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## **Housing Law: The rights of tenants with a disability**

Mencap Cymru Student Advice Project.  
This tool kit was prepared by students  
from Cardiff Law School (Dominic  
Evans, Nathan Hinks, Abigail  
Walbridge and Alice Williams), with  
supervision from Rob Ryder (Solicitor,  
non-practising), and assistance from  
Jason Tucker (Reader in Law) and  
David Dixon (Senior Lecturer).

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 **INVESTORS  
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## Introduction

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The law relating to rented property is covered by a wide range of statutes, regulations and case law. Many aspects of the law are difficult to understand. As a result of this complexity, disputes frequently arise between landlords and tenants. This tool kit aims to simplify and explain two important features of the legal framework:

- a landlord's right to evict a tenant; and
- the respective rights and responsibilities of a landlord and tenant regarding repairs and improvements to rented property.

As this tool kit has been prepared for use by Mencap Cymru's Regional Officers it focuses on the law and procedure applicable in Wales, and particular consideration is given to the law relating to tenants who have a disability.

The tool kit is divided into four parts:

**Part 1 – The main types of tenancy** – explains the legal requirements and key characteristics of the five types of tenancy agreement featured in the tool kit. There is a vast array of housing tenures, and it is beyond the scope of the tool kit to consider all of them. Instead, the types of agreement included are those that are most common in the social housing and private rental sectors, and therefore likely to be of most relevance to the clients being supported by Mencap Cymru's Regional Officers.

**Part 2 – Possession proceedings** – explains the main procedural requirements relating to possession claims, and the defences that may be used by a tenant when faced with the threat of eviction. It includes some guidance regarding the relatively new defences to possession claims, which rely on public law principles, human rights and disability discrimination law. Part 2 also includes some practical guidance about

the steps that can be taken by a tenant (or someone acting on the tenant's behalf) in response to a threat of eviction.

**Part 3 – Repairs and improvements** – explains the respective rights and obligations of landlords and tenants to repair and make improvements to a rented property, and includes some guidance on grants and compensations which may be available to a tenant to cover the cost of the work.

**Part 4 – Additional resources** – contains a list of 'additional resources', including links to various organisations that publish online guidance on a range of topics linked to the matters covered in the tool kit.

The tool kit includes hyperlinks to key online resources. Wherever a reference is underlined in the text, it indicates that it is a hyperlink, which will take you to the relevant external resource.

## Part 1 – The main types of tenancy

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Understanding what type of tenancy the person you are supporting has is very important, as different types of tenancy provide different levels of protection for tenants. This Section will explain the key features of the five types of tenancy that are most common in the social housing and private rental sectors. In addition, you may find it useful to refer to [Shelter's online 'tenancy rights checker'](#), which asks a series of questions to help establish what type of tenancy a person has.

### What is a tenancy?

A tenancy is a legal contract between a tenant and a landlord. It may be written or oral. The tenancy sets out the terms and conditions for living in the property, as well as the obligations of the landlord and tenant.



The tenancy agreement.

If the tenant you are supporting has not been given a copy of their tenancy agreement, it is advisable to ask the landlord to provide one. This will ensure that the tenant is fully aware of the terms and conditions, and his/her rights within the tenancy agreement.

### What is security of tenure?

Put simply, this is a tenant's right to remain in the property and the restrictions imposed by the law on the landlord's ability to evict the tenant. The degree of security of tenure enjoyed by tenants depends on the type of tenancy.

Tenancies can either be granted for a **fixed-term** or can be **periodic**. A fixed-term tenancy is granted for a set period and expires on a fixed date. A periodic tenancy does not have an end date and runs from week to week, or month to month, depending on how the rent is calculated.

Even when the tenancy is for a fixed-term, the landlord is not automatically entitled to possession of the property when the fixed-term expires. Once the term expires, the tenant becomes a **statutory periodic tenant**. What this means is that, when the fixed-term tenancy expires, the law deems the tenant to have been granted a periodic tenancy on the expiry of their fixed-term tenancy. As a result the tenant continues to have security of tenure, and can only be evicted if the landlord obtains an order for possession from the court.



#### Example – statutory periodic tenancy.

Jane has a five year fixed-term tenancy, and her rent is calculated on a monthly basis.

At the end of the five year term the fixed-term tenancy will cease, and Jane will be treated as a monthly statutory periodic tenant. This means that she will still have security of tenure, and can only be evicted if the landlord obtains an order for possession from the court.

### Types of tenancy

There are many types of tenancy. However, this tool kit will focus on the tenancy agreements that are most likely to be held by the clients you are supporting. Table 1 summarises the key information relating to the tenancy agreements considered.

Table 1: The main types of tenancy agreement.

Tenancy	Type of Landlord	Statute
Secure	Tenancies granted by Local Authorities; and Tenancies granted by Housing Associations <b>before</b> 15 January 1989.	Housing Act 1985
Assured	Tenancies granted by, for example a Housing Association, <b>from</b> 15 January 1989.	Housing Act 1988
Assured Shorthold	Tenancies principally granted by private landlords <b>from</b> 15 January 1989.	Housing Act 1988
Introductory	Tenancies granted by Local Authorities to new tenants, on a probationary or trial basis, usually for a period of 12 months.	Housing Act 1996
Demoted	Secure or assured tenancies may be 'demoted' by the court on the application of a social landlord in the case of anti-social behaviour by the tenant.	Anti-Social Behaviour Act 2003 [amending Housing Act 1988 (for assured tenancies) & Housing Act 1996 (for secure tenancies)]

**(1) Secure tenancy**

Secure tenancies are most commonly granted by Local Authorities. Tenancies granted by Housing Associations **before 1989** are also secure tenancies.

A secure tenant will have the right to stay in the accommodation for the rest of the tenant's life, provided that the tenant complies with the tenancy agreement. Secure tenancies can only be ended by a court order. A court order will only be made if one or more of the statutory grounds (reasons) is established by the landlord.

**Part IV Housing Act 1985** sets out the conditions for creating secure tenancies. The conditions are:

- the property is a dwelling house;
- the landlord is a prescribed social landlord;
- the tenant is an individual;
- the tenant occupies the property as his/her only, or principal, home;
- the property is let as a separate dwelling; and
- the tenancy is not in an excluded category under Schedule 1 Housing Act 1985 (which excludes specific types of tenancy such as fixed term leases over 21 years and student accommodation).



What is a 'prescribed social landlord'?

Social housing is accommodation that is provided at an affordable rent. Unlike private rental accommodation it is allocated on the basis of need.

Social housing is provided by social landlords, with the main categories of social landlord being: local authorities, housing associations and not for profit companies.

In Wales, social landlords (other than local authorities) have to be registered on the register of social landlords and must manage their accommodation in line with standards set out by the Welsh Government. This includes having an efficient repairs and maintenance service that responds to tenants' needs.

A private individual cannot be a social landlord, and this means that a secure tenancy cannot be granted by a private landlord.

The most important feature of a secure tenancy is the security of tenure that it gives the tenant, as **s82 Housing Act 1985** provides that a secure tenancy can only be ended, by a landlord, if the landlord obtains a possession order from the court. A possession order can only be made if one of the grounds under **s84 Housing Act 1985** is established (and the grounds are discussed in *Part 2 (2) Grounds for possession – secure tenancy*).

In addition, a secure tenant has the right to pass the tenancy to his/her partner, or to a family member, upon the tenant's death (this is sometimes referred to as the 'right to succession').

The third protection which secure tenants have is that they can enforce their rights without worrying about being evicted, including the rights to:

- have certain repairs carried out by the landlord;
- carry out certain repairs and to do improvements themselves;
- sublet part of the tenant's home with the landlord's permission;
- take in lodgers without the landlord's permission;
- exchange the tenant's home with certain other social housing tenants;
- vote to transfer to another landlord (if the landlord is a local authority);
- be kept informed about matters relating to the tenant's tenancy;
- buy the home.

Additionally, secure tenants have the right not to be treated unfairly by the landlord because of disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex or sexuality.

## **(2) Assured tenancy**

Assured tenancies are generally those offered by housing associations **from 15 January 1989**, following the enactment of the Housing Act 1988. This type of tenancy is similar to a secure tenancy, but assured tenants do

not enjoy a 'right to buy', although they may have a 'right to acquire' the property. In addition, the grounds for possession are different.

**Section 1 Housing Act 1988** sets out the conditions for creating assured tenancies. The conditions are as follows:

- the tenancy must be of a dwelling house "let as a separate dwelling";
- the tenant must be an individual, and if there are joint tenants all must be individuals;
- the tenant (or tenants if they occupy the property jointly) must occupy the property as his/her only, or principal, home; and
- the tenancy is not in an excluded category under Schedule 1 Housing Act 1988 (which excludes specific types of tenancy such as fixed term leases over 21 years and student accommodation).

The protection that an assured tenant has is very similar to that enjoyed by a secure tenant, with the most important feature being the tenant's long-term security of tenure. Under **s5 Housing Act 1988**, an assured tenancy can only be ended, by a landlord, if the landlord obtains a possession order from the court. A possession order can only be made if one of the grounds under **Sch 2 Housing Act 1988** is established (and the grounds are discussed in *Part 2 (3) Grounds for possession – assured tenancy*).

In addition, assured tenants have the right to enforce their rights under the tenancy agreement without worrying about getting evicted. As well as the right to stay in the home, so long as the tenant keeps to the terms of the tenancy, the tenant will also have the right to:

- have the accommodation kept in a reasonable state of repair; and
- carry out minor repairs themselves and to receive payment for these from the landlord.

As with secure tenants, assured tenants have the right to pass the tenancy to his/her partner (or to a family member) upon the tenant's death, and the right not to be treated unfairly by the landlord because of disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex or sexuality.

### **(3) Assured shorthold tenancy**

Assured shorthold tenancies are the most common type of tenancy agreement, and are generally granted by **private landlords**. They are normally arranged for a six-month period, but can be agreed for longer (e.g. twelve months).

An assured shorthold tenancy is a type of assured tenancy. Therefore, the conditions for creating assured shorthold tenancies are the same as for assured tenancies (see **(2) Assured tenancy** above). However, from 28<sup>th</sup> February 1997, any new assured tenancy will be an assured shorthold tenancy unless it is expressly stated not to be one.

Assured shorthold tenancies are usually granted for an initial period of six months. When this period has elapsed, unless a new tenancy is granted, the assured shorthold tenant has no substantive security of tenure (and becomes a **statutory periodic assured shorthold tenant**). This means that the landlord does not require a ground or reason to evict the tenant, as the landlord is entitled to possession as of right. However, the landlord is required to serve a notice on the tenant seeking possession of the property, and if the tenant refuses to leave the landlord will have to apply for a possession order from the court.

