

Factsheet 68

Tenancy rights – security of tenure

June 2018

About this factsheet

This factsheet provides information on a tenant's right to keep their home (security of tenure). It explains that different tenancies offer different levels of security, meaning some tenants can be evicted more easily than others.

For information about other aspects of tenancy rights, see the Age UK factsheets on rents and home improvements and repairs. We also publish factsheets on finding accommodation in the private rented sector and from social landlords, specialist housing for older people and park homes.

The information in this factsheet is applicable in England and Wales. If you are in Scotland or Northern Ireland, please contact Age Scotland or Age NI for information. Contact details can be found at the back of this factsheet.

Contact details for any organisation mentioned in this factsheet can be found in the *Useful Organisations* section.

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1 Recent developments

- In **England**, banning orders for rogue landlords and agents came into force on 6 April 2018. A landlord or agent convicted of a '*banning order offence*' can be banned from carrying out lettings and property management work. Offences include harassment, illegal eviction and letting a property to someone whose immigration status disqualifies them from renting.
- Banning orders were introduced under the *Housing and Planning Act 2016*. The Act made other changes affecting tenants' security of tenure, including requiring local authorities to grant fixed-term instead of '*lifetime*' tenancies in most circumstances and changing the succession rules for existing local authority tenants. These changes are still not in force.
- In **Wales**, there is different legislation. Once the *Renting Homes (Wales) Act 2016* is implemented, a new tenancy regime will come into force. Apart from a few exceptions, all current tenancies will be replaced by two types of occupation contract - a secure contract and a standard contract. The Act works retrospectively, so it is not only future agreements that are affected - existing tenancy agreements will also be converted.

The Welsh Government has not announced when this part of the Act will be implemented and current rules on different tenancy types still apply. Contact Age Cymru Advice or Shelter Cymru for the latest information, or see the Welsh Government website: www.gov.wales/topics/housing-and-regeneration/legislation/rentingbill.

2 Introduction

As a tenant, you have certain legal rights, including the right to keep your home ('*security of tenure*'). In practice, this usually means your landlord is unable to evict you without obtaining a court order.

In some cases, the court must be satisfied the landlord has a good reason to evict. In other cases, the landlord does not need to give a reason. This means some tenants enjoy greater security of tenure than others. Your level of security depends on the type of tenancy you have.

If your landlord asks you to leave or you get a letter or notice telling you to leave, you should seek advice immediately.

Most people living in rented accommodation are tenants. Most tenancies are governed by an Act of Parliament, meaning the tenant has rights set out in that Act. There are different Acts governing different tenancy types. This factsheet gives basic information about these tenancy types and the rights they give tenants. It briefly discusses renters who are not tenants and tenancies that are not governed by an Act of Parliament.

Seek specialist advice if you are unsure whether you are a tenant or what type of tenancy you have. You can use the '*tenancy checker*' tool on the Shelter website or the Shelter Cymru website in Wales.

3 Tenancy or licence?

Most people living in rented accommodation are tenants, but some are licensees. A good start point is your tenancy agreement, which may say you have a tenancy granted under the *Rent Act 1977*, the *Housing Act 1985*, or the *Housing Act 1988*. This means you are a tenant and your tenancy is governed by an Act of Parliament.

The distinction between a tenancy and a licence can be unclear, but, in brief, a tenant has '*exclusive possession*' of their home, whereas a licensee is given permission to occupy. You can have exclusive possession even if you live with others. Being in exclusive possession means you are in control of the premises and can exclude the whole world, including the landlord.

If you live in a care home, you are likely to be a licensee. This is because the care home provider is likely to need unrestricted access to your room or property to provide services, meaning you cannot have exclusive possession. By contrast, if you live in sheltered housing, you are likely to have exclusive possession and be a tenant.

Lodgers are likely to be licensees. People living with friends or family are likely to be licensees, even if they have exclusive possession. This is because the courts have said that, in most cases, family and friends do not intend to enter into a legal landlord and tenant relationship.

The position for people living in accommodation provided by an employer ('*tied accommodation*') is complicated. You may have a tenancy, a licence, or a particular kind of licence called a '*service occupancy*'. Speak to an adviser about your status and rights.

Tenants usually have more rights than licensees. Because of this, some landlords attempt to grant licences when in reality you have exclusive possession and should be a tenant. These '*sham*' licences are less common today than previously, as private landlords have the option of granting low-security assured shorthold tenancies. However, it is important to be aware that you may have a tenancy even if your agreement says you are a licensee. A landlord cannot opt out of rights you should have as a tenant, regardless of what your agreement says.

4 Your right to keep your home

Most tenants and licensees have at least '*basic protection*' from eviction. This means you cannot be forced to leave your property unless your landlord obtains a court order, known as a possession order.

If your tenancy is governed by an Act of Parliament, you have additional protection. In most cases, your landlord must have a good reason for wanting to evict you (a '*ground*' for possession). The main exception is assured shorthold tenants, who can be evicted on a '*no fault*' basis after six months or the end of a longer fixed term.

Some special types of tenancy or licence offer less protection. These people are known as '*excluded occupiers*'. They can be evicted without a court order.

If you are an excluded occupier, your landlord must only give '*reasonable notice*' that they want you to leave (or whatever notice period was specified in your agreement). You are likely to be an excluded occupier if you share a kitchen, living room or bathroom with your landlord or their family, or if you are living rent free. There are other examples, so speak to an adviser if you are unsure.

The following sections describe the main tenancies that are governed by an Act of Parliament and the process for evicting these tenants. Most tenancies are governed by an Act, so, if you are a tenant, you are likely to have one of these. However, be aware that some tenancies are not governed by an Act, for example tenancies of temporary accommodation provided by a local authority. Use the Shelter tenancy checker or speak to an adviser if you are unsure.

5 Types of tenancy

5.1 Fixed term or periodic?

Tenancies are either fixed term or periodic.

Fixed-term tenancies are granted for a specific length of time. They are very common in the private rented sector, where you are likely to be given a tenancy with a fixed term of six or 12 months.

Fixed-term tenancies are less common in the social housing sector, although local authorities and housing associations can grant them and have been encouraged to do so. You may be able to challenge an offer of a fixed-term tenancy by a local authority or housing association, or the length of the tenancy offered (see section 10).

