



MARK
PRICHARD
SOCIAL HOUSING CONSULTANT

Section 21 validity checker

A tool for checking whether a Notice Requiring Possession served under section 21 of the Housing Act 1988 is valid

June 2017

markprichard.co.uk

Purpose of this document

This checker tool helps you to establish whether a section 21 notice served by a landlord on an assured shorthold tenant is valid and can be relied upon to obtain a possession order.

For use in England only

This tool only applies to section 21 notices served in relation to tenancies of properties let in England. The rules in Wales are different.

Version

This version was uploaded on 23 June 2017. Please note this guide may be amended. Download the latest version at markprichard.co.uk/documents/s21-validity-checker

Comments and corrections:

The author welcomes comments and suggested amendments. Please email any comments to mark@markprichard.co.uk

Future changes:

From 1 October 2018 certain requirements that at the time of writing only apply to notices served in respect of tenancies that began on after 1 October 2015 will apply to all assured shorthold tenancies.¹

About the author

Mark Prichard is an independent housing consultant who works across England and Wales. He has worked in social housing for over 20 years in a variety of roles including as a paralegal, policy officer and homelessness officer. He has also reviewed hundreds of homelessness decisions for councils under section 202 of the Housing Act 1996.

In 2017 Mark launched a [website](#) from which a variety of guides, template letters and forms can be downloaded.

Mark has written the following guides:

- [‘Housing Act 1996 Part 7 incorporating pending amendments under the Homelessness Reduction Act 2017’](#)
- [‘Guide to homelessness duties in Wales’](#) and
- [‘Direct payments of housing benefit to private landlords – a guide for tenants’](#)

Mark designs and delivers bespoke training courses on a variety of housing related subjects. Examples of courses available can be found at markprichard.co.uk/training

Disclaimer

This document is intended for guidance only. Obtain legal advice if you need to check the status of a notice requiring possession. Every effort has been made to ensure this document is accurate at the date of publication. However the author cannot guarantee the accuracy of its contents and does not accept responsibility for any loss or damage. Please note that the law changes over time. There are links to www.legislation.gov.uk in the pdf version of this guide. You will need to check that the legislation is provided in its amended form (i.e. incorporating any changes made by subsequent legislation).

Copyright:

© Mark Prichard 2017. The rights of the author to be identified as author of this work has been asserted by him in accordance with the Copyright, Designs and Patents Act 1988. Selling without prior written permission consent is prohibited. In all cases this notice must remain intact.

¹ Deregulation Act 2015, [s.41\(3\)](#); Deregulation Act 2015 (Commencement No.1 and Transitional and Saving Provisions) Order 2015 SI No 994), [Reg.11](#). See footnotes 8 and 139.



Answer the following questions to determine whether a section 21 notice is valid

1. Is the tenant occupying the premises under an assured shorthold tenancy?	<input type="checkbox"/> Yes ⇒ go to (2) <input type="checkbox"/> No ⇒ Section 21 does not apply ²
<hr style="border-top: 1px dashed black;"/>	
2. Is the notice in writing?	<input type="checkbox"/> Yes ⇒ go to (3) <input type="checkbox"/> No ⇒ <i>notice is invalid</i> ³
<hr style="border-top: 1px dashed black;"/>	
3. Is the notice from the landlord (or one of the landlords, if there are joint landlords)?	<input type="checkbox"/> Yes ⇒ go to (4) <input type="checkbox"/> No ⇒ <i>notice is invalid</i> ⁴
<hr style="border-top: 1px dashed black;"/>	
4. Was the notice given to (in the case of a sole tenancy) the tenant or (in the case of a joint tenancy) all tenants?	<input type="checkbox"/> Yes ⇒ go to (5) <input type="checkbox"/> No ⇒ <i>notice is invalid</i> ⁵
<hr style="border-top: 1px dashed black;"/>	
5. Does the notice give at least two months' notice, from the date it was served until the date it expires?	<input type="checkbox"/> Yes ⇒ go to (6) <input type="checkbox"/> No ⇒ <i>notice is invalid</i> ⁶
<hr style="border-top: 1px dashed black;"/>	
6. Did the tenancy ⁷ begin on or after 1 October 2015? ⁸	<input type="checkbox"/> Yes ⇒ go to (7) <input type="checkbox"/> No ⇒ (30)

² The section 21 notice requirements only apply if the occupier is an assured shorthold tenant. Establish the occupier's legal status and check what steps the landlord/licensor must take to obtain possession of the dwelling.

³ Housing Act 1988, [s.21\(1\)\(b\)](#), (4)(a).

⁴ HA 1988, [s.21\(1\)\(b\)](#), (4)(a); [s.45\(3\)](#).

⁵ HA 1988, [s.21\(1\)\(b\)](#), (4)(a); [s.45\(3\)](#).

⁶ HA 1988, [s.21\(1\)\(b\)](#), (4)(a).

⁷ Not including a statutory periodic tenancy automatically arising under [section 5\(2\)](#) of the Housing Act 1988, immediately following a tenancy granted before 1 October 2015. Deregulation Act 2015, [s.41\(1\)](#); Deregulation Act 2015 (Commencement No 1 and Transitional and Saving Provisions) Order 2015 SI No 994, [Reg 11\(n\)](#).

⁸ The purpose of this question is to establish whether the case is one in which the additional requirements imposed in respect of 'post-1 October 2015' tenancies apply. These requirements may be summarised as (1) using the prescribed section 21 notice form; (2) a prohibition on service within the first four months of the original tenancy; (3) a prohibition on applying for possession after a prescribed period – usually six months from service of the s.21 notice – has expired (4) service of the 'Right to Rent' guide; (4) service of a gas safety certificate; and (5) service of an energy performance certificate.



7. Did the landlord use the prescribed form? ⁹	<input type="checkbox"/> Yes ⇒ go to (8) <input type="checkbox"/> No ⇒ <i>notice is invalid</i> ¹⁰
<hr/>	
8. Was the notice served within four months of the date on which the original tenancy began? ¹¹	<input type="checkbox"/> Yes ⇒ <i>notice is invalid</i> ¹² <input type="checkbox"/> No ⇒ go to (9)
<hr/>	
9. Was the notice served more than six months ago? ¹³	<input type="checkbox"/> Yes ⇒ <i>notice is invalid</i> ¹⁴ <input type="checkbox"/> No ⇒ go to (10)
<hr/>	
10. When the notice was served had the tenant been provided, free of charge, an energy performance certificate? ¹⁵	<input type="checkbox"/> Yes ⇒ go to (11) <input type="checkbox"/> No ⇒ <i>notice is invalid</i> ¹⁶
<hr/>	
11. Is there a relevant gas appliance or installation pipework in any room of, or serving any part of, the tenanted premises?	<input type="checkbox"/> Yes ⇒ go to (12) <input type="checkbox"/> No ⇒ go to (13)
<hr/>	
12. When the notice was served had the tenant received, in the previous 12 months, a gas safety certificate? ¹⁷	<input type="checkbox"/> Yes ⇒ go to (13) <input type="checkbox"/> No ⇒ <i>notice is invalid</i> ¹⁸

⁹ Form 6A at the time of writing. Housing Act 1988, s.21(8); Assured Shorthold Tenancy Notices and Prescribed Requirements (England) (Amendment) Regulations 2015 SI No 1725, Reg 2(2); Schedule.

¹⁰ HA 1988, s.21(8); Assured Shorthold Tenancy Notices and Prescribed Requirements (England) (Amendment) Regulations 2015 SI No 1725, Reg 2(2).

