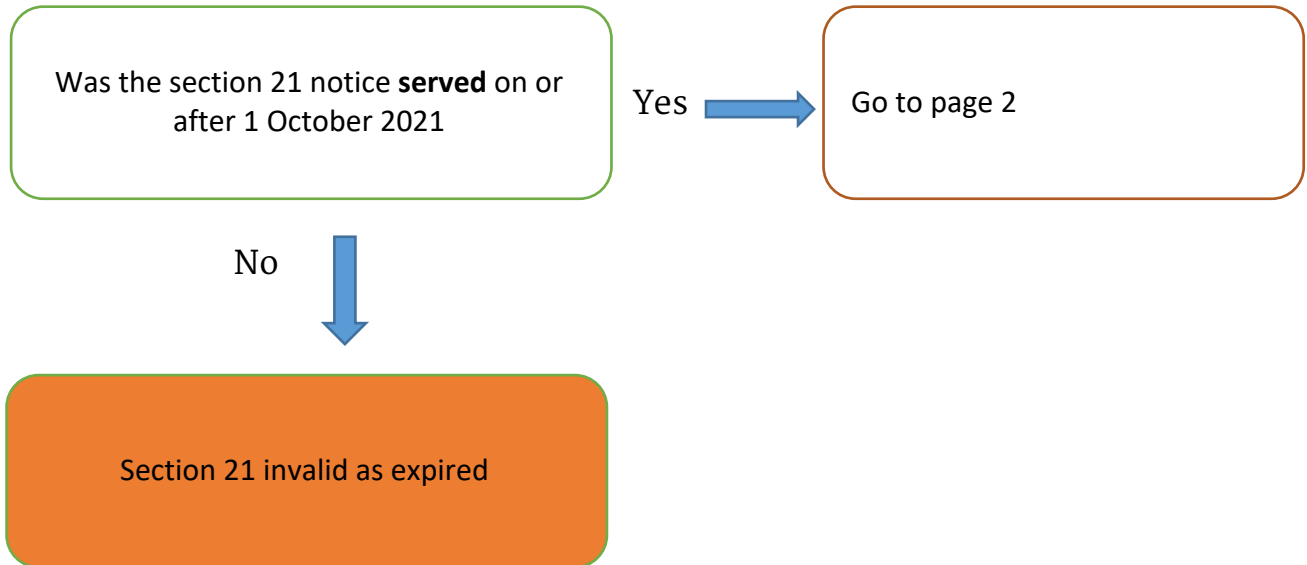
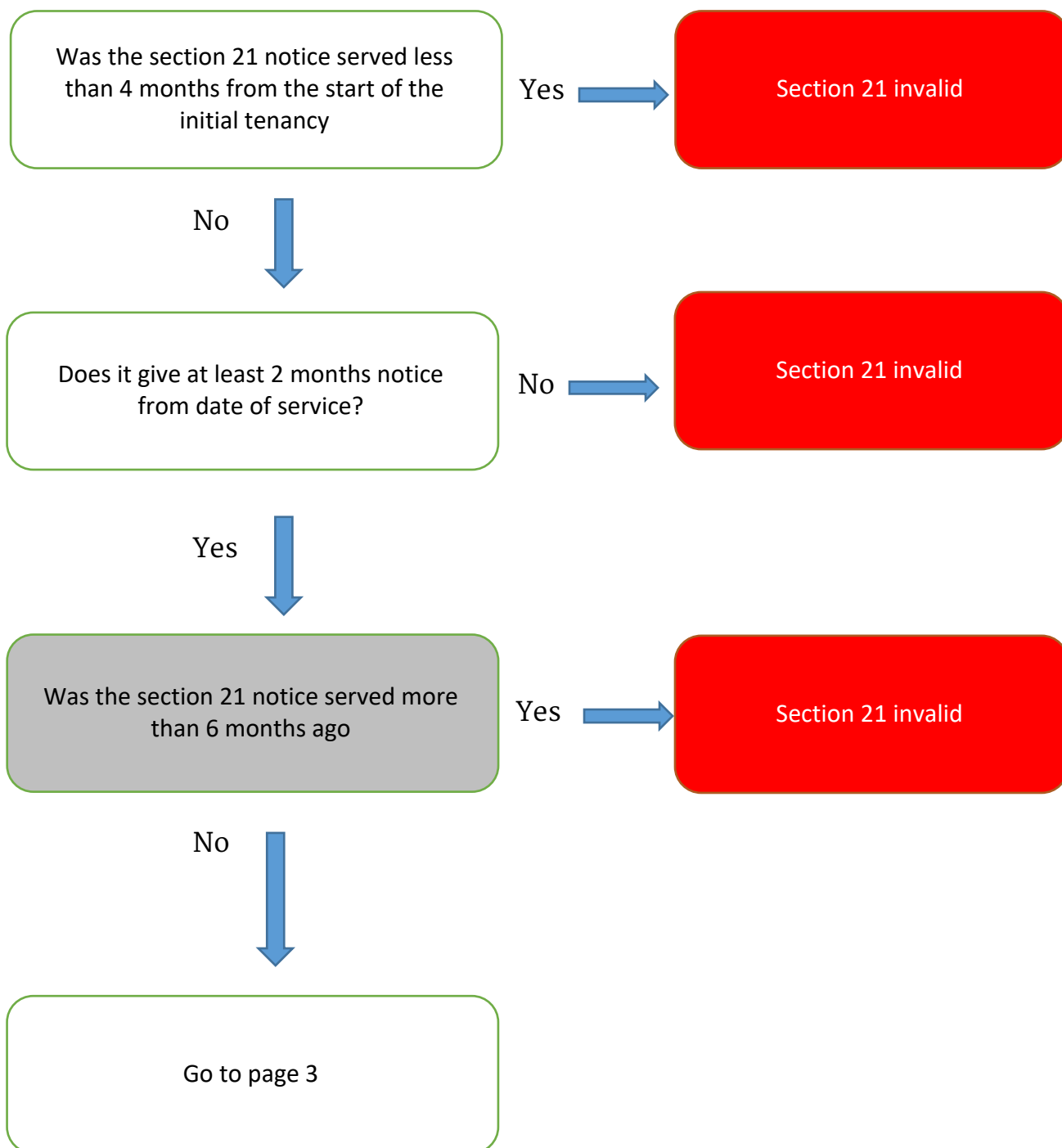


