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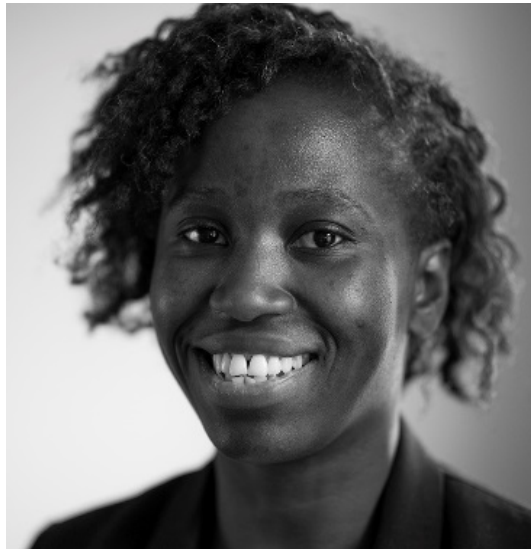
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A nuts and bolts guide to Section 21 Notices



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Presenter



Elizabeth Dwomoh

Elizabeth is an established property practitioner with particular expertise in the fields of housing, commercial and residential landlord and tenant law.

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Aim

The aim of this seminar is to provide tenant advisors with a nuts and bolts guide to notices served pursuant to s. 21 of the HA 1988 (the s.21 Notice).



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Outline of seminar topics

- Section 21 Notice
- Prohibitions on the service of a s.21 Notice
- The future of no-fault evictions?



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The s.21 Notice

Although a landlord who uses the s.21 Procedure can obtain possession without needing a reason for doing so, they must still serve their tenant with a valid notice under s.21(1) or 21(4) of the HA 1988. The notice is commonly referred to as a “s.21 Notice”.



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The s.21 Notice

s.21(1)

- In order to terminate an AST under s.21(1) of the HA 1988 Act, the fixed term period of the AST must have come to an end and no further AST or assured tenancy can be in existence except for a periodic AST.
- Further, the landlord (or if there are two or more landlords, at least one of them) must give the tenant not less than two months' notice, in writing, requesting possession of the Property.



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The s.21 Notice

s.21(4)

To terminate a periodic AST a landlord must serve a notice in writing, giving the tenant not less than two months' notice.



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The s.21 Notice

- Since the insertion s.21(4ZA) of the HA 1988 by s.35 of the DA 2015, in England, a landlord can now terminate a periodic tenancy by serving a s.21 Notice pursuant to s.21(4) of the 1988 Act without specifying an expiry date that falls on the last day of the period of the tenancy.



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The s.21 Notice

Sub-sections 21(1A) and (1B) of the HA 1988 were inserted by s.164 of the Localism Act 2011. Those subsections apply only to registered social providers who grant fixed term ASTs, where the fixed term period granted is not less than two years.



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The s.21 Notice

In respect of ASTs that meet the criteria set out in s.21(1A) of the HA 1988, s.21(1B) provides that:

“...the court may not make an order for possession of the dwelling-house let on the tenancy unless the landlord has given to the tenant not less than six months' notice in writing—

(a) stating that the landlord does not propose to grant another tenancy on the expiry of the fixed term tenancy, and

(b) informing the tenant of how to obtain help or advice about the notice and, in particular, of any obligation of the landlord to provide help or advice.”



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The s.21 Notice

Prescribed form

A prescribed form for s.21 Notices was introduced by s.21(8) of the HA 1988 as amended by s.37 of the DA 2015.



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The s.21 Notice

The most up-to-date version of the prescribed form for s.21 Notices was introduced on 1 June 2019 by the Assured Tenancies and Agricultural Occupancies (Forms) (England) (Amendment) Regulations 2019, Form 6A.



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The s.21 Notice

Effect of errors on the face of a s.21 Notice

An error on the face of the prescribed form, such as an error in the date will not necessarily render the notice defective if the reasonable recipient reading it in context would have understood what the notice was meant to convey and it complied with the statutory requirements or was substantially to the same effect (see: *Mannai Investment Co Ltd v Eagle Star Assurance Co Ltd* [1997] AC 747; *Pease v Carter and another* [2020] EWCA Civ 175 at [39]).



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The s.21 Notice

Moratorium on the service of a s.21 Notice

ASTs granted or renewed on or after 1 October 2015

Possession proceedings must be issued within six months of the service of a s.21 Notice on the tenant.

Periodic tenancies

possession proceedings must be issued within four months of the expiry date of the s.21 Notice, where the period of the tenancy is greater than two months.



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Prohibitions on the service of a s.21 Notice

a landlord (or their agent) must ensure compliance with the following statutory requirements:

- Tenancy deposit scheme under the Housing Act 2004 (the HA 2004)
- the retaliatory eviction requirements under s.33 and s.34 of the DA 2015.
- the licensing of a property that is a house in multiple occupation (HMO) or subject to selective licensing
- provision of gas safety and energy performance certificates
- provision of the “How to rent” booklet
- Breach of the Tenant Fees Act 2019 (the TFA 2019)



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Prohibitions on the service of a s.21 Notice

Tenancy deposit scheme

A landlord who fails to protect a tenancy deposit or comply with the initial requirements of the scheme is barred from serving a s.21 Notice until:

- the deposit is returned to the tenant in full or minus any agreed deductions
- any claim made by the tenant to the county court in respect of their landlord's non-compliance has been determined by the court, settled between the parties or withdrawn.



