



The Landlord Possession Process and Proposed Changes Under the Renters Reform Bill

AUTHOR / KEY CONTACT



Tara Jones
Solicitor

✉ tara.jones@LA-law.com
☎ 01202 702626

Christmas has come early for landlords who are taking a sigh of temporary relief as the government confirmed last month that there will be a pause on the abolition of section 21, "no fault evictions", – a key aspect of the proposed Renters Reform Bill- until changes to speed up the court's system, such as digitalising the process, were complete.

The news follows the announcements of prospective reforms on the laws surrounding evictions and possessions in England and Wales under the Renters (Reform) Bill. For more information on these reforms, please view our previous blog on the proposed changes, [The Renters Reform Bill: 10 Updates for Landlords & Tenants](#).

This article reminds landlords of the existing possession process still in force and what landlords can do to put themselves in the best position when changes are implemented.

The Housing Act 1988 – Section 21

[A section 21 notice](#) is a notice under the Housing Act 1988 which enables landlords to request possession of their property. This is also known as 'no fault' eviction, as the landlord can serve the notice without having to prove the tenant is in some way at fault. A period of 2 months' notice must be provided to the tenant, and the tenant must be in occupation of the property under an Assured Shorthold Tenancy.

In light of the Renters (Reform) Bill, it is essential for landlords to understand that relying on section 21 is more complex than you might think, and landlords must meet specific criteria to proceed with this option. For example, a section 21 notice cannot be relied on where there has been a failure to serve on the tenant at the commencement of the tenancy: a correct version of the how-to rent guide, a valid EPC, gas safety certificate and deposit protection certificate and prescribed information (where applicable).

Ensuring this criterion is met starts before the tenant even steps through the property door, so landlords must understand their obligations. If agents are instructed, landlords need to ensure that these have been met, or

tricky legal hurdles may be faced if the landlord wants vacant possession of the property and the tenant refuses to leave. Where this has not been done, landlords may consider seeking legal advice to ensure their affairs for the property are in order. This will prevent any delays in the eviction process.

Further, section 21 also cannot be used in the following circumstances:

1. To end an Assured Shorthold Tenancy before the expiry of the fixed term unless there is a break clause;
2. Any possession order may not take effect earlier than six months after the beginning of the original tenancy, and
3. A section 21 notice may not be given within four months beginning with the day on which the original tenancy began.

If the tenant does not leave after the notice has been served and the two months term has expired, court proceedings can be issued, and a request for an order for possession can be made. If the court grants a possession order, an application for a warrant to allow a bailiff to evict the tenant will be applied for. Once received, bailiffs can be instructed to remove the tenant from the property. Due to the delays at the courts and lack of availability of bailiffs, this is not a speedy process, so it is best practice to ensure all documentation has been correctly served to the tenant so notice can be provided as soon as it is required.

The Housing Act 1988 – Section 8

[Section 8 notices](#) under the Housing Act 1988 can also be relied on to obtain possession of a property and can often be a quicker method where section 21 has yet to apply or fails. However, mandatory/discretionary grounds under [Schedule 2 of the Housing Act 1988](#) must apply, and this is a much more demanding legal process, and possession is not guaranteed.

Mandatory grounds include:

1. Owner occupation (previous notice is required on the tenant to rely on this provision);
2. Repossession by the lender;
3. Out-of-season holiday let;
4. Lets to students by educational institutions;

5. Minister of religion;
6. Redevelopment;
7. Death of an assured tenant;
8. Antisocial behaviour;
9. No right to rent;
10. Serious rent arrears;

There are also eleven discretionary grounds that can be applied for along with the above mandatory grounds under section 8. The time periods for serving notice differ for each ground and range from two weeks to two months, as set out below:

- For grounds 1, 2, 5, 6, 7, 9 and 16 – the date specified must be at least two months after service (or a period equivalent to the contractual period of the tenancy, if longer).
- For ground 14 – court proceedings for claims can start immediately.
- For ground 7A, one month's notice is required if a fixed term and four weeks if periodic.
- For all other grounds – the date specified must be at least two weeks after service.

The same process as section 21 proceedings applies, except there is always a hearing, and consequently, it can take longer to obtain an order for possession.

Our [Property Litigation](#) team advises landlords and tenants nationwide on various tenancy aspects, including the section 21 and section 8 processes, considering the upcoming Renters (Reform) Bill. Please contact us if you would like further information at Tara.Jones@LA-law.com, Rebecca.Stubbs@LA-law.com, or 01202 702626.