

Property Law Nuts & Bolts

Residential Possession Proceedings

Tuesday 16 September



Welcome and Introduction



Peter Sibley



Your speakers for today



Peter Sibley



Mattie Green



Crash Wigley



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Section 8 – Notice & Grounds



Peter Sibley



The purpose of the s.8 notice

- A warning shot
- *Mountain v Hastings* (1993) 25 H.L.R. 427
- *Prempeh v Lakhany* [2020] EWCA Civ 1422



The statutory scheme

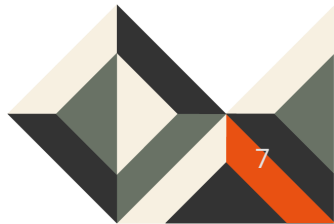
Housing Act 1988

- S.1 – assured tenancies
- S.19A – assured shorthold tenancies
- S.5 – security of tenure



The statutory scheme continued

- S.7
- Mandatory grounds and discretionary grounds
- NB – S.7(6) re fixed term tenancies



Section 8

- Sub-sections (1) to (3)
- Service – Wandsworth London Borough Council v Atwell (1995) 27 H.L.R. 536
- Form – Assured Tenancies and Agricultural Occupancies (Forms) (England) Regulations 2015/620, form 3 and regulation 2; Ravenscroft Properties Ltd. v Hall [2002] H.L.R. 33



Section 8 continued

- Name and address of landlord – s.45(1), broad definition; Prempeh v Lakhany [2020] EWCA Civ 1422
- Grounds – S.8(3)(a); Masih v Yousaf [2014] H.L.R. 27
- Particulars – S.8(2); Camden London Borough Council v Oppong (1996) 28 H.L.R. 701



Section 8 continued - again...

- Dates – (1) after which proceedings will not begin, S.8(3)(c); (2) before which proceedings will not begin, S.8(3)(b); Shepping v Osada (2001) 33 H.L.R. 13
- Mistakes – Pease v Carter and another [2020] 1 W.L.R. 1459
- Dispensing power – S.8(1)(b); n.b. S.8(5); Braintree District Council v Vincent [2004] EWCA Civ 415



Grounds – Schedule 2

- Mandatory and discretionary
- Grounds 1 to 5
- Grounds 8, 10 and 11
- Grounds 7A, 14, 14ZA, 14A
- Grounds 13 and 15
- Other grounds



Practical tips

- Evidence of service
- Pease v Carter
- PD55A paragraph 2.4B
- Evidence of arrears in ground 8 cases



Section 21 notices: overview of requirements



Crash Wigley



Structure – overview of requirements

Types of tenancy: section 21(1) and 21(4)

Timing and notice period

Prescribed legal requirements (EPC, gas safety, right to rent)

Licensing requirements

Deposits

Prohibited payments and the Tenant Fees Act 2019

Retaliatory Eviction



Types of tenancy: section 21(1) and 21(4)

Two provisions for "section 21 notice": section 21(1) and section 21(4) Housing Act 1988

Fixed-term tenancy

- Can only serve a section 21(1) notice which expires within the fixed term if the tenancy contains a break clause which permits this
- If no break clause, may serve a section 21(1) notice before the end of the fixed term, but this notice should expire after the end of the fixed term.

Statutory periodic tenancy

- Where tenant holds over after fixed term and a periodic tenancy is created under section 5(2) HA 1988
- May also rely on section 21(1)



Types of tenancy: section 21(1) and 21(4)

Two provisions for "section 21 notice": section 21(1) and section 21(4) HA 1988

Contractual periodic tenancy

- Includes where fixed-term TA makes provision for periodic tenancy at end of fixed term
- Required to rely on section 21(4)

Specific requirement for section 21(4): the date in the notice must not be earlier than the earliest date that the tenancy could be brought to an end by a notice to quit given by the landlord on the same date as the notice.

So the notice period required may be longer than two months where the rental period is longer than one month.

For both section 21(1) and 21(4) cases, Form 6A should be used (prescribed form).



Timing and notice period

- Notice period: 2 months (subject to Covid exceptions/some section 21(4) cases)
- Should not start proceedings until the notice has expired
- Cannot give notice within four months of when original tenancy began (section 21(4B))
- Possession order may not take effect earlier than six months from date of grant of original tenancy (section 21(5))
- Must bring possession proceedings within six months of giving the notice – use it or lose it (section 21(4D)):
- NB: a different period applies for section 21(4) cases where a longer notice period applies (section 21(4E)) – must bring possession proceedings within 4 months beginning with the date specified in the notice.