¹¹ HA 1988, s.21(4B) provides that, in respect of an assured shorthold tenancy which is not a replacement tenancy, a section 21 notice may not be given within four months of the date on which the tenancy began. In respect of an assured shorthold that is a replacement tenancy a s.21 notice may not be given within four months of the date on which the original tenancy began. See s.21(7) or footnote 26 for the statutory definition of 'replacement tenancy'.

¹² HA 1988, s.21(4B).

¹³ This question assumes (1) the landlord has not yet applied for a possession order, (2) the tenancy period is no longer than two months, and (3) a contractual provision does not requires a notice period of longer than two months. As regards (1) HA 1996 s.21(4D) provides that a landlord cannot begin proceedings under section 21 after a period of six months beginning with the date on which the notice was given. If (2) or (3) applies you should instead ask the following question "Did the notice expire more than four months ago." Again this question assumes the landlord has not yet applied for possession. Under s.21(4E) possession proceedings may not be begun after a period of four months has elapsed from the date specified in the notice .

¹⁴ HA 1998, s.21(4D). See previous footnote.

¹⁵ In accordance with Regulation 6(2) of the Energy Performance of Buildings (England and Wales) Regulations 2012 SI No 3118.

¹⁶ HA 1988, s.21A(1); The Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 SI No 1646, Reg. 2(1)(a); Energy Performance of Buildings (England and Wales) Regulations 2012 SI No 3118, Reg. 6(5).

¹⁷ In accordance with Reg.36 of the Gas Safety (Installation and Use) Regulations (SI 1998 No 2451).



13. Is the landlord a private registered provider of social housing?	<input type="checkbox"/> Yes ⇒ go to (41) ¹⁹ <input type="checkbox"/> No ⇒ go to (14)
<hr/>	
14. Did the landlord give the tenant a copy of the “How to rent: the checklist for renting in England” ²⁰ guide before serving the notice?	<input type="checkbox"/> Yes ⇒ go to (15) <input type="checkbox"/> No ⇒ <i>notice is invalid</i> ²¹
<hr/>	
15. Was the ‘How to Rent’ guide given by email?	<input type="checkbox"/> Yes ⇒ go to (16) <input type="checkbox"/> No ⇒ go to (17)
<hr/>	
16. Had the tenant notified the landlord (or a person acting on their behalf) that they were content to accept service of notices and other documents given under or in connection with the tenancy by email? ²²	<input type="checkbox"/> Yes ⇒ go to (17) <input type="checkbox"/> No ⇒ <i>notice is invalid</i> ²³
<hr/>	
17. Was the version of the ‘How to Rent’ guide the tenant received the relevant (then current) version? ²⁴	<input type="checkbox"/> Yes ⇒ go to (18) <input type="checkbox"/> No ⇒ <i>notice is invalid</i> ²⁵
<hr/>	
18. Has a replacement tenancy ²⁶ come into being since the ‘How to Rent’ guide was given to the tenant? ²⁷	<input type="checkbox"/> Yes ⇒ go to (19) <input type="checkbox"/> No ⇒ go to (20)

¹⁸ HA 1988, s.21A(1); The Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 SI No 1646, Reg.2(b); Gas Safety (Installation and Use) Regulations 1998 SI No 2451, Reg.36(6).

¹⁹ The ‘How to Rent’ guide requirement and retaliatory eviction provisions do not apply to private registered providers of social housing. Article 3(5)(a) of The Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 SI No 1646, and Deregulation Act 2015, s.34(6).

²⁰ The latest version is available online at www.gov.uk/government/publications/how-to-rent See nearlylegal.co.uk/how-to-rent-archive for an archive of previous versions.

²¹ HA 1988, s.21B(3); Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 SI No 1646) reg 3.

²² Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 SI No 1646) reg 3(3).

²³ HA 1988, s.21(3); Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 SI No 1646) reg 3(3).

²⁴ Versions of the guide were published in October 2015 and February 2016. The latest version is available online at www.gov.uk/government/publications/how-to-rent See nearlylegal.co.uk/how-to-rent-archive for an archive of previous versions.

²⁵ HA 1988, s.21B(3); Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 SI No 1646, reg 3(1), (2).



19. Was a different/updated version of the 'How to Rent' guide issued between when the replacement (or statutory periodic) tenancy started and when the notice was served?
- ☐ Yes ⇒ *notice is invalid*²⁸
- ☐ No ⇒ go to (20)

-
20. Has the local authority served one of the following types of housing enforcement notice on the landlord in relation to the tenanted premises:²⁹
- (a) An improvement notice requiring remedial action because of a Category 1 hazard?³⁰
- (b) An improvement notice requiring remedial action because of a Category 2 hazard;³¹ or
- (c) An emergency remedial action notice under [section 40\(7\)](#) of the Housing Act 2004?³²
- ☐ Yes ⇒ go to (21)
- ☐ No ⇒ go to (44)

²⁶ A 'replacement tenancy' for these purposes is a tenancy that comes into existence on the ending of an assured shorthold tenancy and under which the landlord and tenant are the same and the premises let are the same or substantially the same as those let under the previous tenancy. See HA 1988, [s.21\(7\)](#).

²⁷ See next footnote.

²⁸ Generally a landlord does not have to give the tenant another copy of the 'How to Rent' guide when a new version is issued during the tenancy (see Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 SI No 1646 [reg 3\(4\)](#)). However, the implication of [reg 3\(5\)\(b\)](#) appears to be that any new version of the guide must be given if the tenancy is a 'replacement tenancy' (as defined in [s.21\(7\)](#); see footnote 26).

²⁹ Where the notice was served in relation to common parts of the building of which the tenanted premises forms part refer to [section 33\(10\)](#), (11) and (13) of the Deregulation Act 2015 to determine whether the part of the premises to which the enforcement notice applies comes within the statutory definition of 'common parts' for the purposes of retaliatory eviction.

³⁰ Under [section 11](#) of the Housing Act 2004.

³¹ Under [section 12](#) of the Housing Act 2004.

³² If in doubt it is advisable to contact the relevant local authority's housing enforcement section to seek clarification of whether one of these types of notices has been served. Note that housing enforcement notices served after a possession order is granted are discounted for the purpose of retaliatory eviction. See Deregulation Act 2015, [s.33\(7\)](#). Where the notice has been served in relation to conditions of common parts of which the tenanted premises forms part refer to [section 33\(10\)](#), (11) and (13) of the Deregulation Act 2015 to determine whether the notice qualifies for the purpose of the statutory definition of retaliatory eviction.



- 21.** Were the property conditions that resulted in the council serving notice due to a breach by the tenant of either an express term of their tenancy or the duty to use the property in a tenant-like manner?³³
- ☐ Yes ⇒ go to (44)
- ☐ No ⇒ go to (22)

- 22.** When the s.21 notice was served was the property genuinely on the market for sale?³⁴
- ☐ Yes ⇒ go to (44)
- ☐ No ⇒ go to (23)

- 23.** When the s.21 notice was served was a mortgage lender exercising a power of sale under a mortgage that was created before the tenancy began?³⁵
- ☐ Yes ⇒ go to (44)
- ☐ No ⇒ go to (24)

- 24.** Was the housing enforcement notice served before the s.21 notice was served?³⁶
- ☐ Yes ⇒ go to (25)
- ☐ No ⇒ go to (30)

- 25.** Was the enforcement notice revoked³⁷, quashed³⁸ or reversed,³⁹ or was the local authority's decision to take action reversed⁴⁰ before the section 21 notice was served?⁴¹
- ☐ Yes ⇒ go to (44)
- ☐ No ⇒ go to (26)

- 26.** Was the operation of the housing enforcement notice suspended when it was served?
- ☐ Yes ⇒ go to (27)
- ☐ No ⇒ go to (29)

³³ Deregulation Act 2015, [s.34\(1\)](#).

