



# Assured Shorthold Tenancies – Guidance Note 3

## Checklist for section 21 notices

**Note: Law stated here is as at February 2016.**

The government is always making changes in this area of law. Please contact us before proceeding to check the current law.

### I. Deposit taken? If so, when?

If taken before 6 April 2007 and tenancy became periodic before that date. Landlords did not have to protect the deposit and are not in breach for having failed to do so BUT if they wish to serve a valid section 21 notice the deposit must first be protected or repaid to the tenant.

If taken before 6 April 2007 and tenancy became periodic after 6 April 2007. Landlords should have protected the deposit and served the prescribed information by 23 June 2015, otherwise in breach and liable for compensation of 1 to 3 times deposit. Section 21 notice invalid if in breach and cannot cure default by late protection either before or after service. Have to repay deposit first to serve a valid section 21 notice.

If taken between 6 April 2007 and 5 April 2012. Landlords must have protected the deposit and have served prescribed information by 6 May 2012. In default (i.e. failure or late compliance), liable for compensation of 1 to 3 times

deposit. Section 21 notice invalid if in breach and cannot cure default by late protection either before or after service. Have to repay deposit first to serve a valid section 21 notice.

If taken on or after 6 April 2012. Landlords must have protected the deposit and have served prescribed information within 30 days of taking the deposit. In default (i.e. failure or late compliance), liable for compensation of 1 to 3 times deposit. Section 21 notice invalid if in breach and cannot cure default by late protection either before or after service. Have to repay deposit first to serve a valid section 21 notice.

NB following the Deregulation Act, where a landlord has complied with the deposit obligations once there is no need for him to repeat the process when there is a replacement or periodic tenancy.

## 2. Assured Shorthold Tenancies granted on or after 1 October 2015 (NB prior ASTs which become periodic tenancies after 1 October 2015 are not caught)

Cannot serve a valid section 21 notice if in breach of 'prescribed requirements', currently:-

- landlord hasn't provided an energy performance certificate to the tenant
- landlord hasn't provided a gas safety certificate to the tenant
- landlord hasn't supplied the tenant with a copy of the government booklet 'How to Rent: the checklist for renting in England'

Cannot serve a valid section 21 notice if in breach of the 'retaliatory eviction' provisions i.e.

- the tenant makes a complaint in writing to the landlord regarding the condition of the property;
- the landlord does not provide the tenant with a response, or an 'adequate response' (i.e. a response which confirms the action proposed by the landlord and sets out a reasonable timescale for the action to be taken) within 14 days of receiving the complaint;
- as a consequence of the landlord's failure to respond adequately to the complaint, the tenant makes a complaint to the relevant local authority about the condition of the property; and
- the local authority serves a 'relevant notice' on the landlord in response to the tenant's complaint about the state of the property. Landlords are prevented from serving a section 21 notice for a period of 6 months after the issue of such notice by the local authority.

There are certain exceptions to the provisions, for example where the tenant is responsible for the repair or the condition of the property or where the landlord intends to sell the property and the property is genuinely on the market for sale.

Cannot serve a valid section 21 notice if in breach of a 'prescribed requirement'

A section 21 notice may not be served when the landlord is in breach of a 'prescribed requirement'. A prescribed requirement may be enacted by subordinate legislation and may relate to:

- The condition of the property or its common parts,
- The health and safety of occupiers of the property or
- The energy performance of the property.

Landlords must have provided an energy performance certificate and a gas safety certificate to their tenant (best done at the time the tenancy is granted, with a further copy accompanying the section 21 notice) and must also have supplied to the tenant a copy of the government booklet 'How to Rent: the checklist for renting in England'.

NB from 1 October 2018, these provisions will apply to all ASTs in existence at that date.

### Form of Notice

From 1 October 2015, a new prescribed form is to be used for section 21 notices and it is no longer necessary for the date specified in the notice to be the last day of a period of the tenancy. Landlords cannot serve section 21 notices within the first 4 months of the tenancy. Possession proceedings under section 21 must now be issued within 6 months of service of the section 21 notice.



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