



Housing and Homelessness a brief overview

By Lawstop

History of social welfare Housing

- Up until the 19th Century , the state had minimal involvement in social housing
- Changes to housing was brought forward by key events such as individuals being given the right to vote and housing being pushed onto the political agenda
- By 1970 a third of individuals lived in council properties
- In 1988 local authorities were given the ability to transfer their housing stock to Housing Associations
- The right to buy scheme led to 2.2 million homes being bought by tenants from their local authority, many of those are now private rented properties

Current issues in Housing Law

- The sales of social housing and the slow creation of new housing means there is a significant lack of housing available for those in need. In 2018/2019 6,287 new homes were built, but there was 1.1 million people waiting for homes at that time
- Private tenancies in many areas particularly London and the South East are significantly more than the local housing allowance
- Competition for properties has driven up prices in the private sector but in many areas worsened the condition of properties

Private Tenancies

The difference between types of private residential tenancies in England depends on when the tenancy was granted and the legislation in force at that time. There are four main types of tenancy:

- regulated tenancies
- assured tenancies
- assured shorthold tenancies
- common law tenancies



Assured Shorthold Tenancies

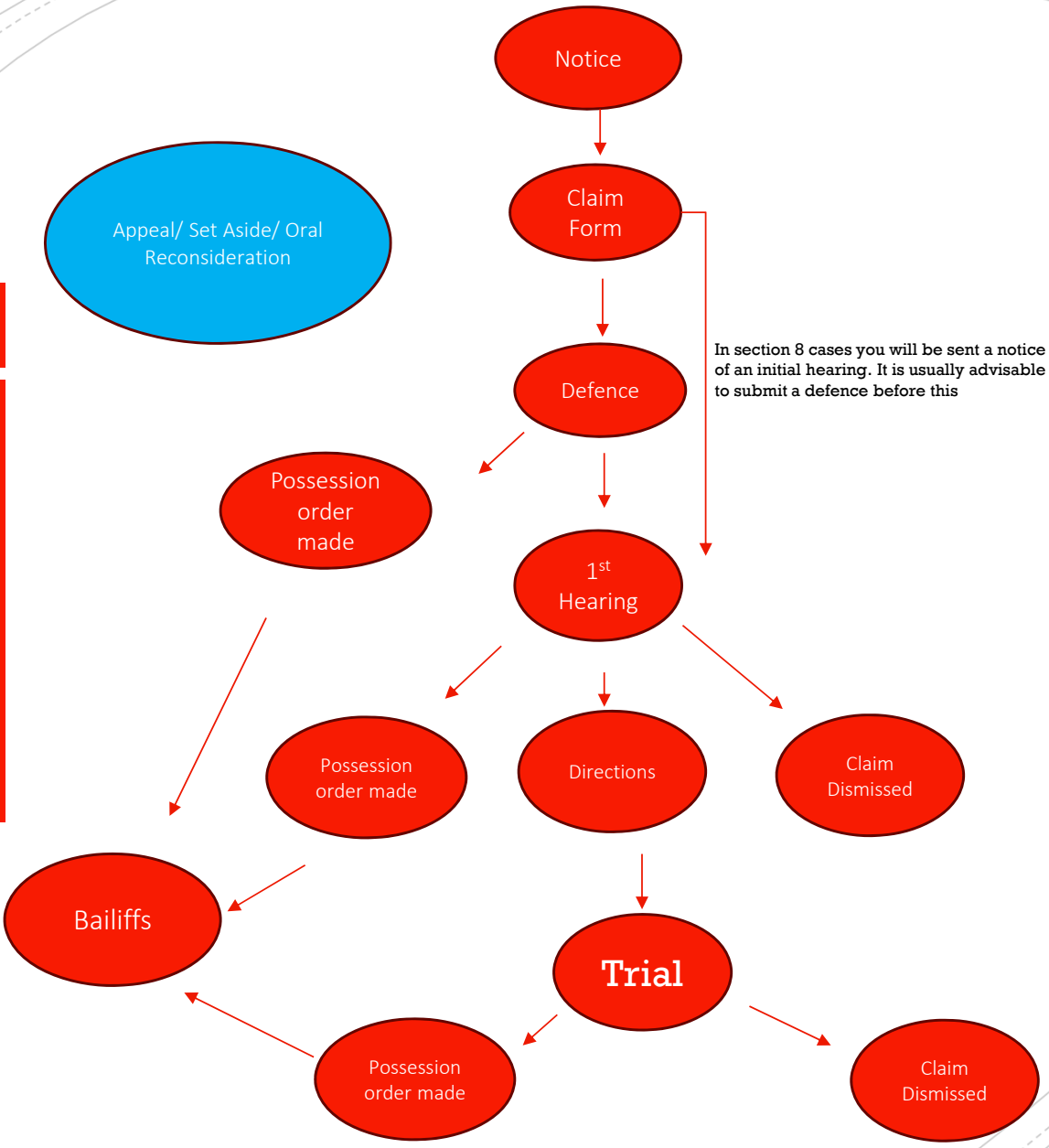
Since 28 February 1997 the majority of assured tenancies are assured shorthold tenancies (ASTs).