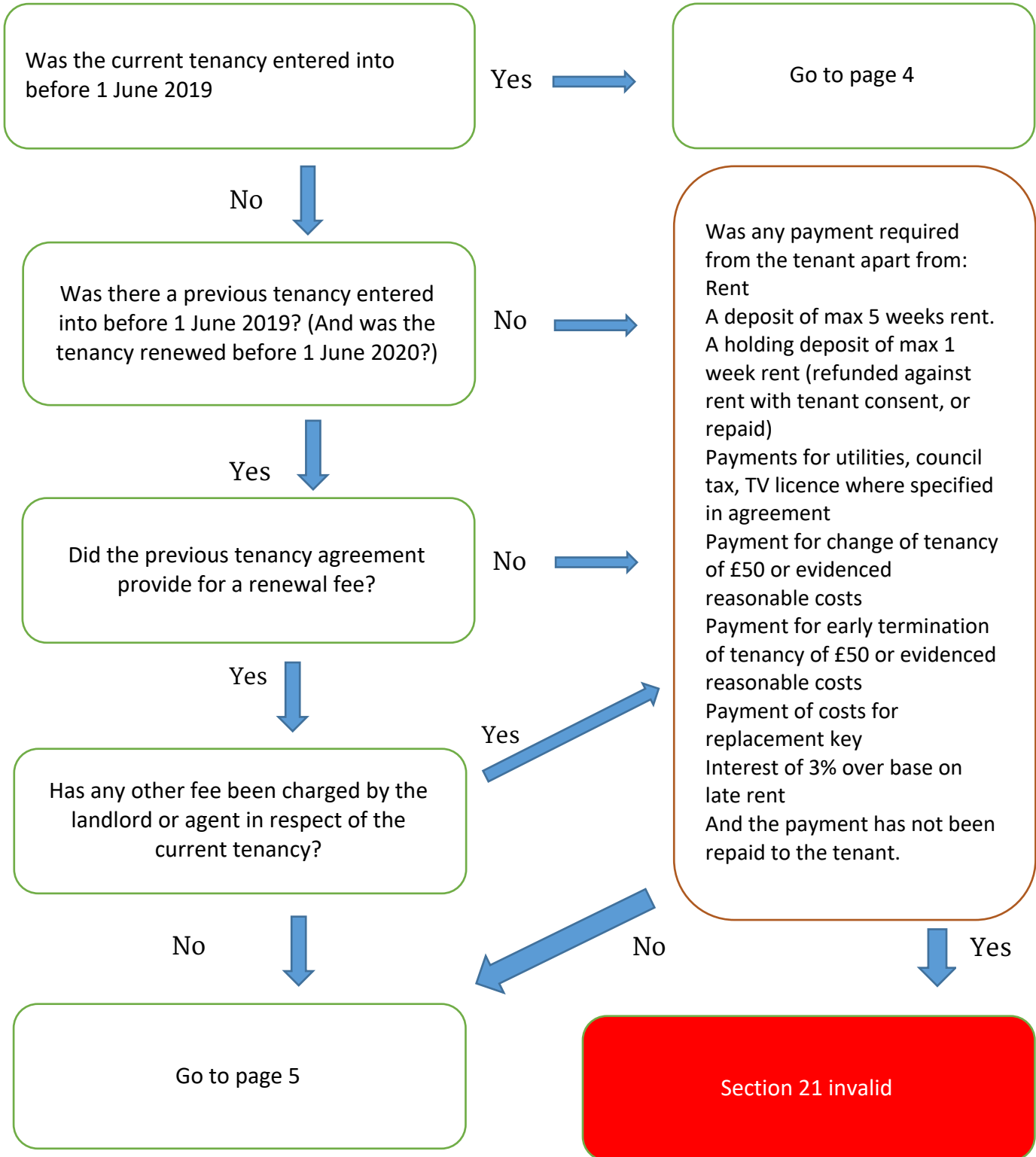
Flow chart for checking statutory validity of section 21 notices

(As of 1 October 2021)





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.



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.

