

## Guidance Note: Obtaining Possession of Short

## Held on Assured or Assured Tenancies

*This Guidance is for England on the new possession procedure under the Housing Act 1988.*

*Obtaining Homes Wales group for the Housing Act 2016.*

### 1. Different types of tenancy –

Landlords cannot evict residential tenants without obtaining possession. Prior to applying for possession, the landlord must advise the tenant that the possession procedure is different according to the type of tenancy they have.

Landlords must first obtain a court order for possession. They must then serve a notice on a tenant to end the tenancy to an end. The type of notice depends on the type of tenancy the tenant has.

#### Assured shorthold tenancy – fixed term

#### Expired

- 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 under section 8 of the Housing Act 1988. This is the simplest way of obtaining possession. The landlord does not need to show any fault on the part of the tenant. For more information see: **Obtaining Possession of a Fixed Term - S21 Notices**

If the tenant has a fixed term tenancy, the fixed term of which has expired, the landlord can use the “accelerated” procedure for possession under section 8 of the Housing Act 1988. This is the simplest way of obtaining possession. The landlord does not need to show any fault on the part of the tenant. For more information see: **Guidance Notes: Obtaining Possession of a Fixed Term - 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 8 of 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 possession during the fixed term is limited because the landlord must show that one of the grounds (inclusive) and 17 of the Housing Act 1988 apply. The tenancy agreement must specify that the landlord has reserved a right in the tenancy agreement to obtain possession 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, they must first serve notice on the tenant under section 21 of the Housing Act 1988. Notices are discussed below.

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 8 of the Housing Act 1988. The grounds set out in Schedule 2 to the Housing Act 1988 are discussed under the heading “The grounds” below.

The landlord’s ability to obtain possession during the fixed term is limited because the landlord must show that one of the grounds (inclusive) and 17 of the Housing Act 1988 apply. The tenancy agreement must specify that the landlord has reserved a right in the tenancy agreement to obtain possession on that particular ground. Certain grounds require prior notice to be served on the tenant before the landlord can apply for a possession order.

Before the landlord can apply for a possession order under section 8 of the Housing Act 1988, they must first serve notice on the tenant under section 21 of the Housing Act 1988. Notices are discussed below.

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

- 3.1 The accelerated possession procedure is not available to landlords of assured tenancies which are periodic. If the tenancy has become periodic the landlord must apply for a possession order under section 8 of the Housing Act 1988. The grounds set out below are discussed under the heading “The grounds” below.

#### Fixed term

The accelerated possession procedure is not available to landlords of assured tenancies which are periodic. If the tenancy has become periodic the landlord must apply for a possession order under section 8 of the Housing Act 1988. The grounds set out below are discussed under the heading “The grounds” below.

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

- 4.1 During the fixed term of an assured tenancy, the landlord cannot obtain possession unless they can show that one of the grounds (inclusive) and 17 of the Housing Act 1988 apply. The tenancy agreement must specify that the landlord has reserved a right in the tenancy agreement to obtain possession on that particular ground. Certain grounds require prior notice to be served on the tenant before the landlord can apply for a possession order.

#### Fixed term

The same as set out above in relation to assured tenancies during the fixed term, i.e., a possession order cannot be obtained unless 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 the **Section 8 Notice** to inform the tenant that it intends to seek a court order for possession.

The Notice must inform the tenant of the grounds upon which the landlord can begin possession proceedings. The earliest date for possession is set out in the table of grounds below includes details of the grounds.

The Notice can be handed to the tenant or sent by recorded delivery. Remember that the notice period given in paragraph 1 of the Notice begins from the time the tenant receives the letter, not when the letter is sent. Always allow a few extra days when calculating the date in paragraph 2 of the Notice (at least 2 months or (as the case may be) 2 weeks from the date the tenant receives the letter).

Landlords should be aware of **The Tenant Fees and Mental Health Crisis Moratorium (Breathing Space Moratorium) Regulations 2020**, which may prevent a landlord from serving a Section 8 Notice if a tenant has debt problems. For more information, see the “Breathing Space Moratorium” below.

### The Grounds in Schedule 2 of the Housing Act 1988

The grounds are briefly summarised below. If they are shown by the landlord, the court must make an order for possession. The other grounds are “mandatory”, which means 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 a summary – the full text can be found at <http://www.legislation.gov.uk/ukpga/1988/29/schedule/2>.

Ground number	Description
1	Recovery by previous owner occupier.
2	A mortgagee is claiming possession.
3	The property was previously let as a short-term let and has since been let as a long-term let (presumably out of season).
4	The property was previously let as a short-term let and has since been let as a long-term let (presumably out of season).
5	The property is needed for religious purposes.
6	The landlord intends to occupy the property.
7	The former tenant has a right to succeed to the tenancy.

possession to inform the tenant that it intends to seek a court order for possession.

upon which the landlord can begin possession proceedings. The earliest date for possession is set out in the table of grounds below includes details of the grounds.

nt by recorded delivery. Remember that the notice period given in paragraph 1 of the Notice begins from the time the tenant receives the letter, not when the letter is sent. Always allow a few extra days when calculating the date in paragraph 2 of the Notice (at least 2 months or (as the case may be) 2 weeks from the date the tenant receives the letter).

ne (**Breathing Space Moratorium (Breathing Space Moratorium) Regulations 2020**, which may prevent a landlord from serving a Section 8 Notice if a tenant has debt problems. For more information, see the “Breathing Space Moratorium” below.

are “mandatory”, which means that the court must make an order for possession. The other grounds are “mandatory”, which means that the court will only make a possession order if the court thinks it is reasonable to do so.

fully before citing any of them in a Section 8 Notice. What follows is a summary – the full text can be found at <http://www.legislation.gov.uk/ukpga/1988/29/schedule/2>.

	Earliest date for beginning proceedings
ending	At least 2 months
	At least 2 months
day let tenancy	At least 2 weeks
rent let threshold	At least 2 weeks
ster of	At least 2 months
r.	At least 2 months
person	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 (unless the tenant has vacated the property during the breathing space).

Someone in debt for up to 60 days. This is known as the breathing space. If the above provisions are applicable, will be notified to a landlord by the Insolvency Service.

cannot:

- take enforcement action on the grounds of rent arrears by serving a S8 notice on the tenant;
- require the tenant to go through the tenant’s debt adviser;
- issue 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. Refer to the guidance on using **the Standard Possession Procedure (for Section 8 and 21 notices)**.

the landlord when the breathing space period

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

S

A

M

P

L

E