Prescribed legal requirements

- For tenancies granted on or after 1 October 2015
- Must have complied with requirements for:
 - Energy Performance Certificates
 - Gas Safety Certificates – including service of most recent certificate prior to service of notice
 - How to rent booklet
- These can be complied with any time before service of section 21, if not provided at start of tenancy.
- Gas safety certificates: still some uncertainty about extent of requirements about provision of the initial and intermediate gas safety certificate
- How to rent booklet: if not served at start of tenancy, should be the most up-to-date version provided prior to service of s 21 notice.



Licensing requirements

- Section 75(1) Housing Act 2004: “No section 21 notice may be given relation to a shorthold tenancy of a part of an unlicensed HMO so long as it remains such an HMO.”
- Section 98(1) HA 2004 where there is a selective licensing scheme in force: “No section 21 notice may be given in relation to a shorthold tenancy of the whole or part of an unlicensed house so long as it remains such a house.”
- There are exceptions, and in both cases the landlord can overcome the prohibition if they have applied for a relevant licence under section 63 or 87 HA 2004 at the time the notice is given.



Deposits

- General principles:
- When a landlord receives a deposit from a tenant, they must (A) protect it and comply with the “initial requirements” of a scheme, and (B) provide the tenant and any “relevant person” the prescribed information in full.
- Both requirements must be complied with within 30 days of receipt, and the deposit must remain protected.
- If the landlord failed to comply with requirement A: should return the deposit before serving the section 21 notice.
- If the landlord failed to comply with requirement B: should provide the prescribed information before serving the section 21 notice (or return the deposit).
- Exceptions in section 215B HA 2004 may apply.



Prohibited payments and TFA 2019

- Section 17 Tenant Fees Act 2019: no section 21 notice may be given if
- A) Landlord has required a relevant person to make a prohibited payment or holding deposit in breach of the Act AND
- B) The prohibited payment/holding deposit has not been repaid.
- These can be considered repaid if applied to the rent or the tenancy deposit, but only if this has been done with the consent of the tenant/relevant person.

What payments are permitted?

- Set out in Schedule 1 to TFA 2019:
- Rent, refundable tenancy deposit capped at 5 weeks' rent (or six weeks rent where annual rent is £50k or more), holding deposit no more than 1 week's rent, and some other fees.



Retaliatory eviction

Section 33 Deregulation Act 2015

Section 33(1): when a local authority serves an improvement notice or a notice of emergency remedial action, the landlord may not serve a section 21 notice for a period of six months from the date of service of the Council's notice.

Per section 33(2), a section 21 notice may be invalidated where:

- The tenant made a complaint about the condition of the dwelling before the service of the notice (must usually be in writing)
- The landlord did not respond, responded inadequately, or responded by giving a section 21 notice.
- The tenant then complains to the local authority about the same matter, and the LA serves a relevant notice.



Enforcing Possession Orders



Mattie Green



When can a landlord enforce a possession order?

- In the context of ASTs, the landlord cannot enforce the possession order - remove the occupier from the property - immediately.
- The order will provide a period following which the landlord can apply for a warrant of possession.
- Usually 14 days when PO made on mandatory grounds, although this can be extended up to 42 days in cases of exceptional hardship (Housing Act 1980, s.89)
- Different rules for mortgage possession cases and 'pure' trespasser cases



Enforcement in the County Court: Overview

- CPR 83.26
- Warrant of possession
- Enforcement agent/bailiffs
- Transfer to the High Court for enforcement
- Warrant can be issued if: (a) the tenant does not leave on the date set out on an outright PO; or (b) the tenant breaches a suspended PO
- Form N325
- Form N325A



Enforcement in the County Court: Permission

- Permission is not generally required to apply for a warrant.
- Exceptions:
 - PO suspended on terms other than non-payment of rent (e.g. anti-social behaviour)
 - 6 years have elapsed since the PO was made
 - 3 months since PO against trespassers
 - Change by death or otherwise in person entitled to enforce the PO or have the PO enforced against them
- **If permission required – apply using form N244**



Enforcement in the County Court: Period of validity

- CPR 83.3(3) & (4)
- A warrant will be valid for 12 months from the date it is issued
- The court may extend the warrant from time to time for a period of 12 months at any one time.



