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Section 21 Possession – A Race Against The Clock?

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In light of the Renters' Right Act 2025, change is potentially around the corner. Though no specific time frame has been set, it is not far-fetched to assume that from some time in 2026 landlords will no longer be able to seek possession through Section 21 of the Housing Act 1998. Therefore, what better time than the present to review s.21, with it possibly being more important than ever before to get it right – before time runs out!

As such, this article will review what is needed for a s.21 Notice, the common issues seen, and whether these issues can be remedied.

WHAT IS NEEDED FOR A s.21 NOTICE?

A s.21 Notice is used by landlords to regain possession of a property let under an assured shorthold tenancy without needing to provide a specific reason for eviction, hence why it is often referred to as a "no-fault" eviction notice. As well as there being specific requirements for a s.21 Notice, such as the need to give 2 months written notice and for it to be in the prescribed form, there are also various pre-conditions which the landlord needs to satisfy to be able to rely on the s.21 Notice. These relate to:

- compliance with the Tenancy deposit legislation;
- providing the required Energy Performance Certificate ("**EPC**");
- providing the required Gas Safety Certificate ("**GSC**"), providing it is a property with a gas supply and the tenancy agreement started after 2015;
- the provision of the prescribed How to Rent Guide for tenancies granted after 1 October 2015; and
- if the tenancy of a room is in a house in multiple occupation, the relevant licence is held.

Failure to meet any of these requirements can mean that the s.21 Notice is invalid. As such, it is important to understand thoroughly what is required, and the best way to begin is by identifying under which statutes they are governed. The starting point is the Housing Act 1998, unsurprisingly, specifically s.21. This has been amended by subsequent legislation, and as such the reader needs to direct themselves to the relevant acts which deal with the pre-conditions.

STATUTORY FRAMEWORK

S.21 Housing Act 1998 sets out the basic framework of allowing a landlord to recover possession on the expiry of or termination of an assured shorthold tenancy. This is quite lengthy but it is also quite self-explanatory, so the reader should start by reading this in full, particularly if unfamiliar with such.

The next important step is going to s.21A of the Housing Act 1998, which specifies that a s.21 Notice cannot be given where the landlord is in breach of a prescribed requirement. The Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 ("**the 2015 Regulations**") are helpful in setting out which legislation the reader should refer to, to identify the specifics for the pre-conditions. However, the regulations for deposits are not set out here, so the reader must know to separately go to the Housing Act 2004. In summary, the key places for the reader to direct themselves to include:

- ss.213-215 Housing Act 2004 for Tenancy deposit requirements;
- reg 6(5) of the Energy Performance of Buildings (England and Wales) Regulations 2012 ("**the 2012 Regulations**") for EPC requirements;
- para (6) or (as the case may be) para (7) of regulation 36 of the Gas Safety (Installation and Use) Regulations 1998 ("**the 1998 Regulations**") for GSC requirements; and
- reg 3 of the Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015 for the How to Rent Guide requirements.

TENANCY DEPOSITS

S.215 Housing Act 2004 makes it clear that the tenancy deposit protection rules, as detailed in ss.213-214, must be complied with in order to allow a landlord to be able to use a s.21 Notice. It is recommended to the reader to take the time to go through this, but in summary, they detail how any tenancy deposit taken must be held in accordance with an authorised scheme. What this includes is:

- any deposit taken in connection with an AST must be protected in an authorised tenancy deposit scheme from the time it is received. This requirement applies to all deposits received on or after 6 April 2007;
- the landlord must also comply with the initial requirements of the tenancy deposit scheme within 30 days of receiving the deposit;
- additionally, the landlord must provide prescribed information to the tenant within 30 days of receiving the deposit. This information must include details about the authorised scheme, confirmation of compliance with the scheme's initial requirements, and an explanation of how the scheme operates; and
- further, taking a deposit which is more than the equivalent of 5 weeks worth of rent would make it a prohibited payment, as set out in the Tenant Fees Act 2019.

Accordingly, the common issues are pretty predictable:

- taking too large of a deposit;
- not putting the deposit in an authorised scheme; and
- not providing the evidence that the deposit is in a scheme.

But can these common issues be remedied?