### **(4) Introductory tenancy**

Local authorities can adopt a scheme in which all new tenancies, which would otherwise be secure tenancies, are granted on an introductory basis for a probationary period of one year.

**Section 125 Housing Act 1996** states that a tenancy will remain an introductory tenancy until one year has passed unless:

- Circumstances change and the tenancy would no longer qualify as a secure tenancy (e.g. the tenant no longer lives in the dwelling house as his/her only or principal home).
- The local authority ceases to be the landlord.
- The local authority revokes its introductory tenancy scheme.
- The tenant dies and there is no one entitled to succeed.
- The period of the introductory tenancy is extended by the local authority.
- The local authority starts a claim for possession.

During the probationary period, the introductory tenant does not have security of tenure, and this means that the local authority can more easily evict the tenant (e.g. in the event of anti-social behaviour). At the end of the probationary period the introductory tenancy automatically becomes a secure tenancy (see

**(1) Secure tenancy** above).

**(5) Demoted tenancy**

Certain social landlords, including local authorities, have the right to apply to the court for an order demoting a secure tenancy or an assured tenancy. Demotion is often sought as an alternative to possession in the event of anti-social behaviour by the tenant (such as noise nuisance).

If a **demotion order** is made in relation to a secure tenancy, it brings the secure tenancy to an end and replaces it with a **demoted tenancy (non-assured)**. After twelve months a demoted tenancy will revert to being a secure tenancy unless, during the twelve month period, the landlord applies for possession (**s143B Housing Act 1996**). However, if the tenant commits a further act of anti-social behaviour, within the twelve month

period, the landlord can serve a notice seeking possession and apply to the court for the tenancy to be terminated.

If a demotion order is made in respect of an assured tenancy, it brings the assured tenancy to an end and replaces it with a **demoted assured shorthold tenancy**. As with a demoted tenancy, the demoted assured shorthold tenancy reverts to being an assured tenancy after twelve months unless the landlord applies for a possession order.

### Glossary of key terms used in Part 1

Housing law involves a number of difficult legal concepts, and the key terms are summarised below for ease of reference:

Term used	Meaning
assured shorthold tenancy	This is a type of assured tenancy. Most commonly it relates to a tenancy of a private dwelling house entered into with a private landlord since 28/2/97.
assured tenancy	A tenancy of a dwelling house begun on or after 15/1/89 and which is protected by Housing Act 1988. The tenant has greater security of tenure than an assured shorthold tenant.
demoted assured shorthold tenancy	The type of tenancy that comes into being when a demotion order is made in relation to an assured tenancy. The tenancy will last for 12 months (unless a possession order is made in the meantime) after which time the tenancy will revert to being fully assured.
demotion order	An order which a social landlord may obtain as an alternative to possession, if the tenant has been guilty of antisocial behaviour. It removes the tenant's security of tenure for 12 months (unless a possession order is made in the meantime).
demoted tenancy (non-assured)	The type of tenancy that comes into being when a demotion order is made in relation to a secure tenancy. The tenancy will last for 12 months (unless a possession order is made in the meantime) after which time the tenancy will become secure.

fixed term tenancy	A fixed term tenancy states the length of time that the parties agree the tenant may stay in the property (e.g. 6 months, or a year).
introductory tenancies	These are probationary tenancies that local authorities have been able to offer new tenants since 12/2/97. They last for 12 months, when they automatically convert into secure tenancies. However, in the meantime, the tenant has very little security of tenure and can be quickly evicted by court order obtained by the local authority.
periodic tenancy	Unlike fixed term tenancies, periodic tenancies do not specify the term for which the tenant is entitled to inhabit the dwelling. A periodic tenant may continue to live in the property as long as s/he pays rent, which, according to the tenancy, may be paid either weekly, fortnightly, monthly, quarterly or annually.
secure tenancy	A tenancy of a dwelling house let by a local authority to an individual for use as his/her only or principal home. It may be preceded by an introductory tenancy.
security of tenure	Legal protection given to certain categories of occupier of residential property by which the landlord must obtain a court order to recover possession of the accommodation.
tenancy	The legal contract between a tenant and a landlord. It may be written or oral. The tenancy sets out the terms and conditions for living in the property, as well as the obligations of the landlord and tenant. This term tenancy is synonymous with the word "lease", though it is usually used to refer to short term occupation.

## Part 2 – Possession proceedings

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There are a number of procedural requirements that must be complied with before a landlord can evict a tenant. First, the landlord usually requires **grounds for possession**. Second, the landlord must serve the tenant with a **possession notice** confirming the landlord's intention to seek a possession order from the court. This Section will explain the various grounds for possession available to landlords, and the information which must be provided in a possession notice.

Even if the landlord complies with all of the necessary procedural requirements, it is still possible for a tenant to defend possession proceedings, and this Section will also discuss some of the key defences available and where a tenant may be able to obtain advice about possession proceedings.

### Grounds for Possession

The grounds for possession differ depending on the type of tenancy. What follows is a summary of each of the grounds. However, some of them are not straightforward in their requirements, and advice from a solicitor may be needed to establish whether all of the requirements have been complied with.

Some of the grounds are **mandatory**, which means that the court must order possession if the ground applies. Other grounds are **discretionary**, which means that the court may grant a possession order, but only if the court thinks that it is reasonable to grant an order. In some cases the court can only issue a possession order if the landlord is able to provide suitable alternative accommodation. The accommodation must be suitable for the tenant's specific needs, and so must be of the size and type that the tenant requires, and the court must take into account the

rent and security of tenure. However, it does not have to be of the same standard as the tenant's present accommodation.

If a tenant has a disability, and the disability relates to the application for possession, then the possession proceeding may be considered discriminatory under the **Equality Act 2010** (see **Defences to Possession Claims (4) Discrimination**).

**(1) Discretionary grounds and reasonableness**

If a landlord is seeking possession under a discretionary ground, the landlord will have to establish both that the ground is proved and that it is reasonable for the court to grant an order, before a possession order is made.

The court will consider all of the facts of the individual case when deciding whether it is reasonable to make a possession order, including:

- the financial positions of the parties;
- the length of time the tenant has lived in the property;
- the tenant's previous conduct;
- the health of the parties, including whether any of the parties has a disability;
- the age of the parties;
- the interests of the wider public (which is particularly relevant in cases involving anti-social behaviour).

Where the basis of the application is **rent arrears**, it is unusual for the court to grant a possession order unless the arrears are substantial. Similarly, if the tenant is in receipt of welfare benefits, and there has been a delay in the claim being processed, the court is likely to treat the tenant sympathetically. However, where the tenant has a history of failing to pay the rent, it is more likely that the court will conclude that it is reasonable to make the possession order.

Where the basis of the application is **breach of an obligation of the tenancy**, the court will look at the seriousness of the breach. If the breach was trivial, and did not result in any significant loss to the landlord, then it is unlikely that the court would find it reasonable to make a possession order. Similarly, if the breach was committed innocently, and the tenant did not realise that their actions amounted to a breach, the court is again unlikely to find it reasonable to make a possession order. Even when a tenant admits a breach, it is not inevitable that a possession order will be made as the court may accept an **undertaking** from the tenant, which is a promise to the court not to commit further breaches. Similarly, the court has power to make a possession order but then suspend it on condition that the tenant does not commit any further breach.

**(2) Grounds for possession – secure tenancy**

There are eighteen different grounds for possession where a tenant is a secure tenant, and the grounds are summarised in Table 2. It should be remembered that in most cases relating to secure tenancies, the landlord will be a local authority.

**Table 2: Grounds for possession – secure tenancy.**

Ground	Description
(1) Rent arrears or other breach of the tenancy agreement	Rent has not been paid by the tenant, or an obligation of the tenancy has been broken or not performed.
(2) Nuisance or annoyance or criminal activity	The tenant (or a person living with the tenant) has been causing a nuisance or annoyance to neighbours, or other people living in or visiting the area, or a serious criminal offence has been committed by the tenant in the property or the local area.
(2A) Domestic violence	Where the home is occupied by a married couple, or civil partners, or co-habitees and one has left the property because of violence, or threats of violence, against them by the other and is not going to

	return.
(3) Deterioration in condition of the property	The tenant has damaged or neglected the property or common areas.
(4) Deterioration in the furniture	The tenant has damaged or neglected the furniture in the property.
(5) Tenancy obtained by deception	False information was given by the tenant prior to the grant of the tenancy, in order to obtain the tenancy.
(6) Payment of premium	Where the tenant exchanged their property with another local authority tenant and money was paid for the exchange.
(7) Non-housing accommodation	The accommodation must form part of a property, which is used mainly for purposes other than housing, and the accommodation must be let to the tenant as part of their employment. The tenant (or a person living with the tenant) must also act in a way that conflicts with the purpose for which the property is used, so that it is no longer suitable for the tenant to continue to live in the accommodation. For example, the tenant is a school caretaker and lives in accommodation in the grounds of the school, and then steals from the school.
(8) Temporary accommodation	The tenant moves into alternative premises as works are being undertaken at their usual accommodation, and on completion of the works the tenant refuses to return to the original property.
(9) Overcrowding	The tenant is living in an overcrowded property which breaks the law.
(10) Landlord's works	The landlord intends to demolish, reconstruct or carry out substantial work to the property in which the tenant lives, or land around it, and cannot do this whilst the tenant remains in the property.
(10A) Landlord seeking to sell the property	The property is in an area, which forms part of a re-development scheme, and the property is affected by the scheme.
(11) Charitable landlords	The landlord is a charity and, if the tenant carried on living at the property, this would be contrary to the objects of the charity.

(12) Tied accommodation	As with Ground 7, the accommodation must form part of a property, which is used mainly for purposes other than housing, and the accommodation must be let to the tenant as part of their employment. Here the landlord is able to gain possession if the employment has come to an end and the landlord needs the accommodation for a new employee.
(13) Accommodation for the disabled	The property is specially adapted for a physically disabled person. The tenant does not have a disability, and the landlord needs the property for another disabled person.
(14) Special needs accommodation provided by Housing Associations and Trusts	The property is reserved for a resident with special needs and the current occupant does not have those needs.
(15) Special needs accommodation	The property is reserved for a resident with special needs and social services support is provided within close proximity. The current tenant does not have those needs, and the landlord requires the property for another person who does.
(16) Under occupation	The tenant has 'succeeded' to the tenancy on the death of the original tenant, and the property is considered too large for the current household.

Where a landlord is seeking a possession order in respect of a secure tenancy, the approach the court will take will depend upon the grounds for possession:

- If Grounds 1 to 8 are relied upon, the court may order possession if it is reasonable to do so.
- If Grounds 9 to 11 are relied upon, the court may order possession if suitable alternative accommodation is available.
- If Grounds 12 to 16 are relied upon, the court may order possession if it is reasonable to do so and suitable alternative accommodation is available.

