

“No-Fault” eviction (Section 21) for landlords

You must follow a regulated process in order to evict a tenant occupying a property on an assured shorthold tenancy. If you don't follow the correct procedures, you may be liable for an unlawful eviction (a criminal matter) or harassing the tenant.

One of the most frequently used mechanisms for evicting a tenant, is to use a section 21 notice; also known as a no-fault eviction. If a landlord is looking to evict their tenant using the section 21 procedure they will need to ensure that all the pre-tenancy requirements have been met. Failure to complete some of these requirements can seriously affect a landlord's ability to serve a valid notice and obtain possession of the property.

Essential requirements for a valid section 21 notice to be issued

1. Time limits

- A section 21 notice cannot be served within 4 months of an AST starting.
- The notice must provide the tenant with two clear months' notice to vacate, allowing time for service.
- The notice can be served at any time of the month and does not need to coincide with the rent payment date.
- The notice will last 6 months from the date of service. If possession proceedings are not started within the 6-month time limit, you will need to re-serve the section 21 notice.

If you are serving notice within the fixed term to terminate at the end of that term, the notice cannot expire before the end of the fixed term as stated in the tenancy agreement. If the fixed term has a break clause, you may exercise the break clause by serving a notice to quit with the section 21 notice to expire as detailed in the agreement.

2. Deposit

There is no legal requirement to take a deposit from a tenant. This section only applies if a deposit has been taken.

- The deposit needs to be protected, in an authorised scheme, within 30 days of receiving the deposit.
- The prescribed information also needs to be provided to the tenant within 30 days of receiving the deposit.

If you have failed to protect the deposit and/or serve the prescribed information, the section 21 notice will be invalid and cannot form the basis of a possession application. In order to remedy the situation you may have one of the following limited options:

- Return the deposit to the tenant in full or with agreed deductions. If this is not accepted please call for advice.
- If the tenant has made an application to the court in respect of you failing to meet the deposit requirements and the court has made a decision, then you can serve a section 21 notice.

3. Energy Performance Certificate (EPC)

A copy of the relevant EPC needs to be given to the tenant at the start of the tenancy. An EPC is valid for 10 years from the date it is issued, so if a tenant is in situ at the point of renewal, they should be given a copy of the renewed EPC.

A section 21 notice cannot be served where the landlord is in breach of this requirement. Please note that if a property is deemed to be sub-standard during an EPC check then a landlord cannot continue to let out the property. You can email a copy of the EPC but only if the tenant agrees. Otherwise it should be sent by post.

4. Gas Safety Certificate

A Gas Safety certificate has to be issued and given to the tenant before they occupy the premises. As a gas safety certificate should be renewed on a yearly basis, a copy of the renewal should be issued to the tenant after the check. You can email a copy of the gas safety certificate but only if the tenant agrees. Otherwise it should be sent by post.

5. How to Rent Guide

Under the legislation there is a requirement for the landlord to provide information about the rights and responsibilities of landlord and tenant. The Government introduced the How to Rent: the checklist for renting in England which needs to be given to the tenant; you can find a copy [here](#).

If a tenancy is renewed, you need to provide the tenant with the most up-to-date booklet at the time of that renewal. You can provide a hard copy or email the How to Rent guide to the tenant, however, if emailing it needs to be an attached PDF and not a link to the website.

What form do I need to use?

The correct prescribed form is known as the form 6A, which you can find a copy [here](#).

It is recommended that this form is used for all section 21 notices as it specifically states it can be used for tenancies prior to October 2015.

Other Considerations

1. Licensing Requirements

Landlords who are required to have a licence from the local authority to let the property, but do not have one, cannot serve a valid section 21 notice until they have one.

- If the property is deemed a large house of multiple occupation (HMO), you will need to be licenced, also known as mandatory licensing.
- The local authority has the power to impose additional licensing on any HMO within its district, including properties that are not covered by the mandatory licensing.
- Local authorities may also introduce selective licensing, which can apply to any type of property not just a HMO.

Please check with your local authority if there are any licensing requirements where the property is based.

2. Retaliatory Eviction

A retaliatory eviction is where the landlord issues an eviction notice in response to a tenant's request for repairs. As a landlord you will not be able to serve a valid section 21 notice if:

- The tenant has written to you complaining about the condition of the property, and
- You have not provided an adequate response, in 14 days, outlining how you will deal with the complaint.
- The tenant then raises the complaint with the council who serve an Improvement Notice or Emergency Remedial Act Notice on you.

If the above steps have been taken and you have been served with a notice by the council, you cannot serve a section 21 notice for 6 months from the date of the notice.

How do I serve the notice on the tenant?

One of the questions we are most frequently asked is how the notice should be served. When faced with serving the notice you should take into consideration:

- The notice must be addressed to all tenants at the property and must include the landlords name, address and signature.
- If you send the notice by recorded/registered post, the notice will not be deemed as served if the tenant refuses to sign. Instead, obtain proof of postage from the post office.
- Make sure if sending by first class post, you allow two working days for service, calculated from the day following the day of posting. Also ensure the additional days are included in the date on the form 6A.
- If you are delivering in person, obtain signatures from the tenants they have received it. If they are not in, post through the letter box and obtain evidence it has been served.
- For delivery in person, the notice will run from the following day.
- Complete a certificate of service known as the N215 that should be kept for your own record in the event of possession proceedings; It does not need to be given to the tenant.

Check List

To make sure you meet the requirements for issuing a valid section 21 notice please see the checklist below before you serve it on your tenant.

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| Is it an Assured Shorthold Tenancy | |
| Did the tenancy commenced more than 4 months ago | |
| Was the deposit taken and protected within 30 days of receipt | |
| Was the Prescribed Information issued to the tenants within 30 days of receiving the deposit | |
| If the deposit was not protected or the prescribed information given within 30 days, has the tenant made an application to the courts or have you returned the deposit? | |
| Was the EPC was given to the tenant prior to occupation | |
| Was the Gas safety was given to the tenant prior to occupation | |
| Was a copy of the How to Rent booklet been provided to the tenant, and if relevant, an up-to-date version been provided on renewal of the tenancy | |
| If necessary, is the property licensed? | |
| There has been no improvement notice issued by the council | |
| Has the prescribed form 6A been used? | |
| The dates in the notice provide for two months AND the relevant time for service | |
| If the tenant has not left after the date specified in the notice and you are within 6 months of serving the notice, the next step is to start possession proceedings. | |

Additional considerations for a property in Wales

If the property is situated in Wales, then the rules are slightly different to England. As a Landlord you will still need:

- To register the deposit with one of the tenancy deposit schemes.
- Give notice of the registration by serving the relevant prescribed information form.
- Undertake an immigration check.

However, in order to serve a section 21 notice, you will have to be a registered member of 'Rent Smart Wales' and you can check to make sure your membership is up to date. If you are not a member your section 21 notice will be invalid. You must also be licensed, and therefore authorised, as a landlord and you can find more information [here](#).

The form of section 21 notice to be used is not prescribed. In other words, you should not be using the Form 6A referred to above. It is recommended that you use the 'old style' forms which you can obtain from commercial sellers which will contain the correct reference to the Housing Act 1988.

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