

Notes on Serving a Section 8 Notice and Court Procedure



These notes are for initial guidance only and do not constitute legal advice or an authoritative statement of the law. Never rely totally on these notes, which apply primarily to England & Wales. Before taking action or not, always do your own research and/or seek professional advice with the full facts of your case and all documents to hand.

The possession procedure under **Section 8 of the Housing Acts 1988 & 1996** sometimes known as the **Section 8 Route** is available to landlords where the tenant is in breach of one or more terms of his tenancy – breach of contract - it's a fault based system.

The Section 8 Route gives **8 mandatory** and **9 discretionary** grounds for possession, but the results are not always straightforward – you might not get the result you want if you go to court, i.e. a possession order and/or a money order.

The Section 21 Route has far more certainty and less risk for the landlord. It should always be used in preference if possession is what you require. (See Notes on Serving a Section 21 Notice)

Whereas the **Section 21 Route** cannot proceed until *both* the notice period (2 months) *and* the fixed-term have expired, the s8 route can be taken **during the fixed-term**, once the s8 notice period has expired – 2 weeks (14 days) for most grounds.

Regardless of whether you progress to court, a **Section 8 Notice** can be a very effective way of **asserting your authority** as a landlord / agent and the notice is effective for one whole year. It puts the tenant **on notice** that there has been a breach of contract and that you are prepared to take the matter to court if necessary.

The landlord can start legal proceedings once the Section 8 Notice period (usually 14 days) has expired.

You must then complete County Court Forms N5 & N119

Form N5 - Summons for Possession of a residential property. One copy is for the court and one copy for each defendant.

Form N119 - Particulars of Claim for Possession in cases of non-payment of rent etc.

Paragraph 3b of form N119 can be used to add further grounds for possession in addition to rent arrears.

You must specify the **ground/s that you intend to rely on to claim possession - arrears etc.** The notice must also give precise details of the breach as set out in one or more of the Grounds for Possession (Housing Acts 1988 & 1996) and it's a good idea to use the exact wording as set out in the Act itself. Google these acts for full details.

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Be aware that some clauses in the Housing Act 1988 have been amended by the Housing Act 1996, so both should be taken together. These Acts can be accessed on-line.

Ground 17 (Landlord was induced to grant the tenancy by a false statement made knowingly or recklessly) was introduced in the Housing Act 1996, Chapter 2, s102.

Unlike the s21 route, if successful the s8 route can give you a **possession order and a money order** for arrears of rent, without separate hearings, but if possession is your priority you may not always achieve this.

In the case of **rent arrears** (Ground 8) tenants can undermine your claim by paying off part of the arrears (*to be certain of obtaining a [mandatory] possession order, arrears must be 2 months (8 weeks when rent paid weekly) at the time of the notice and at the court hearing*).

Another ruse is that tenant/s may put up a defense (or counterclaim) repairs have been requested and not carried out or that the landlord has been harassing them etc.

Landlords should be aware that (unlike with s21) with a s8 claim, if tenants put up a defense, which may be legally represented, they face the possibility of paying the tenant's costs.

Where tenants lose but are able to gain the sympathy of the judge, he or she may grant a **suspended possession order**. This gives the tenant/s time to "mend their ways" and comply with the terms of the suspension, in which case any possession order granted will not be enforceable.

You need to consider carefully which route to use - the **length of time the tenancy has still to run** will be a major factor. For practical purposes it may be more cost effective in the long run to await the end of the fixed-term and to **take the certainty of the s21 route**, even if it is necessary to take further action later in the Small Claims Court to recover rent arrears and dilapidations costs etc.

When you serve a S8 Notice, you should also serve a S21 notice at the same time giving you the option to use the s21 route to possession later. However, you cannot use both routes at the same time. Also, should you decide to withdraw from the s8 route before its conclusion you could find yourself having to pay the tenant's legal costs if they have put up a defense.

Rent Arrears - Non-payment of rent, rent arrears and persistent delays in paying rent are perhaps the most common reasons for taking tenants to court using the Section 8 route, especially if these problems occur early in the fixed-term.

At the first sign of trouble of this kind the landlord/agent should contact the tenant to establish the cause. Offer help if the tenant/s will cooperate by suggesting Housing

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Benefit claims and perhaps a re-scheduling of the rent payments in cases of genuine hardship.

If necessary serve s8 notice citing grounds 8, 10 and 11 *and* a S21 notice (see Notes on servicing s21), the latter giving two months notice effective after the last day of the tenancy period, providing the notice period has ended.