Any tenancy granted after 28 February 1997 is automatically an AST unless:

- a notice is served stating that the tenancy is not an AST, or
- it is written in the agreement that it is not an AST, or
- an exception applies

If an Assured Shorthold Tenancy is no longer in its fixed period, then a landlord is able to use the no fault eviction process (section 21) to evict you from the property.

Timeline of a possession claim



Ending and Assured Shorthold Tenancy

A Landlord can use the section 8 (grounds) or the section 21 (no fault) procedure.

The section 21 procedure is usually preferable, as it is generally a speedier and less expensive process and the court is obliged to make a possession order without the landlord needing to establish grounds. However, the section 21 procedure:

- can only be used to bring the AST to an end as at, or after, the end of the contractual term of the tenancy (ie on expiry by effluxion of time or by break notice)
- cannot be used to obtain possession earlier than six months after commencement of the tenancy (whether the tenancy is a Fixed term or a Contractual periodic tenancy)
- requires that various pre-conditions have been complied

Section 21 Notice (Form 6A)

A section 21 notice cannot be served in relation to an AST of property in England:

- within four months from the beginning of the AST, or
- In the case of a replacement AST, within four months from the beginning of the original AST

This restriction does not apply to a statutory periodic tenancy that has arisen following the end of a fixed term AST.

A notice must be in writing and use the prescribed form.

Two months notice *Note that if the contract is not a periodic month to month the period changes see s.21(4)

Section 21 Defences

Notice is not valid

Proceedings not brought within the time limit

Errors in the Claim form

EPC (energy Performance Certificate)

Gas Safety

Deposit Protection

How to rent guide (private landlord only defence)

Property is correctly licensed

Retaliatory Eviction

Public Law Defence (Social Landlord only defence)

Section 8 – the Notice

The section 8 notice must:

1. specify the ground or grounds upon which the landlord seeks possession. It is advisable, although not essential, to set out the precise wording of the ground or grounds in [HA 1988](#): the Court of Appeal has deemed a notice to be defective where it did not include essential words describing the ground
2. give particulars of those grounds
3. state the date after which proceedings will be commenced, in line with the notice requirements set out in section 8 and confirm that the proceedings will not begin more than 12 months after the date of the section 8 notice


Where there is an error in the completion of the notice, the case of *Mannai v Eagle Star* sets out the approach that the court will take to assessing the validity of the notice. The test is whether, construed objectively on the particular facts of the case, it is quite clear to a reasonable recipient with knowledge of the terms of the tenancy how and when the notice would operate, so that the recipient would not be misled by the error. This is known as the 'reasonable recipient' test.

Section 8 Notice – the Mandatory Grounds

mandatory grounds: the court must make an order for possession if the ground is proved. There is an exception for ground 7B where the court may order the transfer of a tenancy, rather than ordering possession if:

- ground 7B is established (possession on the grounds of the tenant's disqualified immigration status)
- no other grounds in HA 1988, Sch 2 are made out, or a discretionary ground is made out but it is not reasonable to make an order for possession on that ground, and
- the tenancy is a joint tenancy and one or more of the tenants is not disqualified from occupying the dwelling house as a result of their immigration status

In this case the court may order the transfer of the tenancy to the joint tenant(s) who are not disqualified