³⁴ Deregulation Act 2015, [s.34\(2\)](#). Under DA 2015 s.34(3) a property is not genuinely on the market for sale if the landlord intends to sell his or her interest to an associated person, a business partner, someone who is associated with a business partner of the landlord or a business partner of a person who is associated with the landlord. See Housing Act 1996, [s.178](#) for the definition of 'associated'. See DA 2015, [s.34\(5\)](#) for the definition of business partner.

³⁵ See [section 34\(7\),\(8\)](#) of the Deregulation Act 2015 for the full definition of this absolute exemption to the retaliatory eviction provisions contained in DRA 2015 [s.33\(1\)](#) and (2).

³⁶ The purpose of this question is to establish whether you need to consider [section 36\(1\)](#) of the Deregulation Act 2015 (which aims to prevent a retaliatory eviction where the s.21 notice *follows* a housing enforcement notice – see questions 25 to 29) or subsection (2) of the same section (which deals with the situation where the s.21 notice *precedes* a housing enforcement notice – see questions 30 to 40).

³⁷ Under Housing Act 2004, [s.16](#). Deregulation Act 2015, [s.33\(8\)\(a\)](#).

³⁸ Under Housing Act 2004, [Sch 1](#), para 15. Deregulation Act 2015, [s.33\(8\)\(b\)](#).

³⁹ Under Housing Act 2004, [Sch 1](#), para 18. Deregulation Act 2015, [s.33\(8\)\(c\)](#).

⁴⁰ Under Housing Act 2004, [s.45](#). Deregulation Act 2015, [s.33\(8\)\(d\)](#).

⁴¹ It is advisable to make inquiries of the local authority's housing enforcement section if it is unclear whether the notice or enforcement action has been disapplied.



27. Was the s.21 notice served during the period when the housing enforcement notice was suspended?	<input type="checkbox"/> Yes ⇒ go to (44) ⁴² <input type="checkbox"/> No ⇒ go to (28)
<hr style="border-top: 1px dashed #000;"/>	
28. Was the s.21 notice served within six months of the day on which the suspension of the enforcement notice ended?	<input type="checkbox"/> Yes ⇒ <i>notice is invalid</i> ⁴³ <input type="checkbox"/> No ⇒ go to (44)
<hr style="border-top: 1px dashed #000;"/>	
29. Was the s.21 notice served within six months of the date on which the enforcement notice was served?	<input type="checkbox"/> Yes ⇒ <i>notice is invalid</i> ⁴⁴ <input type="checkbox"/> No ⇒ go to (44)
<hr style="border-top: 1px dashed #000;"/>	
30. Did the tenant complain to the landlord ⁴⁵ in writing about the condition of the premises ⁴⁶ before the s.21 notice was served? ⁴⁷	<input type="checkbox"/> Yes ⇒ go to (34) <input type="checkbox"/> No ⇒ go to (31)
<hr style="border-top: 1px dashed #000;"/>	
31. Does the tenant know the landlord's postal address or email address? ⁴⁸	<input type="checkbox"/> Yes ⇒ go to (44) <input type="checkbox"/> No ⇒ go to (32)
<hr style="border-top: 1px dashed #000;"/>	
32. Did the tenant complain to the landlord about the condition of the property (other than in writing, e.g. orally)? ⁴⁹	<input type="checkbox"/> Yes ⇒ go to (34) <input type="checkbox"/> No ⇒ go to (33)

⁴² The author interprets the wording of [section 33\(1\)\(b\)](#) of the Deregulation Act 2015 ("within the six months *beginning with the day on which the suspension ends*") as meaning that a s.21 notice is not invalid under subsection 1 of that section where the operation of a housing enforcement notice is suspended when the s.21 notice is served.

⁴³ Deregulation Act 2015, [s.33\(1\)](#).

⁴⁴ Deregulation Act 2015, [s.33\(1\)\(a\)](#).

⁴⁵ Including a person acting on the landlord's behalf in relation to the tenancy; Deregulation Act 2015, [s.33\(12\)](#).

⁴⁶ Where the complaint was made in relation to conditions of common parts of the building of which the tenanted premises forms part refer to [section 33\(10\)](#), (11) and (13) of the Deregulation Act 2015 to determine whether the part of the premises complained about comes within the statutory definition of 'common parts' for the purposes of retaliatory eviction.

⁴⁷ Deregulation Act 2015, [s.33\(2\)\(a\)](#).

⁴⁸ The requirement in paragraph (a) of [section 33\(2\)](#) of the Deregulation Act 2015 for the complaint to be in writing is disapplied if the tenant does not know the landlord's postal or email address: [s.33\(4\)](#).

⁴⁹ The author interprets the wording of [section 33\(4\)](#) and (5) as meaning, by implication, that the conditions set out in paragraph (b) of subsection (2) of that section apply, for the purpose of establishing whether the eviction was retaliatory, where a tenant does not know the landlord's postal or email address but nevertheless submits a complaint to the landlord about the condition of the premises by other means, e.g. orally.



33. Did the tenant make reasonable efforts to contact the landlord to complain about the condition of the dwelling and was unable to do so? ⁵⁰	<input type="checkbox"/> Yes ⇒ go to (37) ⁵¹ <input type="checkbox"/> No ⇒ go to (44)
<hr style="border-top: 1px dashed #000;"/>	
34. Did the landlord respond to the complaint within 14 days of the day on which the complaint was made?	<input type="checkbox"/> Yes ⇒ go to (35) <input type="checkbox"/> No ⇒ go to (37)
<hr style="border-top: 1px dashed #000;"/>	
35. Did the landlord's response provide a description of the action the landlord proposed to take to address the complaint <i>and</i> set out a reasonable timescale within which the proposed action would be taken? ⁵²	<input type="checkbox"/> Yes ⇒ go to (44) <input type="checkbox"/> No ⇒ go to (38)
<hr style="border-top: 1px dashed #000;"/>	
37. Did the tenant make a complaint to the relevant local housing authority about the condition of the premises? ⁵³	<input type="checkbox"/> Yes ⇒ go to (39) <input type="checkbox"/> No ⇒ go to (44)
<hr style="border-top: 1px dashed #000;"/>	
38. Did the tenant, after complaining to the landlord, make a complaint to the relevant local housing authority about substantially the same issue? ⁵⁴	<input type="checkbox"/> Yes ⇒ go to (39) <input type="checkbox"/> No ⇒ go to (44)
<hr style="border-top: 1px dashed #000;"/>	
39. Was the housing enforcement notice suspended when the s.21 notice was served?	<input type="checkbox"/> Yes ⇒ go to (44) ⁵⁵ <input type="checkbox"/> No ⇒ go to (40)

⁵⁰ Deregulation Act 2015, [s.33\(5\)](#).

⁵¹ The requirements set out in paragraphs (a) and (b) of [section 33\(2\)](#) of the Deregulation Act 2015 are disapplied if the tenant made reasonable efforts to contact the landlord to complain about the condition of the property but was unable to do so: [s.33\(5\)](#).

