

**Flow chart for checking statutory validity of section 21 notices**

 (As of 1 October 2021)

Was the section 21 notice **served** before 26 March 2020 **or** on or after 1 October 2021

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Yes

No

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Was the section 21 notice **served** on or after 26 March 2020 and before 29 August 2020

Yes

No

Was the section 21 notice **served** between 29 August 2020 and 31 May 2021

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Yes

No

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Was the section 21 notice **served** on or after 1 June 2021

Yes

Was the section 21 notice served less than 4 months from the start of the initial tenancy

Section 21 invalid

Yes

No

Section 21 invalid

Does it give at least 2 months notice?

No

Yes

Was the section 21 notice served more than 6 months ago

Section 21 invalid

Yes

No

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Grey area: While s.21(4)(a) notices no longer have to expire on the last day of a period of the tenancy, and s.21(4)(a) only really applies to tenancies that have been periodic from the very start (or a contractual periodic), where the period of a tenancy is such as to require more than 2 months notice (eg quarterly, or annual), the question here is did the s.21(4)(a) notice period expire more than 4 months ago.

Was the section 21 notice served less than 4 months from the start of the initial tenancy

Section 21 invalid

Yes

No

Section 21 invalid

Does it give at least 3 months notice?

No

Yes

Was the section 21 notice served more than 6 months ago

Section 21 invalid

Yes

No

Go to page 6

Grey area: While s.21(4)(a) notices no longer have to expire on the last day of a period of the tenancy, and s.21(4)(a) only really applies to tenancies that have been periodic from the very start (or a contractual periodic), where the period of a tenancy is such as to require more than 3 months notice (eg annual), the question here is did the s.21(4)(a) notice period expire more than 4 months ago.

Was the section 21 notice served less than 4 months from the start of the initial tenancy

Section 21 invalid

Yes

No

Does it give at least 6 months notice?

Section 21 invalid

No

Yes

Was the section 21 notice served more than 10 months ago

Section 21 invalid

Yes

No

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Was the section 21 notice served less than 4 months from the start of the initial tenancy

Section 21 invalid

Yes

No

Does it give at least 4 months notice?

Section 21 invalid

No

Yes

Was the section 21 notice served more than 8 months ago

Section 21 invalid

Yes

No

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Was the current tenancy entered into before 1 June 2019

Go to page 7

Yes

Was any payment required from the tenant apart from:

Rent

A deposit of max 5 weeks rent.

A holding deposit of max 1 week rent (refunded against rent with tenant consent, or repaid)

Payments for utilities, council tax, TV licence where specified in agreement

Payment for change of tenancy of £50 or evidenced reasonable costs

Payment for early termination of tenancy of £50 or evidenced reasonable costs

Payment of costs for replacement key

Interest of 3% over base on late rent

And the payment has not been repaid to the tenant.

No

Was there a previous tenancy entered into before 1 June 2019? (And was the tenancy renewed before 1 June 2020?)

No

Yes

Did the previous tenancy agreement provide for a renewal fee?

No

 Yes

Yes

Yes

No

No

Section 21 invalid

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Has any other fee been charged by the landlord or agent in respect of the current tenancy?

If the tenancy is not a) a statutory periodic tenancy that started before 1 June 2019, or b) a contractual periodic tenancy that started before 1 June 2019, is a deposit of higher than 5 weeks rent being held at the time of service of the s.21 notice.

Section 21 invalid

Yes

No

In the period on or after 1 June 2020, was any payment required from the tenant apart from:

Rent

A deposit of max 5 weeks rent.

A holding deposit of max 1 week rent (refunded against rent with tenant consent, or repaid)

Payments for utilities, council tax, TV licence where specified in agreement

Payment for change of tenancy of £50 or evidenced reasonable costs

Payment for early termination of tenancy of £50 or evidenced reasonable costs

Payment of costs for replacement key

Interest of 3% over base on late rent

And that payment has not been repaid to the tenant.

No

Section 21 invalid

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Yes

Did current tenancy agreement start on or after 1 October 2015?

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No

Yes

Has the tenant received:

Gas safety certificate dated in last 12 months (if gas supply)

Government ‘How to Rent’ Booklet? (Either current version at start of current tenancy, or the latest version before service of s.21)

Section 21 invalid

No

Yes

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Grey Area – Gas Safety Certificates. In *Trecarrell House Limited v Rouncefield*[2020] EWCA Civ 760, the Court of Appeal held that a section 21 notice was valid where a gas safety certificate that should have been provided before the tenant went in to occupation but wasn’t, was provided prior to service of the notice. This means that it is possible for all gas safety certificates to be provided ‘late’ so long as provided before service of a section 21 notice.

What is as yet not clear is the effect of failing to have a valid gas safety certificate at the commencement of the tenancy and where that failing can later be ‘redeemed’, or whether provision of a gas safety certificate at the commencement of a ‘replacement’ tenancy would correct the position.