### **(3) Grounds for possession – assured tenancy**

As with secure tenancies, there are eighteen different grounds for possession where a tenant is an assured tenant. Whilst some grounds are similar, they are not identical, and the grounds in respect of assured tenancies are summarised in Table 3.

**Table 3: Grounds for possession – assured tenancy.**

Ground	Description
(1) Owner-occupiers	The landlord previously lived in the property and now requires it for own use. (The landlord must have given notice to the tenant, before granting the tenancy, that possession might be required on this ground.)
(2) Mortgagees	Ground 1 must apply and the property must also be subject to a mortgage (granted before the beginning of the tenancy) and the lender is repossessing the property.
(3) Tenancy preceded by 'holiday let'	The tenancy is a fixed term tenancy of less than 8 months, and was preceded by a letting for holiday purposes. (The landlord must have given notice to the tenant, before granting the tenancy, that possession might be required on this ground.)

(4) Educational institutions	The tenancy is a fixed term tenancy of less than 12 months, and was previously let to a specified educational institution. (The landlord must have given notice to the tenant, before granting the tenancy, that possession might be required on this ground.)
(5) Minister of religion	The property is held for religious purposes and a minister of religion requires it. (The landlord must have given notice to the tenant, before granting the tenancy, that possession might be required on this ground.)
(6) Demolition or reconstruction	The landlord intends to demolish, or carry out substantial work to the property, and the intended work cannot reasonably be carried out without the tenant giving up possession.
(7) Death of the tenant	The tenancy is a periodic tenancy (including a statutory periodic tenancy) which has passed under a Will or intestacy to a relative of the former tenant. The landlord may obtain possession if proceedings are brought within 12 months of the death of the tenant, or the date when the landlord became aware of the death.
(8) Eight weeks' or two months' rent arrears	The tenant is at least 8 weeks in arrears (if paying weekly/fortnightly), or at least 2 months in arrears (if paying monthly), or 3 months in arrears (if paying quarterly or annually). (The arrears must be due both at the date the landlord serves notice and at the date of the court hearing.)
(9) Suitable alternative accommodation	Suitable alternative accommodation is available for the tenant, or will be available when the order for possession takes effect.
(10) Rent arrears	Some rent is due from the tenant (at the date of the notice or court proceedings).
(11) Persistent delay in paying rent.	The tenant persistently delays paying rent.
(12) Breach of any obligation	A condition of the tenancy, other than one relating to the payment of rent, has been broken.
(13) Waste or neglect	The tenant has damaged or neglected the property or any of its common areas.

(14) Nuisance or annoyance or criminal conviction	The tenant (or a person living with the tenant) has been causing a nuisance or annoyance to neighbours, or other people living in or visiting the area, or a serious criminal offence has been committed by the tenant in the property or the local area.
(14A) Violence to occupier	Where the home is occupied by a married couple, or civil partners, or co-habitees and one has left the property because of violence or threats of violence against them by the other and is not going to return. (This ground can only be used by registered providers of social housing or charitable trusts, and cannot be used by private landlords.)
(15) Deterioration of furniture	The condition of any furniture provided for use under the tenancy has, in the opinion of the court, deteriorated owing to neglect by the tenant.
(16) Premises let to employees	The property was let to the tenant in consequence of employment, and the tenant has now left that employment.
(17) Tenancy induced by false statement	False information was given by the tenant to acquire the tenancy.

Where a landlord is seeking a possession order in respect of an assured tenancy, the approach the court will take will depend upon the grounds for possession:

- If Grounds 1 to 8 are relied upon, the court must order possession if it is satisfied that the ground is established.
- If Grounds 9 to 17 are relied upon, the court may order possession if it is reasonable to do so.

#### **(4) Grounds for possession – assured shorthold tenancy**

Assured shorthold tenancies are usually granted for a period of six months. When this period has elapsed, unless a new tenancy is granted, the assured shorthold tenant has no substantive security of tenure (and becomes a statutory periodic assured shorthold tenant). This means that

the landlord does not require a ground or reason to evict the tenant as the landlord is entitled to possession as of right. However, the landlord is required to serve a notice on the tenant seeking possession of the property, and if the tenant refuses to leave the landlord will have to apply for a possession order from the court.

If the landlord wishes to bring an assured shorthold tenancy to an end during the initial period of the tenancy, an application must be made to the court for a possession order, and the landlord will have to establish one of the grounds for possession for assured tenancies (see **(3)**

***Grounds for possession – assured tenancy).***

***(5) Grounds for possession – introductory and demoted tenancies***

There are no statutory grounds for possession in respect of these types of tenancy. However, before a landlord can evict an introductory or demoted tenant, notice has to be given to the tenant and a possession order obtained from the court. The landlord must have a valid reason for seeking possession, and the most common reasons are rent arrears or anti-social behaviour by the tenant.

## **Possession Notices**

Before court proceedings can be commenced to evict a tenant, a landlord is usually required to send the tenant a possession notice stating his intention to seek an order for possession. The type of notice required depends on the type of tenancy.

***(1) Notice requirements for secure and assured tenancies***

The requirements are set out in **s83 Housing Act 1985** (secure tenancy) and **s8 Housing Act 1988** (assured tenancy). The notice must:

- specify one or more of the statutory grounds;
- give an explanation of why each ground is being relied on; and
- state the earliest date on which the claim can be commenced.

If the notice is completed incorrectly, and the prescribed information is omitted, the notice will be invalid. However, where there are only minor errors or inaccuracies in the notice, or the notice is “substantially to the same effect” as a properly drafted notice, the court will still accept it. Examples of the prescribed notices seeking possession for secure and assured tenancies are set out in [Appendix 1](#) and [Appendix 2](#).

The notice period in the case of a **secure tenancy** is at least 28 days, except where the nuisance ground is relied upon. If the nuisance ground is relied upon, the landlord is entitled to commence proceedings immediately.

The notice period in the case of an **assured tenancy** is either two weeks or two months. However, where the nuisance ground is relied on then the landlord is again entitled to commence proceedings immediately.

## **(2) Notice requirements for assured shorthold tenancies**

The requirements are set out in **s8 and s21 Housing Act 1988**. Assured shorthold tenancies are always made for a fixed-term (usually 6 months), and the landlord is entitled to an order for possession as of right once the fixed-term has expired. No ground for possession is required. However, the landlord is still required to give the tenant notice requiring possession, and the notice requirements vary depending upon when notice is given.

If notice is given before the end of the fixed-term period, then **s21** simply requires the landlord to give not less than two months’ notice in writing. Therefore, at any point up until the last day of the fixed term, the landlord simply has to give at least two months’ written notice. Sometimes, the landlord will provide notice at the start of the tenancy, and this is legitimate as the landlord is simply indicating that once the fixed-term expires possession of the property will be required.

If notice is not given during the fixed-term period, then the tenant becomes a statutory periodic assured shorthold tenant. What this means

is that, when the fixed-term tenancy expires, the law deems the tenant to have been granted a periodic tenancy on the expiry of their fixed-term tenancy. The periodic tenancy does not have an end date and runs from week to week, or month to month, depending on how the rent is calculated. If the tenant becomes a statutory periodic assured shorthold tenant, s21 requires the landlord to provide a more detailed notice which must:

- be in writing;
- state that possession is required under s21;
- state that possession is required after a specific date, which must be the last day of the period of the tenancy and at least two months after the notice was given.

These provisions are complex and if there is any doubt that s21 has been complied with the tenant should seek legal advice as a defective s21 notice may invalidate any subsequent possession order. For example, in ***McDonald & Anor v J Fernandez & Anor [2003] EWCA Civ 1219***, the Court of Appeal set aside a possession order as the notice period was phrased incorrectly. The tenancy had become a monthly statutory periodic assured shorthold tenancy, running from 4<sup>th</sup> of the month to the 3<sup>rd</sup> of the month. The possession notice stated that possession was required “on 4<sup>th</sup> January 2003”. The Court of Appeal ruled that this wording was incorrect as s21 requires the notice to state that possession is required after a specific date, which must be the last day of the period of the tenancy. Therefore, as the tenancy ran to the 3<sup>rd</sup> of each month, the required wording was “after 3<sup>rd</sup> January 2003”.

If the landlord wishes to bring an assured shorthold tenancy to an end during the fixed-term period of the tenancy, s8 requires that an application is made to the court for a possession order, and the landlord will have to establish one of the grounds for possession for assured tenancies.

### **(3) Notice requirements for introductory and demoted tenancies**

The requirements are set out in **s123 Housing Act 1996** (introductory tenancy) and **s143 Housing Act 1996** (demoted tenancy). Again, there is no prescribed form for the notice for an introductory or a demoted tenancy, but the document provided by the landlord must state:

- the reasons for the landlord's decision to apply for a possession order;
- the date that the court will be asked to make an order for possession;
- the earliest date that proceedings can be commenced;
- that the tenant has the right to ask the landlord to review the decision to seek a possession order within 14 days; and
- that if the tenant needs assistance to deal with the notice, this should be sought immediately from a Citizens Advice Bureau, Housing Aid Centre or solicitor.

The notice period in the case of both **introductory** and **demoted tenancies** is at least 28 days. If the tenant requests a review, it must be conducted by a representative of the landlord who was not involved in the decision to apply for the possession order. The tenant is entitled to request that the review is conducted by way of a hearing, and the tenant is entitled to attend the hearing with a representative. (The review process is governed by either the **Introductory Tenants (Review) Regulations 1997** or the **Demoted Tenancies (Review of Decisions) Regulations 2004**.)

### **(4) Rent arrears and social housing**

If a tenant is renting a property from either a local authority or other social landlord, there are court rules which the landlord must comply with before commencing possession proceedings for **rent arrears**. The procedure is set out in Part 2 of the Pre-Action Protocol for Possession

Claims by Social Landlords (the Protocol). The key requirements of the Protocol are summarised below.

When a tenant first falls behind with their rent, the landlord should contact the tenant as soon as possible to discuss their financial circumstances and how they plan to pay the arrears. Where there are joint tenants, the landlord should contact each separately to ensure that everyone is aware of the problem. The landlord should send the tenant quarterly rent statements showing how much rent is due and what payments have been received.

The landlord should also discuss any entitlement to **welfare benefits**. It is important to ensure that a tenant is receiving all the benefits to which they are entitled, particularly housing benefit. If a tenant is receiving welfare benefits, but finds budgeting difficult, then it may be possible to arrange for the tenant's rent to be deducted from their benefits and paid directly to the landlord. A landlord should not start possession proceedings if:

- the tenant has applied for housing benefit; and
- it is likely that the tenant will be eligible for housing benefit; and
- the tenant can make up any sums not covered by their housing benefit.

If the landlord decides to seek a possession order, they must first send the tenant a **notice** stating the intention to seek an order for possession. The notice must comply with the required formalities (as discussed above).