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Prohibitions on the service of a s.21 Notice

Tenancy deposit scheme

A landlord who fails to serve the prescribed information on a tenant is barred from serving a s.21 Notice until:

- the prescribed information is given to the tenant (or any relevant person)
- the deposit is returned to the tenant in full or minus any agreed deductions
- any claim made by the tenant to the county court in respect of their landlord's non-compliance has been determined by the court, settled between the parties or withdrawn



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Prohibitions on the service of a s.21 Notice

Retaliatory eviction

If a landlord seeks to evict a tenant upon receipt of a complaint about disrepair, instead of undertaking the repairs, they are guilty of committing a retaliatory eviction.



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Prohibitions on the service of a s.21 Notice

Retaliatory eviction

Sections 33 and 34 of the DA 2015 aims to restrict a landlord's ability to serve a s.21 Notice when a tenant has made a written complaint to either their landlord or the local authority.



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Prohibitions on the service of a s.21 Notice

Retaliatory eviction

A landlord who is served with a relevant notice is prohibited from serving a s.21 Notice on their tenant for a period of six months beginning on the day of service of the relevant notice. If the notice is suspended by the local authority, the landlord is prohibited from serving a s.21 Notice for a period of six months from the day the suspension ends.



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Prohibitions on the service of a s.21 Notice

Retaliatory eviction

Sub-section 33(2) of the DA 2015 provides a tenant with an alternative mechanism to prevent a landlord from serving a s.21 Notice if they have complained about disrepair.



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Prohibitions on the service of a s.21 Notice

Retaliatory eviction

Before a s.21 Notice is served, a tenant can make a written complaint about the condition of the property to either their landlord or their landlord's managing agent.



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Prohibitions on the service of a s.21 Notice

Retaliatory eviction

If the local authority upholds the tenant's complaint it can serve a "relevant notice" i.e. an improvement notice or an emergency remedial action notice. Once a relevant notice is served on the landlord they are debarred from serving a s.21 Notice on their tenant for a period of six months.

Any s.21 Notice that has already been served on receipt of a written complaint from the tenant or before receipt of a relevant notice from the local authority will become invalid.



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Prohibitions on the service of a s.21 Notice

Licensing

A landlord cannot serve a s.21 Notice on a tenant who occupies property under an AST when the property is an HMO that is subject to mandatory or additional licensing and the property remains unlicensed.



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Prohibitions on the service of a s.21 Notice

Licensing

If a landlord's property is subject to mandatory or additional licensing, they can serve a s.21 Notice in relation to that Property if they have applied for a licence at the time they serve the s.21 Notice.



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Prohibitions on the service of a s.21 Notice

Licensing

A landlord cannot serve a s.21 Notice on an assured shorthold tenant who resides in the whole or part of a house that is subject to selective licensing that remains unlicensed.



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Prohibitions on the service of a s.21 Notice

Licensing

A landlord can avoid the prohibition on serving a s.21 Notice in relation to a house that is subject to selective licensing if they have applied for a licence by the time the s.21 Notice is served.



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Prohibitions on the service of a s.21 Notice

Gas safety and energy performance certificates

In respect of ASTs granted or renewed on or after 1 October 2015, landlords are statutorily obliged to provide their tenants with copies of a current gas safety certificate relating to the property and an energy performance certificate.

Failure to comply with these “prescribed requirements” prohibits a landlord from serving a s.21 Notice on their tenant.



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Prohibitions on the service of a s.21 Notice

Gas safety and energy performance certificates

Regulation 36(6) of the Gas Safety (Installation and Use) Regulations 1998, a landlord must give a copy of the last gas safety record:

- (a) to each existing tenant of premises to which the record relates within 28 days of the date of the [gas safety] check; and
- (b) made in respect of each appliance or flue... to any new tenant of premises to which the record relates before that tenant occupies those premises.



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Prohibitions on the service of a s.21 Notice

Gas safety and energy performance certificates

Does a failure to provide a copy of the gas safety certificate before a tenant goes into occupation of the property invalidate a s.21 Notice subsequently served by the landlord in respect of that tenancy?

Prohibitions on the service of a s.21 Notice

Gas safety and energy performance certificates

Yes! Unless *Trecarrel House Limited v Rouncefield*, Exeter CC, 13 February 2019 (unreported) is reversed on appeal or the Assured Shorthold Tenancies and Prescribed Requirements (England) Regulations 2015 are amended, landlords will be deprived of the opportunity to use the s.21 Procedure where they have failed give the tenant a copy of the most current gas safety certificate before the tenant goes into occupation of the property.



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Prohibitions on the service of a s.21 Notice

How to rent booklet

Since 1 October 2015, private landlords have been required to provide their tenants with a copy of the “How to Rent: The checklist for renting in England”



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Prohibitions on the service of a s.21 Notice

How to rent booklet

A landlord cannot serve a s.21 Notice on their tenant if they have failed to provide them with the How to Rent Booklet.



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Prohibitions on the service of a s.21 Notice

Unlawful tenant fees

Since the commencement of the TFA 2019 on 1 June 2019, a private sector landlord is prohibited from serving a s.21 Notice on a tenant to end their AST if a prohibited fee or unlawfully retained holding deposit has not been returned to the tenant or credit towards their tenancy deposit or rent.



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The future of no-fault evictions

On 15 April 2019, the then Secretary of State for Housing, Communities and Local Government, James Brokenshire, announced that the government intended to abolish evictions under s.21 of the 1988 Act.



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The future of no-fault evictions

The intended aim of the abolition of the s.21 Procedure was to:

“...bring an end to private landlords uprooting tenants from their homes with as little as 8 weeks’ notice after the fixed-term contract has come to an end...It will give them the reassurance that they will not be suddenly turfed out of their home and reduces the risk of being faced with having nowhere else to go.”

The future of no-fault evictions

Will the aim be realised or will it have unintended consequences?