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Housing matters

Housing matters is produced by Shelter for the NHAS and aims to provide a source of up-to-date housing and homelessness news, focus on important case law, cover key legal issues, and produce information for public use.

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Housing matters welcomes contributions from NHAS members. If you would like to provide an article or update for *Housing matters* please email JackieL@shelter.org.uk

National Homelessness Advice Service

The National Homelessness Advice Service (NHAS) is a partnership between Shelter and Citizens Advice funded by the Department for Communities and Local Government.

The service aims to prevent homelessness and remedy other housing problems through increasing public access to high-quality housing advice in England, including online information on the NHAS website at www.nhas.org.uk

The NHAS provides the following to local authorities, CABx and around 100 other advice agencies in England:

- **a national telephone housing advice consultancy service** for local authorities, CABx and around 100 other advice agencies in England. Call **0300 330 0517** 9am–8pm, Monday to Friday, or send in an enquiry using the online enquiry form available on the members' areas of www.nhas.org.uk
- **housing debt casework** - specialist support for cases relating to mortgage arrears and other problems with housing affordability, including welfare benefits issues. Call **0300 330 0517** or use the online enquiries form (see above for details)
- **free basic housing advice training courses** to develop housing advice skills, covering the main housing advice presenting issues and how to advise households effectively on homelessness prevention options
- **written briefings**, articles in *Housing matters* and *Adviser*, information on housing issues and other written materials
- **support** in the implementation of new homeless prevention initiatives.

Contact details

For more information about NHAS training, please email JoanneK@shelter.org.uk or call **0344 515 1676**.

For general enquiries about the NHAS service, please email nhas@shelter.org.uk or call **0344 515 2268**.

Alternatively, please use the 'contact us' page at www.nhas.org.uk

What's new?

Right to rent - extension

The Immigration Act 2014 (Commencement No. 6) Order 2016 SI 2016/11 extends the 'right to rent' requirements to the whole of England from 1 February 2016. Landlords in five West Midlands areas have been required to check their tenants' immigration status since 1 December 2014.

Under the Immigration Act 2014, non-exempt landlords or their agents must check the immigration status of their tenants and licensees (including British and European Economic Area nationals), as well as any adult members of their household, to ensure they have a 'right to rent' and to avoid a sanction (currently a maximum fine of £3,000). Anyone taking in a lodger or sub-letting is also subject to the requirements.

A person with no right to enter or remain in the UK who does not have discretionary permission to rent from the Home Office has no right to rent.

Right to rent – new acceptable documents

With effect from 1 February 2016, the Immigration (Residential Accommodation) (Prescribed Requirements and Code of Practice) (Amendment) Order 2016 SI 2016/9 amends the list of documents listed in the Schedule to the Immigration (Residential Accommodation) (Prescribed Requirements and Codes of Practice) Order SI 2014/2874 which a landlord or agent can accept when carrying out immigration checks on an occupier or prospective occupier.

Right to rent - new Code of Practice

Still with effect from 1 February 2016, SI 2016/9 brings into force a revised Code of Practice explaining how a landlord or agent can comply with the right to rent provisions and avoid sanctions. The previous 2014 Code (updated on 3 January 2016) applies to tenancies that started before 1 February 2016, but where repeat checks are required the new Code applies. The Code can be found at tinyurl.com/R2RCode

Right to rent – new guide

The Government's 'Right to rent document checks: a user guide' provides visual illustrations of some of the documents that a landlord or agent can accept as evidence of a right to rent. It also contains a printable checklist, a list of acceptable people who may issue a letter of reference to an occupier, and a Frequently Asked Questions (FAQs) section. For a copy see tinyurl.com/R2Rchecks

Deregulation Act 2015 and section 21

From 1 February 2016, the provisions in the Deregulation Act 2015 affecting landlords seeking possession of an assured shorthold tenancy by serving a section 21 notice will begin to 'bite'. Although those provisions only apply to tenancies that were granted on or after 1 Oct 2015, their impact has been delayed by the requirement that no section 21 notice could be served in the first four months of a tenancy.

The flow chart on pages 8 and 9 is a useful guide for anyone advising assured shorthold tenants who have been served with a section 21 notice. It considers how a landlord might breach new requirements introduced by the Deregulation Act 2015, and suggests appropriate action that can be taken by a court desk adviser.

Bedroom tax research

A report by the Department for Work and Pensions evaluating the removal of the 'spare room subsidy' (also known as the bedroom tax) finds that, of those affected:

- half fail to make up the shortfall in rent
- only 36 percent who applied for a discretionary housing payment succeeded
- 76 per cent had to cut back on food.

Find the report at tinyurl.com/BT12-15

Homelessness policy 2015 onwards

In December 2015 the government outlined its key policies for tackling homelessness to be implemented over the next five years, including a commitment to working with the homelessness sector to consider options to prevent homelessness.

The following funding is being made available:

- £40 million to refurbish hostels and provide low-cost shared accommodation for young people at risk of homelessness.
- An additional £30 million given to local authorities to enable them to manage their temporary accommodation budgets directly
- £5 million to the 25 authorities with the greatest problems moving people out of temporary accommodation and into a settled home.

