable accommodation is available	2	At least 6 months	At least 6 months
10	Rent arrears. There are arrears both when the Notice is served and when the Landlord issues proceedings.	2	At least: a) 4 weeks where arrears are at least 6 months b) 6 months where arrears are less than 6 months	At least 6 months
11	Persistent delay in payment	2	At least: a) 4 weeks where arrears are at least 6 months b) 6 months where arrears are	At least 6 months

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			less than 6 months	
12	Breach of an obligation under a tenancy agreement.	2	At least 6 months	At least 6 months
13	The condition of the property or any of the common parts has deteriorated because of the behaviour of the Tenant or anyone living there.	2	At least 6 months	At least 6 months
14	Nuisance, annoyance or harassment by the Tenant or anyone living there.	g 8	Immediately after serving Section 8 Notice	Immediately after serving Section 8 Notice
14ZA	Criminal offence committed by the Tenant or anyone living there (England only).	2	At least 2 weeks	N/A
14A	Domestic violence.	2	At least 2 weeks	At least 2 weeks
15	The condition of the property has deteriorated because of the treatment by the Tenant or anyone living there.	2	At least 6 months	At least 6 months
16	Recovery from an employee.	2	At least 6 months	At least 6 months
17	The Landlord was induced to grant the tenancy by a false statement.	2	At least 2 weeks	At least 6 months

### **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. The Landlord should refer to the guidance on using the Accelerated Procedure (for Section 8 cases) to obtain Possession.

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