Periodic tenancies do not have fixed terms, but instead roll on until you or your landlord decide you want the tenancy to end. Some tenancy agreements specify the tenancy '*period*', stating that it runs from week to week or month to month or that it is a weekly or monthly tenancy. If not, the period is inferred from how the rent is set. Periodic tenancies are sometimes called '*lifetime*' tenancies.

In future, local authorities will only be able to grant lifetime tenancies in limited circumstances. This change was brought in by the *Housing and Planning Act 2016*, but has not yet been implemented. Full details of the circumstances in which authorities will continue to grant lifetime tenancies have not yet been published.

The distinction between fixed-term and periodic tenancies is important because it affects your rights as a tenant. It is particularly important if you are an assured shorthold tenant.

If your assured shorthold tenancy comes to the end of its fixed term and you remain in the property without a new tenancy being granted, the tenancy continues as a '*statutory periodic*' tenancy. From this point on, your landlord can use the '*no fault*' procedure to evict you, although you cannot be forced to leave the property until six months have passed since the beginning of the tenancy (see section 7.3). If the tenancy was always periodic, you can be evicted on a no fault basis after six months.

5.2 Private tenants

As a private tenant, you are likely to have one of three tenancies:

- **a regulated (protected or statutory) tenancy** – if you have lived in your home or with the same landlord since before 15 January 1989
- **an assured tenancy** – if you moved into your home on or after 15 January 1989 and were not with the same landlord at a previous address
- **an assured shorthold tenancy** – if you either:
 - moved into your home between 15 January 1989 and 28 February 1997 and were given specific notice saying the tenancy was assured shorthold (unless you had the same landlord at a previous address, in which case the new tenancy may be regulated or assured), or
 - moved in on or after 28 February 1997 (unless you had a regulated or assured tenancy with the same landlord at a previous address or the agreement specifically states otherwise).

Regulated tenancies are governed by the *Rent Act 1977*. Assured and assured shorthold tenancies are governed by the *Housing Act 1988* and the *Housing Act 1996*. The latter removed the requirement for a landlord to give notice if a tenancy is to be assured shorthold. This means assured shorthold tenancies are now the default private sector tenancy.

5.3 Local authority and housing association tenants

If you live in social housing, you are likely to have one of the following:

- **a secure tenancy** (governed by the *Housing Act 1985*) – most housing association tenants who moved in before 15 January 1989 and local authority tenants
- **an assured tenancy** – most housing association tenants who moved in after 15 January 1989
- **an assured shorthold tenancy** – some housing associations offer this type of tenancy as a probationary or longer-term measure. Your agreement will say if your tenancy is assured shorthold.

If a local authority transfers its stock to a housing association, all existing tenants become assured tenants of the housing association. You may keep extra rights, for example the right to buy.

6 The eviction process

If you have one of the tenancy types mentioned above, the eviction process has three main stages:

- 1 the landlord serves a notice indicating they want the property back
- 2 the court grants an '*order for possession*'
- 3 the court issues a warrant authorising bailiffs to evict you.

However, there may be more stages or fewer. You may end up going to court several times, for example if a possession order is '*suspended*' or '*postponed*' and you struggle to comply with conditions the court has set (see section 6.1 for more information). In exceptional circumstances, the court will allow a possession hearing to take place even though the landlord has not served a notice. It may do this if you have caused considerable nuisance to your neighbours, for example.

You may choose to leave at the end of the notice period or by the date specified on the order for possession, meaning no further action is necessary. Speak to an adviser before doing this.

Stage one – eviction notice

Unless the exceptional circumstances set out above apply, it is likely you will receive a '*notice to quit*', a '*notice seeking possession*' or a '*notice requiring possession*' as the first stage in the eviction process. The type of notice depends on your tenancy and the reason why the landlord is seeking possession.

Generally speaking, a notice must include your name and address and give you a period of time before the landlord will apply to court for a possession order. In some cases, your landlord's name and address and full details of any '*ground*' for possession (the reason why possession is being sought – see section 6.1) must be given.

Different grounds require different notice periods. For some, a landlord should give two months' notice, for others, two weeks or less. For assured shorthold tenancies, no ground is required if the landlord is seeking possession after six months or at the end of a longer fixed term, but at least two months' notice must be given.

Stage two - order for possession

When the notice period ends, the landlord can apply to the court for a possession order. If your landlord takes action in the courts, you may end up having to pay some, or all, of their legal costs.

For most tenancies, there must be a court hearing to decide whether an order should be granted. There is a fast-track procedure that can be used for assured shorthold tenancies if the landlord is applying on a '*no fault*' basis (see section 7.3), meaning there may not be a court hearing. The court still has to consider the case and look at all relevant papers.

If a possession order is granted '*outright*', you are told to leave the property by a certain date. You can ask the court to delay this date if it causes you '*exceptional hardship*' to leave so promptly.

In some cases, the court may grant a possession order that is '*suspended*' or '*postponed*', meaning a bailiff's warrant will not be granted if you comply with certain conditions

Stage three – bailiff's warrant

If you do not leave by the date on the possession order or comply with conditions set by the court, your landlord can apply to the court for a warrant authorising bailiffs to evict you. Most eviction cases are dealt with by the county court. If so, the court should send you notice that a bailiff's warrant has been issued. This tells you the date and time of the eviction.

However, your landlord can ask for your case to be transferred to the High Court. The county court judge will decide whether to allow this. If they do, the eviction is carried out by officers working for the High Court, sometimes called '*Sheriffs*'. The landlord must apply for a '*writ of possession*' before the eviction takes place. They must give you notice they are doing this, but there is no requirement for the notice to be in any particular form. In one case, a reminder from the landlord of the terms of the possession order and a request for the tenant to leave was deemed to be sufficient.

High Court eviction is usually much quicker than county court eviction. High Court Sheriffs may turn up just a few days after the landlord applies for a writ of possession. They are not required to notify you in advance of their visit, although it is common practice for them to drop off the writ and return a day or two later. This means you may not know exactly when the eviction is to take place. In addition, High Court eviction is more costly and High Court Sheriffs have the power to seize your goods if money is owed.