For more information, see the House of Commons Library briefing, Statutory Homelessness in England which can be found at tinyurl.com/HCLB1164

Moving on after domestic abuse

In this article, Margaret Williams looks at move-on accommodation for survivors of domestic abuse and explains the vital importance of local knowledge.

Margaret Williams is Homelessness Project Manager at East London Housing Partnership.

Safe, settled accommodation is pivotal to households at risk of domestic abuse.¹ Housing has a fundamental role to play in preserving the safety and well-being of the survivors and any children involved, and to reduce the risk of them becoming repeat victims. Settled accommodation helps survivors of domestic abuse achieve independence and rebuild their lives, for example by returning to work or education, and helps children to settle in school.

The problem in context

Crime statistics for 2013/14 identified that 1.4 million women and 700,000 men were victims of domestic abuse.²

Women's Aid's Annual Survey 2014 reported that 1,800 women and 1,700 children were occupying accommodation in 144 refuges in England on 26 June 2014, with 74,500 women supported through non-refuge services such as outreach.³

Homelessness statistics

In 2014, 6,550 households were accepted as owed a main homelessness duty by local authorities in England with domestic violence the reason for loss of their last settled home.⁴ A Crisis's study of women's homelessness⁵ found that domestic abuse was the cause of loss of the last settled home for 20% of respondents, rising to 40% for women aged 40 and over. A study by Shelter⁶ identified similar figures with 40% of women reporting that domestic abuse contributed to their homelessness.

Refuge spaces – supply, demand and problems moving on

The numbers of women who need refuge accommodation is far greater than the number of bed spaces available with on average 112 women turned away each day due to lack of space. Between 2010 and 2014, the loss of specialist domestic violence services resulted in 1,700 fewer refuge bed spaces in England.⁷

Whilst refuge accommodation is not suitable for all households escaping domestic abuse, other forms of temporary accommodation rarely provides the safety and security needed by survivors.

The Women's Aid's annual survey 2013⁸ reported that 47% of refuges found that women were remaining in refuges longer than in previous years due to delays in securing move-on accommodation. The reasons given were:

- unsuitable accommodation
- shortage of housing
- affordability, including rent deposit and agency fees
- reluctance of private sector landlords to accept people on benefits.

In some areas at least, private sector rent rises show no sign of slowing, which limits the options of low income survivors and places much of the private rented sector out of reach of women moving on from refuges or other temporary accommodation.

Preventing homelessness

Social housing providers are ideally placed to identify households where domestic abuse may be occurring and act to prevent escalation, before the survivor makes a homelessness application in crisis.

The Department for Communities and Local Government (DCLG) guidance on domestic abuse and homelessness states that:⁹ 'Authorities should consider how they might identify potential victims of abuse. For example housing organisations are ideally placed as they have access to people's homes for maintenance purposes and can spot domestic abuse through an analysis of repairs and also through community development work where trained staff can spot signs of abuse.' This guidance could equally apply to housing associations.

Training is needed to help housing providers ask the right questions, identify the signs of abuse or know how to respond when a disclosure is made. Targeted enquiry or screening can be put in place through collaboration across the housing sector. This process needs to be developed and delivered in partnership with agencies supporting survivors of domestic and sexual abuse, such as children's services, the homelessness

Footnotes

¹ Domestic abuse includes domestic and sexual violence, as well as any other form of abuse.

² Crime Statistics - Focus on Violent Crime and Sexual Assault Offences 2013/14, Office for National Statistics, 2015.

³ See tinyurl.com/WAsurveys

⁴ Statistics on reason for loss of last settled home between 1998 and 2014/15 can be found in the Statutory homelessness live tables: July to September 2015. See tinyurl.com/stats14-15

⁵ Homeless Women: Still being failed yet striving to survive, Crisis, 2006.

⁶ Homelessness: What's gender got to do with it, Shelter, 2002.

⁷ Women's Aid Annual Survey 2014 - tinyurl.com/WAsurveys

⁸ See tinyurl.com/WAsurveys

⁹ para 40, Supplementary guidance on domestic abuse and homelessness, DCLG, 2014.

sector, mental health services, therapeutic services, substance use, employment and debt services. Where homelessness cannot be prevented, a planned housing response can be implemented as part of the support plan agreed with the household.

Homelessness statutory duty

The Housing Act 1996 sets out in Part 7 the duties a housing authority owes to survivors of domestic abuse – to advise and assist the applicant and, depending on the particular circumstances, to provide temporary accommodation while the case is investigated, followed by longer term accommodation if the authority confirms that it has a full duty to accommodate the person or household.

A person has a priority need for accommodation if s/he is vulnerable as a result of having to leave accommodation because of violence or threats of violence. Applicants cannot be referred to another authority where they, or a member of their household, would be at risk of violence. The Homelessness Code of Guidance reminds authorities that in cases involving violence, the safety and confidentiality of the applicant is of paramount concern.¹⁰

Good practice models

Local authority resources are extremely stretched. This presents challenges in the provision of move-on accommodation and support for domestic abuse survivors, but has also led to some innovative methods and options being developed.

The variation in service provision, both at individual authority and regional and sub-regional levels, highlights the importance of local knowledge for survivors of domestic abuse and their advisers in making informed choices about their housing options.

The following examples of good practice models and projects may all reduce the length of time survivors spend in temporary accommodation, benefiting both survivors and the responsible authority.