After giving notice, the landlord should make reasonable attempts to contact the tenant to discuss their arrears. The landlord must do this before beginning court proceedings. If the tenant can pay a reasonable amount to reduce the arrears and continue to pay the rents in future, the landlord should agree to postpone any court action.

If a tenant is **vulnerable** the landlord should also consider whether:

- the tenant has been discriminated against because of their vulnerability;
- the tenant may be entitled to a social care assessment;
- the tenant would have capacity to represent themselves at court if possession proceedings are commenced.

A vulnerable tenant would include someone who is disabled, elderly or suffering from a mental illness, or someone under 18 years old.



### Protecting vulnerable tenants.

In addition to the requirements under the Protocol, individual local authorities (and other social housing providers) may also have their own policies dealing with the treatment of vulnerable people. Most local authorities post their procedures on their websites, and if you are supporting a tenant who is vulnerable it is important to check whether the landlord has its own policy and, if so, whether the landlord has complied with the terms of the policy.

If the landlord decides to apply for a possession order, then, at least ten days before the court hearing, the landlord must:

- supply the tenant with an up-to-date rent statement, detailing the arrears;
- provide the tenant with the date of the court hearing and advise them that if they do not attend their home may be at risk; and
- provide the court with information about the tenant's housing benefit position.

If the landlord fails to comply with the requirements of the Protocol, the court will require an explanation regarding why the Protocol has not been complied with and can:

- Adjourn, strike out or dismiss the landlord's application. (This can only happen if the landlord is seeking to evict a tenant under a 'discretionary' rather than a 'mandatory' ground.)
- Decide that the landlord must pay the court costs. (This can happen even if the landlord succeeds in obtaining an order for possession.)

## **Defences to Possession Claims**

Even if the landlord has complied with all of the necessary procedural requirements, it is still possible for a tenant to defend possession proceedings, and some of the key defences available are discussed below.

### **(1) Defective possession notice**

As discussed previously, a notice seeking possession must usually be sent to the tenant before court proceedings are commenced (see **Possession Notices**). If the notice is defective, for example it is not in the prescribed form or the grounds or reasons for possession are inaccurate or unclear, then the court may refuse to grant an order.

Every notice sent by a landlord should, therefore, be examined carefully to see whether it is valid. For example, in **Manel v Memon [2001] 33 HLR 24 CA** a notice was held to be defective because it omitted the required statement explaining the tenant's right to seek legal advice.

### **(2) Landlord's failure to establish grounds for possession**

It is the landlord's responsibility to satisfy the court that the ground(s) for possession are established. If the landlord cannot prove the ground, the court will not make a possession order.

### **(3) Reasonableness**

As discussed previously, where a landlord is relying on a ‘discretionary ground’ it is the landlord’s responsibility to establish both that the ground for possession is made out on the facts and that it is reasonable to grant a possession order (see **(1) Discretionary grounds and reasonableness**).

### **(4) Discrimination**

The **Equality Act 2010 (EA 2010)** came into force on 1 October 2010. Its purpose was to reform and harmonise equality law, and it amalgamated over a hundred pieces of legislation, including the Disability Discrimination Act 1995. The EA 2010 outlaws discrimination, which arises due to the person being discriminated against having a ‘protected characteristic’.

Under **s4 EA 2010**, disability is classed as a protected characteristic. This means that it is unlawful to treat someone unfairly due to their disability. A person has a disability if:

- they have a physical or mental impairment; and
- the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

**Schedule 1 EA 2010** further explains disability. **Paragraph 2** notes that ‘long-term adverse effect’ means that it has lasted, or is likely to last, at least 12 months or for the rest of the person’s life. **Paragraph 6** notes where a person has cancer, HIV infection or multiple sclerosis, the person is automatically treated as disabled and it is not necessary to establish an effect on a person’s ability to carry out normal day-to-day activities.

**Paragraph 8** takes into account progressive conditions, so a disability that is not presently having a substantial adverse effect on a person’s ability to carry out normal day-to-day activities, but which is likely to recur, is covered.

Learning disabilities may be treated as a disability under the EA 2010 provided a long term and substantial effect on a person's daily life can be established. Relevant issues may include:

- behavioural difficulties;
- speech difficulties;
- difficulty using a computer;
- difficulty reading and writing;
- the need for special equipment.

The EA 2010 defines discrimination in two ways: **direct discrimination** and **indirect discrimination**.

Under **s13 EA 2010** direct discrimination occurs if person A treats person B differently or less favourably because of a protected characteristic. However, it is not discrimination to treat a disabled person more favourably than a non-disabled person.



### Example – direct discrimination.

A landlord gives notice to evict the tenant, and says that this is because members of the Resident’s Association have put pressure on him to give the notice because of the tenant’s severe learning disability.

This is **direct discrimination**. The tenant is being treated differently or less favourably because of his disability, which is a protected characteristic. The landlord would not have given notice if the tenant had not been disabled.

Under **s19 EA 2010** indirect discrimination occurs if person A applies a provision, criterion or practice to person B which is discriminatory in relation to a relevant protected characteristic. Generally, a ‘provision, criterion or practice’ will be discriminatory if it puts people who share B’s protected characteristic at a particular disadvantage when compared with people who do not share the particular characteristic.



### Example – indirect discrimination.

A tenant uses a wheelchair and also has a severe learning disability. The Local Authority allocates housing using a choice based letting system, which means that the tenant needs to bid for housing online. The tenant finds this difficult due to her learning disability, and needs help with the bidding process. It is also difficult for the tenant to travel to the Local Authority offices to bid for properties.

Although the choice based system applies to everyone who needs social

housing, it could amount to **indirect discrimination** as it places the tenant, and other disabled people like her, at a disadvantage.

Where person A applies a provision, criterion or practice which is discriminatory, person A's actions will not amount to indirect discrimination if they are a proportionate means of achieving a legitimate aim. Examples of legitimate aims are:

- health and safety, and welfare of individuals;
- running an efficient service;
- requirements of a business; and
- desire to make profit.

As well as being legitimate, the aim must also be proportionate. This means that the reason behind the discrimination must be fairly balanced against the disadvantage a tenant has suffered because of the discrimination. Effectively, person A will have to establish that their actions are objectively justified. If there are better and less discriminatory ways of doing things, it will be more difficult to justify discrimination, and economic reasons alone are never enough to justify discrimination.

The general protection available in respect of direct and indirect discrimination applies to all protected characteristics. Where the relevant protected characteristic is disability, **s15 EA 2010** provides additional protection against **disability discrimination**. Disability discrimination will occur where person A treats person B unfavourably because of person B's disability, and person A cannot show that the treatment is a proportionate means of achieving a legitimate aim.



### Example – disability discrimination.

A homeless person applies to a Local Authority for emergency housing. The person in question has Tourette's syndrome, which causes him to swear a lot. A note of this is placed on his file. However, when the time comes for his interview, the Local Authority officer refuses to interview him because of his swearing.

The refusal to conduct an interview could amount to **disability discrimination** as it is connected to the person's disability.

However, s15 EA 2010 also states that the treatment of person B will not amount to disability discrimination if person A can show that they did not know, and could not reasonably have been expected to know, that person B had a disability. Even if it can be established that person A knew, or ought to have known, of the disability person A may still be able to avoid a claim of disability discrimination if person A can establish that the treatment of person B was a 'proportionate means of achieving a legitimate aim' (i.e. that is was objectively justified).

The provisions relating to direct, indirect and disability discrimination may all be relevant in the context of a claim for possession, and a tenant may rely on one or more of the provisions to defend the claim. In addition, **s35 EA 2010** provides that:

*A person (A), who manages premises, must not discriminate against a person (B) who occupies the premises:*

- a. in the way in which A allows B to make use of a benefit or facility;*
- b. by evicting B, or taking steps to secure B's eviction;*

c. *by subjecting B to any other detriment.*

Where the landlord is a public authority, the tenant may also be able to rely on the Public Sector Equality Duty (PSED) under **s149 EA 2010**, which provides that:

*A public authority must, in the exercise of its functions, have due regard to the need to:*

- a. *eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by EA 2010;*
- b. *advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- c. *foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

Public authorities are defined in **Schedule 19 EA 2010**, and include Local Authorities. Housing associations are not included within this definition, but s149 requires organisations, which are not public authorities but which exercise public functions, to have due regard to the requirements of s149.

The following cases provide examples where the courts have upheld defences based on discrimination in housing disputes:

***North Devon Homes v Brazier [2003] EWHC 574 (QB)*** – The tenant was exhibiting anti-social behaviour, which was related to mental illness, and the landlord commenced possession proceedings. The landlord argued that it would not have treated a non-disabled person, who had behaved in the same way, any differently. The court held that a possession order was not justified, noting: there was no evidence that the landlord had even considered whether the eviction was justified, a psychiatric report

made it clear the eviction would lead to a serious deterioration in the tenant's health and, although the neighbours suffered considerable inconvenience as a result of the tenant's behaviour, their health and safety were not endangered. Although the fact that an eviction would be unlawful under the Disability Discrimination 1995 Act did not determine whether it was reasonable to grant a possession order, it was highly relevant to the court's exercise of its discretion. (Although this was a case decided under the Disability Discrimination Act 1995, it is likely that the principles considered would apply under the EA 2010 as s149 EA 2010 imposes the same duty as s49A Disability Discrimination Act 1995.)

**Pieretti v London Borough of Enfield [2010] EWCA Civ 1104** - In this case the local authority was challenged for failing to comply with the Public Sector Equality Duty (PSED) when considering an application for accommodation from a disabled couple who had been evicted from their rented property. The local authority argued that they had made themselves intentionally homeless. The Court of Appeal held that the reviewing officer breached the PSED by failing to take appropriate steps to take account of the tenant's disability. This was because no enquiries had been made to establish the extent to which they could be said to have become intentionally homeless.

**Barnsley Metropolitan Borough Council v Norton & Ors [2011] EWCA Civ 834** - Following termination of the first defendant's employment for misconduct, the local authority brought possession proceedings in order to accommodate a new caretaker. The tenant lived in the property with his wife and daughter, and his daughter had cerebral palsy and epilepsy. It was accepted that the daughter had a disability for the purposes of the EA 2010. As the daughter's health could be critically affected by the local authority obtaining a possession order, it was under a duty to have regard to her disability at the time when the decision was taken to commence possession proceedings and failure to do so was a breach of that legal duty. Although the Court of Appeal did not set the possession order aside,

it noted that the local authority had a duty to re-house the family and that it expected the new accommodation to be available before the possession order was enforced.

#### **(5) Public law defences**

A public law defence is only available where the landlord is a public body (such as a local authority), and so is not available where the landlord is a private individual. Public bodies must act fairly, and must consider the individual circumstances of each case. Sometimes this is referred to as acting in accordance with ‘the rules of natural justice’. For example, if a noise complaint is made against a tenant of a local authority, the rules of natural justice require the tenant to be given an opportunity to respond to the allegation.

