

# Notice that you must leave

a brief guide for landlords and tenants



# housing



## Notice that you must leave

This booklet explains the basic rules about bringing a residential tenancy (or licence) to an end:

- either by the landlord or tenant serving notice to quit;  
or
- by a landlord serving a notice of his or her intention to seek possession.

Like the other booklets referred to in the text, it appears in the series of housing booklets produced jointly by Communities and Local Government and the Welsh Assembly Government.

It is divided into three sections:

- notice by landlords
- notice by tenants
- licences

*This booklet does not give an authoritative interpretation of the law; only the courts can do that. Nor does it cover all cases. If you are in doubt about your legal rights or obligations you would be well advised to seek information from a Citizens Advice Bureau or consult a solicitor. Help with all or part of the cost of legal advice may be available under the Legal Aid scheme depending on your personal circumstances.*

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## How to bring a tenancy or licence to an end

People who live in property for which they pay a rent or charge to another person will be either tenants or licensees, depending on the terms of the agreement which lets them live in their home. The person who is the other party to the agreement will be the landlord or licensor. Tenants have rights and obligations set out in their tenancy agreement and additional rights and obligations in legislation. These rights may vary depending on when the tenancy agreement was entered into. Licensees have fewer rights. This booklet sets out the position on the notice which the landlord or licensor must give when he or she wants his or her property back, and the notice the tenant or licensee must give. The type of notice will depend on the *type* of agreement the tenant or licensee has and the *terms* of the agreement.

The features of regulated tenancies under the Rent Act are described in the housing booklet *Regulated Tenancies*; new-style assured and shorthold tenancies are described in *Assured and Assured Shorthold Tenancies: a Guide for Tenants* and *Assured and Assured Shorthold Tenancies: a Guide for Landlords*; housing association lettings in a series of residential charters published by the Housing Corporation and lettings to agricultural workers in Agricultural Lettings No 23. Secure tenancies such as most council tenancies are discussed in the booklet *Your Rights as a Council Tenant* which covers the notice provisions for secure tenants. Tenancies under the Landlord and Tenant Act 1954 and the Agricultural Holdings Act 1986 are not covered in this booklet. If you are not sure which type of tenancy applies in your case, look at these

booklets. They are available from Citizens Advice Bureaux and rent officers, and direct from Communities and Local Government or the Welsh Assembly Government. You can find the address of the nearest Citizens Advice Bureau or rent officer in the phone book, or from your local council, or the local library. Tenants with long leases at low rents should see the Communities and Local Government booklet *Long Residential Tenancies: Your Rights to Security of Tenure*.



## How to bring a tenancy to an end

### Bringing a tenancy to an end

Must a landlord serve notice on his or her tenant to bring a tenancy to an end in every case?

No (see below). But if the dwelling is let under a *periodic tenancy* which is a tenancy running from week to week or month to month, or some other period, with no date fixed for the tenancy to end the landlord must normally serve either a notice to quit or a notice seeking possession. These notices must be in prescribed form – that is, they must contain certain information required by law. A notice to quit does not have to be in a prescribed form if the tenancy is an excluded tenancy (see below).

When does a landlord not need to serve a notice in prescribed form?

*Fixed term tenancies* which are granted for definite periods end automatically when the agreed period of the tenancy runs out, though the tenant may have a right to remain in residence under statute.

Special rules apply for bringing *protected shorthold tenancies* to an end. These are explained in housing booklet *Regulated Tenancies*.

*Secure tenancies*, held by tenants of local authorities and of registered providers of social housing and those held by charitable housing trusts which started before 15 January 1989, and a very few starting afterwards, are also subject to special rules. Secure tenancies where a body such as the local authority is the landlord are described in housing booklet *Your Rights as a Council Tenant*.

### What is an excluded tenancy?

It is a tenancy which was entered into on or after 15 January 1989 (except as the result of a contract made before that date) and meets one of the following conditions:

- Under the terms of the tenancy, the tenant shares accommodation with the landlord or family member immediately before the beginning and end of the tenancy. The landlord or family member must be occupying the shared accommodation at those times as part of his or her only or main home. If only a family member shares, the landlord must be occupying at those times as his or her only or main home, another part of the same building (which must not be a purpose-built block of flats). (Staircases, passages, corridors, storage areas and means of access are not counted as 'accommodation' for the purposes of deciding whether the tenant is sharing with the landlord or the family member)
- The tenancy was granted as a temporary expedient to a trespasser

- It is a tenancy for a holiday
- The tenancy is rent free, and the tenant is not providing services which have a financial value

See also page 11 – excluded licences.