Reciprocal agreements

Reciprocal agreements are voluntary collaborations between social housing providers. They do not form part of the statutory duty of local authorities.

East London reciprocal agreement

The East London reciprocal agreement is a collaboration between the eight

East London local authorities and 20 housing associations in the area. It enables survivors who hold a social housing tenancy to apply for a move across borough boundaries into settled accommodation provided by an alternative authority or registered provider who, in return, is provided with a property by the referring partner. North, South East, South West and West London all have reciprocal agreements although operation is slightly different under each. Details are available from the relevant Coordinator.¹¹

Pan London reciprocal agreement

The Pan London reciprocal agreement is a collaboration between the 32 London boroughs and the City of London Corporation. It is not widely known and currently is operated through a named lead in each authority with the assistance of the sub-regional Homelessness Coordinators. There are plans for the Safer London Foundation to develop this with the local authorities and, in the interim, information is available through the project's homelessness coordinators.¹²

County-wide reciprocal agreement

Essex operates a county-wide reciprocal agreement¹³ for survivors (social housing tenants only) at high risk of abuse who have been referred to a meeting of the local Multi Agency Risk Assessment Conference (MARAC). A MARAC is a confidential meeting in which a domestic abuse specialist together with police, children's social services, health and other relevant agencies agree a plan for how to help victims at high risk of murder or serious harm. An individual's risk of abuse is established by professionals trained in using a risk identification model known as DASH - the Domestic Abuse, Stalking and Honour Based Violence model.¹⁴

Lettings and mobility schemes

Lettings and mobility schemes enable homeless households to move to vacant social housing properties in other areas through an allocation or a mutual exchange.

Housing Moves

This is a London-wide lettings scheme that helps social tenants to move from one part of London to another. Available properties are advertised on the Housing Moves website.¹⁵ Escaping domestic abuse is not currently listed as a priority category, but this does not mean a move cannot be achieved. Further details are available from the Housing Moves website, local authority or registered provider where the survivor holds a tenancy.

Footnotes

¹⁰ para 10.28, Homelessness Code of Guidance for Local Authorities, DCLG, 2006.

¹¹ More information and contact details of the project coordinators are at tinyurl.com/EastLonRA

¹² More information and contact details of the project coordinators are at tinyurl.com/PanLonRA

¹³ For further details, email Tracey.brushett@essex.gov.uk

¹⁴ For more information see tinyurl.com/DASHmod

¹⁵ See tinyurl.com/HMorg

Footnotes

¹⁶ See tinyurl.com/HomeUK

¹⁷ Sanctuary Scheme Installation Manual, MPS, 2015. Find it at tinyurl.com/SanctuaryS

¹⁸ For further details, email rthomas@lbbd.gov.uk

¹⁹ See tinyurl.com/DAalliance For further information, email gudrun.burnet@peabody.org.uk

²⁰ See tinyurl.com/Slives

Homefinder

This is a national mobility scheme advertising available social housing across the UK.¹⁶ It is a not-for-profit service which promotes and case manages moves of homeless households and tenants to vacant social housing properties. The scheme offers a housing option for those in need of a housing move to another area. Anyone can apply, however priority and support through the process are dependent on the social landlord being signed up to the scheme.

Sanctuary

Through the installation of appropriate security measures, survivors can remain in their homes and do not lose their established local support networks. There are a wide variety of sanctuary projects up and down the country including full sanctuary provision and basic enhanced home security. Their primary aim is to protect victims of domestic abuse who do no longer live with their perpetrators, offering the choice to remain in their home or return home after a period in a place of safety while security measures are installed. The Metropolitan Police Service (MPS) manual¹⁷ sets out the minimum technical specifications for the installation of a sanctuary safe room and associated security and fire safety measures.

Fast-track move-on protocols

The London Borough of Barking and Dagenham has agreed a fast track move-on protocol with the local refuge.¹⁸ When a resident is ready to leave the refuge and wants to continue to reside in the area, a referral will be made by a designated officer at the refuge to a designated officer within the authority's Housing Service. The survivor is not required to present as homeless. Once accepted, a direct offer of accommodation is made subject to availability of properties.

Early intervention

The Domestic Abuse Housing Alliance (DAHA)¹⁹ promotes good practice by enabling housing providers to analyse and assess their existing service delivery against a set of National Domestic Abuse Service Standards. DAHA is an accreditation project promoting early identification and interventions based on the needs of the household. It equips housing professionals with the knowledge and skills required to identify tenants experiencing abuse and facilitate a response.

Web-based information

The St Mungo's Rebuilding Shattered Lives website²⁰ provides examples of good practice in homelessness interventions and prevention for women escaping domestic abuse across a wide range of areas and options.

Conclusion

Housing providers can reduce homelessness by adopting an integrated organisational position that supports and facilitates early identification of tenants at risk of abuse, and makes interventions, including planned moves, based on the needs of the household.

The supply of housing for low income single-person or single-parent households, including those escaping from domestic abuse, is likely to remain a challenge for housing providers.

Clare Laxton, Public Policy Manager at Women's Aid, in 2006 made the following comment about the problems caused to survivors of domestic abuse by delays in finding move-on accommodation: 'An extended stay [in a refuge] beyond her needs could stunt women's recovery and delay her capability to rebuild her life and return to work or education'.