⁵² Deregulation Act 2015, [s.33\(3\)](#).

⁵³ Deregulation Act 2015, [s.33\(2\)\(c\)](#).

⁵⁴ Deregulation Act 2015, [s.33\(2\)\(c\)](#).

⁵⁵ The prohibition on serving a valid s.21 notice under [section 33\(2\)](#) of the Deregulation Act 2005 is disapplied, under subsection (9) of that section, if the operation of the enforcement notice has been suspended.



- 40.** Was the s.21 notice given *either*:
- (a) following the tenant's complaint to the landlord; *or*
 - (b) before the local authority served the enforcement notice?
- ☐ Yes ⇒ *notice is invalid*⁵⁶
- ☐ No ⇒ go to (44)
-
- 41.** Was the tenancy⁵⁷ granted on or after 1 April 2012?⁵⁸
- ☐ Yes ⇒ go to (42)
- ☐ No ⇒ go to (44)
-
- 42.** Was the tenancy, when the notice was served, a fixed term tenancy of two years or more?⁵⁹
- ☐ Yes ⇒ go to (43)
- ☐ No ⇒ go to (44)
-
- 43.** Did the landlord give the tenant at least six months' notice in writing, stating that it did not propose to grant another tenancy when the fixed term expires, and informing the tenant of how to obtain help or advice about the notice and any obligation the landlord owes to provide help or advice?
- ☐ Yes ⇒ go to (44)
- ☐ No ⇒ *notice is invalid*⁶⁰

⁵⁶ Deregulation Act 2015, [s.33\(2\)](#). Although where the court makes a possession order *before* the local authority serves the enforcement notice on the landlord, that order cannot be set aside on the basis that a relevant enforcement notice was served: Deregulation Act 2015, [s.33\(7\)](#).

⁵⁷ Not including a statutory periodic tenancy automatically arising under [section 5\(2\)](#) of the Housing Act 1988. Localism Act 2011, [s.164\(2\)\(b\)](#).

⁵⁸ The additional requirements set out in question 43 only apply to tenancies that were granted on or after 1 April 2012 (providing the condition set out at question 42 is also met). See Localism Act 2011, [s.164\(2\)](#) and Localism Act 2011 (Commencement No 4 and Transitional, Transitory and Saving Provisions) Order 2012, SI No 628, [Reg 6](#).

⁵⁹ The purpose of this question is to determine whether the requirement imposed by s.21(1B) on registered providers of social housing in connection with tenancies with fixed terms of at least two years applies.

⁶⁰ HA 1988, [s.21\(1B\)](#).



44. Was a tenancy deposit ⁶¹ paid in connection with the current tenancy or a preceding tenancy?	<input type="checkbox"/> Yes ⇒ go to (45) <input type="checkbox"/> No ⇒ go to (73)
<hr/>	
45. Did the deposit consist entirely of money?	<input type="checkbox"/> Yes ⇒ go to (47) <input type="checkbox"/> No ⇒ go to (46)
<hr/>	
46. When the notice was served, had the landlord ⁶² previously returned the non-monetary property to the person who gave it as a deposit?	<input type="checkbox"/> Yes ⇒ go to (47) ⁶³ or (73) ⁶⁴ <input type="checkbox"/> No ⇒ <i>notice is invalid</i> ⁶⁵
<hr/>	
47. When the notice was served did any of the following apply?	<input type="checkbox"/> Yes ⇒ go to (73) <input type="checkbox"/> No ⇒ go to (48)
<div style="margin-left: 20px;"> <ul style="list-style-type: none"> ▪ the landlord⁶⁶ had returned the deposit money in full to the tenant; ▪ the deposit had been returned to the tenant with deductions that were agreed by the tenant; or ▪ an application by the tenant to court for repayment of the deposit and/or compensation had been: <ul style="list-style-type: none"> <input type="checkbox"/> determined, <input type="checkbox"/> withdrawn, or <input type="checkbox"/> settled by agreement?⁶⁷ </div>	

⁶¹ A tenancy deposit is defined as “a transfer of property intended to be held (by the landlord or otherwise) as security for (a) the performance of any obligations of the tenant, or (b) the discharge of any liability of his, arising under or in connection with the tenancy.” Housing Act 2004, [s.212\(8\)](#). This may be contrasted with, for example, sums genuinely intended to be advance payments of rent. Such payments are *not held as security* for the aforementioned purposes; *Johnson v Old* [2013] EWCA Civ 415.

⁶² See footnote 66.

⁶³ If money was taken as a deposit in addition to the non-monetary property.

⁶⁴ If no money was taken as a deposit in addition to the non-monetary deposit.

⁶⁵ Housing Act 2004, [s.215\(3\)](#).

⁶⁶ For the purposes of the tenancy deposit protection provisions (i.e. [Part 6, Chapter 4](#) of the Housing Act 2004) ‘landlord’ includes a person acting on the landlord’s behalf in relation the tenancy; HA 2004, [s.212\(9\)\(a\)](#). Accordingly the obligations and liabilities of landlords arising in relation to tenancy deposits also apply to a landlord’s agent.

⁶⁷ The sanction under [section 215](#) of the Housing Act 2004 (i.e. an inability to serve a section 21 notice) does not apply if, before the notice was served (1) the deposit has been returned in full to the tenant (s.215(2A)(a)), (2) the deposit has been returned to the tenant with deductions that have been agreed between the landlord and tenant (s.215(2A)(a)), or (3) an application to the county court has been made under [s.214\(1\)](#) and has been (i) determined by the court, (ii) withdrawn or (iii) settled by agreement between the parties (s.215(2A)(b)).



48. Was the deposit money received on or after 6 April 2012?⁶⁸
- ☐ Yes ⇒ go to (49)
- ☐ No ⇒ go to (55)

-
49. Before the s.21 notice was served did the landlord serve a notice on the tenant and any relevant person⁶⁹ containing all⁷⁰ the prescribed information⁷¹ relating to the protection of the deposit?
- ☐ Yes ⇒ (50)
- ☐ No ⇒ *notice is invalid*⁷²

-
50. Did the landlord, within 30 days of receiving the tenancy deposit money:
- (a) protect the deposit using an authorised scheme; and
- (b) comply with the initial requirements of that scheme?⁷³
- ☐ Yes ⇒ go to (54)
- ☐ No ⇒ go to (51)

⁶⁸ The primary purpose of this question is to determine whether the tenancy deposit should, at first instance, have been protected within 14 days or 30 days. Under [section 213\(3\)](#) of the Housing Act 2004 a landlord is required to comply with the initial requirements of the relevant scheme within 30 days. From 6 April 2007 to 5 April 2012 this period was 14 days. However [section 184](#) of the Localism Act 2011 amended section 213 of the Housing Act 2004 so that landlords were required, with effect from 6 April 2012, to protect tenancy deposits and comply with the initial requirements of the relevant scheme within 30 days (Localism Act 2011, s.184(2)(a)).

⁶⁹ A 'relevant person' is a person who, under an arrangement made with the tenant, paid the deposit money on the tenant's behalf; Housing Act 2004, [s.213\(10\)](#). This could include, for example, a council that paid a deposit under an arrangement with a homeless applicant for the purpose of enabling them to take up a private rented sector offer.

⁷⁰ It is advisable to check the contents of the notice to determine whether *all* the information has in fact been included. For example [article 2\(g\)\(vi\)](#) requires that the notice states "the circumstances when all or part of the deposit may be retained by the landlord, by reference to the terms of the tenancy." In respect of this particular requirement it is advisable to compare the contents of the information notice with the relevant terms of the tenancy agreement. See also the following footnote.