See <https://nearlylegal.co.uk/2020/06/the-trecarrell-conundrum/>

Is the tenancy of a room in a house in multiple occupation with shared facilities?

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Yes

No

Has the tenant received an energy Performance Certificate for the flat/house

Section 21 invalid

No

Yes

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Grey Area:

It is not clear whether Section 6 of The Energy Performance of Buildings (England and Wales) Regulations 2012 applies where the tenancy is of a room in an HMO with shared facilities. I understand that this is being tested in various cases. This box represents the general view at this point, but case law may hold that an EPC is required for the tenancy of a room in an HMO in the future. There is a county court judgment that the EPC is not required, *Home Group Ltd v Henry*. County Court at Newcastle. 21 May 2018

 – see https://nearlylegal.co.uk/2019/05/troubles-with-tlas-hmos-and-epcs/

Section 21 invalid

Has the Council served an Improvement Notice or Emergency Remedial Notice about the property in the last 6 months?

Yes

No

Before getting the s.21 notice, did the tenant make a complaint about the condition of the property to the landlord, in writing?

No

Yes

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Has the landlord responded within 14 days, setting out steps to fix the problems?

Yes

No

If the Council inspect and then serve an Improvement Notice or Emergency Remedial Notice before a possession order is made, the s.21 notice becomes invalid (and no new one can be served for 6 months), so long as the council notice is not withdrawn.

Does the S.21 notice form look *exactly* like the Form 6A here (or to substantially the same effect)

<https://www.gov.uk/guidance/assured-tenancy-forms>

(subject to varied notice periods as per pages 1 - 3)

Section 21 invalid

No

Yes

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Is the tenancy in a House of Multiple Occupation that requires licensing under Mandatory licensing, or the Local Authority’s selective licensing scheme (if any)

No

Yes

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Is the HMO currently licensed, or temporarily exempt, or a licence application made by landlord/manager is still underway

Yes

 No

Section 21 invalid

Grey area: Pre 1 October 2015 tenancies. There were different views on whether s.37 Deregulation Act 2015 made the use of Form 6A prescribed as of 1 October 2018, or whether further regulations are required. I think that subsequent regulations have put the issue beyond doubt, and that For 6A is prescribed

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Was a deposit taken for the tenancy before 6 April 2007?

No

Yes

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Have there been any new tenancy agreements since 6 April 2007

Yes

NO

Was the prescribed information given to the tenant (and anyone who paid the deposit on their behalf) before or at the same time as the section 21 notice was served? (for prescribed information see <http://www.legislation.gov.uk/uksi/2007/797/article/2/made>

Was the deposit protected in a deposit scheme before 23 June 2015?

Yes

NO

Yes

NO

Has the deposit been returned to the tenant?

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NO

Yes

Section 21 invalid

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Go to page 15

Was a deposit taken?

No

Yes

Was the deposit protected in a scheme at any time and still protected? (if not paid back to tenant before s.21 notice)

Section 21 invalid

No

Yes

If deposit not paid back to tenant before s.21 notice, was the ‘prescribed information’ given *in full* at any time? See <https://www.legislation.gov.uk/uksi/2007/797/article/2/made>

Section 21 invalid

No

Yes

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Is this the first tenancy agreement for the property?

No

Yes

Was the deposit protected in a scheme within 30 days of being received? Or has deposit been returned before service of s.21 notice?

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Yes

No

Section 21 invalid

Was the deposit protected and prescribed information served during a previous tenancy agreement for the same property?

(for prescribed information see <http://www.legislation.gov.uk/uksi/2007/797/article/2/made>

Was the deposit protected and prescribed information served within 30 days of the deposit being taken?

(for prescribed information see <http://www.legislation.gov.uk/uksi/2007/797/article/2/made>

No

Yes Yes No

Was the deposit protected in an approved scheme within 30 days of being taken?

Was the prescribed information given to the tenant (and anyone who paid the deposit on their behalf) before or at the same time as the section 21 notice was served?

Yes

No

Yes No

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Section 21 invalid

Subject to court decisions, See <http://nearlylegal.co.uk/category/housing-law-all/deposits/>

Does the Section 21 Notice give an expiry date, or the notice period expire, at the end or after the end of the fixed term of the tenancy?

Section 21 invalid

No

Yes

Section 21 Valid

(Possibly, subject to details of notice being right, service being made on all tenants and so on)

Grey boxes are ‘grey areas’ and notes are provided in grey on the same page.

S.21(4)(a) notices are no longer required, except for tenancies that were periodic from the very start, or became periodic contractually rather than as a statutory periodic, and even then, they no longer have to specify an expiry date that is the end day of a period of the tenancy.

All the requirements of the chart above must be met.

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