Domestic abuse survivors seeking move-on accommodation after leaving either a refuge or an existing tenancy need information about what move-on provision is available through local, sub-regional, regional or national schemes in order to make an informed choice on their housing options.

East London Housing Partnership

The East London Housing Partnership (ELHP) is an alliance between the eight East London local authorities and East London registered social landlords. Its purpose is to address housing need and increase the quality and availability of housing in East London.

For further details see www.elhp.org.uk

For further information on any of the content of this article, please contact Margaret Williams on 020 8227 5031 or by email at Margaret.williams@elhp.org.uk

Where the county court has made an outright possession order, or a tenant or borrower breaches the terms of a suspended order, the landlord or mortgage lender must use a bailiff to carry out the eviction. In recent years there has been an increasing use of High Court enforcement officers (HCEOs) to carry out evictions even where the possession order was made in the county court.

HCEOs (sometimes known as sheriffs' or certificated bailiffs) are private agents regulated by the High Court Enforcement Officers' Association who operate under instructions received from the claimant landlord or lender.

Rules and standards

The rules on enforcement of possession orders can be found in Part 83 of the Civil Procedure Rules (CPR), which came into force on 6 April 2014. Part 83 CPR brings together procedures in the county court and the High Court which were formerly contained in different sets of rules (the County Court Rules and the Rules of the Supreme Court).

HCEOs are bound by the National Standards for Enforcement Agents¹ and they subscribe to a Code of Practice.²

County court enforcement

Most claims for possession of residential property are brought in the county court, and the normal enforcement procedure is through the court's own bailiffs. Thus, the landlord or lender will usually apply to the county court for a warrant of possession³ by completing court form N325.

Even where the order was suspended, a warrant in the county court is normally issued without prior notice to the occupier and without a hearing.

The county court bailiff will then fix a date for the eviction and should send a Notice of Eviction (on form N54) to the occupier giving the date and time of the eviction.

Form N54 also contains information for defendants about what they need to do if they wish to apply to the court to suspend the warrant or postpone the eviction.

Transferring a case to the High Court

In some cases, however, a landlord or lender may decide to arrange for the enforcement of a county court possession order not by county court bailiffs, but by enforcement officers authorised by the High Court.

Applying for a transfer

A landlord may apply to the county court for an order transferring proceedings for the enforcement of a possession order to the High Court.

Strictly, this should be done by making a formal application to the court on form N244, although a claimant will sometimes ask for a transfer 'on the spot', immediately after the possession order is made. Section 42 of the County Courts Act 1984 permits proceedings for the enforcement of any county court order to be transferred to the High Court.

While the County Courts Act 1984 does not offer any guidance in dealing with an application to transfer, the county court judge has a discretion whether or not to grant the application. A tenant or borrower can oppose the application (see below).

Reasons for using HCEOs

The normal practice is that county court orders should be enforced in the county court, and if landlords or lenders wish to enforce in the High Court, they should give reasons why the claim should be transferred.

The principal reason for wanting High Court enforcement is speed and the reduction in lost rent. There is a perception, encouraged by HCEO providers' publicity material, that HCEOs can evict in a much shorter time than can county court bailiffs. One provider's website⁴ advertises that it 'completes the process in fewer than 14 days in over 90% of all cases'.

Other reasons include:

- for social housing tenants, the needs of other people on a local authority's housing list
- High Court writs of possession do not expire after 12 months and can be used again if a subsequent payment arrangement breaks down.

In this article, John Gallagher examines the reasons for an increased use of the High Court to enforce possession orders, its implications for tenants and borrowers, and the impact of recent case law.

John Gallagher is principal solicitor at Shelter.

Footnotes

¹ Taking control of goods: national standards, MoJ, 2014 - See tinyurl.com/NatStand

² tinyurl.com/practicecode

³ The warrant is court form N49.

⁴ See tinyurl.com/HCEOs

Footnotes

⁵ s.42(5) County Courts Act 1984.

⁶ The writ of possession is on court form 66 or 66A.

⁷ CPR 83.13(8).

⁸ High Court (Chancery Division) 24 August 2015, reported on p.40 of Legal Action Magazine, October 2015.

⁹ Under CPR 83.13(8) permission will not be granted unless every person in actual occupation of the land is given such notice of the proceedings as the court considers sufficient to enable them to apply for any relief to which they may be entitled to.

¹⁰ Combined certificate of judgment and request for a writ of possession.

¹¹ Pritchard and others v Teitelbaum and others [2011] EWHC 1063 (Ch).

¹² reg.6 Taking Control of Goods Regulations 2013 SI 2013/1894.

Once the transfer of proceedings has taken place, the order may be enforced as if it were an order of the High Court.⁵

Challenging a 'transfer up' application

An occupier may oppose an application to transfer a case to the High Court. Reasons for opposition could include that:

- the claimant has not provided evidence that significant delay will be caused by using the county court bailiffs
- the costs involved in using a HCEO are disproportionately high
- the lack of notice of an eviction date from the HCEO could cause hardship (see under 'After writ is issued' below)
- (for borrowers), the borrower could be deprived of the opportunity to apply for a stay or suspension of the writ because s/he may receive no notice of the lender's application for a writ (see 'Exceptions - no permission needed' below).