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Section 8 Notice – the Discretionary Grounds

discretionary grounds: if the court finds a discretionary ground is proved, it must also be satisfied that it is reasonable to make a possession order

S8 – The Claim form

The particulars of claim must:

- specify the property of which the landlord is seeking possession
- state that the property is residential
- provide the basis for the possession claim
- give full details of the tenancy
- supply details of every person who the landlord believes is in possession of the property

In addition, if the claim includes a claim for rent arrears, the particulars of claim must:

- state the total rent due at the start of the proceedings
- set out, in schedule form, the dates and amounts of all rent paid and not paid, together with a running total, for a period of up to two years prior to the date of issue of the claim. If the landlord wishes to go back more than two years, they should exhibit a detailed schedule to a witness statement
- specify the daily rate of rent and interest charged
- provide details of any steps taken to recover the rent arrears, including details of any earlier court proceedings
- provide any details known about the tenant's financial or other circumstances, including any social security benefit, and whether any benefits are paid directly to the claimant landlord on behalf the defendant tenant

If the claim relates to the conduct of the tenant, particulars of that conduct must be provided.

The relevant mandatory and/or discretionary grounds should be included in the particulars of claim. It is not necessary to quote the ground(s) verbatim, but sufficient detail should be given.

Section 8 Defences

1. Have not done the alleged behaviour
2. You have permission from the landlord, e.g. having a dog at the property
3. Have paid off or are paying off rent arrears and there is a reason for the court to believe you won't continue to accrue arrears
4. Disability e.g. your anti-social behaviour is because of your condition and it is not just
5. Eviction is not proportionate, with anti-social behaviour for example, could an undertaking or an injunction have sufficed.
6. Off setting arrears with a counterclaim for disrepair or for failing to protect a deposit

Ending a Secure Tenancy - Notice seeking Possession (Housing Act 1985, Section 83)

The NSP pursuant to HA 1985, s 83 (often called a 'section 83 notice') must be in the prescribed form, or in a form substantially to the same effect and must:

- specify the date when proceedings can be brought
- specify and give particulars of the ground(s) for possession

The court has power to dispense with the need for a NSP if it is just and equitable.

For a secure periodic tenancy, the date in the NSP must not be earlier than the date on which the tenancy could end under a notice to quit. In the case of a weekly periodic tenancy, this will be 28 days. Any proceedings stating Ground 2 (nuisance or anti-social behaviour) can start immediately and the date in the notice will be the date the tenant is required to give up possession.

A notice will expire 12 months after the date specified in the NSP and if the date passes a new notice must be served. A landlord cannot rely on the mere fact that a now expired notice was served as satisfying this requirement.

Unlawful Eviction

Unlawful eviction (or illegal eviction) is defined in the [Protection from Eviction Act 1977 \(PEA 1977\)](#) and is a criminal offence. An action for unlawful eviction arises when a landlord or another person deprives, or attempts to deprive, a residential occupier of their occupation of a property without using the legally prescribed means to do so.

A 'residential occupier' is defined as:

'...a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.'

This definition applies to tenants and licensees.

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Seek legal
assistance

If an individual has been asked to leave they should seek legal advice to determine if the notice is lawful

Homelessness Reduction Act 2017 – prevention and relief duty

- The [Homelessness Reduction Act 2017 \(HRA 2017\)](#) entered into force on 3 April 2018, significantly reforming England's homelessness legislation.
- The revised regime places duties on local authorities to intervene at earlier stages to prevent homelessness in their areas. It also requires Local Authorities to provide homelessness services to all those affected, not just those who have 'priority need'.
- The include:
 1. an enhanced prevention duty extending the period a household is threatened with homelessness from 28 days to 56 days, meaning that LHAs are required to work with people to prevent homelessness at an earlier stage
 2. a new duty for those who are already homeless so that LHAs will support households for 56 days to relieve their homelessness by helping them to secure accommodation

Prevention Duty

- The prevention duty places a duty on housing authorities to work with people who are threatened with homelessness within 56 days to help prevent them from becoming homeless. If the LHA is satisfied that a person is:
 - threatened with homelessness,
 - eligible for assistance

the housing authority is obliged to take reasonable steps to help the applicant either remain in their existing accommodation or secure alternative accommodation.

The first priority is to keep people in their homes, or if this is not possible, then to move the applicant to a suitable property in a planned way.