Yes →

Section 21 invalid

↓ 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

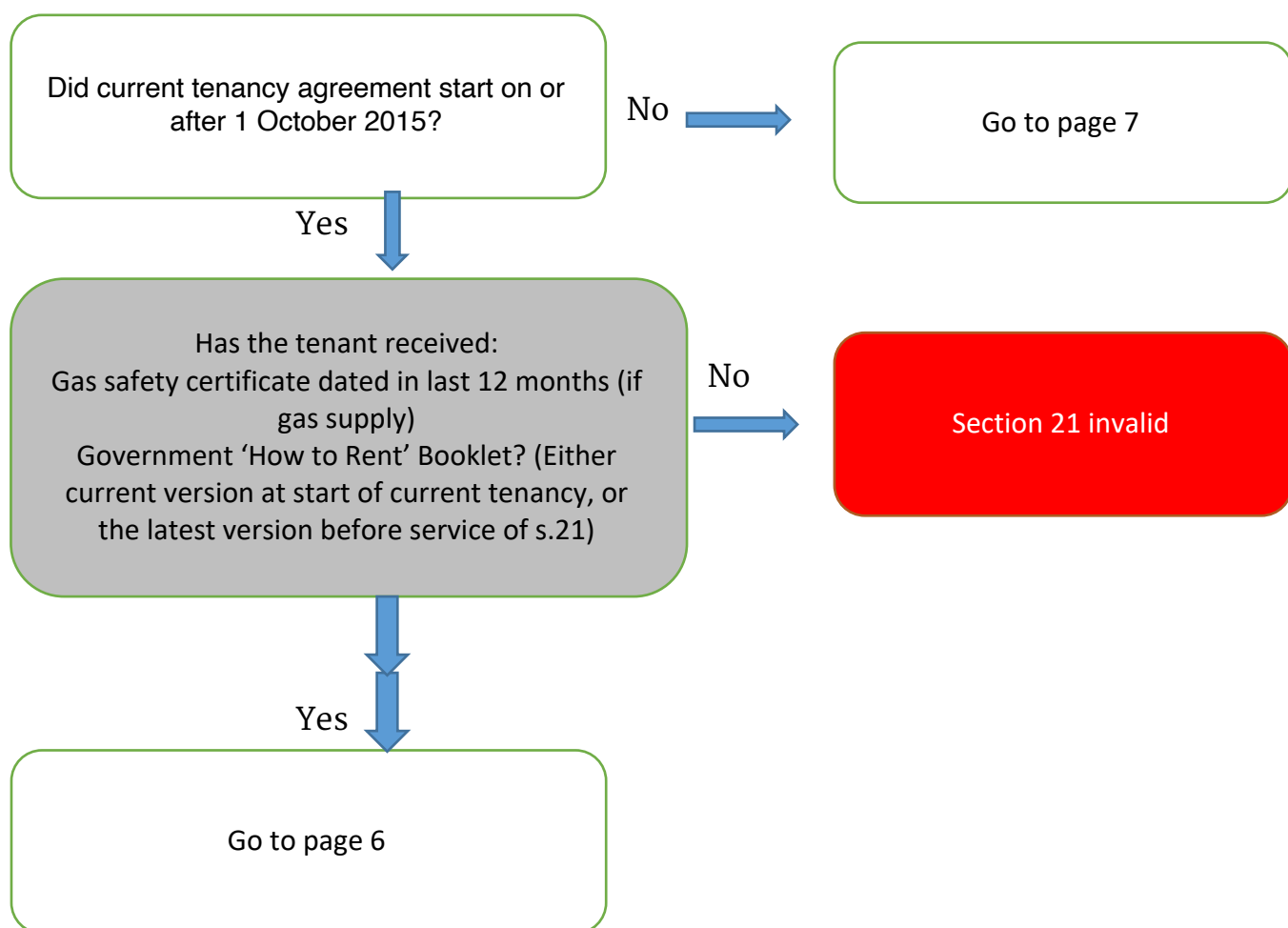
And that payment has not been repaid to the tenant.