The court may also be asked to take into account the occupier's circumstances, such as whether s/he has significant rent or mortgage arrears or has children.

Applying for a High Court writ

Once proceedings have been transferred to the High Court, the landlord will need to obtain a writ of possession (the equivalent of a county court warrant of possession).

Notice of application

With limited exceptions (see below), the landlord must apply to the High Court for permission to issue a writ of possession⁶ authorising a HCEO to carry out the eviction. The court will not give permission unless the landlord can prove that the occupier has been given notice of the proceedings relating to the application.⁷ This gives the occupier the opportunity to be heard and to make any application to set aside or vary the possession order or to stay or suspend the writ.

In the case of *Nicholas v Secretary of State for Defence*,⁸ the separated wife of a serviceman remained in service quarters after her husband left. The Secretary of State obtained a possession order against her and applied to the Court - without giving her any notice of the application - for permission to issue a writ of possession. The first that Mrs Nicholas knew of the eviction was when she awoke one morning to find HCEOs in the process of changing the locks to the property. She applied successfully to set aside the writ of

possession. The court held that, under court rules, notice of an application for a writ of possession must be given to every occupier before permission to issue a writ of possession is given.⁹ Permission should not therefore have been granted. The court noted that by failing to give notice, the claimant is depriving the occupier of an opportunity to apply to the court to stay or suspend the writ of possession, and that failure may justify setting aside a writ even after it has been executed.

Exceptions - no permission needed

The High Court's permission is not required to issue a writ of possession against:

- trespassers (unless more than three months have expired since the date of the possession order); and
- borrowers in mortgage possession proceedings.

Trespassers only – form N293A

Where the order for possession is against trespassers, there is an abbreviated procedure. The landlord or lender can complete court form N293A¹⁰ certifying that a writ is required to enforce a judgment against goods or trespassers. On payment of a fee, the county court will seal the form and send it to the High Court for enforcement.

Mortgage borrowers

Where mortgage borrowers are concerned, although the form N293A cannot be used, the claimant lender does not need either to obtain permission for a writ of possession or to give notice of the eviction date.¹¹ As such, where borrowers or their representatives are notified that the county court has agreed to transfer the proceedings to the High Court, they will need to act with all possible speed to secure a hearing to stay or suspend enforcement before the HCEO arrives to evict. If a stay or suspension of enforcement is granted, it is essential that the HCEO is informed of this immediately.

After writ is issued

Once permission has been given (where necessary) and a writ of possession has been issued, there is no requirement on the HCEO to notify the occupier of the date when they will come to evict. Some HCEOs will make contact as a matter of good practice, but the length of notice is likely to be short. However, where a HCEO is seeking to seize goods as well as recover possession, the occupier must be given seven days' notice.¹²

Set aside or varying a possession order

Section 42(6) of the County Courts Act 1984 provides that:

'Where proceedings for the enforcement of any judgment or order of a county court are transferred under this section –

(a) the powers of any court to set aside, correct, vary or quash a judgment or order of a county court, and the enactments relating to appeals from such a judgment or order, shall continue to apply; ...'

It seems therefore that an application to set aside or vary the possession order may still be made in the county court following the transfer of proceedings, while an application to stay or suspend enforcement must be made to the High Court.

Routine use of wrong procedure

The way in which the process of transfer to the High Court for enforcement should work has recently been examined in some detail in an enlightening judgment of District Judge Salmon of Birmingham County Court in the case of *Birmingham CC v Mondhlani*.¹³

Birmingham County Council had been using agents to obtain the transfer of possession cases to the High Court for enforcement. It transpired that writs had been obtained against secure tenants of the council by the agents lodging form N293A. As discussed above, this procedure is available only for writs of possession against trespassers. Secure tenants remaining in occupation after expiry of a possession order are not trespassers, so the Court had been issuing writs where there was no authority to do so.

As a result of using the 'no permission needed' procedure, tenants received no notice of any kind and no information about their ability to apply to the Court for relief in respect of the possession order. The judge expressed alarm at the requirements of the CPR being "side-stepped", and stated that the practice must stop. The judge was also concerned to discover that where the Council had applied for permission to issue a writ, they had done so in the Huddersfield District Registry of the High Court, not Birmingham.

Good practice

In *Mondhlani*, the judge suggested that, in deciding whether or not the court should agree to 'transfer up', it was relevant to consider various factors, in particular, the 'overriding objective' of the court rules,

which is to enable the court to deal with cases justly and at proportionate cost. Other factors to be considered might include the amount of the rent or mortgage arrears, and whether there was a likelihood that a warrant or writ of possession might be suspended by any court before eviction took place, since the time advantages of transfer might be minimal in that event.

The court should also look for adequate assurances that the tenant would not be prejudiced by the transfer, and may impose conditions on the transfer for the tenant's protection. The speed of eviction, however, was not of itself a reason why the tenant would be disadvantaged.

The judge considered that it might be possible to apply to the county court for transfer to the High Court and for permission to issue a writ of possession at the same time, provided that notice of both applications was given to the occupier. This is uncertain, and it is suggested that permission to issue a writ can only be sought from the High Court.