⁷¹ The information that must be given in writing is listed at [article 2](#) of the Housing (Tenancy Deposits) (Prescribed Information) Order 2007 SI No 797.

⁷² Housing Act 2004, [s.215\(2\)](#).

⁷³ i.e. the rules imposed by the particular scheme used by the landlord. [Section 213\(4\)](#) of the Housing Act 2004 defines "the initial requirements" as "such requirements imposed by the scheme as fall to be complied with by a landlord on receiving...a tenancy deposit". Note that schemes may change the rules from time to time. Accordingly the rules that applied at the relevant time should be checked via the scheme's website.



51. Did a replacement tenancy⁷⁴ come into existence after the deposit was received?⁷⁵
- ☐ Yes ⇒ go to (52)
- ☐ No ⇒ *notice is invalid*⁷⁶
-
52. Did the landlord, *within 30 days of the beginning of the replacement tenancy*:
- (a) protect the deposit using an authorised scheme; and
- (b) comply with the scheme's rules?⁷⁷
- ⁷⁸

⁷⁴ For this purpose 'replacement tenancy' means a tenancy replacing an earlier tenancy where (a) the landlord and tenant are the same under the new tenancy as under the landlord and tenant under the preceding tenancy immediately before it ended and (b) the premises let under both tenancies are the same or substantially the same; Housing Act 2004, [s.215B](#)(4). This includes statutory periodic tenancies arising under [section 5](#)(2) of the Housing Act 1988. Note however that tenancies that provide for a fixed term and periods thereafter (under the same tenancy) do not constitute two separate tenancies.

⁷⁵ The purpose of this question is to establish whether the landlord might be able, under [section 215B](#), to remedy their previous breach of the tenancy deposit requirements (for the purpose of s.21 notice validity, i.e. to escape the [s.215](#) sanction).

⁷⁶ Housing Act 2004, [s.215](#)(1).

⁷⁷ i.e. the rules imposed by the particular scheme used by the landlord. [Section 213](#)(4) of the Housing Act 2004 defines "the initial requirements" as "such requirements imposed by the scheme as fall to be complied with by a landlord on receiving...a tenancy deposit". Note that schemes may change the rules from time to time. Accordingly the rules that applied at the relevant time should be checked via the scheme's website.

⁷⁸ The purpose of this question is to establish whether the landlord might be able to remedy their previous breach of the deposit protection rules (for the purpose of s.21 notice validity, i.e. to escape the [s.215](#) sanction) by virtue of the 'Superstrike rule'. In *Superstrike Ltd v Rodriguez* [2013] EWCA Civ 669 it was held that a statutory periodic tenancy is a new tenancy. Where a deposit was paid in respect of the preceding tenancy but continues to be held as security under the new tenancy there is deemed to be fresh receipt by the landlord of the deposit money. It appears that this rule is likely to assist landlords in the present circumstances by providing a fresh 30-day period in which to comply with [s.213](#)(3).



- 53. During a previous tenancy:**
- ☐ Yes ⇒ go to (54)
 - ☐ No ⇒ *notice is invalid*⁸⁴
- (a) was the deposit protected using an authorised scheme;
- (b) was the deposit held in accordance with that scheme's rules⁷⁹ (ignoring any requirement to take particular steps within any specified period);
- (c) did the landlord serve a notice on the tenant and a any relevant person⁸⁰ containing all⁸¹ the prescribed information⁸² relating to the protection of the deposit; and
- (d) did the deposit continue to be protected with the same authorised scheme as when the last prescribed information notice was validly served?⁸³

-
- 54. Has the deposit remained protected?**⁸⁵
- ☐ Yes ⇒ go to (73)
 - ☐ No ⇒ *notice is invalid*⁸⁶

⁷⁹ i.e. the rules imposed by the particular scheme used by the landlord. [Section 213](#)(4) of the Housing Act 2004 defines "the initial requirements" as "such requirements imposed by the scheme as fall to be complied with by a landlord on receiving...a tenancy deposit". Note that schemes may change the rules from time to time. Accordingly the rules that applied at the relevant time should be checked via the scheme's website.

⁸⁰ A 'relevant person' is a person who, under an arrangement made with the tenant, paid the deposit money on the tenant's behalf; Housing Act 2004, [s.213](#)(10). This could include, for example, a council that paid a deposit under an arrangement with a homeless applicant for the purpose of enabling them to take up a private rented sector offer.

⁸¹ It is advisable to check the contents of the notice to determine whether *all* the information has in fact been included. For example [article 2](#)(g)(vi) requires that the notice states "the circumstances when all or part of the deposit may be retained by the landlord, by reference to the terms of the tenancy." In respect of this particular requirement it is advisable to compare the contents of the information notice with the relevant terms of the tenancy agreement. See also the following footnote.

⁸² The information that must be given in writing is listed at [article 2](#) of the Housing (Tenancy Deposits) (Prescribed Information) Order 2007 SI No 797.

⁸³ The purpose of this question is to establish whether the landlord has remedied their previous breach of the tenancy deposit requirements (for the purpose of s.21 notice validity, i.e. the [s.215](#) sanction) under [section 215B](#)(2) by complying with the requirements set out in subsection (1) of that section.

⁸⁴ Housing Act 2004, [s.215](#)(1).

⁸⁵ Note that protection may lapse, for example where a landlord using an insurance based scheme fails to pay a renewal premium that is required when a replacement tenancy comes into existence. Where there is any doubt it is advisable to check with the relevant scheme that the deposit is (and has remained) protected.

⁸⁶ Housing Act 2004, [s.215](#)(1).



55. Was the deposit money received between 6 April 2007 and 5 April 2012?
- ☐ Yes ⇒ go to (56)
- ☐ No ⇒ go to (63)

-
56. Before the s.21 notice was served did the landlord serve a notice on the tenant and any relevant person⁸⁷ containing all⁸⁸ the prescribed information⁸⁹ relating to the protection of the deposit?
- ☐ Yes ⇒ go to (57)
- ☐ No ⇒ *notice is invalid*⁹⁰

-
57. Did the landlord, within 14 days⁹¹ of receiving the tenancy deposit money:
- (a) protect the deposit using an authorised scheme; and
- (b) comply with the initial requirements of that scheme?⁹²
- ☐ Yes ⇒ go to (62)
- ☐ No ⇒ go to (58)

⁸⁷ A 'relevant person' is a person who, under an arrangement made with the tenant, paid the deposit money on the tenant's behalf; Housing Act 2004, [s.213](#)(10). This could include, for example, a council that paid a deposit under an arrangement with a homeless applicant for the purpose of enabling them to take up a private rented sector offer.

⁸⁸ It is advisable to check the contents of the notice to determine whether *all* the information has in fact been included. For example [article 2](#)(g)(vi) requires that the notice states "the circumstances when all or part of the deposit may be retained by the landlord, by reference to the terms of the tenancy." In respect of this particular requirement it is advisable to compare the contents of the information notice with the relevant terms of the tenancy agreement. See also the following footnote.

⁸⁹ The information that must be given in writing is listed at [article 2](#) of the Housing (Tenancy Deposits) (Prescribed Information) Order 2007 SI No 797.

⁹⁰ Housing Act 2004, [s.215](#)(2).