↓ No

Go to page 5

↓ Yes

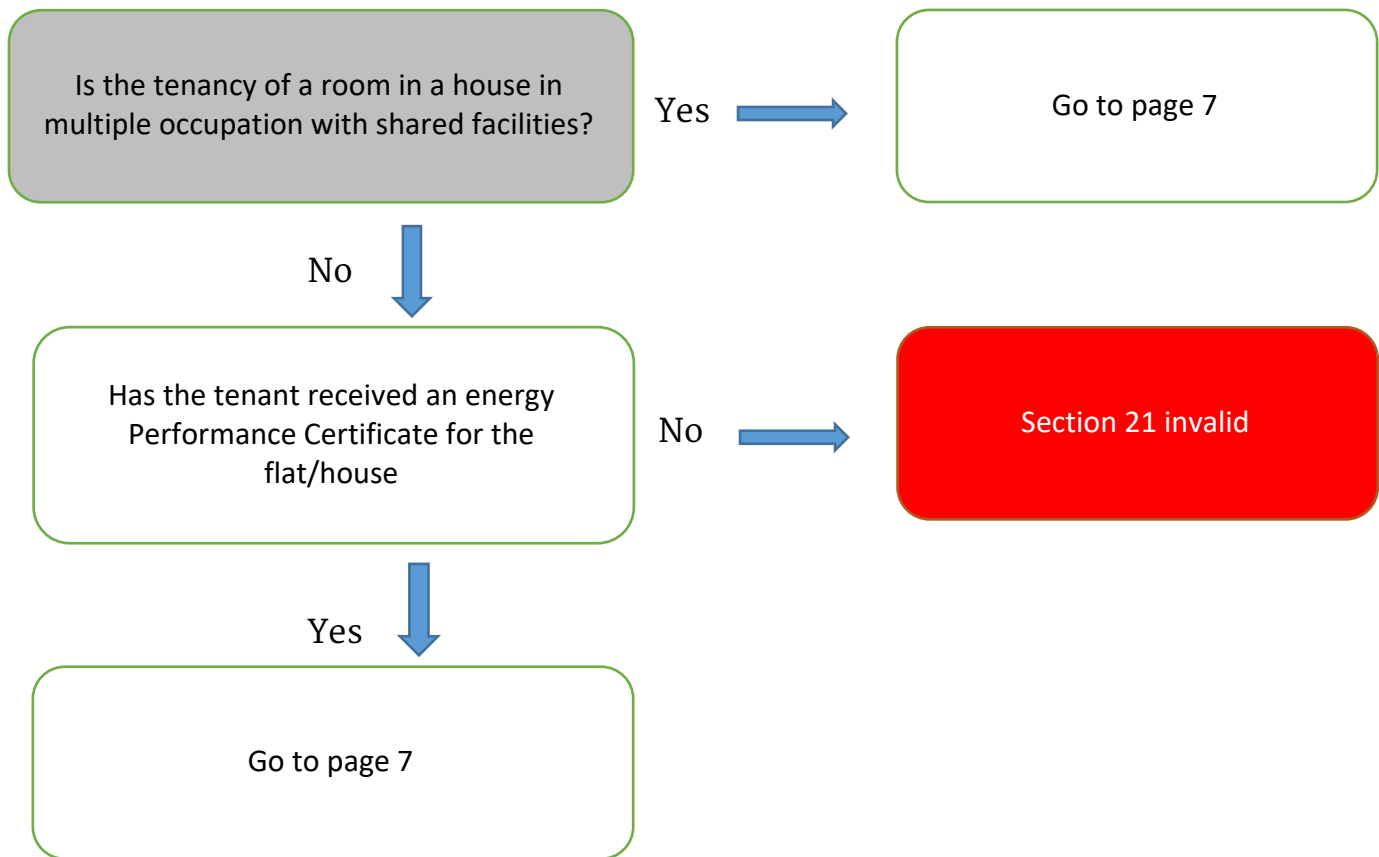
Section 21 invalid



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.

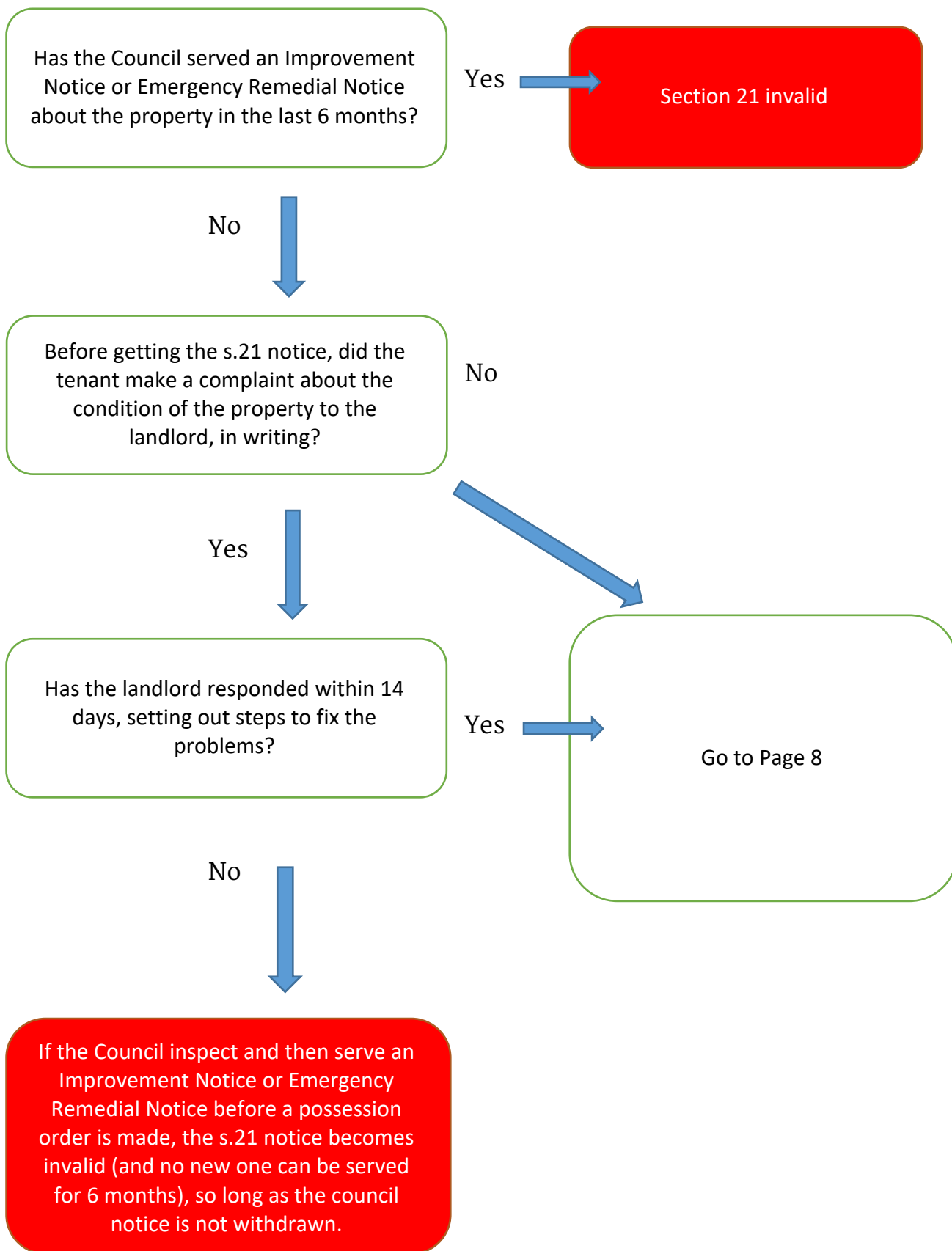
What is as yet not clear is the effect of failing to have a valid gas safety certificate at the commencement of the tenancy and where that failing can later be 'redeemed', or whether provision of a gas safety certificate at the commencement of a 'replacement' tenancy would correct the position.