Legal aid

Legal aid may be available to defend an application to transfer proceedings, or to apply to set aside an order, or suspend a writ of possession. However, where an occupier has been evicted following a procedural defect such as the landlord failing to obtain permission, the Legal Aid Agency is unlikely to find that there is sufficient benefit in taking action for reinstatement if the possession order was made on a mandatory basis (for example, a 'Ground 8' order) since the occupier may only be back in occupation for a short period of time before he or she is lawfully evicted.

Conclusion

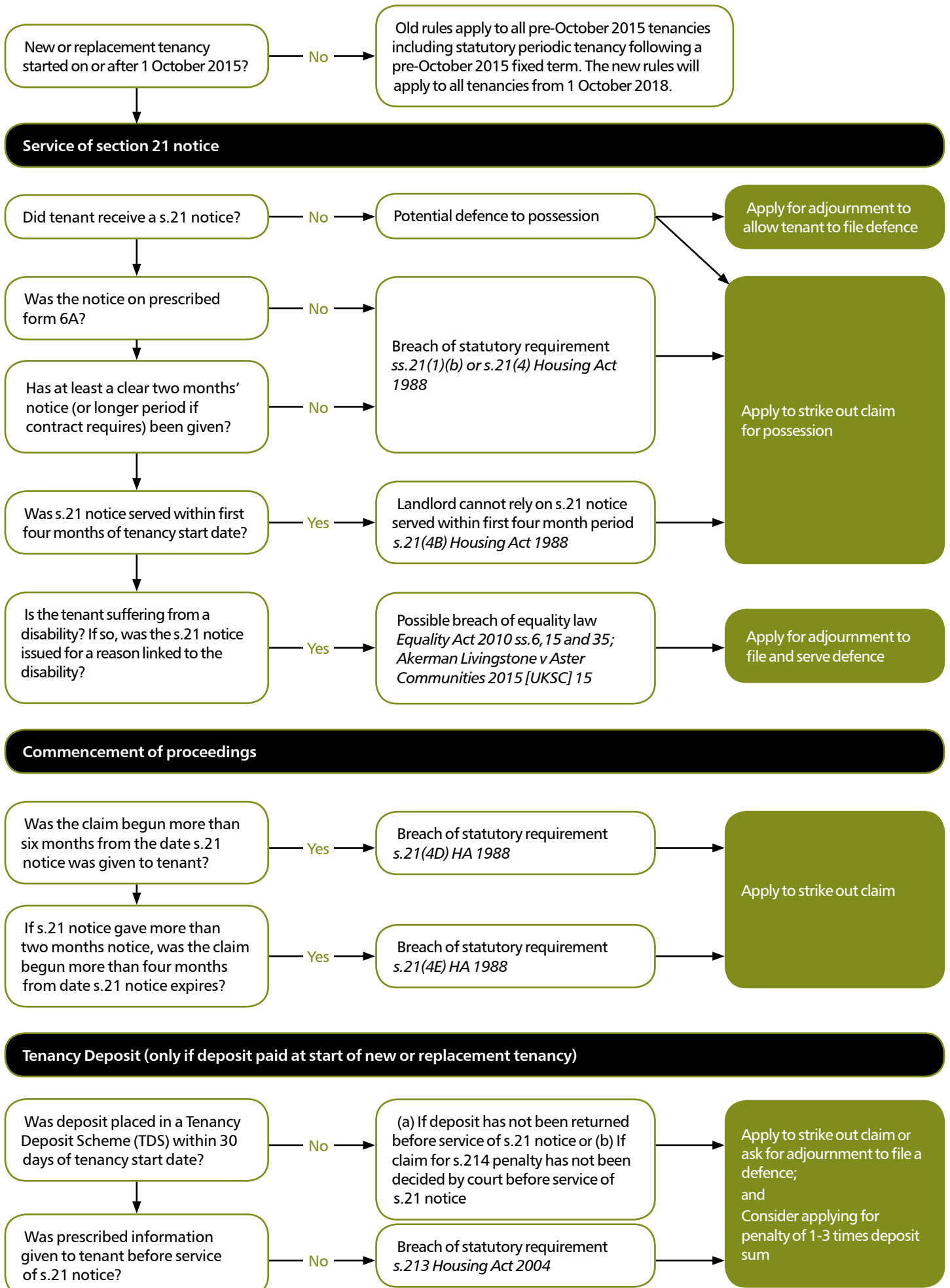
It is to be hoped that the revelations in the *Mondhlani* case, and the courts' emphasis on the clear requirement for landlords to apply for permission to issue a writ of possession, will mean an end to the malpractices which have grown up in the use of HCEOs.

As a result, landlords may now conclude that HCEOs do not offer an appreciably quicker eviction process than county court bailiffs. In view of the abuses of process that have taken place, and of the potential for further abuse, there is a pressing need for the government to review the entire operation of High Court enforcement, and for stronger regulation of the powers and practices of HCEOs.