### Excluded tenancies: What notice must be given in place of the notice to quit in prescribed form?

In most cases, there is a common law requirement that the landlord should give a periodic tenant notice to quit which is as long as the period of the tenancy. (For yearly tenancies, six months' notice is needed.) So for example, if it is a weekly tenancy, he or she should get a week's notice. If the tenancy agreement says he or she must give a particular length of notice, he or she must give that notice in full. The notice must comply with anything the agreement says, and unless the agreement says something different the notice must bring the tenancy to an end at the end of a complete period of the tenancy. It is advisable to give notice in writing.

You should first check the notice period set out in the agreement. The length of notice period and the date on which notice is to expire must comply with the terms set out in the agreement. If the agreement is silent and it is a periodic tenancy, a notice to quit must be at least as long as the period of the tenancy (for example, if the tenancy is a weekly tenancy, the tenant should get a week's notice, for a monthly tenancy, a month's notice must be given). Exceptionally, for a yearly tenancy, six months' notice must be given. Notice must be given so as to expire at the end of any complete period of the tenancy. It is advisable to give this notice in writing.



## Landlord's notice to quit

What are the rules for serving a notice to quit in prescribed form?

The notice must:

- be in writing
- be given at least four weeks before the date it runs out and
- include the information set out below

What information has to be included in a landlord's notice to quit?

The information is:

- if the tenant or licensee does not leave the dwelling, the landlord or licensor must get an order for possession from the court before the tenant or licensee can lawfully be evicted. The landlord or licensor cannot apply for such an order before the notice to quit or notice to determine has run out.

A tenant or licensee who does not know if he or she has any right to remain in possession after a notice to quit or a notice to determine runs out can obtain advice from a solicitor. Help with all or part of the cost of legal advice and assistance may be available under the Legal Aid Scheme. He or she should also be able to obtain information from a Citizens Advice Bureau, a Housing Aid Centre or a rent officer.\*

The tenancy agreement cannot change these rules, but, subject to this, the notice must comply with anything the

\* 'a notice to determine' here refers to a notice served on a licensee to end his licence.



agreement says. Unless the agreement says something different the notice:

- must bring the tenancy to an end at the end of a complete period of the tenancy (for example at the end of a month, if the tenancy is by the month) and
- will have to be longer than four weeks if the tenancy period is more than four weeks

You can buy notice to quit forms with the required information printed on them from law stationers.

### Does the notice to quit bring the tenancy to an end?

In the case of a Rent Act tenancy or a Rent (Agriculture) Act tenancy, when the notice to quit or a notice to determine runs out, the tenancy comes to an end. In most cases, however, the tenant will have rights to stay on in the property under the Rent Act 1977 or the Rent (Agriculture) Act 1976. A notice to quit will not end all tenancies. Assured tenancies, for example, cannot be brought to an end by the landlord except by his obtaining a court order.

### Notice seeking possession

#### For which tenancies must a landlord serve a notice of intention to seek possession?

Periodic assured tenancies and assured agricultural occupancies under the Housing Act 1988. He or she must also serve notice of his or her intention to seek possession on certain grounds where he or she wishes to get possession from an assured tenant (including an assured shorthold tenant) before the fixed term has come to an end. He or she can only do so when he or she has said in the tenancy agreement that he or she might want to get possession on those grounds.

## What are the rules about a landlord's notice of intention to seek possession?

If a landlord is seeking possession from an assured tenant or an assured agricultural occupant, he or she may only do so on grounds laid down in the Housing Act 1988.

There are special rules for getting possession from assured shorthold tenants but a landlord may also obtain possession from an assured shorthold tenant on any of the grounds in the Act. These are set out in *Assured and Assured Shorthold Tenancies: a Guide for Tenants* and *Assured and Assured Shorthold Tenancies: a Guide for Landlords*.

If a landlord wants possession on grounds 3, 4, 8 or any of grounds 10-15 of Schedule 2 to the Housing Act 1988, he or she must give *at least two weeks' notice* in the prescribed form (which he or she can get from law stationers or large booksellers).

If a landlord is seeking possession on any of the other grounds, he or she must give *at least two months' notice* in the prescribed form (which he or she can get from law stationers).

Sometimes longer notice will be needed.