For these reasons, you may wish to challenge an application by your landlord to have your case transferred to the High Court – seek advice urgently if you are in this position.

The eviction process and homelessness

If you are at risk of homelessness, seek help from your local authority. By law, they must ensure information and advice about homelessness, including how to prevent homelessness, is available to you for free.

If you meet certain conditions, the local authority have a duty to assess your circumstances and agree a plan with you for preventing your homelessness. This will involve them taking '*reasonable steps*' to help you. If you are in rent arrears, reasonable steps can include assessing your entitlement to a Discretionary Housing Payment.

You should get this help if the local authority agree you are at risk of homelessness and ‘*eligible for assistance*’ on the basis of your immigration status. You are at risk of homelessness if you are likely to become homeless within 56 days, or if you are an assured shorthold tenant and have received a valid ‘*no fault*’ eviction notice that expires within 56 days.

If you have received one of these notices, it may be possible for you to be treated as homeless when it expires. This is the case even if you have not been through all the stages of the eviction process. The local authority should assess whether it is reasonable for you to remain in the property and, if not, take reasonable steps to help you obtain suitable housing available for at least six months. This can include providing financial or other support to help you get another private rented property.

Government guidance states that it is unlikely to be reasonable for an assured shorthold tenant to remain past the expiry of a no fault notice if the landlord intends to seek possession, further efforts from the local authority to resolve the situation are unlikely to be successful and there is no defence to eviction.

For more information on homelessness applications, local authority duties and presenting your case, see factsheet 89, *Homelessness*. Note, different rules apply for applications made before 3 April 2018. Do not give up your accommodation without speaking to the authority first.

6.1 Grounds for possession

In most cases, your landlord must have a specific reason for wanting to evict you (a ‘*ground for possession*’), for example rent arrears, anti-social behaviour or other breaches of your tenancy agreement. The court will not make a possession order unless it is satisfied the ground exists.

The main exception is if you are an assured shorthold tenant, as your landlord does not need a ground after a certain point and can evict you on a ‘*no fault*’ basis.

The grounds for possession are set out in law and vary according to tenancy type, although there is some overlap. Sections 7 to 9 set out the main grounds for possession your landlord can use depending on your tenancy type. Section 7.3 explains the position for assured shorthold tenants.

Grounds for possession are either ‘*mandatory*’ or ‘*discretionary*’.

Mandatory grounds

If a ground is mandatory, the court has no discretion over whether it makes a possession order. It must make an order if it is satisfied the ground exists. However, you may be able to challenge eviction on ‘*public law*’, human rights or discrimination grounds (see section 6.3). There may be a requirement on the landlord to show that suitable alternative accommodation is available for you.

Discretionary grounds

If a ground is discretionary, the court has discretion over whether it makes an order. It will only make an order if this is '*reasonable*'. In some cases, suitable alternative accommodation must be available for you too.

In deciding whether it is reasonable to grant an order, the court may consider factors such as the length of time you have lived in the property, your health and age, your conduct and willingness to remedy any issues and, in cases of anti-social behaviour, the effects of your behaviour on others.

When considering a claim for possession on a discretionary ground, the court has the power to '*adjourn*' (delay) the proceedings to give you time to clear rent arrears or rectify another breach. Alternatively, it can grant an order that is '*suspended*' or '*postponed*' on certain conditions.

If you fail to meet these conditions, the landlord can go back to court and ask for a bailiff's warrant to be granted, although you may be able to ask the court to vary the terms of the order instead.

If your landlord is a local authority or a housing association, they must comply with a Ministry of Justice Pre-Action Protocol before seeking to evict. This sets out steps they should take if you are in rent arrears or are '*particularly vulnerable*'. If their ground for possession is discretionary and they do not comply with the protocol, the court can dismiss the case.

6.2 Suitable alternative accommodation

In some cases, the court can only grant a possession order if satisfied you are to be provided with suitable alternative accommodation.

The rules on suitability vary slightly depending on your tenancy type but, in brief, the new tenancy must offer the same or comparable security of tenure and the new property must meet certain conditions.

If you are a regulated or assured tenant, for example, the court must consider whether the new property is '*reasonably suitable*' in terms of proximity to your workplace, cost and size. If furniture was provided under your old tenancy, similar or '*reasonably suitable*' furniture must be provided at the new property.

Alternatively, the landlord can provide a certificate from the local authority stating it will re-house you by a specified date.

If you are a secure tenant, the court must consider additional issues, such as the proximity of the new property to a family member's home (if this is essential to wellbeing) and the terms of the tenancy agreement. Alternatively, the landlord can provide a certificate from the local authority as above.

Seek advice if you are in this situation, particularly if the court must also be satisfied that it would be reasonable to move you.

6.3 Defending a claim for possession

If you receive a notice from your landlord stating they want the property back, seek advice immediately. Bring a copy of the notice to your appointment with the adviser so they can check when your notice period runs out, why your landlord is seeking possession and whether the notice is valid.

A notice may be invalid if the landlord uses the wrong form (for some tenancies, notice must be given using a specific form) or if the form is not properly completed, does not give enough information about why possession is being sought, or gives an incorrect date by which you should leave the property.

If your notice is invalid, the court may refuse to grant a possession order. This is unlikely to prevent eviction altogether, as your landlord can simply serve a valid notice to begin the process again, but it could buy you time to consider your options or remedy any issues.

It may be possible to raise a defence against eviction by disputing the landlord's ground for possession or by claiming they are behaving unlawfully or unreasonably. If the ground for possession is discretionary, you could argue that eviction would be unreasonable. If the landlord must show that suitable alternative accommodation is available, you could challenge its suitability or availability.

Your ability to raise a successful defence depends on factors such as your tenancy type, the reason your landlord is seeking possession, whether they are classed as a '*public body*' (meaning they must comply with public and human rights law) and whether you have a '*protected characteristic*' under the *Equality Act 2010*.

If you have a disability and possession is sought because you have done, or not done, something that might relate to being disabled, the possession proceedings may be considered discriminatory under the Equality Act 2010. For example, you may have been prevented from claiming housing benefit on time because of a mental health problem.

