



SECTION 21 PROCEEDINGS FOR POSSESSION GUIDANCE NOTE

Please see the warning and disclaimer at the bottom of this note.

1. Introduction

A landlord who has granted an assured shorthold tenancy (AST) has a legal right to recover possession of his property when the tenancy comes to an end. The correct legal procedure, set out in the Housing Act 1988, must be followed. This includes serving notice on the tenant in accordance with section 21 of that Act (the **section 21 notice**). However, a landlord will not be entitled to serve a section 21 notice where a deposit has been paid by the tenant and the landlord has not complied with tenancy deposit protection legislation.

There is no legally prescribed form of section 21 notice. However, a blank form of notice can be found on this website and downloaded for use to help ensure that your notice contains all of the correct information.

Different rules must be observed depending on whether the section 21 notice is served during the fixed term of an AST (see 2.1 below) or during a statutory periodic tenancy (see 2.2 below). In all cases the notice period must be at least 2 months' and notice cannot be served before the tenancy has started.

2.1 Notice Given During a Fixed Term

The tenant must be given a minimum of 2 months' notice (that the landlord requires possession of the property). The two months' start from when the notice is **received** by the tenant, therefore, if the notice is to be sent by post (first class post with proof of posting as a minimum) at least three extra business days should be added to allow time for the notice to arrive with the tenant.

Although there is nothing to prevent a landlord from serving a section 21 on his tenant during the fixed term, the notice cannot *expire* during the fixed term. For example where the fixed term expires on 30th June the notice can be served on or before this date but must not expire any earlier than 1st July to be valid.

If notice is given to expire after the fixed term has ended the tenant is entitled to remain in the property until the notice has expired as a statutory periodic tenant.



2.2 Notice Given During a Periodic Tenancy

Where the tenant remains in occupation of the property after the fixed term of an AST has expired without signing a new tenancy agreement for a further fixed term is said to occupy the property under a **statutory periodic tenancy**. The period of the tenancy will depend on how often the tenant pays the rent, so where the tenant pays rent every month the tenancy will be a monthly periodic tenancy.

Again, the landlord must give the tenant at least 2 months' notice that possession is required, but the notice must expire *on the last day of a period of the tenancy*.

For example, the tenant's fixed term has come to an end and the tenant remains in occupation by virtue of a monthly periodic tenancy. The rent is paid on 15th day of each month which means that the last day of the period will be 14th day of each month. If the landlord serves notice on the tenant on 1st March the notice cannot expire until 14th May to be valid.

Whether the tenancy is periodic or for a fixed term landlord should note the following when preparing a section 21 notice:

- Possession of a property cannot be obtained within the first 6 months of an AST using this procedure. In such cases it may be possible to use the section 8 procedure.
- If there are joint landlords notice must be given by at least one of them.
- If there is more than one tenant notice must be served on all of them. The landlord may choose to either include each of its tenants on one section 21 notice or may serve a separate section 21 on each tenant individually.

3. Serving the Section 21 Notice

Care should be taken to ensure that the section 21 notice is correctly served on the tenant. Service may be made by post or in person. If you are serving the notice by post the recorded delivery service should be used (and best practice would suggest a copy by first class post with proof of posting as well) as the landlord can then produce evidence that the notice was delivered. The notice is only considered to be served once it has been received so when preparing the notice to be sent by post the landlord should add a minimum of 3 working days to the notice period to allow for the notice to be delivered to the tenant.



4. Starting Possession Proceedings

If the tenant does not vacate the property voluntarily after the notice has expired the landlord will need to apply to court to obtain an order for possession. Where the section 21 procedure has been followed correctly the court is obliged to make an order for possession.

WARNING: The law can be complex and the forms referred to in this note are only intended to be used by those experienced or trained to do so.

The information contained in this note is intended for general guidance only and cannot be relied upon. We recommend that you contact us for specific advice before serving notice or starting possession proceedings. Lawson Coppock & Hart will not be responsible for any negative outcome as a result of relying on the content of this note.

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