Public bodies make a series of decisions during the course of possession proceedings, including:

- to serve notice seeking possession;
- to review or not to review this decision;
- to issue proceedings at court;
- to pursue the proceedings after seeing the tenant’s defence;
- to execute the possession order once it is granted by the court.

At each of these stages the local authority is under a duty to ensure that it is acting reasonably, and if it fails to act reasonably at any stage the court may grant the tenant relief (e.g. by refusing to make, or setting aside, the possession order) (see ***Salford City Council v Mullen & Ors* [2010] EWCA Civ 336**).

Where a local authority fails to follow its own policies and procedures, it is very likely that the court would find that the local authority had acted unlawfully. Therefore, if you are supporting a tenant and the landlord is a public body, it is essential that you check whether the landlord has a relevant policy and whether it has been complied with (e.g. policies

relating to equality, rent arrears, housing strategy, vulnerable tenants and homelessness).

Some examples of cases where the court has allowed the tenant to rely on a public law defence are:

**McGlynn v Welwyn Hatfield District Council [2009] EWCA Civ 285** -

Complaints of anti-social behaviour were made against a tenant, and the local authority served a possession notice indicating that the local authority would seek a possession order if the anti-social behaviour continued. The court held that the local authority had failed to follow the rules of natural justice, as the tenant had not been given a sufficient opportunity to respond to the allegations.

**Barber v London Borough of Croydon [2010] EWCA Civ** -

The tenant was violent and abusive towards a resident caretaker, and the local authority served a possession notice and issued possession proceedings. During proceedings it came to light the tenant had severe mental health problems, and that his behaviour was a result of this. The court held that in deciding to carry on with the proceedings the local authority had failed to have regard to its own policies and procedures relating to the management of anti-social behaviour by vulnerable tenants.

**Eastlands Homes Partnership Ltd v Whyte [2010] EWHC 695 (QB)** -

The landlord served a possession notice due to rent arrears and anti-social behaviour. The court held that the landlord had failed to follow its own policy in relation to rent arrears. (It should be noted that the law does not require landlords to have policies and procedures in place, but if a policy exists then it must be followed.)

**(6) Human Rights Act defences**

The Human Rights Act 1998 came into force on the 2<sup>nd</sup> October 2000. It incorporated into UK law most of the rights contained in the European Convention on Human Rights. As with public law defences, a defence

under the Human Rights Act 1998 is only available where the landlord is a public body (such as a local authority), and so is not available where the landlord is a private individual.

**Article 8** is the convention right which is most relevant to housing possession claims. It is known as the right to **private and family life**, and provides that:

*8(1) Everyone has a right to respect for his private and family life, his home and his correspondence.*

*8(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

Taking steps to evict a tenant has the potential to amount to an infringement of Article 8(1) because an order for possession results in the removal of the tenant from the home.

Balanced against this, Article 8(2) allows local authorities and other social landlords to hold and manage their housing stock for the future benefit of the whole community. They are best equipped to make management decisions regarding the way that housing under their control is administered. This includes making decisions to deal with anti-social behaviour in the interests of public safety, and in respect of rent arrears, as this falls within the 'economic well being' test.

There have been a number of very important court decisions, which consider the extent to which tenants can argue a defence to a claim for possession based on an infringement of Article 8.

The Supreme Court decision in **Manchester City Council v Pinnock [2011] UKSC 6** opened the door to the use of an Article 8 defence in a possession claim. However in reaching this decision the Court indicated that Article 8 would only be relevant in exceptional circumstances.

In a further development last year the Court of Appeal approved the use of an Article 8 defence to defeat a claim for possession in **Southend-On-Sea Borough Council v Armour [2014] EWCA Civ 231**. Mr Armour and his daughter lived in a flat rented from the local authority under an **introductory tenancy**. Mr Armour was accused of anti-social behaviour and the local authority issued a claim for possession. The case was adjourned on a number of occasions, and the final hearing did not take place until eleven months after the original complaint had occurred. In the meantime, Mr Armour's behaviour had improved. The judge held that Article 8 could be invoked. He also held that whilst the local authority's decision to seek possession of Mr Armour's property was proportionate, at the time the notice of possession was served, it was not proportionate for an order for possession to be made by the time the case came to trial. This was because almost a year has passed between the commencement of proceedings and the trial, and no further complaints about Mr Armour's conduct had been made. It was relevant to the court's decision that Mr Armour suffered from Asperger's syndrome and depression, and that his behaviour had markedly changed since the date of the last incident of anti-social behaviour. The local authority appealed, and both the High Court and the Court of Appeal held that it was disproportionate for the local authority to continue to seek possession in the circumstances.

The key issue is whether or not the decision to seek a possession order can be said to be proportionate (in practical terms, justifiable) when taking account of both the tenant's circumstances and a social landlord's duty to manage the housing stock for the benefit of the wider community. As noted in 'Pinnock', the Article 8 requirement for proportionality "*is more likely to be a relevant issue in respect of occupants who are*

*vulnerable as a result of mental illness, physical or learning difficulty, poor health or frailty” [para. 64].*

## **Alternatives to litigation**

Going to court can be slow, expensive and stressful, and there are a number of alternatives to litigation which may help to resolve a housing dispute.

### **(1) Complaint about a local authority or other social landlord**

Local authorities and other social landlords will usually have their own complaints procedure. If a dispute arises, and the tenant believes that the landlord is acting unfairly, then it may be appropriate for the tenant to make a complaint.

It will usually be possible to obtain information about the complaints procedure from the organisation’s website. Alternatively, the tenant could contact the landlord and request a copy of the procedure.

If a complaint is lodged, the tenant must usually comply with all of the stages set out in the complaints procedure, and the landlord must be given a reasonable time to respond to the complaint. If the complaints procedure does not specify timescales, then up to 12 weeks could be considered to be reasonable, unless the situation is more urgent.

### **(2) Complaint about a private landlord**

The National Landlords Association has a code of practice that all member landlords should follow. The code says that landlords must respect the law, and this includes the Equality Act 2010. It also says that a landlord should treat their tenants with courtesy and respect. Therefore, if the landlord is a member of the Association then it may be possible to use the NLA Accreditation Complaints Process.

### **(3) *The Public Services Ombudsman for Wales***

The Public Services Ombudsman for Wales can deal with complaints about Local Authorities or other social landlords. Before complaining to the Ombudsman, the tenant should have exhausted the landlord's complaints procedure. However, it is possible to complain directly to the Ombudsman if the complaint is very urgent, for example if the tenant's safety is at risk.

If a tenant has lodged a complaint with the landlord, but feels that the landlord is taking too long to process the complaint, then a complaint can be made to the Ombudsman. However, as noted above, the Ombudsman is likely to allow the landlord up to 12 weeks to deal with the complaint.

The Ombudsman will not normally deal with complaints which have gone to court or which are better dealt with by the courts.

### **(4) *Mediation***

Situations may arise where, although there is a dispute, neither the landlord nor the tenant wishes to go to court. In these circumstances Alternative Dispute Resolution (ADR) may be appropriate. In practice, the form of ADR most likely to be suitable would be mediation, which involves an independent person helping the landlord and tenant to try and find a solution to the problem. The Ministry of Justice provides an online [Find a civil mediation service](#).

Mediation is not suitable for every problem, particularly where the situation is urgent. For example, if a tenant is threatened with illegal eviction an application to the court for an injunction is likely to be the only option.

### **Obtaining legal advice**

If you are supporting a tenant who is experiencing difficulties with their landlord, then it is important to consider obtaining legal advice, particularly if the tenant is being threatened with eviction. Legal aid is

available for some types of housing disputes provided the tenant is on a low income and their case has reasonable prospects of success. The Legal Aid Agency has an [online eligibility checker](#), which asks a series of questions about the type of dispute and the person's financial circumstances, and then provides an indication regarding whether legal aid may be available.

In addition, the Law Society has an online [Find a Solicitor](#) search facility, which allows you to search for a solicitor specialising in housing disputes in the local area.

### **Supporting a tenant threatened by eviction – a checklist**

The threat of eviction will usually be a consequence of either a failure by a tenant to pay rent, or anti-social behaviour by a tenant or a member of a tenant's family. The following checklist sets out some practical steps you can take if you are supporting a tenant threatened by eviction.



#### Checklist - Supporting a tenant threatened by eviction.

- I. Obtain a copy of the tenancy agreement. If the tenant does not have a copy, then ask the landlord to provide one.
- II. The tenancy agreement should state what type of tenancy is in place. If this is not clear from the tenancy agreement, or a copy of the agreement cannot be obtained, then the information contained in **Part 1 – The main types of tenancy** should help you identify the type of tenancy. Alternatively, you may find it useful to refer to [Shelter's online 'tenancy rights checker'](#).
- III. Consider whether the landlord has made clear the reason(s) why a possession order is being sought. If clear reasons have not been provided clarification should be sought from the landlord.

- IV. If the landlord has sent a notice seeking possession examine the notice carefully. In particular:
- Is the notice in the proper form?
  - Is the information contained within it accurate and clearly expressed?
  - Has the correct notice period been complied with?
  - If the notice includes a statutory ground for possession does the statutory ground relied on apply in the circumstances?
- V. If the landlord's reasons for seeking possession are connected to the tenant's disability, or disability of a member of the tenant's family living in the accommodation, consider the following:
- whether the landlord is aware of the disability;
  - if there is a care plan in existence, whether the landlord's intention to evict is inconsistent with any provisions in the plan, or whether it would be inappropriate or unreasonable for the landlord to evict;
  - whether the landlord's conduct discriminates against the tenant, or a member of the tenant's family, on the grounds of disability.
- VI. Obtain copies, from the landlord, of any policies which may be relevant to the decision to seek possession, for example policies relating to equality, rent arrears, housing strategy, vulnerable tenants or homelessness. If the landlord has not adhered to its own policy requirements, an immediate request should be made for a review of the decision to seek possession.
- VII. In the case of a claim related to non-payment or arrears of rent, if the landlord is a social landlord, then check to see whether the landlord has complied with the Pre-Action Protocol.
- VIII. Always consider whether the matters complained of are capable of being resolved by means other than eviction (for example, by mediation), and ensure that, where necessary, legal advice is sought.

## Part 3 – Repairs and improvements

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This section explains the respective rights and obligations of landlords and tenants to repair and make improvements to a rented property, and includes information about the grants which may be available to a tenant to fund improvements.

### Repairs

#### (1) *Private landlords*

Generally, private landlords have a duty to keep the accommodation in a reasonable state of repair, and their tenants have an obligation to look after the accommodation.