If it appears your notice is invalid or there are other '*defences*' you can raise against eviction, an adviser may refer you for specialist legal help. Legal aid funding for legal advice and representation is available for eviction cases. You must meet eligibility criteria to qualify, such as being on a low income or in receipt of certain benefits. Contact your local Law Centre or Citizens Advice for more information.

When can eviction be challenged?

It is possible to challenge eviction at every stage of the process, including after a bailiff's warrant has been issued. In some cases, it is even possible to regain occupation of a property after you have been evicted. However, the court's powers to set aside an eviction warrant after it has been '*enforced*' by bailiffs are limited to circumstances where it is satisfied there has been an abuse of process or '*oppression*'.

This includes where the landlord or the court gives '*misleading information*' to you about the eviction and how you might act to stop it. If a warrant is set aside, your tenancy is automatically restored.

You should always seek specialist advice to see what can be done, although the earlier you do this, the better.

'No fault' evictions

For assured shorthold tenancies, no ground for possession needs to be given after a certain point. This is often called a '*no fault*' eviction and can be difficult to challenge as, usually, the landlord simply has to follow the correct procedure for possession to be granted.

The law changed recently with the aim of preventing '*retaliatory eviction*'. This is where a landlord uses the no fault procedure to evict a tenant who has complained about the condition of their property. See factsheet 67, *Home improvements and repairs*, for more information. See section 7.3 for other restrictions on using the no fault procedure.

7 Grounds for possession for private tenants

7.1 Regulated (protected and statutory) tenants

Regulated tenancies, which are no longer granted, offer very strong tenancy rights. They are either '*protected*' or '*statutory*', but all regulated tenancies started off as protected tenancies.

A fixed-term protected tenancy comes to an end when the fixed term expires and a periodic protected tenancy can be brought to an end by the landlord serving a notice to quit. If you remain in occupation after your protected tenancy comes to an end, a statutory tenancy comes into being. Statutory tenants can only be evicted if the landlord can prove a ground to the court.

7.1.1 Mandatory grounds

The main mandatory grounds include:

- the landlord previously lived in the property or bought it for their retirement and now wants to live in or sell it
- the property was intended for a member of the clergy, or was previously occupied by a farm manager, widow or widower, and has been temporarily let out to an ordinary tenant
- the landlord is a member of the armed forces and intends to live in the property after discharge.

Normally, these grounds can only be used if the landlord notified you in writing before your tenancy started that you may be evicted for such a reason (although the court can make an exception).

7.1.2 Discretionary grounds

Discretionary grounds for possession include:

- not paying your rent
- damaging or neglecting the property or furniture
- causing a nuisance or annoyance
- renting the property to someone else without the landlord's permission
- the landlord needs the property for themselves or family
- you are a former employee of the landlord and the property is needed for a new employee
- there is suitable alternative accommodation available.

In these cases, the court must be satisfied it is reasonable to make a possession order.

7.2 Assured tenants

Assured tenants have strong tenancy rights and can only be evicted if the landlord can prove a ground to the court.

If the tenancy is within a fixed term, the landlord can only use some of the grounds to gain possession and in most cases only if there is a clause in the tenancy agreement allowing it to be ended in this way.

For example, the discretionary ground where the landlord can show that suitable alternative accommodation is available to you cannot be relied upon.

7.2.1 Mandatory grounds

The main mandatory grounds include:

- the landlord previously lived in the property or intends to do so and told you this before your tenancy started (the court can make an exception)
- the mortgage lender is repossessing the property – this ground can only be used in certain circumstances, seek advice if in this position
- the landlord intends to demolish or carry out substantial work to the property
- significant rent arrears both at the date the landlord serves notice and the date of the hearing - at least eight weeks' arrears if paying weekly or fortnightly, or two months' arrears if paying monthly
- conviction for a serious offence or anti-social behaviour that has been proven in another court – see factsheet 9, *Anti-social behaviour in housing*, for more information.

7.2.2 Discretionary grounds

Discretionary grounds for possession include:

- the landlord can show that suitable, alternative accommodation is available for you
- some rent arrears (at the time of serving the notice and at the start of court proceedings)
- persistent delays in rent payment
- breaking a condition of your tenancy agreement
- damaging or neglecting the property or furniture
- causing a nuisance or annoyance to neighbours or other people living in or visiting the area
- false information given by you prior to the grant of the tenancy.

In these cases, the court must be satisfied that it is reasonable to make a possession order.

7.3 Assured shorthold tenants

An assured shorthold tenancy is a type of assured tenancy and has limited security. During the first six months (or the length of the fixed term if longer), you can only be evicted if your landlord proves one of the grounds for possession set out in section 7.2.

After the first six months (or the end of the fixed term if longer), you can be evicted on a '*no fault*' basis. This means the landlord does not have to prove a ground in court, although they must follow the correct procedure.

No fault eviction may be called a '*section 21*' eviction. This is because the landlord must serve a '*section 21*' notice to start the process. To be valid, a section 21 notice must be in writing and give you at least two months' notice that the landlord wants the property back. If your tenancy was granted on or after 1 October 2015, the landlord must use a specific legal form for the notice (or a form substantially to the same effect). From 1 October 2018, this rule applies to all assured shorthold tenancies.

If you have a fixed-term assured shorthold tenancy with a housing association or another social landlord, they should give you notice at least six months before the end of the fixed term if they plan not to renew the tenancy. This applies if your tenancy was granted on or after 1 April 2012 for a fixed term of at least two years.

The notice must be in writing, state that the landlord will not be renewing the tenancy and tell you where to get help and advice. If the landlord does not serve this notice, the court cannot make a no fault order for possession at the end of the fixed term. The landlord must also serve a section 21 notice as explained above.

Restrictions on no fault eviction – deposit protection

A landlord cannot serve a valid section 21 notice if they have not complied with their deposit protection obligations. The law says landlords granting assured shorthold tenancies must protect your deposit in an ‘*authorised scheme*’.

The rules are different depending on when your deposit was paid. If it was paid on or after 1 April 2012, your landlord should have protected it within 30 days of receipt and should have provided you with ‘*prescribed information*’, including details of where it is protected.

If they did not protect the deposit within 30 days of receipt, or they fail to give you information about where it was protected within 30 days, they cannot use the no fault procedure until they return the money to you (subject to agreed deductions), or until the matter has been decided in court or settled out of court.