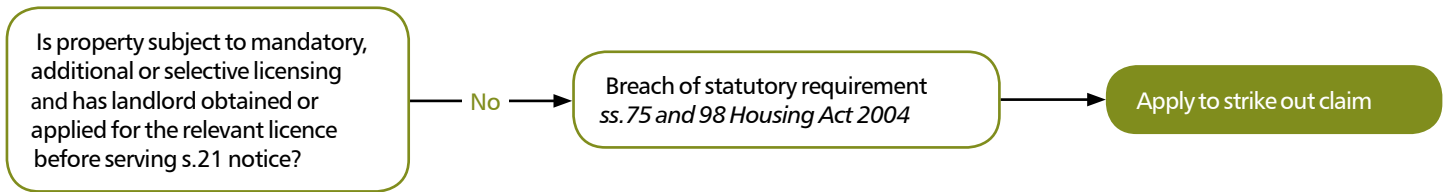
Footnotes

¹³ [2015] EW Misc B41 (CC) transcript available on BAILII at tinyurl.com/Mondhlani

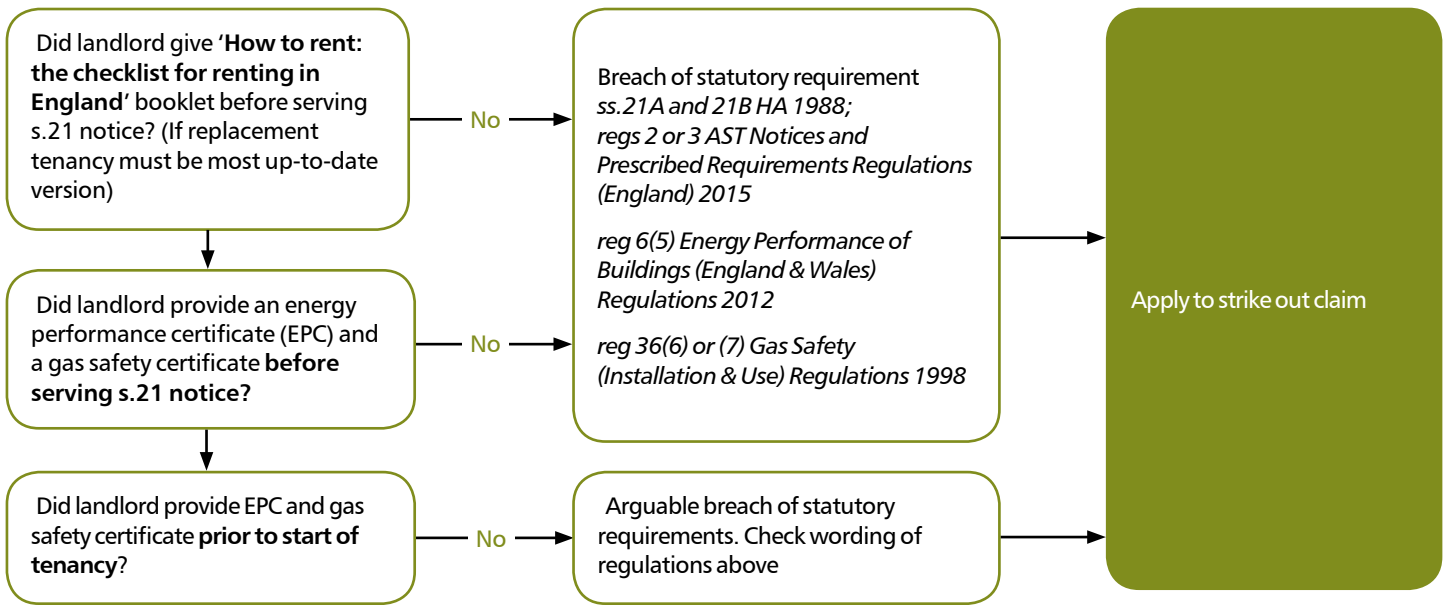
New rules: advising tenants facing section 21 possession proceedings



