# Last gasp for s.21s (30/4/26)

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## Introduction

1. After 30 April 2026, residential landlords will no longer be able to serve a no-fault notice of possession under s.21 of the Housing Act 1988 ('**HA 1988**'). That is the effect of the Renters' Rights Act 2025, which is being implemented in stages throughout 2026. In this article we are concerned with a short, high-level guide to s.21 and how it may be used before the 30 April deadline. The article concerns privately rented premises in England.

## What is a s.21 notice?

2. Most tenancies of residential property are 'assured shorthold tenancies' ('**ASTs**') and most ASTs grant to the tenant a fixed term of possession, normally of between 6 and 24 months. At the expiry of the fixed term the AST 'rolls over' and continues on the same terms. If the landlord wishes to regain possession, he must serve notice under s.21 HA 1988[1]. A landlord's s.21 notice is a written document to the tenant stating that possession is required. There are strict requirements governing its form, as well as when and how it may be served. There are in addition circumstances in which it cannot be served at all.

## What is the correct form for a s.21 notice?

3. The Assured Tenancies and Agricultural Occupancies (Forms) (England) Regulations 2015 ('**Form Regs**') require a s.21 notice to be in 'Form No.6A', which can be found in the schedule here. Landlords are given a sliver of leeway by reg.2, which permits a s.21 notice to be in a form '*substantially to the same effect*' as Form No.6A. Litigators faced with issues of form should consult *McDonald v Fernandez* [2003] EWCA Civ 1219; *Spencer v Taylor* [2013] EWCA Civ 1600; and *Pease v Carter* [2020] EWCA Civ 175.

[1] This article is not concerned with notices under s.8 HA 1988.

## When can a s.21 notice be served?

4. Possession cannot be granted before the term of the AST has expired. A s.21 notice may be served before, on or after expiry (*Spencer* at [14-15]) but it cannot be served within the first 4 months of the term (s.21(4B) HA 1988). Crucially, the tenant must be given not less than 2 months' notice that possession is required (though no particular date needs to be specified (*Spencer* at [11])). Litigators must note that a landlord cannot sit on a s.21 notice indefinitely. Proceedings must be started within 6 months of the date it is given (s.21(4D) HA 1988). For the relationship between ss.21(1) and (4) HA 1988, see generally *Spencer*.

## How must a s.21 notice be served?

5. The HA 1988 does not specify a method of service. If the tenancy agreement does, the landlord must follow it. It is common for tenancy agreements to incorporate s.196 Law of Property Act 1925 which permits service by leaving the notice at the property or by recorded postal delivery. If no method is specified it is, in the author's experience, settled that delivery by hand or recorded post will constitute good service[2]. There is no authority dealing directly with whether a s.21 notice can be served electronically (e.g. by email). It is sometimes argued that email service is invalid because s.21 HA 1988 requires notices to be in 'writing' and, so the argument goes, 'writing' connotes a physical document. Litigators will form their own view and may wish to consider the definition of 'writing' in sch.1 Interpretation Act 1978 ('**IA 1978**').

## Failing to comply with 'prescribed requirements'

6. By reason of ss.21A-B HA 1988 and the Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 ('**Prescribing Regs**'), a landlord cannot rely on a s.21 notice while in breach of any of the following:

   a. The requirement to give an energy performance certificate ('**EPC**') to his tenant (see regulation 6(5) of the Energy Performance of Buildings (England and Wales) Regulations 2012).

   b. The requirement to give a gas safety certificate(s) ('**GSR**') to his tenant (see regulation 36(6)-(7) of the Gas Safety (Installation and Use) Regulations 1998).

   c. The requirement to give the most recently published 'How to rent: the checklist for renting in England' ('**HTR**') guide (see regulation 3 Prescribing Regs).

[2] There is a rebuttable presumption at common law that posting a notice is *prima facie* evidence it has been received, see *Khan v D'Aubigny* [2025] EWCA Civ 11 at [77-79].

7. An enormous body of case law has built up around these requirements, far beyond the scope of this article to summarise. For a recent highlight see *Khan v D'Aubigny* [2025] EWCA Civ 11, in which the tenant denied receiving the EPC, GSR and HTR posted by the landlord. The landlord relied on s.7 IA 1978 that where a statutory instrument permits or requires a document to be served by post, service will be deemed once it is posted. That argument failed because the Prescribing Regs neither permit not require the EPC, GSR and HTR to be posted. They require only that they are 'give[n]' or 'provide[d]'[3].

## Failing to comply with requirements for deposits

8. The taking and returning of tenancy deposits is heavily regulated (see ss.212-215C Housing Act 2004 ('**HA 2004**')). Relevant for our purposes is s.215 HA 2004, which provides that no s.21 notice may be served when a landlord is in breach of any of the following[4]:

    a. The requirement for the deposit to be held in accordance with an 'authorised tenancy deposit scheme'.

    b. The requirement for the landlord to comply with the 'initial requirements' of an authorised tenancy deposit scheme.

    c. The requirement for the landlord to give to the tenant the 'prescribed information' in the 'prescribed form', or a form substantially to the same effect.