Where the landlord is seeking possession of an assured shorthold tenancy using the shorthold rule, he or she must give *at least two months' notice* and in some cases longer. There is no prescribed form for serving notice on a shorthold tenant (unless the landlord is going for possession on one of the grounds in the Act), but a landlord may like to get advice from a solicitor or a Citizens Advice Bureau on how to do it.

Are there any circumstances in which the landlord does not have to serve a notice of his or her intention to seek possession?

*The landlord should always serve notice.* If for any reason he or she does not, and possession proceedings come to court, the court may consider in a particular case that there were just and fair reasons why the landlord did not serve notice, and let him or her off this particular legal requirement. The court cannot do this in any circumstances if the landlord is seeking possession on ground 8 under the Housing Act 1988 (the two months' rent arrears ground – see *Assured and Assured Shorthold Tenancies: a Guide for Tenants* and *Assured and Assured Shorthold Tenancies: a Guide for Landlords* or if he or she is going for possession from a shorthold tenant simply because the shorthold has expired. See also page 9.

## After the notice runs out

Does the tenant have to leave when a notice to quit or notice of intention to seek possession runs out?

No. Normally the tenant cannot be lawfully evicted unless the landlord has obtained an order from the court. Under the Protection from Eviction Act 1977 it is not lawful for a landlord to enforce his or her right to recover possession of his or her property from a tenant other than through the courts. This does not apply if the premises are occupied by an excluded licensee (see page 11) or an excluded tenant (see page 4) whose tenancy started on or after 15 January 1989. Illegal eviction is a criminal offence. Local authorities have powers to prosecute and any complaints should be made to them – see housing booklet *My Landlord Wants Me Out*.

## Questions on possession

Will the court always grant the landlord a possession order when a notice has run out?

This will depend on the type of tenancy, the grounds on which the landlord is seeking possession, and whether the landlord proves his or her case to the court.

If the tenant has a regulated tenancy under the Rent Act 1977, a statutory tenancy under the Rent (Agriculture) Act 1976, or an assured tenancy or an assured agricultural occupancy under the Housing Act 1988 the court may only grant an order on one of a limited number of grounds laid down in those Acts. Some of the grounds (or cases as they are called in the Rent Act 1977 and the Rent (Agriculture) Act 1976) are *mandatory*, and if the landlord proves his or her case the court must give him or her possession. Some are *discretionary*, and the court will only give the landlord possession if it thinks it is reasonable to do so. The Rent Act 1977 cases are set out in housing booklet *Regulated Tenancies*, and the Housing Act 1988 grounds in *Assured and Assured Shorthold Tenancies: a Guide for Tenants* and *Assured and Assured Shorthold Tenancies: a Guide for Landlords*. The cases and grounds as they apply to agricultural tenancies are set out in housing booklet *Agricultural Lettings No 23*.

If the tenancy is either a *protected shorthold tenancy* or an *assured shorthold tenancy* the court must grant the landlord an order for possession provided the landlord has followed the correct procedures.

## Does the landlord need to go to court for possession if he or she lives in the same property as his tenant?

This will depend on when the letting started, and whether the landlord shares any accommodation with his or her tenant.

For lettings which were entered into on or after 28 November 1980, but before 15 January 1989, the landlord will normally have to go to court to get his or her tenant to leave if the tenant does not want to go.

Tenancies which were entered into before 28 November 1980 are subject to special rules. For lettings which were entered into on or after 15 January 1989, if the landlord or a family member shares accommodation with his or her tenant in a property which contains the landlord's only or main home (see conditions on page 4) he or she will generally not need a court order. If he or she does not share accommodation with his or her tenant, unless one of the other exclusions applies, he or she will need a court order. The court may not grant him or her possession immediately, but it can only defer possession for a certain length of time. For fuller details on the rules, see housing booklets *Renting Rooms in Someone's Home: a Guide for People Renting from Resident Landlords* and *Letting Rooms in Your Home: a Guide for Resident Landlords*.



## Notice by tenants

What must a tenant do if he or she wants to give up his or her tenancy?

There is no provision in existing legislation requiring a tenant to give notice to their landlord should they wish to end the tenancy. A tenant's obligation to give notice, the amount of notice they need to give and the way in which this notice is served, is a matter for the landlord and the tenant to agree between them at the outset of the tenancy and such information should be included in a written tenancy agreement.

This might include the landlord's willingness to allow the tenant to find a new tenant to replace them. Although the landlord will still bear the responsibility for ensuring they are a suitable replacement. This can be done by carrying out a credit check and following up any references provided.