The terms in the tenancy agreement will detail the responsibilities of the landlord and the tenant. If there is no written tenancy agreement, whatever the landlord and tenant have agreed orally will apply.

Certain repairs will always be the landlord's responsibility, whether or not they are specifically mentioned in the tenancy agreement. These are:

- The structure and exterior of the premises (such as walls, floors, roof, window frames and external doors), and the drains, gutters and external pipes. If the property is a house, the essential means of access to it, such as steps from the street, are also included in 'structure and exterior'. It also includes garden paths and steps to the house.

- The water and gas pipes, and electrical wiring (including taps and sockets).
- The basins, sinks, baths and toilets.
- Central heating system and fixed heaters (for example, gas fires) and water heaters.
- Communal entrances and lifts.

Landlords cannot include a term in a tenancy agreement that would reduce their legal obligations, or pass on any of their responsibilities to the tenant. For example, a term making the tenant responsible for repairs to the roof would not have any effect as the law says that roof repairs are always the landlord's responsibility.

Usually, it is the tenant's responsibility to:

- look after the property by using it in a tenant like way;
- inform the landlord about the repairs that are needed;
- provide access to have any repair work done.

Using the property 'in a tenant like way' means that the tenant must: complete minor repairs (such as changing light bulbs or fuses), keep the property reasonably clean and use fixtures and fittings properly (e.g. not blocking the toilet by flushing something unsuitable down it).

A landlord is not required to repair any damage caused by a tenant, someone in the tenant's household, or a guest, regardless of whether the damage was caused accidentally or not. This is because treating the property in a tenant like way also requires the tenant to ensure that neither they nor their visitors damages the property.

If the landlord has to carry out repairs, which are very disruptive, the tenant may be entitled to claim compensation; for example, the landlord may agree to reduce the rent to compensate for the disruption. However, a tenant should not stop paying rent due to the disruption as this could risk eviction.

If the landlord does not carry out the repairs required, a tenant **does not** have the right to withhold rent until the repairs are undertaken. Again, withholding rent in these circumstances may lead to eviction. It is possible for the tenant to carry out the repairs and then either bill the landlord or deduct the costs from future rent. However, if the tenant decides to do the repairs themselves, the correct procedure must be followed, which includes giving the landlord notice, obtaining quotes for the work and ensuring that it is completed to a good standard. Shelter produces a guide, '[Doing the repairs if your landlord won't](#)', to help

tenants who are thinking of carrying out repairs and then claiming the costs back from their landlord.

## **(2) Social landlords**

As with private landlords, social landlords have a duty to keep the accommodation in a reasonable state of repair, and their tenants have an obligation to look after the accommodation.

Local authority tenants will have access to a **right to repair scheme**. Under the scheme, if repairs estimated to cost up to £250 are not carried out within a fixed time scale, the tenant can require that a different contractor is assigned to do the job. The key timescales are one day, three days and seven days, and examples of repairs that should be completed within given timescales are:

- One day - if the tenant has no water, electricity or gas, or no heating or hot water in the winter, or a blocked sewer.
- Three days - if the tenant has partial loss of water or electricity, or no heating or hot water in the summer, or a blocked bath or basin.
- Seven days - if the roof is leaking or an extractor fan is broken.

Where a repair is not carried out in time, the local authority must appoint a new contractor and set another time limit. A tenant can claim compensation, up to £50, if the repair is not carried out within the extended time limit. Twenty types of repairs qualify for the scheme, including those relating to insecure doors, broken entry phone systems, blocked sinks and leaking roofs. A repair will not qualify for the scheme if the local authority has fewer than 100 properties, is not responsible for the repair or if the authority decides it would cost more than £250. Details of the right to repair scheme can be obtained from the local authority's website, and many have online forms that can be used to report outstanding repairs.

Other social landlords do not have to operate a right to repair scheme, but many do. Therefore, tenants of other social landlords may also be entitled to compensation if they report a repair or maintenance problem which affects their health, safety or security and the landlord fails to carry out the repair within a set timescale. Again, information regarding whether the landlord operates a right to repair scheme can be obtained from the landlord's website.

## Improvements

Generally, tenants do not have the right to make changes to a landlord's property, and making a change to the property may amount to a breach of the tenancy agreement entitling the landlord to seek possession.

Where the tenant has a **(1) Secure tenancy**, an application can be made to the local authority for permission to carry out improvements. An improvement is any alteration or addition to the property and includes:

- addition or alteration to the landlord's fixtures and fittings;
- addition or alteration connected with the provision of services to the property;
- the erection of a wireless or television aerial; and
- the carrying out of external decoration.

Under **s97 Housing Act 1985** the tenant must not make any improvement without the written consent of the landlord, but the landlord's consent cannot be unreasonably withheld. If the landlord refuses a request, it is for the landlord to show that it was not a reasonable request and relevant factors will include whether the improvements would be likely to:

- make the property, or any other premises, less safe for occupiers;
- cause the landlord to incur expenditure which it would be unlikely to incur if the improvement was not made; or

- reduce the price which the property would fetch if sold on the open market, or the rent which the landlord would be able to charge on re-letting the property.

If the landlord withholds consent unreasonably, the tenant may proceed as if the consent was given. However, legal advice should always be sought before proceeding without a landlord's consent, and it may be necessary to make an application to the county court for the court to rule on whether consent has been withheld unreasonably.

Consent may be given by the landlord subject to conditions, but the conditions must be reasonable. This could include stipulating the quality of materials to be used or requiring qualified tradesmen to do the work. If the landlord stipulates a condition that is unreasonable, then the tenant can argue that the landlord is withholding consent unreasonably. If a question arises regarding whether a condition was reasonable, it is for the landlord to show that it was reasonable, and again an application to the court may be required in the event of a dispute. If the tenant fails to comply with a reasonable condition then the tenant will be treated as being in breach of the tenancy agreement.

Where a tenant has lawfully made an improvement, and has paid the whole or part of the costs, the landlord is not entitled to increase the rent on the basis of the improvements made.

### ***(1) Compensation for improvements***

The right to claim compensation for improvements applies to most local authority tenants, but not private tenants. Compensation can usually be claimed at the end of the tenancy, although it is not payable where a tenant is evicted. If joint tenants separate, the person who leaves will not receive compensation. If a tenancy ends because the tenant dies, or other special circumstances apply, the person responsible for the estate can claim compensation.

The right to compensation applies to the following improvements:

- fitting a bath or shower, washbasin or toilet;
- fitting a kitchen sink and work surfaces for preparing food;
- fitting storage cupboards in a bathroom or kitchen;
- installing central heating, hot water boilers and other types of heating;
- fitting thermostatic radiator valves;
- fitting pipe, water tank and cylinder insulation;
- draught-proofing outside doors or windows;
- installing double-glazing or other window replacement or secondary glazing;
- rewiring or installing power and lighting or other electrical fittings (including smoke detectors); and
- improvements to home security (excluding burglar alarms).

Compensation can be claimed for the costs of materials (but not appliances such as cookers or fridges), and labour costs (but not a tenant's labour). The tenant can claim up to £3,000 for each improvement, but cannot claim for improvements valued at less than £50. In addition, the tenant cannot claim for professional fees or costs associated with obtaining planning permission or building regulations approval.

Obviously, it is important that the tenant keeps a full record of the amount spent in making any improvements. However, even where records are kept, the tenant may not recover the full costs of the improvement as compensation can be reduced in accordance with the following principles:

- The value of any improvement reduces with the passage of time and as the tenant gets more use out of it.

- Less compensation will be payable if a surveyor considers the costs of the improvement too expensive, or the quality is less than it would have been if the landlord had done it themselves.
- Compensation entitlement can be used to offset any money owed to the landlord for housing debts, including any work the landlord needs to do as a result of the improvements made by a tenant.
- Compensation may be reduced by the cost to the landlord of cleaning the property.

In addition, internal decoration (painting and wallpapering), fitted wardrobes, light fittings, laminated flooring and wood paneling do not qualify for compensation. If the tenant received financial assistance (such as a grant) towards the costs of improvements, the amount of any compensation will be reduced by the amount of the grant.

## **(2) *Planning permission and building regulations approval***

In addition to the landlord's consent, a tenant who wishes to make changes to a property may also require planning permission and/or building regulations approval before any work is done on the property.

Useful information regarding planning permission and building regulations can be found on the [Welsh Government Planning Portal](#). This includes, amongst other things, interactive guides for specific projects such as loft conversions, extensions, conservatories, outbuildings and porches. There are also case studies relating to conservatories, doors and windows, extensions and extended walls.

## **The duty to make 'reasonable adjustments'**

**Section 20 Equality Act 2010 (EA 2010)** creates a requirement to make reasonable adjustments for disabled people. The meaning of the term disability has already been explained in the section of the tool kit dealing with **(4) *Discrimination*** as a defence to a possession claim.

**(1) *Who is under a duty to make reasonable adjustments?***

**Sch 4 EA 2010** states that only the landlord or manager of a rented property has the duty to make reasonable adjustments, but this includes the owner of a property, an estate agency or management company, a Local Authority or a housing association. (In the rest of this Section, the term landlord will be used to include managers of rented property.)

**(2) *What are the key obligations placed on landlords?***

Under **s20 EA 2010**, the landlord must take reasonable steps to avoid any provision, criterion or practice, or any physical feature which puts a disabled person at a substantial disadvantage in comparison with persons who are not disabled. In addition, reasonable steps must be taken to provide any auxiliary aid necessary to ensure that a disabled person is not at a substantial disadvantage in comparison with persons who are not disabled.

In practice, once a landlord becomes aware of a tenant's disability, the key obligations placed on landlords are:

- to change policy or practice, including the terms of the tenancy agreement; and
- to provide additional aids or services.

Under **s20 EA 2010**, a landlord may be required to make changes to any policies or practices they have which disadvantage a tenant because of their disability. This includes changing a term of a tenancy agreement. For example, a term saying pets are not allowed in the property could be changed to allow a disabled person to have an assistance dog.

Where a tenant requires 'auxiliary aids and services' to rent or live in the property, these may have to be provided. An example may be supplying a tenant with a copy of their tenancy agreement in a format that is more suited to their needs, such as easy read or braille.

However, landlords will not usually have an obligation to make structural changes which would substantially and permanently alter the property. For example, there is no obligation to remove walls, widen doorways or install permanent ramps, or to carry out any change that would alter the physical features of the property.

**(3) *When does the duty to make reasonable adjustments arise?***

The landlord has a duty to make reasonable adjustments if a tenant is **disadvantaged** because of their disability and the adjustment is **reasonable**.

A tenant is likely to be disadvantaged if they find it very difficult to do something. A tenant can ask the landlord to make reasonable adjustments if they find it very difficult to do the following:

- become a tenant or occupy a property;
- enjoy the property they live in; or
- use any facilities and benefits which are attached to the property (e.g. a common garden or parking space).