The situation is different for deposits paid before 1 April 2012. Seek specialist advice if your landlord tries to evict you using the no fault procedure and you believe they have not complied with their deposit protection obligations.

Further restrictions for new tenancies

In **England**, the *Deregulation Act 2015* introduced further restrictions on a landlord’s ability to use the no fault procedure. These apply if your tenancy was granted on or after 1 October 2015. From 1 October 2018, the restrictions apply to all assured shorthold tenancies.

Your landlord cannot use the no fault procedure if they have not provided you with a copy of your property’s current Energy Performance Certificate and current gas safety certificate. This applies whether you rent from a private landlord or housing association.

If you rent privately, the landlord must also provide you with an up-to-date copy of the government’s ‘*checklist for renting*’ guide at some point during the tenancy. They cannot serve a valid section 21 notice if you have complained about the property’s condition and been backed up by the local authority serving a notice. See factsheet 67, *Home improvements and repairs*, for more information.

Your landlord must not serve a section 21 notice within the first four months of your tenancy. If your tenancy has been renewed, the four-month period begins on the first day of the original tenancy. If you have been served with a section 21, your landlord must commence court proceedings within a specific time limit (usually six months). If they do not, they must serve a fresh notice to start the process again.

The *Deregulation Act 2015* does not apply in **Wales**. The *Renting Homes (Wales) Act 2016* contains measures to tackle retaliatory evictions, but these have not yet been implemented. Contact Age Cymru Advice or Shelter Cymru for more information, or see the Welsh Government website: www.gov.wales/topics/housing-and-regeneration/legislation

Challenging no fault eviction

The rules set out above mean that no fault eviction can be challenged, even though the landlord does not have to prove a ground in court.

Seek advice if you are in this position. However, you should be clear about what you can hope to achieve by challenging eviction in this way. You may only succeed in delaying eviction.

This would give you time to explore your housing options, but some options, such as making a homelessness application, may be more difficult to pursue if you are not at immediate risk of losing your home.

Bear in mind that, if you do not leave by the date on the section 21 notice and the matter goes to court, you may have to pay your landlord's costs and your credit score could be affected.

See Age UK information guide 8, *Housing options*, for more information about your housing options and factsheet 89, *Homelessness*, for information about the homelessness application and assessment process.

8 Grounds for possession for local authority tenants

Most local authority tenants are '*lifetime*' secure tenants and can only be evicted on limited grounds.

There are exceptions, for example if you have a probationary, fixed-term ('*flexible*') or demoted tenancy, or if you are homeless and living in temporary accommodation provided by the local authority.

8.1.1 Mandatory grounds

These include:

- your home is illegally overcrowded
- your landlord needs the property empty in order to carry out work to it or to demolish it.

If the landlord seeks possession on these grounds, they must prove suitable alternative accommodation is available for you.

There is an '*absolute*' ground for anti-social behaviour, which is identical to the ground against assured tenants in section 7.2.1. The court does not have to be satisfied suitable alternative accommodation is available when making an order on this ground.

8.1.2 Discretionary grounds

These include:

- not paying your rent or breaking a condition of your tenancy agreement
- damaging or neglecting the property or furniture provided by the landlord
- causing a nuisance or annoyance to neighbours or other people living in or visiting the area
- you or your partner have left the property because of domestic violence, including threats of violence, and are not going to return
- you obtained your tenancy by giving false information to the landlord.

In these cases, the landlord has to prove one of the grounds applies and the court must be satisfied it is reasonable to make a possession order.

There are discretionary grounds where the landlord must also show they can provide you with suitable alternative accommodation. These include:

- your home is specifically designed or adapted for someone with a physical disability or other special needs and no one with those needs lives with you
- you took over the tenancy after a previous tenant died and the home is larger than you need, except if you were the spouse or civil partner of the previous tenant (it is unclear if this applies if you were live-in partners).

9 Grounds for possession for housing association tenants

If you are a housing association tenant and your tenancy began before 15 January 1989, the grounds for possession are the same as for secure local authority tenants.

If your tenancy began on or after 15 January 1989, the grounds for possession are the same as for assured private tenants, with an additional discretionary ground available in domestic violence cases.

A housing association can seek possession if you or your partner have left the property because of domestic violence, including threats of violence, and are not going to return.

Some housing association tenants have less protection, for example if you have a fixed-term or demoted tenancy. Housing associations may offer fixed-term tenancies as a probationary or longer-term measure.

10 Probationary, '*flexible*' and demoted tenancies

10.1 Probationary tenancies

Both local authorities and housing associations can grant probationary or trial tenancies to new tenants. These generally last for 12 months.

Provided there are no issues during that time, you should get another, more secure tenancy at the end of the 12-month period, although this could be a fixed-term tenancy.

Probationary tenancies have limited security of tenure and you can be evicted fairly easily if problems, such as rent arrears or anti-social behaviour, arise.

Local authority probationary tenancies are called introductory tenancies. Housing association probationary tenancies are called starter tenancies.

Introductory tenancies – granted by local authorities

If a local authority chooses to run an introductory tenancy scheme, they must grant introductory tenancies to all new tenants. The exception is if you are already a secure or assured tenant. This might apply, for example, if you live in a '*general needs*' council property and ask to be transferred to sheltered housing. Your new tenancy is secure or assured, not introductory.

If you are an introductory tenant, you have limited security of tenure. To evict you, the local authority must serve a notice giving its reasons and allow you 14 days to request an internal review of the decision. If no review is requested or the decision remains the same, the local authority may apply to the court for a possession order.

Provided the local authority has served the correct notice and carried out the review in accordance with the law, you have no defence to the possession claim, other than on public law, equalities or human rights grounds.

If the authority does not start possession proceedings within a 12-month period and other conditions are met, the tenancy automatically becomes secure.

If the authority offers '*flexible*' tenancies (secure tenancies granted for fixed terms), the tenancy may become flexible after the introductory period, but only if a notice was served in advance of the tenancy being granted informing you this would happen.

Local authorities can extend introductory tenancies by up to six months, for example if there are rent arrears or to tackle anti-social behaviour. A notice of extension must give the landlord's reasons for extending.

You have the right to ask for a review of a decision to extend your introductory tenancy. You must request this within 14 days of the notice of extension being served.