Ground 8 - *Both at the date of the service of the notice under section 8 of this Act relating to the proceedings for possession and at the date of the hearing—*
(a) *if rent is payable weekly or fortnightly, at least **eight weeks'** rent is unpaid;*
(b) *if rent is payable monthly, at least **two months'** rent is unpaid;*
(c) *if rent is payable quarterly, at least one quarter's rent is more than three months in arrears; and*
(d) *if rent is payable yearly, at least three months' rent is more than three months in arrears; and for the purpose of this ground "rent" means rent lawfully due from the tenant.*

Ground 10 - *Some rent lawfully due from the tenant*
(a) *is unpaid on the date on which the proceedings for possession are begun;*
(b) *except where subsection (1)(b) of section 8 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.*

Ground 11 - *Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.*

Evidence: Follow the Civil Procedure Rules

http://www.justice.gov.uk/civil/procrules_fin/contents/parts/part55.htm

Once a tenant gets into trouble with rent arrears you should send a **polite reminder letter** and start to send out regular rent statements and schedules of arrears. The schedule is rather like a bank statement, simply (ideally a spread-sheet) an account listing:

Date - Rent Due - Rent Paid - Balance Due (showing outstanding running balance)

This is important evidence to present in court.

Your own bank statements will be needed to show that payments have stopped, therefore always show a reference to each tenant on ongoing payments – for example, a standing order payment appearing on your statement might have a reference – Jones 249 – indicating that Jones at 249 has paid x amount on the given date. Standing Order Mandate - http://www.landlordzone.co.uk/pdf/standing_order_mandate.pdf

Nuisance, Noise and Anti-Social Behavior - Nuisance, noise, general anti-social behaviour and damages are **contentious issues** and notoriously difficult for a landlord to prove.

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It's generally only worth pursuing the s8 route as far as the courts in these circumstances if the tenancy has a long period left to run, though landlords/agents must bear in mind their duty of care to neighbors.

If you are affected by these problems **collect all the evidence you can** by keeping a diary of disturbances and reportings to the police and take statements from witnesses.

Length of Tenancy - This process is a reminder that issuing long tenancies – more than six months – can introduce an **element of risk for landlords** if the tenant is not proven in performance.

Harassment - never be tempted to threaten a tenant or interfere with the property in any way or you could be accused of harassment. Under the **Protection from Eviction Act 1977** there are quite severe penalties for landlords convicted of harassment / threatened or unlawful eviction, which are criminal offences.

If relations become strained it's best to **avoid personal contact** with your tenant/s without a witness being present, or better still, use a third party such as a letting agent or solicitor. Otherwise you may be wrongfully accused of harassment, which can be very difficult to disprove.

Voluntary Surrender: If the tenant will not leave voluntarily of his/her own free will by **surrendering the tenancy** the only way you can lawfully evict a troublesome tenant is by serving notice (s21) and obtaining a **court possession order**.

A court bailiff must then enforce this if physical eviction is necessary.

Re-housing: Remember, if your tenant is looking to the local authority for re-housing you could remind them in your S8 notice that, as they are in breach of contract with you, the council may not be prepared to re-house, and likewise they are unlikely to get free legal advice.

However, tenants will always be advised by councils not to leave until they are evicted – otherwise they make themselves homeless and therefore the council has no obligation to re-house.

Abandonment: Difficulties arise where a tenant abandons the property (or appears to do so) perhaps owing a substantial amount of rent. Further complications arise if the tenant leaves possessions behind.

Re-entering, changing locks and even re-letting the property in these circumstances can be **very risky for a landlord** – it is possible this could result in both criminal charges and punitive civil damages.

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The correct and the only safe procedure in the abandonment situation is to obtain a possession order having **served a Section 8 or a Section 21 notice** at the property, which must have expired before going to court.

There *is* a defense for **taking over the property** in such circumstances but it's by no means fool proof. You must be able to prove to a Crown Court Jury that you had good reason (good evidence) to believe that the **tenancy had been abandoned** and that you had taken all reasonable steps to contact the tenant.

Posting an **abandonment notice** at the premises, contacting the local authority rent officer and contacting next of kin. (you should have a contact person if the tenant completed a Tenancy Application Form:

<http://www.landlordzone.co.uk/pdf/application.pdf>)

These are all reasonable steps you could take. But these are no guarantee you won't be prosecuted for **Unlawful Eviction**, should the tenant return.

The Main Points of the Section 8 Route (from the Housing Act):

- *the landlord or, in the case of joint landlords, at least one of them, has served on the tenant a notice in accordance with the relevant section (s8) and the proceedings are begun within the time-limits prescribed and clearly stated on the notice*
- *the notice must be given in the prescribed form – there forms are available from legal stationers or downloaded from this website*
- *The notice must specify the ground or grounds why a landlord seeks possession.*
- *The Housing Acts provide 18 grounds that a landlord can use to recover possession under s8. (Ground 14a applies only to Registered Social Landlords. The landlord must specify in the notice which ground he intends to rely on and give precise particulars of the ground or grounds which apply.*

The Section 8 Route can be used for both Assured Shorthold Tenancies *and* Assured Tenancies, whereas the Section 21 Route can only be used for ASTs.