However, if the tenant has a fixed term tenancy, this would be regarded in law as a contract and therefore the tenant may only give up his or her tenancy before the end of the fixed term if the landlord agrees or if the agreement says he or she can (this does not apply to protected shorthold tenancies: see housing booklet *Regulated Tenancies*). This could be by way of a break clause that should benefit the tenant as well as the landlord. Otherwise, it is likely to be an unfair term as per the provisions of the Unfair Terms in Consumer Contracts regulations 1999.

If neither the terms of a fixed term tenancy, nor the landlord, allow the tenant to end the arrangement early, the tenant is likely to be contractually responsible for ensuring that rent is paid for the remainder of the fixed term. Landlords should be aware that they cannot necessarily expect compensation for the whole term's rent if the tenant leaves early: there is also a responsibility on the landlord in this situation to try to cover his or her losses in other ways, notably by trying to re-let the accommodation. Also, on some occasions, a tenant might have good cause for ending the agreement early. Landlords and tenants in such circumstances should seek legal advice.

If the tenant is a periodic tenant, any notice they must give, its length and how it should be served, will be at the discretion of the landlord. Any notice given by the tenant should reasonably bring the tenancy to an end at the end of a complete period of the tenancy (for example, at the end of a month, if the tenancy is by the month) although this requirement should be stated clearly in the tenancy agreement. If the tenancy agreement is silent on any of the above issues, this is likely to be regarded as the tenant having been given no obligation to provide notice.



## Licences

Does a licensor have to give notice to end a licence?

If the licensee has a periodic licence which is not an *excluded licence* under the Protection from Eviction Act 1977, he or she has to give notice in prescribed form (see page 5). The information he or she must put in the notice is the same information as in the notice to a tenant, and it has to

follow broadly the same rules as the notice to quit for a tenant, see page 5. He or she will also need to get a court order to evict the licensee in this case. For an excluded licence, the notice required is the longer of whatever has been agreed between the parties (if anything) and what is reasonable. Notice of the same length as would be required for a similar tenancy would normally be considered reasonable (but this is not laid down in law). As for an excluded tenancy, the licensor does not have to give notice in writing.

### What is an excluded licence?

See the definition of excluded tenancies on page 4. A licence in those categories listed can be excluded for exactly the same reasons as a tenancy is excluded. In addition, a licence can be an excluded licence if the accommodation concerned is in a hostel provided by certain public bodies such as local authorities or housing associations registered by the Housing Corporation or Housing for Wales.

### Does a licensee have to give notice if he or she wants to leave the property?

Generally, yes: the law for licensees is the same as for tenants. A licensee of an excluded licence should give notice as for licensors, ie of reasonable length.

### If the agreement is described as a licence, does that mean it is a licence?

Not necessarily. The distinction between a licence and a tenancy is not always straightforward and the occupier should get legal advice if he or she is not sure whether he or she has a licence or a tenancy. Even if a licensee has an



excluded licence, and the licensor may not need to serve notice and obtain a court order, *it is illegal to use or threaten violence for the purpose of securing entry to premises where someone is present and opposed to entry.*

## **Rental purchase agreements**

How do you get possession from a person who has a rental purchase agreement?

It is normally necessary to obtain a court order to get possession from a rental purchaser. Under housing law, a rental purchaser is someone who is buying his or her property under an agreement to pay in more than two instalments, and who does not own the property until all, or an agreed part, of the purchase price has been paid.



## Further information

The other housing booklets referred to in this booklet are:

*Your Rights as a Council Tenant*

*Assured and Assured Shorthold tenancies:*

*A guide for tenants*

*Assured and Assured Shorthold tenancies:*

*A guide for landlords*

*My Landlord Wants Me Out*

*(Harassment and Illegal Eviction)*

*Renting Rooms in Someone's Home:*

*A Guide for People Renting from Resident Landlords*

*Letting Rooms in Your Home:*

*A Guide for Resident Landlords*

*Agricultural Lettings*

*Regulated Tenancies*

*A series of Residents Charters*

*Residential Long Leaseholders:*

*A Guide to Your Rights and Responsibilities*

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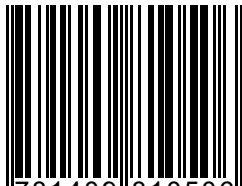
Llywodraeth Cynulliad Cymru  
Welsh Assembly Government

Published by the Department for Communities and Local Government  
and the Welsh Assembly Government

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on paper comprising no less than 75% post consumer waste.

ISBN: 978 14098 1050 6

ISBN 978-1409810506



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