⁹¹ This was the relevant time limit for protecting the deposit between 6 April 2007 and 5 April 2012 before [section 213](#)(3) of the Housing Act 2004 was amended by [section 184](#)(2)(a) of the Localism Act 2011.

⁹² i.e. the rules imposed by the particular scheme used by the landlord. Note that schemes may change the rules from time to time. Accordingly the rules that applied at the relevant time should be checked via the scheme's website.



- 58.** *Between 6 April 2012 and 6 May 2012:*⁹³
- (a) was the deposit protected using an authorised scheme;
- (b) was the deposit held in accordance with that scheme's rules⁹⁴
- and*
- (c) did he landlord serve a notice on the tenant and any relevant person⁹⁵ containing all⁹⁶ the prescribed information⁹⁷ relating to the protection of the deposit?⁹⁸
-
- 59.** Did a replacement tenancy⁹⁹ come into existence after the deposit was paid?

☐ Yes ⇒ go to (62)

☐ No ⇒ (59)

☐ Yes ⇒ go to (60)

☐ No ⇒ *notice is invalid*¹⁰⁰

⁹³ The 30-day grace period provided by [section 184](#) of the Localism Act 2011 and [Article 16](#) of the Localism Act 2011 (Commencement No 4 and Transitional, Transitory and Saving Provisions) Order 2012 SI No 628.

⁹⁴ i.e. the rules imposed by the particular scheme used by the landlord. [Section 213](#)(4) of the Housing Act 2004 defines "the initial requirements" as "such requirements imposed by the scheme as fall to be complied with by a landlord on receiving...a tenancy deposit". Note that schemes may change the rules from time to time. Accordingly the rules that applied at the relevant time should be checked via the scheme's website.

⁹⁵ A 'relevant person' is a person who, under an arrangement made with the tenant, paid the deposit money on the tenant's behalf; Housing Act 2004, [s.213](#)(10). This could include, for example, a council that paid a deposit under an arrangement with a homeless applicant for the purpose of enabling them to take up a private rented sector offer.

⁹⁶ It is advisable to check the contents of the notice to determine whether *all* the information has in fact been included. For example [article 2](#)(g)(vi) requires that the notice states "the circumstances when all or part of the deposit may be retained by the landlord, by reference to the terms of the tenancy." In respect of this particular requirement it is advisable to compare the contents of the information notice with the relevant terms of the tenancy agreement. See also the following footnote.

⁹⁷ The information that must be given in writing is listed at [article 2](#) of the Housing (Tenancy Deposits) (Prescribed Information) Order 2007 SI No 797.

⁹⁸ The purpose of this question is to establish whether the landlord took the opportunity provided by transitional arrangements after the Localism Act 2011 came into force whereby landlords could regularise their position during a 30 day period ending on 6 May 2012. See [article 16](#) of the Localism Act 2011 (Commencement No 4 and Transitional, Transitory and Saving Provisions) Order 2012 SI No 628.

⁹⁹ For this purpose 'replacement tenancy' means a tenancy replacing an earlier tenancy where (a) the landlord and tenant are the same under the new tenancy as under the landlord and tenant under the preceding tenancy immediately before it ended and (b) the premises let under both tenancies are the same or substantially the same; Housing Act 2005, [s.215B](#)(4). This includes statutory periodic tenancies arising under [section 5](#)(2) of the Housing Act 1988. Note however that tenancies that provide for a fixed term and periods thereafter (under the same tenancy) do not constitute two separate tenancies.

¹⁰⁰ Housing Act 2004, [s.215](#)(1).



- 60.** Did the landlord, *within 30 days of the beginning of the replacement tenancy*:
- (a) protect the deposit using an authorised scheme; and
 - (b) comply with that scheme's rules?¹⁰¹
- ☐ Yes ⇒ go to (62)
- ☐ No ⇒ go to (61)
-
- 61.** *During a previous tenancy*:
- (a) was the deposit protected using an authorised scheme;
 - (b) was the deposit held in accordance with that scheme's rules (ignoring any requirement to take particular steps within any specified period);¹⁰²
 - (c) did the landlord serve a notice on the tenant and any relevant person¹⁰³ containing all¹⁰⁴ the prescribed information¹⁰⁵ relating to the protection of the deposit; and
 - (d) did the deposit continue to be protected with the same authorised scheme as when the last prescribed information notice was validly served?¹⁰⁶
- ☐ Yes ⇒ go to (62)
- ☐ No ⇒ **notice is invalid**¹⁰⁷

¹⁰¹ The purpose of this question is to establish whether the landlord might be able to remedy their previous breach of the deposit protection rules (for the purpose of s.21 notice validity, i.e. to escape the [s.215](#) sanction) by virtue of the 'Superstrike rule'. In [Superstrike Ltd v Rodriguez](#) [2013] EWCA Civ 669 it was held that a statutory periodic tenancy is a new tenancy. Where a deposit was paid in respect of the preceding tenancy but continues to be held as security under the new tenancy there is deemed to be fresh receipt by the landlord of the deposit money. It appears this rule is likely to assist landlords in the present circumstances by providing a fresh 30-day period in which to comply with [s.213\(3\)](#).

¹⁰² Housing Act 2004, [s.215B\(1\)\(b\)](#).

¹⁰³ A 'relevant person' is a person who, under an arrangement made with the tenant, paid the deposit money on the tenant's behalf; Housing Act 2004, [s.213\(10\)](#). This could include, for example, a council that paid a deposit under an arrangement with a homeless applicant for the purpose of enabling them to take up a private rented sector offer.

¹⁰⁴ It is advisable to check the contents of the notice to determine whether *all* the information has in fact been included. For example [article 2\(g\)\(vi\)](#) requires that the notice states "the circumstances when all or part of the deposit may be retained by the landlord, by reference to the terms of the tenancy." In respect of this particular requirement it is advisable to compare the contents of the information notice with the relevant terms of the tenancy agreement. See also the following footnote.

¹⁰⁵ The information that must be given in writing is listed at [article 2](#) of the Housing (Tenancy Deposits) (Prescribed Information) Order 2007 SI No 797.

¹⁰⁶ The purpose of this question is to establish whether the landlord has remedied their previous breach of the tenancy deposit requirements (for the purpose of s.21 notice validity, i.e. the [s.215](#) sanction) under [section 215B\(2\)](#) by complying with the requirements set out in subsection (1) of that section.



62. Has the deposit remained protected? ¹⁰⁸	<input type="checkbox"/> Yes ⇒ go to (73) <input type="checkbox"/> No ⇒ <i>notice is invalid</i> ¹⁰⁹
<hr style="border-top: 1px dashed #000;"/>	
63. Has a replacement tenancy ¹¹⁰ - other than a statutory periodic tenancy - come into existence since 6 April 2007?	<input type="checkbox"/> Yes ⇒ go to (71) <input type="checkbox"/> No ⇒ go to (64)
<hr style="border-top: 1px dashed #000;"/>	
64. Was: (a) the deposit received in connection with a fixed term tenancy that began before 6 April 2007? (b) that became a statutory periodic tenancy ¹¹¹ when the fixed term ended?	<input type="checkbox"/> Yes ⇒ go to (65) <input type="checkbox"/> No ⇒ go to (68)
<hr style="border-top: 1px dashed #000;"/>	
65. Did the statutory periodic tenancy begin on or after 6 April 2007? ¹¹²	<input type="checkbox"/> Yes ⇒ (66) <input type="checkbox"/> No ⇒ (68) ¹¹³
<hr style="border-top: 1px dashed #000;"/>	
66. Did the landlord <i>before 24 June 2015</i> : ¹¹⁴ (a) protect the deposit using an authorised scheme; and (b) comply with the requirements of the scheme? ^{115 116}	<input type="checkbox"/> Yes ⇒ go to (70) <input type="checkbox"/> No ⇒ <i>notice is invalid</i> ¹¹⁷

¹⁰⁷ Housing Act 2004, [s.215\(1\)](#).