Starter tenancies – granted by housing associations

If a housing association decides to operate a starter tenancy scheme, it must grant starter tenancies to all new tenants, or all new tenants in a designated area. These should be for a maximum of 12 months, or a maximum of 18 months if reasons for extending the probationary period are given and you have the opportunity to request a review.

If no action is taken, you are offered another tenancy at the end of the trial period. Housing associations are being encouraged to use tenancies with fixed terms, like a local authority flexible tenancy. These should be granted for a minimum of five years or, exceptionally, a minimum of two years.

Housing associations can grant '*lifetime*' rather than fixed-term tenancies to certain groups of people, such as older people. They should have a policy on when longer-term tenancies are granted and take the needs of vulnerable households and households with children into account.

They should give you the opportunity to appeal against or complain about the type or length of tenancy offered. They should have a policy on the circumstances in which they may or may not grant another tenancy on the expiry of the fixed term.

10.2 Flexible tenancies – England only

A flexible tenancy is a form of secure tenancy, granted mainly by local authority landlords. It is granted for a fixed term, normally a minimum of five years. In '*exceptional circumstances*', a flexible tenancy can be granted for a minimum term of two years.

Flexible tenancies have more limited security of tenure than '*periodic*' or '*lifetime*' secure tenancies, which roll on indefinitely unless terminated by you or a court. As a flexible tenant, you can be evicted at the end of the fixed term if your landlord follows the correct procedure, although the decision to evict must not be '*wrong in law*' and you may be able to raise a public law, human rights or equality defence. See section 6.3 for more information on defending an eviction claim.

When a flexible tenancy is coming to the end of its fixed term, the local authority must either grant another flexible tenancy, or a periodic secure tenancy, or seek possession. If they do not do any of these, the tenancy automatically becomes a periodic secure tenancy at the end of the fixed term.

If the authority does not want to grant another tenancy when a flexible tenancy comes to an end it must serve two types of notice:

- the first notice must be served at least six months before the tenancy is due to end, with reasons for the non-renewal
- the second notice must be served at least two months before the tenancy is due to end, saying that the authority is seeking possession.

If you receive notice that the local authority does not intend to renew your flexible tenancy, seek advice immediately. You have 21 days from the date the first notice is served to request a review. The law says a review must, in particular, consider whether the decision has been made in line with the authority's tenancy strategy (see below). The authority must notify you in writing of its decision on the review.

Before a fixed-term flexible tenancy ends, the grounds for possession are the same as for periodic secure tenancies (see section 8). There must be a clause in the tenancy agreement allowing the landlord to 're-enter' the property in this way. Flexible tenants have other rights that periodic secure tenants have, such as succession rights (see section 11).

English local authorities have been able to grant flexible tenancies since the *Localism Act 2011* came into force on 1 April 2012. The Welsh Government does not intend to introduce this tenancy type in **Wales**.

Tenancy strategy

Before a local authority can grant flexible tenancies, they must publish a tenancy strategy. It must set out when flexible tenancies are granted, how long the terms are and the circumstances in which the authority will grant a further tenancy on the coming to an end of the existing tenancy.

Authorities must have a policy on how to take the needs of households who are vulnerable by reason of age, disability or illness, and the needs of households with children, into account. This includes offering tenancies providing '*a reasonable degree of stability*'.

You can request a review if you think the authority has not followed its policies by offering you a flexible tenancy of a certain length. You must do so within 21 days of receiving the offer, unless the authority agrees to an extension. You can make a complaint about being offered a flexible instead of a periodic secure tenancy.

10.3 Demoted tenancies

Local authorities and housing associations can apply to have a tenancy '*demoted*' by the court. This reduces your security of tenure for a period of time, making it easier for the landlord to evict you.

The court makes a demotion order if satisfied you, or someone living with you or visiting you, have engaged or threatened to engage in anti-social behaviour, or used or threatened to use the property for unlawful purposes. The court must consider it reasonable to make the order. If the landlord does not apply for possession within the period of time specified in the demotion order, usually 12 months, your tenancy becomes secure or assured again.

If you receive notice that your landlord is applying to have your tenancy demoted, seek advice immediately. See factsheet 9, *Anti-social behaviour in housing* for more information.

11 The right to inherit a tenancy ('*succession*')

Your right to inherit a family member's tenancy after their death depends on various factors, including the tenancy type, when it was granted, your relationship to the tenant and how long you lived together. This section set out the different statutory succession rules for each tenancy type. These are the circumstances in which the law allows a tenancy to be inherited.

Unless there is more than one potential successor, statutory succession happens automatically and does not have to be granted by the landlord. However, the rules on succession are complex and it can be difficult to get a landlord to recognise your right to succeed.

If there is more than one eligible successor, try and decide amongst yourselves who should succeed. If you cannot decide, it is up to the landlord or the court to make a decision.

Seek advice if you are having difficulties with establishing a right to succession.

Tenancy agreements can provide additional succession rights, so it is important to check the agreement of the person who passed away.

If you are a local authority or housing association tenant, check whether the landlord has policies on when it allows succession outside of the statutory rules. Even if you have no legal right of succession, it is worth negotiating with the landlord if your circumstances are exceptional.

Note that same-sex married couples are treated the same as opposite-sex married couples. Civil partners are treated the same as married couples. Same-sex partners living together as if they are married or in a civil partnership are treated the same as opposite-sex unmarried couples living together as husband and wife

11.1 Joint tenants

If one of two joint tenants dies, the remaining tenant automatically takes over the whole tenancy. This is technically via '*survivorship*' rather than succession, but the surviving tenant is treated as a successor. They are responsible for paying the rent in full.

If the tenancy is secure, assured, or assured shorthold, no further succession is permitted (unless the tenancy agreement states otherwise). If the tenancy is regulated under the *Rent Act 1977*, there is nothing to prevent further succession to the now-sole tenancy.

11.2 Private tenants

11.2.1 Assured (including assured shorthold tenancies)

Periodic assured tenancies (including assured shorthold tenancies) can be inherited by the tenant's spouse, civil partner, or a person who was living with the tenant as if they were their spouse or civil partner.

You must have been occupying the property as your only or principal home immediately before the tenant's death. Succession can only happen once.