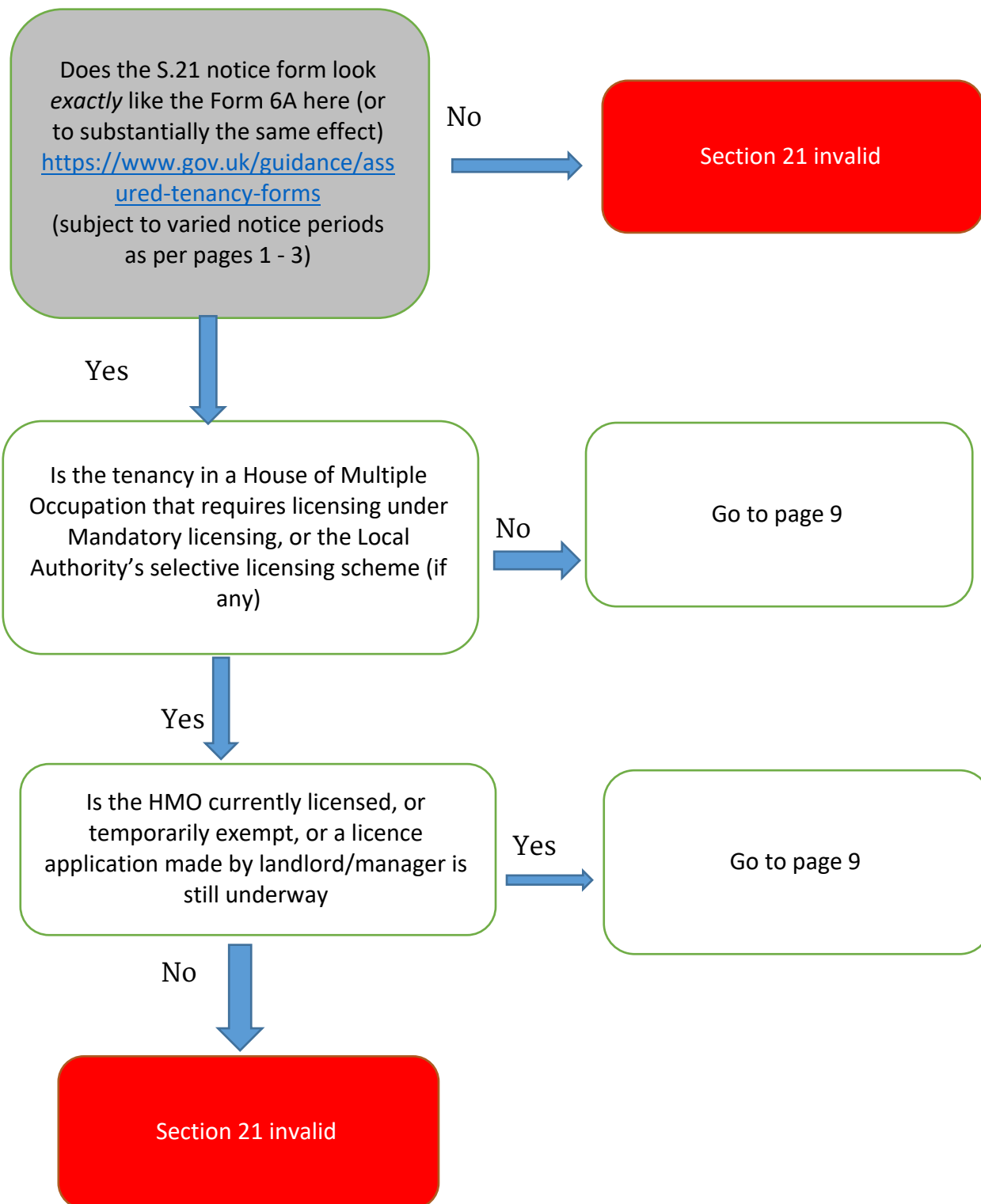
See <https://nearlylegal.co.uk/2020/06/the-trecarrell-conundrum/>



