



# Assured Shorthold Tenancies – Guidance Note 3

## Checklist for Section 21 notices

**Note: Law stated here is at August 2020 but does not take into account any emergency Covid-19 changes.**

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

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

If a deposit was taken on or after 6 April 2012. The landlord must have protected the deposit and have served the prescribed information within 30 days of taking the deposit. In default (i.e. failure or late compliance), the landlord could have to pay the tenant compensation of 1 to 3 times the deposit. Any Section 21 notice will be invalid if in breach and you cannot cure default by late protection either before or after service. You have to repay the deposit to the tenant first then serve a valid Section 21 notice.

If taken between 6 April 2007 and 5 April 2012 the landlord must have protected the deposit and have served prescribed information by 6 May 2012. If in default (i.e. failure or late compliance), the landlord could be liable for compensation of 1 to 3 times deposit. The Section 21 notice is invalid if in breach and you cannot cure default by late protection either before or after service. The landlord has to repay the deposit first and then serve a valid Section 21 notice.

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 the landlord will be in breach and the tenant may claim compensation of 1 to 3 times deposit. Also, a Section 21 notice will be invalid if in breach and you cannot cure default by late protection either before or after service. You will have to repay the deposit first to serve a valid Section 21 notice.

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.

NB following the Deregulation Act 2015, if a landlord has complied with the deposit obligations once there is no need to do so again when there is a replacement or periodic tenancy.



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## Prescribed Requirements

**You cannot serve a valid Section 21 notice if in breach of 'prescribed requirements', currently that the landlord must:-**

- provide an energy performance certificate to the tenant
- provide a gas safety record to the tenant **before** they went into occupation (if there is a gas supply to the property)
- supply the tenant with a copy of the current government booklet 'How to Rent: the checklist for renting in England'
- If the property is in an HMO that requires licencing the HMO must be licenced.
- The landlord or their agent cannot be holding a "prohibited payment" under the Tenant Fees Act 2019

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 before they enter the property, 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'.

**You cannot serve a valid Section 21 notice if in breach of the 'retaliatory eviction' provisions that is:**

- the tenant has made a complaint in writing to the landlord regarding the condition of the property;
- the landlord has not provided 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 has made a complaint to the relevant local authority about the condition of the property; and,
- the local authority has served a 'relevant notice' on the landlord in response to the tenant's complaint about the state of the property.

If so, 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.

Further prescribed requirements may be enacted by subordinate legislation and may relate to:



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- 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

### **Form of Notice**

A prescribed form must be used for Section 21 notices. Landlords cannot serve Section 21 notices within the first 4 months of a tenancy. Possession proceedings following a Section 21 notice must be issued within 6 months of service of the notice.



[www.kerseys.co.uk](http://www.kerseys.co.uk)

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