As assured shorthold tenancies have limited security, it can be difficult for successors who were not previously joint tenants with the deceased tenant to assert succession rights. You could try to negotiate a new tenancy with your landlord rather than take over the existing tenancy by succession.

Note

It is common in the private sector for tenants to be granted assured shorthold tenancies with a six-month or one-year fixed term.

If an assured shorthold tenancy granted by a private landlord is still within its fixed term, it should pass to the deceased tenants' personal representatives as part of their estate.

11.2.2 Regulated (protected and statutory) tenancies

Regulated tenancies can be inherited by the tenant's spouse, civil partner, or a person who was living with the tenant as if they were their spouse or civil partner. You must have been living in the property immediately before the tenant's death.

Alternatively, a tenancy can be taken over by a member of the tenant's family if they lived in the property for the two years leading up to the tenant's death.

If a member of the family other than the tenant's spouse, civil partner or partner takes over the tenancy, it becomes assured instead of regulated. Otherwise, the successor inherits a statutory tenancy.

Regulated tenancies can be passed on twice, but only if the first succession is to a spouse, civil partner or co-habiting partner and the second is to a person who was related to both the original tenant and their successor. The second successor gets an assured tenancy.

11.3 Local authority tenants

11.3.1 All Welsh tenancies and English tenancies pre-1 April 2012

These tenancies can be inherited by a spouse, civil partner or a member of the tenant's family (including a partner the tenant lived with as if married or in a civil partnership).

A spouse or civil partner must have occupied the property as their only or principal home at the time of the tenant's death.

A member of the family (including a partner) must have lived with the tenant for at least 12 months and occupied the property as their only or principal home at the time of death. If there is more than one potential successor, the spouse or civil partner has priority.

If you succeed to a tenancy after someone's death and are not the spouse or civil partner of the deceased tenant, the authority can ask the court for permission to move you to suitable alternative accommodation.

They can only do this if the property is larger than you need and they gave you written notice between six and 12 months after the tenant's death. The court may only order possession if it is reasonable to do so.

A tenancy can only be passed on once in this way.

11.3.2 Tenancies in England that began on or after 1 April 2012

If a tenancy (secure or flexible) was granted on or after 1 April 2012, succession rights are more limited.

A tenancy can only be inherited by a spouse, civil partner, or person living with the tenant as if they were their spouse or civil partner.

However, the tenancy agreement may extend this right to other family members.

11.4 Housing association tenants

Assured tenancies granted by housing associations (including assured shorthold tenancies) can be inherited by the tenant's spouse, civil partner, or a person who was living with the tenant as if they were their spouse or civil partner.

The successor must have occupied the property as their only or principal home immediately before the tenant's death and succession can only happen once.

For tenancies granted after 1 April 2012 in **England**, the tenancy agreement may give additional succession rights, which apply if there is no-one eligible to succeed as a spouse, civil partner etc.

For secure housing association tenancies (granted before 15 January 1989), a family member (including a live-in partner) can succeed in the absence of an eligible spouse or civil partner. They must have lived in the property for at least 12 months before the tenant's death.

12 Harassment and illegal eviction

In most cases, it is illegal for your landlord to evict you without a court order. It is also against the law for your landlord to harass or withdraw services from you with the intention of forcing you to leave your home or making it impossible for you to live there in peace and comfort. Acts of harassment include threats or physical violence, withdrawing essential services such as disconnecting the electrical supply or refusing to carry out vital repairs.

The *Protection from Eviction Act 1977* protects tenants from illegal eviction. The *Protection from Harassment Act 1997* covers a wider range of harassment (racial harassment, neighbour disputes and harassment by landlords) and is not restricted to residential occupiers. It can be used in addition to, or instead of, the *Protection from Eviction Act 1977*.

If you are being harassed or threatened with illegal eviction, contact your local authority. Some have tenancy relations officers who deal with these cases. If the authority does not have a tenancy relations service, staff from other departments such as the Environmental Health or housing department may assist.

The authority normally tries to conciliate between you and your landlord. If this fails, it can take legal action against a landlord who breaks the law. Alternatively, you can take action yourself through the courts, but you should seek advice if you are considering this.

You can apply to the court for a rent rebate if your landlord harasses you, uses (or threatens to use) violence to enter your property, or carries out (or attempts) an illegal eviction. A landlord can be banned from carrying out lettings and property management work on the same grounds. More information is in factsheet 35, *Tenancy rights – rent*.

13 Other issues

13.1 Relationship breakdown

If you are asked to leave your home by your spouse, civil partner or partner (referred to collectively as '*partner*'), you may have rights to stay temporarily or permanently. This may be the case even if the tenancy agreement is in their sole name.

If you and your partner separate and find it difficult to agree on who should keep your home, you can try mediation. This can help avoid court proceedings, but is unlikely to be appropriate if you have experienced violence or are at risk of violence.

Legal aid, or funding for legal advice and representation, is available for mediation, but you must meet eligibility criteria, such as being on a low income or in receipt of certain benefits.

If you try mediation, make sure you understand your rights to keep your home and your potential options first. For more information, see factsheet 89, *Homelessness*.

It is important to be aware a joint '*periodic*' tenancy can be ended by one tenant serving a valid notice on the landlord. This means a tenancy that is not a fixed-term tenancy or where the original fixed term has elapsed.

Your partner does not have to obtain your consent to end the tenancy in this way and you may be unable to remain in the property. The situation may be different if you have a '*regulated*' (protected) tenancy, seek advice if you are in this position.

If your partner leaves your property but has not served a notice to quit, you need to establish whether you can be made a sole tenant. It may be possible through a deed of assignment (this means your partner transfers their '*share*' of the tenancy to you), or by the creation of a new sole tenancy in your name.

Some social landlords (local authorities and housing associations) may be unwilling to do this, particularly if you are under-occupying the property. However, a social landlord is likely to be classed as a '*public body*', meaning it must comply with public and human rights law, which gives you more scope to challenge eviction.

13.2 Mortgage repossession

The property you rent may be mortgaged or your landlord may have secured other debts against its value. This gives the person who granted the mortgage or the loan, the lender, a right of possession if your landlord breaches the terms of their agreement, for example by failing to keep up with payments.