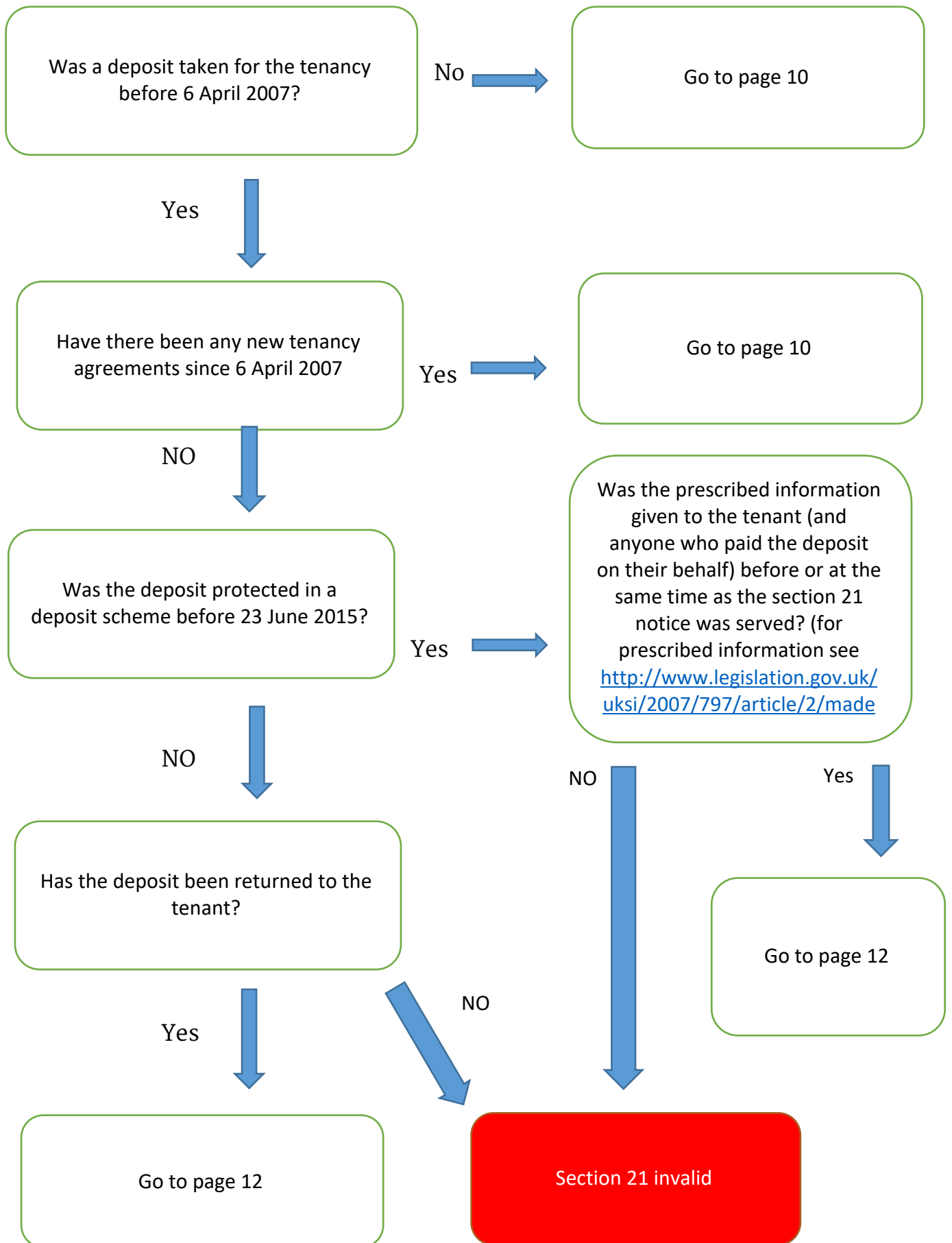
Grey Area:

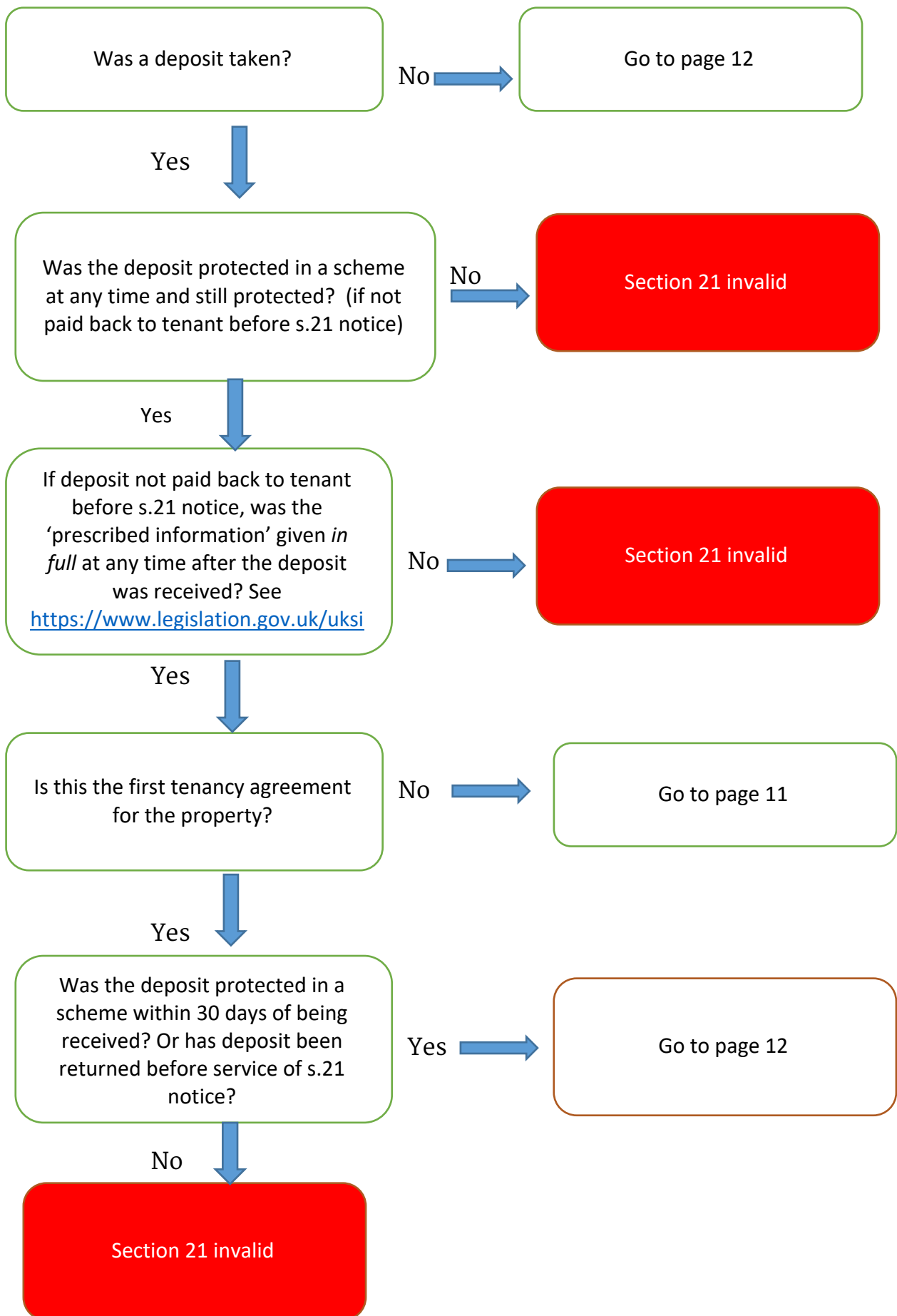
It is not clear whether Section 6 of The Energy Performance of Buildings (England and Wales) Regulations 2012 applies where the tenancy is of a room in an HMO with shared facilities. I understand that this is being tested in various cases. This box represents the general view at this point, but case 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/>