In short - yes! This is one of the most simple remedies, the landlord just needs to return the deposit that was either unprotected or otherwise classed as a prohibited payment, and this should be done prior to the s.21 Notice. This remedy is set out within s.215 Housing Act 2004.

GAS SAFETY CETERIFICATES

Reg 36(6)(b) of the 1998 Regulations prescribes how a copy of the GSC shall be given to the new tenant before they occupy the premises, and that copies of further records are to be given within 28 days of the date of the check. However, it must be remembered that Reg 2(2) of the 2015 Regulations removes this 28 day requirement.

Reg 36(3)(c) of the 1998 Regulations sets out what information shall be included in the GSC. Some requirements include the date of the check, the address of the premises, the name and address of the landlord, and the name and signature of the individual carrying out the check. As such, common issues include how the GSC has not been filled out accurately – such as missing important information about the landlord, property and the individual carrying out the check. But other common issues include where there has been a gas safety check but the GSC was not provided prior to the tenant occupying the property, and perhaps more alarmingly where no gas safety checks were completed at all.

So which issues can be remedied?

Some of these issues have been addressed by the Courts. And there are three cases in particular to look at:

1. *Trecarrell House Ltd v Rouncefield* (2020) EWCA Civ 760
2. *Byrne v Harwood-Delgardo*. HHJ Bloom. Luton County Court. 21 June 2022
3. *Cassell & Cassell v Sidhu & Sidhu*. HHJ Clarke. County Court at Reading. 9 October 2025

Trecarrell is the only binding decision, with the latter two being merely persuasive. However, it is notable that even though they have slightly different facts, I regard *Byrne* and *Cassell* to be somewhat conflicting, and they quite frankly make our job as property lawyers much more difficult, because it is harder to predict how a court will determine a case where there are arguably defects with the GSC.

TRECARRELL

The reader is encouraged to read the judgment in full.

The key to the appeal was the meaning of Reg 2(2) of the 2015 Regulations. In short, the Court of Appeal lead judgment (on a 2:1 split decision) seemed to find that both 36(6)(a) and 36(6)(b) of the 1998 Regulations are applied by reg 2(1) and (2) of the 2015 Regulations, but the time limits are disapplied. In this case, it is important to remember that here the landlord had obtained a valid GSC before the tenant moved in. The GSC was simply not provided to her at the start of the tenancy.

As such, focusing solely on this decision, where the defect of the landlord is simply late service of the GSC, and such did exist prior to the tenancy, I think it is safe to assume this error can be remedied as long as the GSC is served prior to the service of the s.21 Notice.

But what this case does not answer, is whether any inadequacies in a GSC at the start of the tenancy can be remedied by later adequate GSCs…

BYRNE

In *Byrne*, the issue on appeal was whether the absence of a GSC at the start of the tenancy prevented a s.21 Notice being served. Ultimately, it was held that it did. HHJ Bloom used a strict reading of the regulations, and I recommend reading his judgment in full for a detailed explanation.

Byrne was distinguishable from *Trecarrell,* because in *Trecarrell* the required GSCs did exist, but had simply not been served upon their creation. Whereas in *Byrne*, it did not exist at the start of the tenancy at all. Though not binding, at the time it seemed that *Byrne* indicated that there is no clear reason why a subsequently obtained GSC should redeem the absence of a valid GSC at the start of the tenancy, HHJ Bloom pointing out policy reasons for such.

CASSELL

That being said, in *Cassell* in essence the opposite was decided, in that later and valid GSCs could effectively make up for the defect in the GSC at the start of the tenancy, which would strictly be an invalid GSC.

Namely, the GSC at the start of the tenancy left the box for “Details of Customer/Landlord” blank, so failed to comply with regulation 36(3)(c)(iii) of 1998 Regulations. However, it was found that where the two GSCs for the following two years were valid, it meant that the failure to provide the initial valid GSC could be remedied. So here the s.21 Notice could be valid because of the two valid GSCs prior to the s.21 Notice.

Though it is noted that the facts in *Cassell* and *Byrne* are different, including there being an invalid GSC followed by multiple valid ones, as opposed to there being no gas safety check at all at the start of the tenancy, *Cassell* seems to suggest that an issue in the first GSC can be remedied by later valid certificates. This is arguably a broader approach to allowing a s.21 Notice to be served than in *Trecarrell* where a valid GSC did exist but just not served.