If your tenancy was granted before your landlord took out a mortgage and the lender obtains possession of the property, the tenancy is '*binding*' on the lender. This means you become the lender's tenant and pay rent to them. They cannot evict you unless they can prove a ground for possession or the no fault procedure is available to them.

Your tenancy binds the lender if it was granted after the mortgage was taken out and with their consent, although there are specific grounds for possession that may apply in these circumstances. If your tenancy was granted without the lender's consent, it will not be binding on them and you can be evicted if they obtain possession.

You can ask the court to allow you to remain in the property for a number of months. You should be sent notices by the lender in advance of the possession hearing and before an application for a bailiff's warrant is made. This gives you an opportunity to ask the court to postpone the eviction.

13.3 Immigration status

The *Immigration Act 2014* introduced the concept of a ‘*right to rent*’, linked to your immigration status. Some people have an unlimited right to rent, such as British citizens, European Economic Area (EEA) nationals, and people with indefinite leave to remain. Others have a time-limited right to rent and some are disqualified from renting altogether.

You are disqualified from renting if you are not a British, EEA or Swiss citizen and:

- you require leave to enter or remain in the UK but do not have it, or
- you have leave to enter or remain in the UK subject to a condition that you are disqualified from renting.

Private landlords in England must carry out pre-tenancy checks on all prospective adult occupiers of a property to ensure they are not disqualified from renting. They must carry out follow-up checks if an occupier has a time-limited right to rent. For more information, see factsheet 63, *Finding private rented accommodation*.

If you or a member of your household is disqualified from renting, your security of tenure is affected. If you are an assured (including assured shorthold) or regulated tenant, there is a ground for possession allowing your landlord to start the eviction process if informed that you, or an adult living with you, is disqualified.

This is a ‘*mandatory*’ ground for assured tenants and a ‘*discretionary*’ ground for regulated tenants. If your landlord is told all members of your household are disqualified from renting, they do not have to get a court order for possession to evict you. They must serve a notice terminating your tenancy. This notice is enforceable as if it were a court order, meaning that once it expires, the landlord can go to court and ask them to issue a bailiff’s warrant.

Useful organisations

The law relating to rights for tenants is complicated. This factsheet aims to give you basic information about your rights but in many cases you may want to get more detailed advice from a specialist adviser.

Citizens Advice

England or Wales go to www.citizensadvice.org.uk

In England telephone 0344 411 1444

In Wales telephone 0344 477 2020

Helps people resolve their money, legal and other problems by providing free, independent and confidential advice. Details of your local office can be found on the website.

Housing advice services

The availability and quality of housing advice varies from area to area. Local authorities have a legal duty to provide information and advice about various aspects of homelessness, or ensure that this is provided in the local area. Contact your local authority as soon as possible if you are worried you may become homeless.

In some areas there may be a specific housing advice or housing aid centre, providing advice on a range of housing issues. Your local authority or Citizens Advice should be able to tell you if there is a housing advice centre in your area.

Housing Ombudsman Service

www.housing-ombudsman.org.uk/

Telephone 0300 111 3000

Investigates complaints about landlords made by tenants in England. Membership is mandatory for social landlords registered with the Regulator of Social Housing. Membership is currently voluntary for private landlords and very few are members.

Legal advice

Solicitors can advise you on the law and represent you in court if necessary. If you approach a solicitor about a housing matter, check they are experienced in housing law. Your local housing advice centre or Citizens Advice may be able to refer you to an experienced solicitor. If you are on a low income you may be able to qualify for free legal advice.

For more information see factsheet 43, *Getting legal advice*.

Local Government and Social Care Ombudsman (LGSCO)

www.lgo.org.uk

Telephone 0300 061 0614

In England, the LGSCO investigates complaints about injustice arising from poor administration by local authorities (in Wales, see the Public Services Ombudsman for Wales).

Ministry of Housing, Communities and Local Government (MHCLG)

www.gov.uk/government/organisations/department-for-communities-and-local-government

Telephone 030 3444 0000

Website has useful information on planning laws, tenants' rights and environmental protection relevant to England (in Wales, see Welsh Government).

Public Services Ombudsman for Wales

www.ombudsman-wales.org.uk

Telephone 0300 790 0203

Looks to see whether people have been treated unfairly or have received a bad service from a public body, such as a local authority.

Regulator of Social Housing

www.gov.uk/guidance/about-the-regulator-of-social-housing

Telephone 0300 124 5225

Regulates registered providers of social housing in England, including local authority landlords and housing associations. It sets a number of standards that providers are expected to meet, but only intervenes in serious cases where harm has been caused or is likely (in Wales, see Welsh Government entry).

Shelter

www.shelter.org.uk

Telephone 0808 800 4444 (free call)

A national charity providing telephone advice to people with housing problems on tenancy rights, homelessness, repairs and housing benefit.

Shelter Cymru

www.sheltercymru.org.uk

Telephone 0345 075 5005

Tai Pawb

www.taipawb.org

Telephone 029 2053 7630

An organisation in Wales that promotes equality and social justice in housing. They are committed to working in partnership with the providers and receivers of housing services, local authority partners, third sector (voluntary organisations) and the Welsh Government.

Welsh Government

www.wales.gov.uk

Telephone 0300 0604400

The devolved government for Wales.

Your local authority

www.gov.uk/find-local-council

If you are not a local authority tenant and are having problems with your landlord, the authority may have a tenancy relations officer who can help you. Whoever your landlord is, the authority must ensure that advice and information about homelessness and the prevention of homelessness is available to you free of charge. They may have a duty to help you if you become homeless or are threatened with homelessness.

Age UK

Age UK provides advice and information for people in later life through our Age UK Advice line, publications and online. Call Age UK Advice or Age Cymru Advice to find out whether there is a local Age UK near you, and to order free copies of our information guides and factsheets.

Age UK Advice

www.ageuk.org.uk

0800 169 65 65

Lines are open seven days a week from 8.00am to 7.00pm

In Wales contact

Age Cymru Advice

www.agecymru.org.uk

0800 022 3444

In Northern Ireland contact

Age NI

www.ageni.org

0808 808 7575

In Scotland contact

Age Scotland

www.agescotland.org.uk

0800 124 4222

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