Enforcement in the County Court: Notice requirements

- CPR 83.8A
- Bailiffs must deliver notice of eviction at least 14 days before eviction date
- Form N54 addressed to all persons named on PO and “any other occupiers”
- Court can dispense with requirement of notice or extend or shorten time for notice to be delivered
- Exception for true trespassers



Enforcement in the County Court: Notice requirements

- Notice must be inserted through the letter box in a sealed transparent envelope or if this is not practicable, attached to the main door or some other part of the land so that it is clearly visible.
- If this is not practicable, it should be attached in a sealed transparent envelope to stakes in the land in places where they are clearly visible.
- If the eviction is rescheduled, a further notice of eviction must be delivered to the premises at least 7 days before the new eviction date.



Enforcement in the County Court: Tenant applications to suspend the warrant

- The tenant might be able to apply to suspend the warrant of possession before it is executed.
- The court has the power to suspend a warrant if the possession order was made on a discretionary grounds.
- The court's powers are more limited where possession is mandatory.



Enforcement in the County Court: Executing the warrant

- Bailiff will attend the property at time stated on N54
- Bailiff can evict anyone they find on the premises, including occupiers who were not a party to the original possession proceedings - *R v Wandsworth County Court ex parte Wandsworth LBC* [1975] 3 All ER 390
- If the tenant refuses to leave, the landlord can apply to the court for contempt of court
- If the tenant re-enters, the landlord can apply for a warrant of restitution with the permission of the court (CPR 83.26(8))



Enforcement in the County Court: I **think** they have left...

- Unless you are certain that the tenant has left, proceed with obtaining possession by warrant...
- Protection from Eviction Act 1977
- See s.5(1)(a) of the Housing Act 1988:

(1)An assured tenancy cannot be brought to an end by the landlord except by—

(a)obtaining—

(i)an order of the court for possession of the dwelling-house under section 7 or 21, and

(ii)the execution of the order



Transfer to the High Court for Enforcement

- S.42 of the County Courts Act 1984 makes provision for specific judgments of the County Court to be transferred to the High Court for enforcement.
- Why? Delaaaaaaaays in the County Court
- How? Plead, N244 with evidence or ask on the day & hope for the best
- Persuading a judge to transfer to the County Court –
exceptional circumstances
- Court will seal Form N293A - take one with you!



The Renters' Rights Bill



Ashley Thompson



Change is on the horizon...

- Tory Government introduced Renters (Reform) Bill in May 2023
- Reached 2nd reading in the Lords
- Reintroduced as the shiny new Renters Rights' Bill by Labour Gov
- Where are we in the parliamentary process?
 - Through all the stages in the House of Commons
 - Through all stages in the House of Lords
 - Ping-pong
- But WHEN?





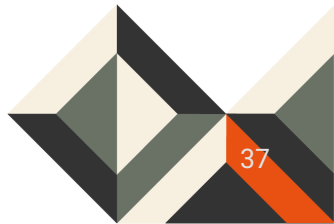
Abolition of s. 21

- Clause 2(b) – no more Chapter 2 of the Housing Act 1988
 - No more s. 21 – “no fault” evictions
 - Delivering on Labour’s manifesto promise
- Clause 1 – inserts s. 4A into Housing Act 1988
 - Fixed term tenancies → Periodic tenancies
 - Clause 15 – inserts s. 16E(1) duties
 - Section 16I(1) = financial penalty of up to £7,000
- Some transitional arrangements (Schedule 6)



Out with the old, in with the old?

- So, what is left?
- Good ol' s. 8 – i.e., "fault-based" eviction
- Consolation takes two forms:
 - a. Broadening and strengthening (?) of grounds of possession
 - b. No fixed term = No s. 7(6); and s. 21(4B) has not made its way into the Bill
 - UPSHOT = s. 8 notice may be given at any time



Mandatory Grounds

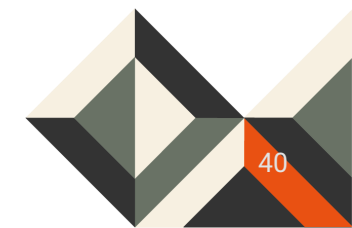
GROUND	DESCRIPTION	NOTICE PERIOD
1	Occupation by landlord, spouse, civil partner or other close family member (i.e., parent, grandparent, sibling, child or grandchild) <i>NB: expiry date in s. 8 notice must be 1 year from commencement of tenancy; no longer need to show lived there prior; no longer requirement to give notice pre-tenancy.</i>	4 months (previously 2)
1A	Sale of dwelling-house (or grant of lease of 21 years) <i>NB: expiry date in s. 8 notice must be 1 year from commencement of tenancy.</i>	4 months
2	Sale by Landlord's mortgagee <i>NB: No longer requirement for mortgage to be granted pre-tenancy; no longer requirement to give notice pre-tenancy.</i>	4 months (previously 2)