Relief Duty

- HA 1996, s 189B, inserted by HRA 2017, s 5, contains the relief duty. This requires housing authorities to help people who are homeless to secure accommodation.
- This duty arises where the LHA is satisfied that the applicant is:
 - homeless, and
 - eligible for assistance
- Unless the LHA refers the application to another LHA in England, the LHA must take reasonable steps to help the applicant to secure that suitable accommodation becomes available for the applicant's occupation for at least:
 - six months, or
 - such longer period not exceeding 12 months as may be prescribed

Homelessness -
duty to
accommodate
while enquiries
are ongoing

- If the Local authority has reason to believe an applicant may be :
 - homeless
 - eligible for assistance, and
 - in priority need for accommodation
- the Local authority is obliged under [s.188](#) to provide interim accommodation while the relief duty is fulfilled

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Homelessness enquiries and decisions

1. not homeless
2. not eligible
3. not habitually resident
4. not in priority need
5. intentionally homeless
6. no local connection

Review

- A Internal Review is a simple letter requesting that the Local Authority should carry out a 202 Review
- The review request must be made within 21 days upon
- You should always ask for the Housing file
- If the review is out of time: please look at this guidance
- The review will be conducted by a Reviews Officer who must not have been involved in making the original decision
- The review takes 8 weeks but if both parties agree the review can be extended

Accommodation pending review

- When requesting a 202 review you can ask for accommodation pending review or appeal. This is a discretion and not a duty.
- In considering whether to secure accommodation pending review, housing authorities will need to balance the objective of maintaining fairness between homeless persons in circumstances where they have decided that no duty is owed to them, against proper consideration of the possibility that the applicant might be right. They need to consider:
 - the merits of the applicant's case that the original decision was flawed and the extent to which it can properly be said that the decision was one which was either contrary to the apparent merits or was one which involved a very fine balance of judgment;
 - whether any new material, information or argument has been put to them which could alter the original decision; and,
 - the personal circumstances of the applicant and the consequences to them of a decision not to exercise the discretion to accommodate.
- Where an applicant is refused accommodation pending a review, they may seek to challenge the decision through judicial review.

Suitability of Accommodation

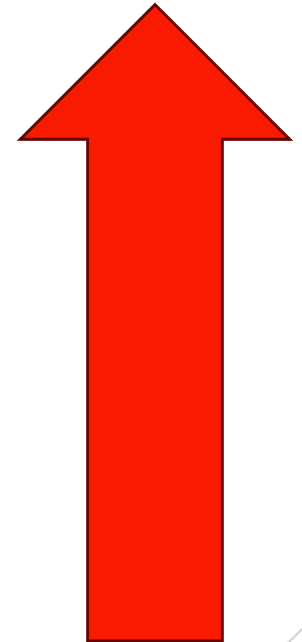
- All accommodation secured by a local authority in discharge of its housing duties under Housing Act 1996, Pt VII must be suitable.
- The question of what is suitable can give rise to disputes between the applicant and the Local Authority, as an applicant may be disappointed that the accommodation offered does not meet all of their wishes. However, the Local Authority is entitled to rely on the facts that:
 1. accommodation is in short supply
 2. there are huge strains on their resources, and
 3. perfection cannot be expected
- Suitability also has a temporal aspect, and what is considered suitable for a person for a short period of time may not be suitable as long-term accommodation. However the passage of time may mean that what was originally suitable becomes unsuitable.



Suitability of accommodation

The level of suitability increases through the homeless application.

- Permanent accommodation
- Temporary accommodation
- Emergency accommodation



Suitability of Accommodation

- Location – Out of Area/ Close to school/ Close to support / located away from perpetrator and associates
- Size – Enough rooms/ Enough beds
- Accessibility – Issues with steps/ Distance from shops/ distance from schools
- Safety – Security/ Open doors / Disrepair / Perpetrator and associates
- Triggers – Shared facilities/ drug use/ noise/ same interior design
- Affordability – change

Other methods of accommodation outside of the Housing Act

- Section 4, 95, 98 of the of the Immigration and Asylum Act 1999
- Schedule 10 of the of the Immigration Act 2010
- Section 18 and 19(3) of The Care Act 2014
- Section 17 and 20 Children Act 1989