However, the landlord only has a duty to make changes if they are reasonable. When deciding whether an adjustment is reasonable, consideration needs to be given to:

- the type and length of the letting;
- how much the adjustment will cost;
- the landlord's resources; and
- how effective the proposed change is likely to be.

It is considered reasonable under the **EA 2010** for a tenant to ask their landlord to do the following things:

- remove, replace or provide any furniture, furnishings, materials or equipment (so long as it would not become a permanent fixture when installed);
- replace or provide signs or notices;
- replace taps or door handles;
- replace, provide or adapt door bells or door entry systems; or
- change the colour of any surface (e.g. a wall or a door).

**(4) *Who bears the costs of a reasonable adjustment?***

If an adjustment is reasonable, the landlord must pay for it, and the disabled person should not be asked to meet the costs even if they have requested the adjustment.

**(5) *Disability Adaptations***

A disabled tenant can ask the landlord for permission to make disability-related adaptations to the property at the tenant's own expense. A landlord must not unreasonably refuse to give their consent. This means they must have a good reason for refusing.

A tenant should provide details of the works they want to carry out and how they propose to carry out the work. They should also say if they intend to reinstate the accommodation to its original condition when the tenancy ends.

If a landlord refuses to give their consent, they must inform the tenant in writing and explain why the request has been refused. If a landlord cannot give a good reason for refusing or if they do not respond to a written request for consent within a reasonable time, their consent is deemed to have been given. However, as with improvements, legal advice should always be sought before proceeding without a landlord's consent, and it may be necessary to make an application to the county court for the court to rule on whether consent has been withheld unreasonably.

In deciding whether the landlord has acted unreasonably, the following factors may be taken into account:

- the type and length of the tenancy;
- the tenant's ability to pay for the adaptation;
- how easy it is to make the adaptations; and
- the extent of any disruption and effect on other occupiers.

A landlord can attach conditions to their consent as long as they are reasonable. Reasonable conditions can include obtaining the appropriate planning permissions, reinstating things that have been changed at the end of a tenancy, and allowing the landlord to inspect works carried out. Again, as with improvements, if a question arises regarding whether a condition was reasonable, it is for the landlord to show that it was reasonable, and an application to the court may be required in the event of a dispute. If the tenant fails to comply with a reasonable condition then the tenant will be treated as being in breach of the tenancy agreement.

#### **(6) Disabled Facilities Grants**

If a disabled person needs to make an adaptation to the property in which they are living, it may be possible for them to obtain a disabled facilities grant (under the **Housing Grants, Construction and Regeneration Act 1996**). This applies whether the disabled person owns the property or rents it.

A disabled facilities grant is a sum of money paid by a Local Authority for work that is essential to help a disabled person live an independent life, such as:

- widening doors and installing ramps;
- improving access to rooms and facilities (e.g. installing a stair lift or a downstairs bathroom);

- installing a heating system;
- adapting heating or lighting controls to make them easier to use.

A Local Authority must provide the grant if the applicant meets the qualifying criteria. A grant is only available where the adaptation is:

- **Necessary** and **Appropriate** to meet the disabled person's needs. (The Local Authority will normally ask an occupational therapist for their opinion on whether or not the work is necessary.)
- **Reasonable** and **Practical**, given the age of the property and the condition it is in. (For example, if the property is in a serious state of disrepair, it might not be practical to do the work.)

In addition, the applicant or the disabled person must own the property or be a tenant, and must intend to live in the property during the grant period (which is currently 5 years). An occupant will be treated as being disabled if:

- their sight, hearing or speech is substantially impaired;
- they have a mental disorder or impairment of any kind; or
- they are physically disabled by illness, injury or impairment present since birth or otherwise.

If the property is rented, the landlord's permission will be required before the Local Authority awards the grant. A landlord must not refuse permission without a good reason, and if a landlord does refuse without good reason this could amount to disability discrimination (see **Defences to Possession Claims: (4) Discrimination**).



Applying for a Disabled Facilities Grant – some practical considerations.

- The grant application form can be obtained from the Local Authority (either Housing or Environmental Health Department).
- The Local Authority will normally require 2 written estimates for the work, and may be able to provide a list of builders.
- The application must be submitted to the Local Authority before work starts on the property.
- The Local Authority must give its decision in writing, but is allowed up to 6 months to process the application. The grant may not be paid if work starts on the property before the Local Authority approves the application, and therefore it is essential to make the application as promptly as possible.
- If the property is rented, the landlord's permission for the adaptations will be required before the Local Authority approves the grant.
- Any adaptation will have to comply with planning and building regulations, and therefore separate applications for the relevant approvals may need to be made before any work starts. It is essential that the correct approvals are obtained, as undertaking building works without the relevant approvals could be a ground for eviction.
- The Local Authority may require a qualified architect or surveyor to plan and oversee the work.
- If the applicant is unhappy with the Local Authority's decision there is a right of appeal, and details can be obtained from the Local Authority. If the applicant appeals, and is unhappy with the outcome, it may be possible to make a further complaint to the Public Services Ombudsman for Wales.
- A Disabled Facilities Grant will not affect the applicant's entitlement to welfare benefits.

The maximum amount of the grant varies depending on where the applicant lives in the UK, but in Wales the upper limit is currently £36,000. The amount of grant depends on household income and savings, and a contribution to the costs of the work may be required. The grant is usually paid by instalments (as the work progresses), or in full (when the work is finished), and the Local Authority may pay the contractor directly or give the applicant a cheque to cover the costs incurred.

In Wales it may also be possible to get help under the **Rapid Response Adaptations Programme**. To be eligible under the programme, an applicant has to be a home-owner or a tenant, must usually be aged 60 or over and/or have a physical disability, and:

- be in hospital; or
- have recently been discharged from hospital; and
- wish to carry on living independently at home.

A referral to the programme by a health professional is required.

The programme applies to small-scale alterations to a disabled person's home, such as:

- small ramps;
- rails and hand-grips;
- a covered walk way to a toilet;
- levelling of paths;
- community safety alarms or other safety measures in the home.

The programme is run by Care and Repair Cymru who produce a [Rapid Response Adaptations Programme \(RRAP\) online guide](#) explaining the scheme in detail.



## Sources of grant funding.

The tool kit focuses on the main grants available to disabled people in a housing context. However, there are many other types of grant and sources of funding, and identifying and accessing grant funding can be difficult. The following websites may be of assistance in identifying relevant available grants:

- *Citizens Advice (Wales)* - guide to funding sources available in Wales.
- *Care & Repair Cymru* - national charitable body which seeks to ensure that all older people have homes that are safe, secure and appropriate to their needs.
- *Grants Expert (UK)* - advice regarding funding sources for a range of activities, including 'Home' and 'Property' sections.

## Part 4 – Additional resources

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### Citizens Advice (Wales)

Produces a range of information guides, which can be searched to take into account differences in law resulting from devolution. Useful guides include:

- Housing Issues Overview - includes helpful information regarding key issues, such as types of tenancies and discrimination in housing provision.
- Rent arrears
- Alternatives to Going to Court

### Disability Rights UK

Charity supporting people with disabilities or other health conditions. Produces a fact sheet in relation to Disabled Facilities Grants.

### Equality and Human Rights Commission

Organisation established to protect and promote human rights. Produces fact sheets in relation to:

- Equality Act and Housing
- Reasonable Adjustments for Disabled People

### Westminster Government

Provides an online search engine to identify which local authority is responsible for the area in which a tenant is living.

### Shelter Cymru

Charity providing free, expert independent housing advice. Produces a range of useful information guides, such as:

- Eviction

- Repairs
- Tenant's rights

## Future Changes

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As housing is a devolved matter, the Welsh Assembly has power to legislate in this area. In February 2015, the Welsh Government published the Renting Homes (Wales) Bill. The main purpose of the Bill is to harmonise and simplify housing law in Wales. If the Bill is implemented, the existing legal framework as outlined in this tool kit will be radically altered.

The Welsh Government has produced an 'Explanatory Memorandum', which explains the changes proposed by the Bill.

# Appendix 1

## Notice of Seeking Possession – Secure Tenancy (Periodic)

### NOTICE OF SEEKING POSSESSION Housing Act 1985, section 83

This Notice is the first step towards requiring you to give up possession of your dwelling. You should read it very carefully.

1. To.....  
(names of secure tenants)

- *If you need advice about this Notice, and what you should do about it, take it as quickly as possible to a Citizen's Advice Bureau, a Housing Aid Centre or a Law Centre, or to a Solicitor. You may be able to receive Legal Aid but this will depend on your personal circumstances.*

2. The .....[name of landlord]  
intends to apply to the Court for an order requiring you to give up possession  
of:  
.....  
.....  
.....

- *If you are a secure tenant under the Housing Act 1985, you can only be required to leave your dwelling if your landlord obtains an order for possession from the Court. The order must be based on one of the Grounds which are set out in the 1985 Act (see paragraphs 3 and 4 below).*
- *If you are willing to give up possession without a Court order, you should notify the person who signed this Notice as soon as possible and say when you would leave.*

3. Possession will be sought on Ground(s).....of Schedule 2 to the  
Housing Act 1985, which reads:-  
[give the text in full of each Ground which is being relied on]

- *Whatever Grounds for possession are set out in paragraph 3 of this Notice, the Court may allow any of the other Grounds to be added at a later stage. If this is done, you will be told about it so you can argue at the hearing in Court about the new Ground, as well as the Grounds set out in paragraph 3, if you want to.*
- 4. Particulars of each ground are as follows:-  
[give a full explanation of why each Ground is being relied upon]**

- *Before the Court will grant an order on any of the Grounds 1 to 8 or 12 to 16, it must be satisfied that it is reasonable to require you to leave. This means that, if one of these Grounds is set out in paragraph 3 of this Notice, you will be able to argue at the hearing in Court that it is not reasonable that you should have to leave, even if you accept that the Ground applies.*
- *Before the Court grants an order on any of the Grounds 9 to 16, it must be satisfied that there will be suitable alternative accommodation for you when you have to leave. This means that the Court will have to decide that, in its opinion, there will be other accommodation which is reasonably suitable for the needs of you and your family, taking into particular account various factors such as the nearness of your place of work, and the sort of housing that other people with similar needs are offered. Your new home will have to be let to you on another secure tenancy or a private tenancy under the Rent Act of a kind that will give you similar security. There is no requirement for suitable alternative accommodation where Grounds 1 to 8 apply.*

- *If your landlord is not a local authority, and the local authority gives a certificate that it will provide you with suitable accommodation, the Court has to accept the certificate.*
- *One of the requirements of Ground 10A is that the landlord must have approval for the redevelopment scheme from the Secretary of State (or, in the case of a landlord of a property in England which is a private registered provider of social housing, from the Regulator of Social Housing). The landlord must have consulted all secure tenants affected by the proposed redevelopment scheme.*