¹⁰⁸ Note that protection may lapse, for example where a landlord using an insurance based scheme fails to pay a renewal premium that is required when a replacement tenancy comes into existence. Where there is any doubt it is advisable to check with the relevant scheme that the deposit is (and has remained) protected.

¹⁰⁹ Housing Act 2004, [s.215\(1\)](#).

¹¹⁰ For this purpose 'replacement tenancy' means a tenancy replacing an earlier tenancy where (a) the landlord and tenant are the same under the new tenancy as under the landlord and tenant under the preceding tenancy immediately before it ended and (b) the premises let under both tenancies are the same or substantially the same; Housing Act 2005, [s.215B\(4\)](#). Note however that tenancies that provide for a fixed term and periods thereafter (under the same tenancy) do not constitute two separate tenancies.

¹¹¹ Under [section 5](#) of the Housing Act 1988.

¹¹² The purpose of this question is to determine whether the case is one to which [section 215A](#) of the Housing Act 2004 might apply.

¹¹³ There are conflicting views on whether the landlord must give the prescribed information before serving a s.21 notice in these circumstances (i.e. receipt of a tenancy deposit before 6 April 2007 in respect of a tenancy that did not become a statutory periodic tenancy after that date and where there has been no replacement tenancy). See for example *Defending Possession Proceedings* (8th edition; 2016) Luba et al at para 10.80. It is suggested that legal advice is sought. It appears clear however that the landlord need not comply with the initial requirements of the statutory deposit protection scheme. He will however need to protect the deposit before serving the s.21 notice. See [section 215\(1\)](#) of the Housing Act 2004.

¹¹⁴ A 90-day grace period was provided by [section 215A\(3\)\(a\)](#) of the Housing Act 2004.

¹¹⁵ i.e. the rules imposed by the particular scheme used by the landlord. [Section 213\(4\)](#) of the Housing Act 2004 defines "the initial requirements" as "such requirements imposed by the scheme as fall to be complied with by



- 67.** Before the s.21 notice was served did the landlord serve a notice on the tenant and any relevant person¹¹⁸ containing all¹¹⁹ the prescribed information¹²⁰ relating to the protection of the deposit?
- ☐ Yes ⇒ go to (70)¹²¹
- ☐ No ⇒ *notice is invalid*¹²²

-
- 68.** Was the deposit protected before the s.21 was served?
- ☐ Yes ⇒ go to (70)
- ☐ No ⇒ *notice is invalid*¹²³

-
- 70.** Has the deposit remained protected?¹²⁴
- ☐ Yes ⇒ go to (73)
- ☐ No ⇒ *notice is invalid*¹²⁵

a landlord on receiving...a tenancy deposit". Note that schemes may change the rules from time to time. Accordingly the rules that applied at the relevant time should be checked via the scheme's website.

¹¹⁶ The purpose of this question is to establish whether the landlord either (1) protected the deposit within 14 days of receiving the deposit or if they did not (2) whether the landlord took the opportunity provided by [section 215A](#) of the Deregulation Act 2015 to regularise his or her position during the 90 day period ending on 24 June 2015.

¹¹⁷ HA 2004, s.215(1).

¹¹⁸ A 'relevant person' is a person who, under an arrangement made with the tenant, paid the deposit money on the tenant's behalf; Housing Act 2004, [s.213](#)(10). This could include, for example, a council that paid a deposit under an arrangement with a homeless applicant for the purpose of enabling them to take up a private rented sector offer.

¹¹⁹ It is advisable to check the contents of the notice to determine whether *all* the information has in fact been included. For example [article 2\(g\)\(vi\)](#) requires that the notice states "the circumstances when all or part of the deposit may be retained by the landlord, by reference to the terms of the tenancy." In respect of this particular requirement it is advisable to compare the contents of the information notice with the relevant terms of the tenancy agreement. See also the following footnote.

¹²⁰ The information that must be given in writing is listed at [article 2](#) of the Housing (Tenancy Deposits) (Prescribed Information) Order 2007 SI No 797.

¹²¹ The landlord has regularised his position (in respect of tenancy deposit protection) by complying with [section 215\(2\)](#) and [section 215A\(3\)](#) of the Housing Act 2004.

¹²² Housing Act 2004, s.215(2).

¹²³ Housing Act 2004, s.215(1).

¹²⁴ Note that protection may lapse, for example where a landlord using an insurance based scheme fails to pay a renewal premium that is required when a replacement tenancy comes into existence. Where there is any doubt it is advisable to check with the relevant scheme that the deposit is (and has remained) protected.

¹²⁵ Housing Act 2004, s.215(1).



- 71.** Before the s.21 notice was served did the landlord serve a notice on the tenant and any relevant person¹²⁶ containing all¹²⁷ the prescribed information¹²⁸ relating to the protection of the deposit?¹²⁹
- ☐ Yes ⇒ go to (58)¹³⁰
- ☐ No ⇒ *notice is invalid*¹³¹
-
- 73.** Were the tenanted premises a (or did they form part of a) house in multiple occupation (HMO)¹³² when the notice was served?
- ☐ Yes ⇒ go to (77)
- ☐ No ⇒ go to (74)
-
- 74.** Was the landlord required to obtain an HMO licence for the property when the notice was served?¹³³
- ☐ Yes ⇒ go to (75)
- ☐ No ⇒ go to (77)
-
- 75.** Did the landlord have an HMO licence for the property when the notice was served?
- ☐ Yes ⇒ go to (77)
- ☐ No ⇒ go to (76)

¹²⁶ A 'relevant person' is a person who, under an arrangement made with the tenant, paid the deposit money on the tenant's behalf; Housing Act 2004, [s.213](#)(10). This could include, for example, a council that paid a deposit under an arrangement with a homeless applicant for the purpose of enabling them to take up a private rented sector offer.

¹²⁷ It is advisable to check the contents of the notice to determine whether *all* the information has in fact been included. For example [article 2\(g\)\(vi\)](#) requires that the notice states "the circumstances when all or part of the deposit may be retained by the landlord, by reference to the terms of the tenancy." In respect of this particular requirement it is advisable to compare the contents of the information notice with the relevant terms of the tenancy agreement. See also the following footnote.

¹²⁸ The information that must be given in writing is listed at [article 2](#) of the Housing (Tenancy Deposits) (Prescribed Information) Order 2007 SI No 797.

¹²⁹ Where the deposit was received before 6 April 2007 but since this date there has been a replacement tenancy the landlord is required to serve the prescribed information notice.

¹³⁰ Where (1) a deposit was received before 6 April 2007 and (2) a replacement tenancy (other than a statutory periodic tenancy) came into existence after that date the case is broadly treated as if the deposit was received after 6 April 2007 in relation to compliance with the tenancy deposit protection rules (for the purposes of determining section 21 validity). See Housing Act 2004, [s.215B](#)(3).

¹³¹ Housing Act 2004, [s.215](#)(2).

¹³² Within the meaning of the HMO definition set out at sections [254](#) to [260](#) of the Housing Act 2004. If you are unsure whether a property is an HMO you may wish to make inquiries of the relevant local authority's housing enforcement section.