Periods of Notice Required - Serving a Section 8 Notice - You must serve notice seeking possession of the property on the tenant *before* starting court proceedings. You need to give the following periods of notice:

Grounds 3, 4, 8, 10, 11, 12, 13, 15 or 17 – at least 2 weeks

Grounds 1, 2, 5, 6, 7, 9 and 16 – at least 2 months

For ground 14 – you can start proceedings as soon as you have served notice.

Serving the Notice. Notices can be served (1) in person, (2) at the property (through the letter box) (3) by mail. Remember to keep copies of everything.

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- (1) **Serving in person** is perhaps the preferable method as there's no doubt about the actual date of service, but try to have a witness. Another option is to use a professional Process Server.
- (2) **Service at the Property** through the letter box is also a good method, but again you need a witness.
- (3) **Service by mail** is an acceptable method (first class post - next day delivery) but allow 3 working days for delivery and use registered post "**Proof of Postage**" This means the Post Office will give a receipt of postage and the address to which the notice is sent. This will be accepted by the court if you have a receipt.

Some solicitors advise posting from 2 different post offices – thus preventing the defendant claiming the notice was not received – unlikely to be “lost in the post” twice!

Recorded Delivery can cause problems if the intended recipient refuses to sign, is not present at the property, or the “postie” fails to get a signature – not uncommon these days. This means it's returned to you, by which time you may have missed the trigger date and you may then need to give an extra month's notice, in the case of s21 notices.

How long will it take? The courts are not fast in the way they process claims and there can be significant delays involved. The overall time it takes to remove a tenant will to a large extent depend on the tenant and the work-load of your local court.

Tenants may leave on receipt of your s8 or s21 notice, when they receive a court summons, or they may stick it out to the bitter end – even asking the judge to delay possession and waiting until the bailiff comes knocking, each stage adding more delays.

The judge has the discretion to delay possession where the tenant can show hardship.

These timings for the whole process are a rough guide only, for an average overall time of 2 to 3 months. They will vary considerably from region to region:

| | | |
|---|---------|----------|
| Notice period: | 14 days | |
| Time between application and hearing date, on average | | 2 months |
| Grant of Possession Order | 14 days | |
| Bailiff's removal | 14 days | |

Note: If you do this yourself take care to get the minutest details correct on the notices and paperwork – there's a high proportion of these processes thrown out on technicalities.

Be prepared to challenge if you necessary, by respectfully pointing out to the judge any errors of interpretation you are aware of.

If you are not confident or you are not prepared to do your homework on this, which is vital, consider using an eviction specialist or a solicitor. As a very rough guide, the full process will cost you in the region of £1000 plus if someone does it for you.

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Court Hearing: Landlords get a bad press generally – it's not the most revered occupation in society - and they don't always get much sympathy in court, as often do their tenants, particularly if they conform to the bullying landlord stereotype.

Try hard to avoid the “Rigsbyesque slumlord” syndrome by presenting yourself as a smart-suited efficient business person with a reasonable approach to your tenants and obvious respect for the law, and the judge, whom you refer to as Sir or Madam.

Present your case clearly and concisely with brief, well organised statements and evidence. Avoid making personal slights and insults about your tenant/s or responding to those spurious jibes written in your tenant's defense – stick strictly to the facts.

Judges will thank you for making their job easier – they don't want the task of reading pages and pages of “twittering on” about what happened in the tenancy. For example, the tenant owes rent - that's enough!

Generally these hearings are quite informal so you don't have to be a Philadelphia lawyer to win your case! Judges can read between the lines and know who is being reasonable and who is not.

There's a fair amount of homework needed to get yourself up to scratch with the rules, and to put together a good case, but it's perfectly feasible for the average layman to complete this procedure. Once you've done this successfully it gives you a tremendous sense of satisfaction, and the next time it's a piece of cake!

Section 8 Notice - <http://www.landlordzone.co.uk/agreements.htm>

LandlordZONE FAQ – <http://www.landlordZONE.co.uk/FAQ>

LandlordZONE Forums: <http://www.LandlordZONE.co.uk/forums>

Civil Procedure Rules - CPR 55 - Possession Claims:
http://www.justice.gov.uk/civil/procrules_fin/contents/parts/part55.htm

LandlordZONE Topic - Grounds for Possession:
http://www.landlordzone.co.uk/grounds_for_possession.htm

Court Service – Information for Landlords:
<http://212.137.36.113/infoabout/housing/landlords/index.htm>

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