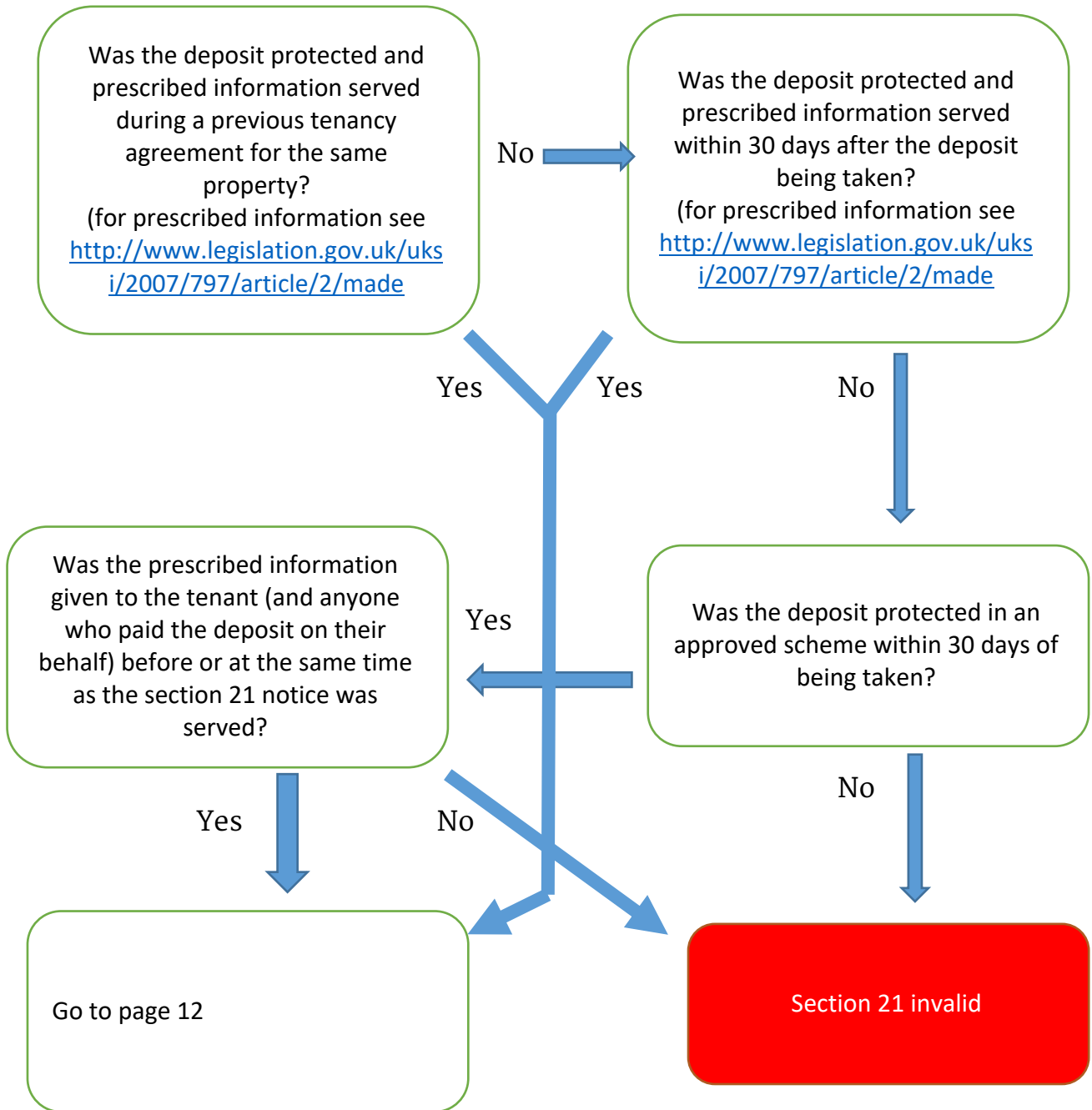




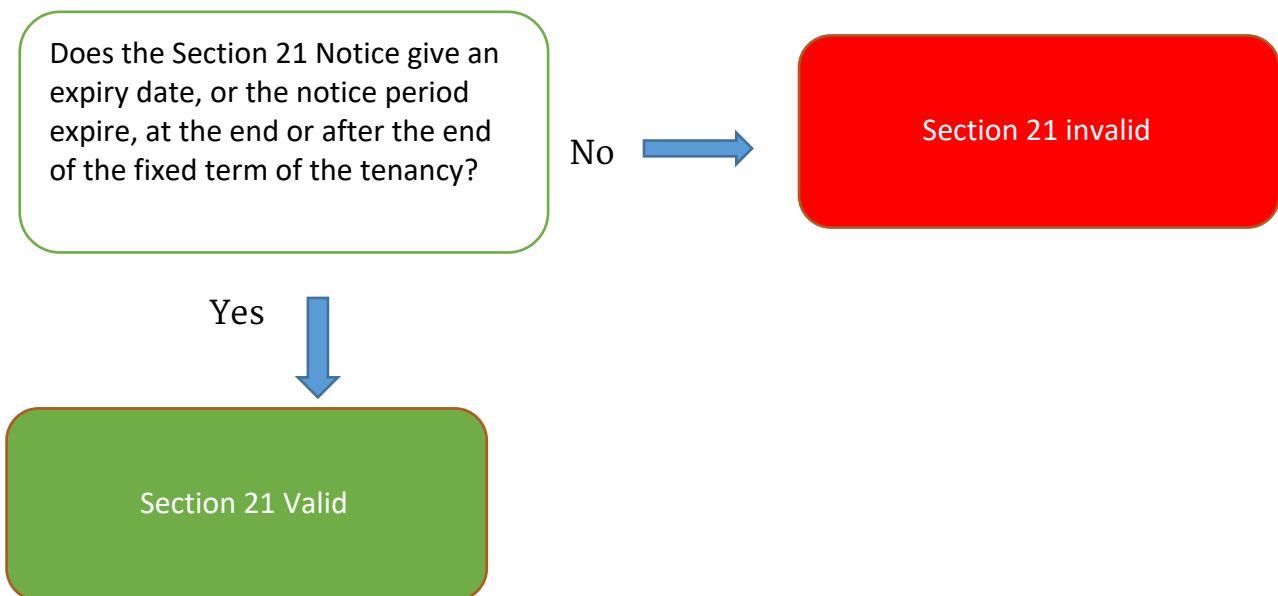
Grey area: Pre 1 October 2015 tenancies. There were different views on whether s.37 Deregulation Act 2015 made the use of Form 6A prescribed as of 1 October 2018, or whether further regulations are required. I think that subsequent regulations have put the issue beyond doubt, and that Form 6A is prescribed







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



(Possibly, subject to details of notice being right, service being made on all joint 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.

August 2024 - Updated to include this judgment on deposit prescribed information, <https://nearlylegal.co.uk/2024/08/too-soon-prescribed-information-before-a-deposit-taken/> - prescribed information given in whole or in part before a deposit taken does not comply with the Prescribed Information Order 2007 or s.213 Housing Act 2004. A County Court appeal to a Circuit Judge, but I am persuaded it is right.

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