¹³³ A landlord may require a licence because of the mandatory licensing requirements (i.e. where a licence is required by [Part 2](#) of the Housing Act 2004) or under a selective licensing scheme. Selective licensing schemes may be adopted by local authorities under [Part 3](#) of the 2004 Act, either in respect of all HMOs in the authority's district, certain types of HMO or for HMOs in a defined geographical area. Make inquiries of the relevant authority's housing enforcement section if it is unclear whether the landlord requires a licence.



- 76.** When the notice was served:
- (a) had the landlord applied for a licence,¹³⁴ or
- (b) had
- (i) the landlord notified the local authority of his or her intention to take steps with a view to ensuring the HMO no longer requires a licence,¹³⁵ and
- (ii) the authority issued a temporary exemption notice in respect of the HMO which remained effective?¹³⁶
- ☐ Yes ⇒ go to (77)
- ☐ No ⇒ *notice is invalid*¹³⁷
-
- 77.** Was the tenancy a contractual periodic tenancy when the notice was served?¹³⁸
- ☐ Yes ⇒ go to (78)
- ☐ No ⇒ go to (85)
-
- 78.** Was the contractual tenancy granted on or after 1 October 2015?¹³⁹
- ☐ Yes ⇒ go to (80)
- ☐ No ⇒ go to (79)
-
- 79.** Did the date given in the notice as the day after which possession was required the last day of a period of the tenancy?
- ☐ Yes ⇒ go to (81)
- ☐ No ⇒ *notice is invalid*¹⁴⁰

¹³⁴ This question assumes that landlord's application had not been determined when the s.21 notice was served; Housing Act 2004, [s.73](#). The application must have remained effective when the s.21 notice was given. [Section 72\(8\)](#) sets out the circumstances in which an application is 'effective'.

¹³⁵ Under [section 62\(1\)](#) of the Housing Act 2004 (mandatory licensing) or [s.86\(1\)](#) (selective licensing).

¹³⁶ The local authority may issue a temporary exemption notice under [section 62\(2\)](#) of the Housing Act 2004 where the landlord or person having control of the HMO notifies the authority of his or her intention to take particular steps with a view to securing that the property does not require a licence; [s.62\(1\)](#). [Section 72\(8\)](#) sets out the circumstances in which a notification is 'effective'.

¹³⁷ Housing Act 2004, [section 75](#) (mandatory licensing) and [section 98](#) (selective licensing).

¹³⁸ This purpose of this question is to determine whether the notice must meet the requirements set out in subsection (1) or (4) of [section 21](#). Subsection (1) provides notice requirements for fixed term and statutory periodic tenancies. Subsection (4) sets out requirements for contractual periodic tenancies (see questions 78 to 84). *Spencer v Taylor* [2013] EWCA Civ 1600 held that a s.21 notice need only comply with the subsection (1) requirements where the tenancy is a statutory periodic tenancy that has arisen under [section 5](#) of the Housing Act 1988 following the end of a fixed term tenancy.

¹³⁹ The purpose of this question is to establish whether [section 21\(4ZA\)](#) applies. This subsection simplifies the subsection (4) requirements for those contractual periodic tenancies that began on or after 1 October 2015. Specifically, the requirement in [section 21\(4\)](#) that the notice must expire on the last day of a period of the tenancy is disapplied. Subsection (4ZA) was added by Deregulation Act 2015, [s.35](#).

¹⁴⁰ HA 1988, [s.21\(4\)\(a\)](#).



80. Did the notice expire more than four months ago? ¹⁴¹	<input type="checkbox"/> Yes ⇒ <i>notice is invalid</i> ¹⁴² <input type="checkbox"/> No ⇒ go to (81)
<hr/>	
81. Did the notice indicate that possession is required under section 21 of the Housing Act 1988? ¹⁴³	<input type="checkbox"/> Yes ⇒ go to (82) <input type="checkbox"/> No ⇒ <i>notice is invalid</i> ¹⁴⁴
<hr/>	
82. Is the period of the tenancy longer than two months?	<input type="checkbox"/> Yes ⇒ go to (84) <input type="checkbox"/> No ⇒ go to (83)
<hr/>	
83. Does the tenancy include a contractual term placing an obligation on the landlord when serving notice to give a period longer than two months?	<input type="checkbox"/> Yes ⇒ go to (84) <input type="checkbox"/> No ⇒ go to (87)
<hr/>	
84. Is the date on which the notice expires earlier than the earliest day on which the tenancy could, were it a common law tenancy, be brought to an end by a notice to quit? ¹⁴⁵	<input type="checkbox"/> Yes ⇒ <i>notice is invalid</i> ¹⁴⁶ <input type="checkbox"/> No ⇒ go to (87)
<hr/>	
85. Was the tenancy a fixed term tenancy when the notice was served?	<input type="checkbox"/> Yes ⇒ go to (86) <input type="checkbox"/> No ⇒ go to (87)
<hr/>	
86. Did the notice give an expiry date which was before the end of the fixed term?	<input type="checkbox"/> Yes ⇒ <i>potential defence</i> ¹⁴⁷ Proceed to (87) ¹⁴⁸ <input type="checkbox"/> No ⇒ go to (87)

¹⁴¹ This question assumes that (1) the current tenancy did not begin before 1 October 2015 and (2) the landlord has not yet commenced proceedings for possession. As regards (1) there is no time period after which a s.21 notice becomes invalid for tenancies that began before 1 October 2015 (until 1 October 2018: Deregulation Act 2015, s.41(3)). In relation to (2) s.21(4E) provides that a landlord may not commence possession proceeding more than four months after the date specified in the notice in cases where s.21(4)(b) requires that more than two months notice is given.

¹⁴² HA 1988, s.21(4E).

¹⁴³ This requirement is met if the landlord has used the prescribed notice form (Form 6A at the time of writing).

¹⁴⁴ HA 1988, s.21(4)(a).

¹⁴⁵ For example, under the common law notice rules at least three months' notice is required if the tenancy period is quarterly (*Lemon v Lardeur* [1946] KB 613) and at least six months if the period is one year or longer (*Sidebotham v Holland* [1895] 1 QB 378).

¹⁴⁶ HA 1988, s.21(4)(b).

¹⁴⁷ While nothing in the Housing Act 1988 Act explicitly states that a section 21 notice cannot expire before the end of a fixed term tenancy it is arguable that the tenant may nevertheless defend a claim based on such a notice, e.g. by arguing that the notice was not effective when it expired. Consider referring the tenant to a specialist housing advisor.

¹⁴⁸ Continue checking whether there are other grounds on which the notice may be invalid.



- 87.** Was the notice served before the current tenancy was agreed by the landlord and tenant?
- ☐ Yes ⇒ *notice is invalid*
- ☐ No ⇒ go to (88)

-
- 88.** Since the notice was served has the landlord acted in a manner that is wholly inconsistent with the request for possession, so he or she may legally be 'estopped' from relying on the notice or so that relying on the notice may be unconscionable (e.g. by unequivocally stating that the notice has been 'withdrawn')?
- ☐ Yes ⇒ *potential defence*¹⁴⁹
- ☐ No ⇒ *notice is valid*

¹⁴⁹ Consider referring the tenant to a specialist housing advisor.





**MARK
PRICHARD**
SOCIAL HOUSING CONSULTANT

01492 533975 // 07835 545 409

mark@markprichard.co.uk

markprichard.co.uk