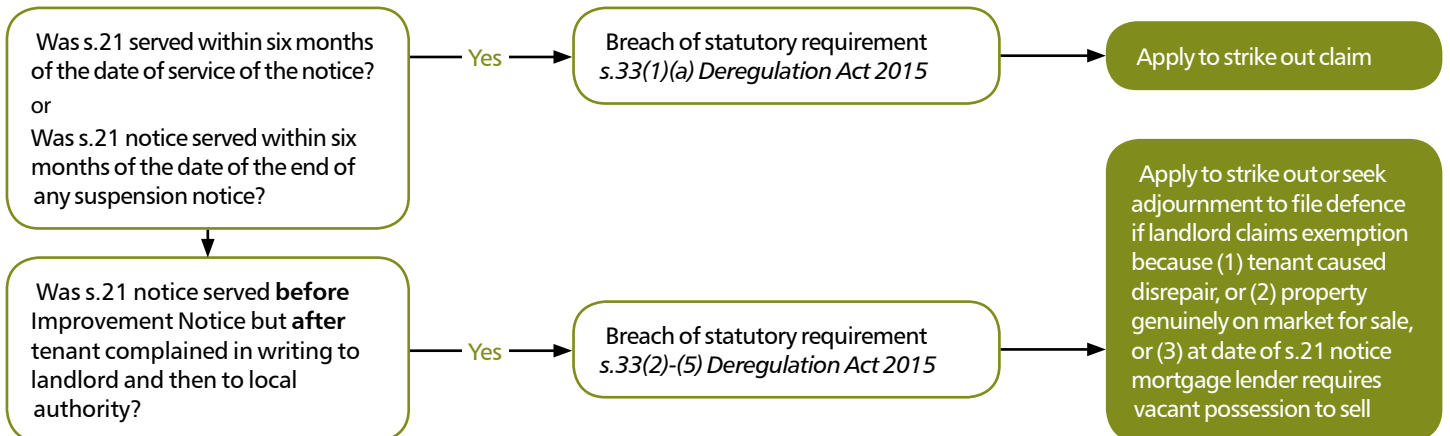
HMO licence requirements if relevant



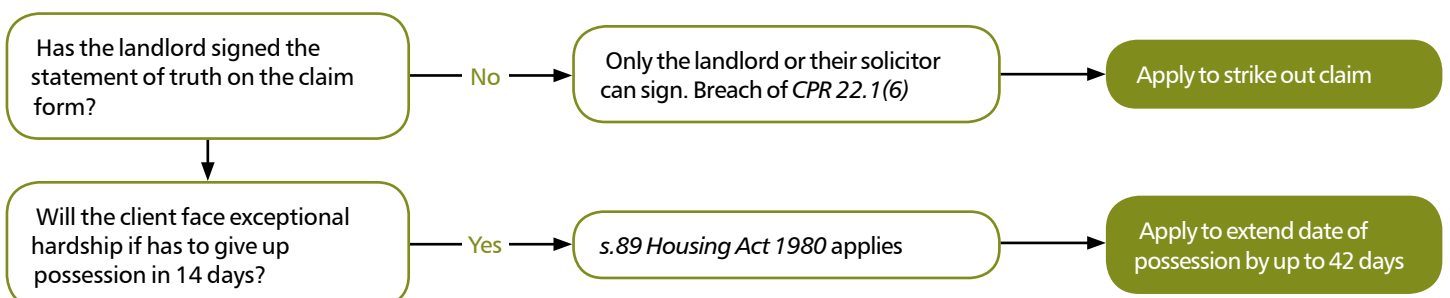
Provision of Prescribed Information (not related to Tenancy Deposit Scheme)



Retaliatory eviction where an Improvement Notice (category 1 or 2 hazard) or Emergency Remedial Action Notice served



If section 21 is valid



Private tenants: smoke and carbon monoxide alarms

This leaflet looks at the duty of a private landlord to provide working alarms to protect tenants from the dangers of fire and carbon monoxide

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Note
Information contained in this leaflet is correct at the time of publication. Please check details before use.

If you rent your home from a private landlord, your landlord must provide a:

- smoke alarm on each floor that you occupy
- carbon monoxide (CO) alarm in any room containing a solid fuel appliance (solid fuels include coal and wood).

If you are a new tenant, your landlord should check that all alarms are working at the start of your tenancy. These duties do not apply if you live in the same house as your landlord.

Smoke alarms

A working smoke alarm can save your life by giving an early warning of fire. Your local fire and rescue service can give you advice on fire safety in the home.

Although it is your landlord's duty to install a working smoke alarm on every floor of your home, it is your responsibility to check it on a regular basis. Around 35 people die every year because their alarm doesn't work. Test it by pressing the button until the alarm sounds. If there is no sound:

- a standard battery-powered alarm needs a new battery
- a ten-year sealed battery-powered alarm needs to be completely replaced
- a mains-powered alarm may need replacing by an electrician.

If an alarm stops working, contact your landlord so s/he can arrange for the necessary repairs or replacements.

Specialist alarms

Your landlord does not have to provide specialist alarms if you are deaf or hard of hearing. You can contact Action on Hearing Loss on 03330 144 525 or textphone 03330 144 530 for information about alarms that alert you through vibration or flashing light.

CO poisoning

CO is a colourless, odourless gas that can make you very ill or even kill you. CO poisoning can be a result of:

- poorly maintained gas appliances
- incomplete burning of solid fuel
- poor ventilation in the home which allows poisonous gas to build up.

To prevent CO poisoning, your landlord must:

- ensure gas appliances are serviced annually by a Gas Safe engineer
- provide a CO detector in every room containing a solid fuel appliance.

Symptoms of CO poisoning

The initial symptoms of CO poisoning are often similar to flu – for example, dizziness, headaches, and nausea. Long term exposure can cause serious health problems, even paralysis and brain damage.

If you think you are at risk, switch off any appliance that could be faulty and open doors and windows to ventilate the room. Do not sleep in it. Report the problem to your landlord as soon as possible, and don't re-light any appliance until it has been checked by a qualified person. Consider visiting your GP urgently for a blood test.

Houses in multiple occupation

If you live in a licensed house in multiple occupation (HMO) your landlord must provide smoke alarms and keep them in working order. Gas appliances must be checked every year and your landlord must provide a certificate to prove this has been done. HMOs licensed after 1 October 2015 must have CO detectors in every room containing a solid fuel appliance.

What can your council do?

Contact your local council if your landlord does not provide a functioning smoke alarm or CO detector. The council will serve a notice telling your landlord to comply with the law within 28 days, and can carry out necessary urgent works. Your council's environmental health department can also help you if your home contains other hazards to your health, such as faulty wiring or blocked fire escapes.

Further advice

You can get further advice from Shelter's free* housing advice helpline (0808 800 4444), a local Shelter advice service or Citizens Advice bureau, or by visiting shelter.org.uk/advice or adviceguide.org.uk

*Calls are free from UK landlines and main mobile networks.