

FACT SHEET



SEPTEMBER 2018

The legal helpline is available to members with individual queries arla.co.uk/members/legal-advice

MORE INFO

View the Deregulation Act 2015: www.legislation.gov.uk/ukpga/2015/20/contents/enacted

Changes to Section 21 Notices

CONTEXT

The Deregulation Act 2015 introduces a number of important changes to when a landlord may serve a Section 21 Notice in order to regain possession of their property. The Act is designed to improve the possession process for landlords and tenants.

THE CHANGES

There are new restrictions on serving Section 21 Notices early and a new template Section 21 form. The new rules also remove the need for a landlord to specify that a tenancy must end on the last day of a rental period; unless the tenancy started on a periodic basis without any initial fixed term where a longer notice period may be required depending on how often the tenant is required to pay rent (for example, if the tenant pays rent quarterly, they must be given at least three months' notice, or, if they have a periodic tenancy which is half yearly or annual, they must be given at least six months' notice (which is the maximum)).

NB: These changes have put into legislation the change to notice periods created by the Judgment in the case of *Spencer v Taylor* – i.e. that landlords and agents can use Section 21(1)(b) to regain possession by providing two calendar months' notice (unless the tenancy started at a periodic as noted above). However, in the event that a tenant has paid an amount of rent in advance and a Section 21 Notice requires them to leave during the period paid for, the tenant is entitled to a refund of the rent paid for the days they are not occupying the property.

ELIGIBILITY

The changes affect all new assured shorthold tenancies in England that start on or after 1 October 2015. All remaining assured shorthold tenancies in England will be swept under the new rules on 1 October 2018.

WHAT DOES THIS MEAN?

Timing restrictions

Landlords cannot validly serve a Section 21 Notice in the first four months of a tenancy. However, where a tenancy has been renewed the landlord will be able to serve a Section 21 Notice at any point during a renewed tenancy.

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Expiry

Section 21 Notices will only be valid for six months from the date of issue (as specified in section 2 of the new template Section 21 form).

However, where a tenancy is created on a periodic basis (i.e. no initial fixed term), then landlords will still need to regain possession using Section 21(4)(a). Therefore, the notice period needs to end at the end of a rental period and cannot be shorter than a rental period (up to a maximum of six months). For example, where there is a quarterly periodic tenancy, the date specified on the Notice should be three months from the date of service. For tenancies which fall into this situation, the Notice is only valid for four months from the expiry date on the Notice.

Template Section 21 notices

There will be a new template Section 21 form which will need to be used when giving notice on all tenancies which start on or after 1 October 2015 and which can be used to bring existing tenancies to an end after that date.

Required information

Landlords will not be able to serve a Section 21 Notice on tenancies that begin on or after 1st October 2015 unless they have provided tenants with the following information:

- A Gas Safety Certificate covering all fixed as well as portable gas appliances provided by the landlord for the tenants' use. For more information see our fact sheets on gas safety: arla.co.uk/news/september-2015/arlagas-safety-fact-sheets-available-now
- The property's Energy Performance Certificates (EPC); except where a property is not required to have an EPC – such as where the landlord is letting a room on a single AST in a House in Multiple Occupation (HMO).
- The Department for Communities and Local Government's *How to rent: The checklist for renting in England* go to propertymark.co.uk/advice-and-guides/renting/england to download the guide. This can be provided digitally or as a hard copy if the tenant requests it, or does not have computer access. Agents and landlords should not simply supply a link to where the document can be found. This should be given at the start of a new tenancy.
- The Prescribed Information relating to the protection of a tenants' deposit. See our fact sheet Changes to Tenancy Deposit Protection and the use of Section 21 Notices: arla.co.uk/members/fact-sheets.

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THE IMPACT

Landlords will no longer be able to seek possession using Section 21:

1. During the first four months of the tenancy, or, in the case of a renewed tenancy, during the first four months of the original tenancy;
2. Where the landlord is prevented from retaliatory eviction under section 33 of the Deregulation Act 2015;
3. Where the landlord has not complied with the Required Information specified above;
4. Where the landlord has not complied with the tenancy deposit protection legislation; or
5. Where a property requires a licence but is unlicensed.

TIMETABLE

The new rules come into force on 1 October 2015 and will apply to any Assured Shorthold Tenancies granted on or after this date.

NB: The provisions do not apply to Periodic Tenancies (when the fixed period ends) that arise on or after 1 October 2015 when the fixed term of those tenancies began prior to 1 October 2015. However, the new rules will apply to all Assured Shorthold Tenancies in existence after the end of the period of three years (1 October 2018) regardless of whether the tenancy began prior to 1 October 2015.

NB: The requirement for landlords to provide the Required Information (specified above) about the tenancy will continue to apply to tenancies entered into on or after 1 October 2015.

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