

October 2021



SECTION 21 AND SECTION 8 NOTICE PERIODS BACK TO PRE- PANDEMIC LEVELS

From 1st October 2021, s21 and s8 notice periods have reverted back to the notice periods that existed prior to the outbreak of the Covid-19 pandemic.

As a reminder, s21 and s8 notices are notices that a landlord can use to lawfully evict a tenant residing in a property under an assured shorthold tenancy (otherwise known as an AST). S21 notices are generally regarded as no-fault-based and are often used where there has been no wrongdoing on the part of the tenant, but the landlord may want the property back for example to sell it or renovate. S8 notices are generally fault-based. There are 17 grounds that can be relied upon as part of the process, and the most common ground relied upon is where the tenant is in rent arrears.

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Prior to the Covid-19 pandemic, the notice period for a possession claim under s21 Housing Act 1988 was two months, and the notice period under s8 Housing Act 1988 was generally two weeks for most grounds (including where there are rent arrears).

When the Covid-19 pandemic broke out, notice periods for both s21 and s8 notices initially rose to three months, before rising again to be as long as six months in most cases.

Over 18 months on, as the pandemic eases and the country returns to what is being referred to as the “new normal”, the notice period for s21 and s8 notices have now reverted to their pre-pandemic levels.

ADJUSTMENTS TO RIGHT TO RENT CHECKS DUE TO END ON 5TH APRIL 2022

Landlords of residential properties are required by law to carry out right to rent checks on prospective tenants to ascertain whether they have the legal right to reside in the UK. Following the outbreak of the Covid-19 pandemic, adjustments were introduced to make it easier and more practical for landlords and agents to carry out these checks using video calls and scanned documents.

These temporary measures have recently been extended and will remain in place until 5th April 2022. The Government have stated that new guidance will be issued prior to this date as to how right to rent checks will be carried out from 6th April 2022, following a review of the possibility of digital right to rent checks in future.

The Government have also confirmed that there is no requirement for landlords and agents to carry out additional retrospective checks on tenants who had an adjusted check during the temporary measures in place between 30th March 2020 and 5th April 2022.

TOP POSSESSION PITFALLS OF SUMMER 2021

The last few months have again been extremely busy for our Property Litigation team and in particular we have seen many landlords take steps to start the process of evicting defaulting tenants particularly since the relevant notice periods have started to decrease.

We have put together the top three pitfalls that we have come across in the last few months:-

Unlawful evictions

We have had several landlords ask if they can enter a tenant’s property and change the locks in order to force an eviction on the tenant as an alternative to following the s8 or s21 processes, which inevitably take a lot longer. The answer to this question is always “no”. Taking this sort of action would be an unlawful eviction, and can have serious consequences which include the tenant bringing a claim for compensation, reinstatement in the property, or even criminal proceedings against the landlord. It is important to follow the proper procedure in accordance with the law to avoid any potentially disastrous consequences.

Defaulting tenants avoiding possession

We have seen a number of cases where the defaulting tenant, who may be in serious rent arrears and in breach of the tenancy agreement in other ways, can take steps to avoid a possession order being granted. If a landlord only has two months' worth of rent arrears, the tenant only needs to pay £1 to bring the arrears to below the two month threshold needed to rely on the mandatory ground for a s8 possession claim. Sometimes it is safer to let the arrears accrue slightly more to avoid that situation happening and legal costs and time being wasted.

Delays in the court system

Whilst this is not strictly a pitfall, this is a key issue that is impacting most if not all of the landlords and agents that we work with. Following the six month ban on evictions in 2020, the court system (which was already under resourced) has struggled to catch up and it could be some years to clear the backlog in cases. This can be hugely frustrating for landlords with cases stuck in the court process. We do everything we can to progress the case, but ultimately we are in the court's hands in terms of timescales a lot of the time.

NEW S8 AND S21 PRESCRIBED FORMS FROM 1ST OCTOBER 2021

As well as changed notice periods, the template Form 6A (used for s21 notices) and Form 3 (used for s8 notices) have also been updated and are both available on the Government website.

It is important to remember that these are prescribed, meaning that a failure to use the prescribed form could result in the notice being invalid.

When serving either a s8 or s21 notice, it is usually best to check the Government website and download the latest version of the appropriate form. If the wrong version of the relevant notice is used, it is possible that the notice will later be found to be invalid.

<https://www.gov.uk/guidance/assured-tenancy-forms#form-6a>



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If you would like to discuss or need any help or support on any of the issues above then please contact the Machins' Property Litigation Team on 01582 514000.

We offer fixed fees for s21 and s8 possession claims up to and including the first possession hearing. Please get in touch for a copy of our fixed fee schedule or to find out more.

Machins Solicitors LLP have offices in Berkhamsted and Luton. We are one of the leading law firms in Hertfordshire and Bedfordshire and recognise the need to establish a proper relationship with our clients which allows us to understand individual requirements and to give effective practical advice in a pragmatic, cost effective way. We provide specialist advice and assistance both for businesses and individuals.

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