But it remains unclear if a court would interpret *Cassell* as broadly as allowing no GSC existing at start of tenancy of being capable of being remedied by a later valid served one – something I very much doubt. Accordingly, where *Byrne* may seem correct on a strict reading, and *Cassell* on a purposive one, neither are binding and it remains unclear what a court would be bound to do in similar situations for our clients… how helpful…

Therefore, depending how similar our individual cases are to *Byrne* or *Cassell* it may indicate whether the issue can be remedied, but I repeat that these cases are not binding and should not be relayed to clients as providing a clear indication of how a judge will determine their case.

ENERGY PERFORMANCE CERTIFICATES

Reg 2 of the 2015 Regulations indicates that the relevant legislation for EPCs as relates to s.21A Housing Act 1988 is that of Reg 6(5) of the 2012 Regulations. This specifically states that "*The relevant person must ensure that a valid energy performance certificate has been given free of charge to the person who ultimately becomes the buyer or tenant*."

Reg 6(5) does not specify any time period or limitation for providing the EPC. However, I suggest it is notable that Reg 6 when read as a whole envisions the EPC being provided prior to the commencement of tenancy. This is particularly seen from Reg 6(2) which indicates prospective buyers or renters should be provided an EPC at the earliest opportunity, and in any event no later than the earlier of either a written request for such or at a viewing of the Property.

Common issues for EPCs are generally as straightforward as not having an EPC in place when the tenant moves in, but can this be remedied at a later date?

Unfortunately, the position is arguably even less clear for EPCs than it is for GSCs, mainly because there is a real lack of case authority on such. As such, it only leaves us with the case authority for GSCs, which is less than adequate, so it doesn't really give us more hope for knowing with certainty whether an EPC can be served prior to serving the s.21 Notice to remedy this defect.

Looking at *Trecarrell*, perhaps it can, and organisations such as Shelter have posted online that the valid EPC can be served later, linking to *Trecarrell* as authority. However, I am cautious about this certainty that Shelter seems to have, given that *Trecarrell* is a case which does not address within its judgment that it applies to EPCs, and notably, Reg 2(2) of the 2015 Regulations only refers to the time limitation for providing GSCs not applying, and does not make reference to EPCs…

Since the 2012 Regulations seemingly envision an EPC being given prior to occupation, and *Trecarrell* is only being used by analogy, perhaps issues regarding EPCs cannot be remedied. Yet on the other hand, perhaps a Judge more willing to use a purposive approach like in *Cassell* will happily use *Trecarrell* as authority to allow the EPC to be provided late, so long as it is before the s.21 Notice.

I would be tempted to err on the side of caution when advising clients, but it may be something they are willing to risk and are happy to incur the costs of taking a tenant to court at the chance of gaining possession, before s.21 is no longer an option at all!

HOW TO RENT GUIDES

Reg 3 of the 2015 Regulations sets out that the Landlord must provide the How to Rent Guide as a hard copy, or by email where the tenant has notified their consent to such. Though the landlord isn't required to repeatedly provide a tenant with updated how to rent guides, a common issue would be the failure to serve this guide in the first place.

It is again noted Shelter has posted online that this guide can be provided at any time before the s.21 Notice, using *Trecarrell* as authority. I do agree on this occasion that this failure can be remedied at any time, not necessarily by solely relying on *Trecarrell*, but also because there is not a strict timeframe given within the statute to provide this information.

As such, it seems that this issue can be relatively easily remedied. But it is unfortunate that this cannot be said for the GSCs and EPCs.

Article prepared by Chloe Rixon.

Chloe Rixon is a Barrister from New Square Chambers who has particular expertise in property law matters.

Chloe regularly appears in a variety of possession matters, ranging from rent arrears to trespass and other more complex Housing Act routes. Chloe always strives to delve into the finer details of every matter to be able to provide grounded and nuanced advice in a range of residential and commercial property disputes, to be able to follow through with desirable results in Court. Before coming to the Bar, Chloe previously worked as a commercial property paralegal for Wedlake Bell LLP, and obtained a first-class degree in Law from Durham University. Though Chloe has a keen interest in property disputes, she continues to develop her practice in a wide range of commercial chancery areas, including wills, trusts, commercial litigation, company and insolvency work.

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