**Cross out this paragraph if possession is being sought on Ground 2 of Schedule 2 to the Housing Act 1985 (whether or not possession is also sought on another Ground)**

**5. The Court proceedings for possession will not be begun until after:**

.....  
 [give the date after which Court proceedings can be brought]

- *Court proceedings cannot be begun until after this date, which cannot be earlier than the date when your tenancy or licence could have been brought to an end. This means that if you have a weekly or fortnightly tenancy, there should be at least 4 weeks between the date this Notice is given and the date in this paragraph.*
- *After this date, court proceedings may be begun at once or at any time during the following twelve months. Once the twelve months are up this Notice will lapse and a new Notice must be served before possession can be sought.*

**Cross out this paragraph if possession not being sought on Ground 2 of Schedule 2 to the Housing Act 1985**

**5. Court proceedings for possession of the dwelling-house can be begun immediately. The date by which the tenant is to give up possession of the dwelling-house is:**

.....  
 [give the date by which the tenant is to give up possession of the dwelling-house]

- *Court proceedings may be begun at once or at any time during the following twelve months. Once the twelve months are up this Notice will lapse and a new notice must be served before possession can be sought.*
- *Possession of your dwelling-house cannot be obtained until after this date, which cannot be earlier than the date when your tenancy or licence could have been brought to an end. This means that if you have a weekly or fortnightly tenancy,*

*there should be at least 4 weeks between the date this Notice is given and the date possession is ordered..*

**Signed.....**  
**On behalf of.....**  
**Address.....**  
**.....**  
**Tel No.....**  
**Date.....**

## Notice of Seeking Possession – Secure Tenancy (Fixed-term)

### NOTICE OF SEEKING POSSESSION

#### Housing Act 1985, section 83

**This Notice may lead to your being required to leave your dwelling. You should read it very carefully.**

**1. To.....  
(names of secure tenants)**

- *If you need advice about this Notice, and what you should do about it, take it as quickly as possible to a Citizen's Advice Bureau, a Housing Aid Centre or a Law Centre, or to a Solicitor. You may be able to receive Legal Aid but this will depend on your personal circumstances.*

**2. The .....[name of landlord]  
intends to apply to the Court for an order terminating your tenancy and  
requiring you to give up possession of:**

.....  
.....

- *This Notice applies to you if you are a secure tenant under the Housing Act 1985 and if your tenancy is for a fixed term, containing a provision which allows your landlord to bring it to an end before the fixed term expires. This may be because you have got into arrears with your rent or have broken some other condition of the tenancy. This is known as a provision for re-entry or forfeiture. The Act does not remove the need for your landlord to bring an action under such a provision, nor does it affect your right to seek relief against re-entry or forfeiture, in other words to ask the Court not to bring the tenancy to an end. The Act gives additional rights to tenants, as described below.*
- *If you are a secure tenant and have a fixed term tenancy, it can only be terminated and you can only be evicted if your landlord obtains an order for possession from the Court. The order must be based on one of the Grounds which are set out in the 1985 Act (see paragraphs 3 and 4 below).*
- *If you are willing to give up possession without a Court order, you should notify the person who signed this Notice as soon as possible and say when you would leave.*

**3. Termination of your tenancy and possession will be sought on Ground(s).....of Schedule 2 to the Housing Act 1985, which reads:-  
[give the text in full of each Ground which is being relied on]**

- *Whatever Grounds for possession are set out in paragraph 3 of this Notice, the Court may allow any of the other Grounds to be added at a later stage. If this is done, you will be told about it so you can argue at the hearing in Court about the new Ground, as well as the Grounds set out in paragraph 3, if you want to.*

**4. Particulars of each ground are as follows:-  
[give a full explanation of why each Ground is being relied upon]**

- *Before the Court will grant an order on any of the Grounds 1 to 8 or 12 to 16, it must be satisfied that it is reasonable to require you to leave. This means that, if one of these Grounds is set out in paragraph 3 of this Notice, you will be able to argue at the hearing in Court that it is not reasonable that you should have to leave, even if you accept that the Ground applies.*
- *Before the Court grants an order on any of the Grounds 9 to 16, it must be satisfied that there will be suitable alternative accommodation for you when you have to leave. This means that the Court will have to decide that, in its opinion, there will be other accommodation which is reasonably suitable for the needs of you and your family, taking into particular account various factors such as the nearness of your place of work, and the sort of housing that other people with similar needs are offered. Your new home will have to be let to you on another secure tenancy or a private tenancy under the Rent Act of a kind that will give you similar security. There is no requirement for suitable alternative accommodation where Grounds 1 to 8 apply.*
- *If your landlord is not a local authority, and the local authority gives a certificate that it will provide you with suitable accommodation, the Court has to accept the certificate.*

- *One of the requirements of Ground 10A is that the landlord must have approval for the redevelopment scheme from the Secretary of State (or, in the case of a landlord of a property in England which is a private registered provider of social housing, from the Regulator of Social Housing). The landlord must have consulted all secure tenants affected by the proposed redevelopment scheme.*

**5. The Court proceedings will not be begun until after**

.....  
**[give the date after which Court proceedings can be brought]**

- *Court proceedings cannot be begun until after this date, which cannot be earlier than the date when your tenancy or licence could have been brought to an end. This means that if you have a weekly or fortnightly tenancy, there should be at least 4 weeks between the date this Notice is given and the date in this paragraph.*
- *After this date, court proceedings may be begun at once or at any time during the following twelve months. Once the twelve months are up this Notice will lapse and a new Notice must be served before possession can be sought.*

**Signed**.....  
**On behalf of**.....  
**Address**.....  
.....  
**Tel No**.....  
**Date**.....

# Appendix 2

## Notice of Seeking Possession – Assured Tenancy

### FORM NO 3:

#### NOTICE SEEKING POSSESSION OF A PROPERTY LET ON AN ASSURED TENANCY OR AN ASSURED AGRICULTURAL OCCUPANCY

- Please write clearly in black ink.
- Please tick boxes where appropriate and cross out text marked with an asterisk (\*) that does not apply.
- This form should be used where possession of accommodation let under an assured tenancy, an assured agricultural occupancy or an assured shorthold tenancy is sought on one of the grounds in Schedule 2 to the Housing Act 1988.
- Do not use this form if possession is sought on the “shorthold” ground under section 21 of the Housing Act 1988 from an assured shorthold tenant where the fixed term has come to an end or, for assured shorthold tenancies with no fixed term which started on or after 28th February 1997, after six months has elapsed. There is no prescribed form for these cases, but you must give notice in writing.

---

**1. To:**

.....  
*Name(s) of tenant(s)/licensee(s)\**

**2. Your landlord/licensor\* intends to apply to the court for an order requiring you to give up possession of:**

.....  
*Address of premises*

**3. Your landlord/licensor\* intends to seek possession on ground(s) ..... in Schedule 2 to the Housing Act 1988, as amended by the Housing Act 1996, which read(s):**

.....  
*Give the full text (as set out in the Housing Act 1988 as amended by the Housing Act 1996) of each ground which is being relied on. Continue on a separate sheet if necessary.*

**4. Give a full explanation of why each ground is being relied on:**

.....  
.....  
.....  
.....  
.....

*Continue on a separate sheet if necessary.*

**Notes on the grounds for possession:**

- If the court is satisfied that any of grounds 1 to 8 is established, it must make an order (but see below in respect of fixed term tenancies).
- Before the court will grant an order on any of grounds 9 to 17, it must be satisfied that it is reasonable to require you to leave. This means that, if one of these grounds is set out in section 3, you will be able to suggest to the court that it is not reasonable that you should have to leave, even if you accept that the ground applies.
- The court will not make an order under grounds 1, 3 to 7, 9 or 16, to take effect during the fixed term of the tenancy (if there is one) and it will only make an order during the fixed term on grounds 2, 8, 10 to 15 or 17 if the terms of the tenancy make provision for it to be brought to an end on any of these grounds.
- Where the court makes an order for possession solely on ground 6 or 9, the landlord must pay your reasonable removal expenses.

**5. The court proceedings will not begin until after:**

.....Give  
*the earliest date on which court proceedings can be brought*

- Where the landlord is seeking possession on grounds 1, 2, 5 to 7, 9 or 16, court proceedings cannot begin earlier than 2 months from the date this notice is served on you (even where one of grounds 3, 4, 8, 10 to 13, 14A, 15 or 17 is specified) and not before the date on which the tenancy (had it not been assured) could have been brought to an end by a notice to quit served at the same time as this notice.
- Where the landlord is seeking possession on grounds 3, 4, 8, 10 to 13, 14A, 15 or 17, court proceedings cannot begin earlier than 2 weeks from the date this notice is served (unless one of 1, 2, 5 to 7, 9 or 16 grounds is also specified in which case they cannot begin earlier than two months from the date this notice is served).
- Where the landlord is seeking possession on ground 14 (with or without other grounds), court proceedings cannot begin before the date this notice is served.

- Where the landlord is seeking a possession on ground 14A, court proceedings cannot begin unless the landlord has served, or has taken all reasonable steps to serve, a copy of this notice on the partner who has left the property.
- After the date shown in section 5, court proceedings may be begun at once but not later than 12 months from the date on which this notice is served. After this time the notice will lapse and a new notice must be served before possession can be sought.

**6. Name and address of landlord/licensor\*.**

*To be signed and dated by the landlord or licensor or his agent (someone acting for him).  
If there are joint landlords each landlord or the agent must sign unless one signs on behalf of the rest with their agreement.*

**Signed** .....**Date** .....

Please specify whether: landlord  licensor  joint landlords  landlord's agent

**Name(s) (Block Capitals)**

.....

**Address**

.....  
.....

**Telephone -**

Daytime .....Evening .....

What to do if this notice is served on you:

- This notice is the first step requiring you to give up possession of your home. You should read it very carefully.
- Your landlord cannot make you leave your home without an order for possession issued by a court. By issuing this notice your landlord is informing you that he intends to seek such an order. If you are willing to give up possession without a court order, you should tell the person who signed this notice as soon as possible and say when you are prepared to leave.
- Whichever grounds are set out in section 3 of this form, the court may allow any of the other grounds to be added at a later date. If this is done, you will be told about it so you can discuss the additional grounds at the court hearing as well as the grounds set out in section 3.
- If you need advice about this notice, and what you should do about it, take it immediately to a Citizen's Advice Bureau, a housing advice centre, a law centre or a solicitor.

(This form is also available electronically at [Assured tenancy forms \(Form 3\)](#).)

For More Information you can also contact:

The Wales Learning Disability Helpline on **0808 808 1111**

Or e-mail [helpline.wales@mencap.org.uk](mailto:helpline.wales@mencap.org.uk)