GROUND	DESCRIPTION	NOTICE PERIOD
4	Accommodation formerly let to students by universities. <i>NB: No longer requires pre-tenancy notice, but should give it to avoid breach of duty</i>	2 weeks
4A	<i>Student accommodation</i> <i>NB: Allows private landlords to give student lets; must be HMO; full-time students or reasonably believed to be; written statement mandatory; expiry of s. 8 between 1 June and 30 Sept; intention that next let be to students</i>	4 months
5C (prev. 16)	Worker lettings <i>NB: Now mandatory ground; no longer requires pre-tenancy notice, but should give it to avoid breach of duty</i>	2 months



GROUND	DESCRIPTION	NOTICE PERIOD
6	Redevelopment <i>NB: Cannot be used if expiry of s. 8 notice is fewer than 6 months from start of tenancy</i>	4 months (previously 2)
7A	Conviction	None (previously 1 month)
8	Rent arrears <i>NB: 3 months' rent arrears at date of s. 8 and date of hearing (previously 2); any amount attributable to unpaid Universal Credit is to be ignored</i>	4 weeks (previously 2)



Discretionary Grounds

GROUND	DESCRIPTION	NOTICE PERIOD
9	Suitable alternative accommodation	2 months
10	Any rent arrears	4 weeks (previously 2)
11	Persistent late payment of rent	4 weeks (previously 2)
12	Breach of terms of tenancy	2 weeks
13	Deterioration of property	2 weeks



GROUND	DESCRIPTION	NOTICE PERIOD
14	Anti-social behaviour <i>NB: Court must consider two further points: (a) whether T has co-operated with L's attempts to stop conduct; (b) effect on other occupiers of an HMO</i>	None
14A	Domestic abuse in social housing	2 weeks
14ZA	Rioting	2 weeks
15	Deterioration of furniture	2 weeks
17	False statement inducing tenancy	2 weeks





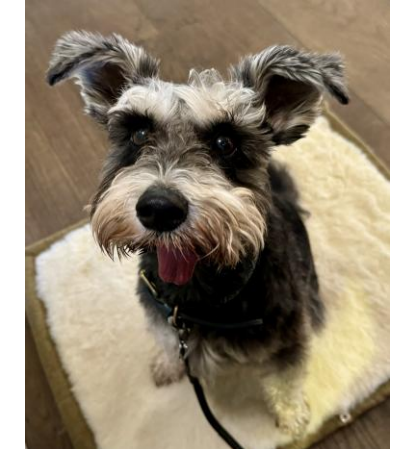
Rent

- Current increases regime:
 - During fixed term = express term
 - Upon statutory periodic = s. 13 Housing Act 1988
 - Challenge to initial rent = s. 22 Housing Act 1988
- New increases regime:
 - Clause 7 retains s. 13, amended. Section 13(4A) = Rent cannot be increased except by:
 - Serving a s. 13 notice
 - It having been determined by the FtT
 - Agreement, but after FtT determination – and must be lower.
 - So, no express clauses
 - But s. 22 power to be inserted into s. 14
- Clauses 9 and 10 prohibit payments of rent in advance absolutely
 - If invited or encouraged by L or agents, sanctions which apply to prohibited fees will apply



Pets

- Currently, entirely at the whim of Ls
- Clause 10 implies into every (non-social housing) tenancy right to request (s. 16A)
- And L cannot unreasonably withhold consent
- May be reasonable superior L says no (s. 16B(3))
- Enforceable by specific performance (s. 16B(5))
- Interesting definition of “pet”...
- Insurance may be mandatory
- What if you already have one?



Other changes

- Rent bidding – Clause 58
- Unlawful eviction – clause 60
- Landlord redress scheme – clauses 65 to 70
- Private rented sector database – clause 76 to 97
- Extension of Decent Home Standards to the private rented sector – clause 101



Day 1...

- Who knows!
- Clause 145 – *“This Act comes into force on such day as the Secretary of State may by regulations made by statutory instrument appoint...”*
- 2 months... 6 months...
- Likely March/April 2026
- Unfortunately, no longer ties to an efficient, working system



Q&A



Thank you

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