9. Breach is not fatal, but the remedy comes at a cost. Before he may serve a valid notice, a landlord must first repay the deposit in full (or with agreed deductions). Powerful leverage for tenants[5]. Unsurprisingly, this area has also generated a large body of case law. Eagle-eyed readers will have spotted a familiar phrase ('*substantially to the same effect*') which we first encountered in the Form Regs, above. For the most recent analysis of substantive compliance see *Lowe v Governors of Sutton's Hospital in Charterhouse* [2025] EWCA Civ 587, but note permission to appeal to the Supreme Court has been granted.

[3] The landlord in *Khan* was ultimately successful on account of the service terms in the tenancy agreement and the common law presumption of service.
[4] Litigators should note also s.215(3) HA 2004 which prevents a s.21 notice from being served when a landlord has taken a non-monetary deposit. In the author's experience, this is very rare.
[5] More leverage is to be found in s.214 HA 2004, by which tenants may apply for damages for the landlord's breach. Litigators will note s.215(2A(b).

## Retaliatory eviction

10. Another trap for s.21 notices lies in s.33 of the Deregulation Act 2015, which prevents 'retaliatory eviction'. A retaliatory eviction occurs when a landlord serves a s.21 notice in response to a tenant's complaint to a local authority about the condition of the property. Broadly, where a 'relevant notice' has been served on the landlord he may not serve a s.21 notice for 6 months (unless the relevant notice has been revoked or quashed). A 'relevant notice' is an improvement notice under ss.11-12 HA 2004 or a notice of emergency remedial action under s.40(7) HA 2004.

## Charging impermissible fees

11. Yet another trap lies in the often overlooked Tenant Fees Act 2019 ('**TFA 2019**'), which regulates the fees a landlord may charge to a tenant. The list of permitted payments may be found in the schedule, here. For tenancies entered after 1 June 2019, a landlord who charges a prohibited payment is prevented by s.17 TFA 2019 from serving a s.21 notice. The landlord may remedy the situation by first repaying the fee in full, or agreeing with the tenant that it will go towards rent or a deposit (s.17(5) TFA 2019).

## Houses in Multiple Occupation (HMOs)

12. The licensing rules on HMOs and other premises required to be licensed are complex and contained in Part 2 HA 2004. It is beyond the scope of this article to consider the law in detail, but litigators will note that a s.21 notice cannot be given in respect of an AST of an unlicensed HMO or other 'unlicensed house' (see ss.75, 96(1) and 98 HA 2004).

## What happens after a s.21 notice has been served?

13. If the tenant remains in possession after the notice period has expired, the landlord may commence proceedings via the 'accelerated' procedure in rules 55.11-55.19 of the Civil Procedure Rules 1998 ('**CPR**'), here. The accelerated procedure begins as a paper determination, meaning the court will only require the parties to attend a hearing in two circumstances: (1) the judge reviewing the claim is not satisfied the claim form was served, or that the landlord is entitled to possession; (2) the tenant has applied for postponement of possession on the grounds of exceptional hardship under s.89 Housing Act 1980 ('**HA 1980**'). It is important to note that the accelerated procedure cannot be used where the landlord also seeks an order for unpaid rent (CPR r.55.12(b)).

14. By s.89 HA 1980, if the court is satisfied the landlord is entitled to possession, whether following a paper determination or a hearing, it must order the tenant to give up possession in no less than 14 days. There is one exception to this. If it appears to the court that 'exceptional hardship' would be caused by requiring possession within 14 days, it may postpone the date of possession by up to 6 weeks. There are no reported decisions on the meaning of 'exceptional hardship', but it is axiomatic that it must mean something greater than the inevitable hardship of eviction. For a recent example of the court's approach, see *Ponponne v Live in Guardians* [2022] EWHC 3485 (KB) where '*a combination of the medical conditions of* [the tenant] *combined with the suddenness of the impact of leaving her home today would cause* [her] *severe distress and that does in my judgment in this case* [amount] *to exceptional hardship'* (at [29]).

## What if the tenant still does not leave?

15. If the tenant remains in possession after the date specified in the order, the landlord may apply for a warrant or writ of possession and enforcement by bailiffs. It is beyond the scope of this article to consider the matter further.

## Further resources

16. High-level guidance for tenants by the Department for Levelling Up, Housing & Communities can be found here. A detailed guide has been produced (and is regularly updated) by Shelter, here. Those with access to the White Book will find detailed commentary in Volume 2, Section 3 (3A), Housing Act 1988, Part 1 (Rented Accommodation), Chapter II (Assured Shorthold Tenancies).

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