

Transcript

RRA Unit 1.2

Overview of all the grounds

Hello, everyone. In this video, we are going to look at an overview of all of the Section 8 grounds, both the mandatory grounds and the discretionary grounds. So let's put a bit of context to this.

The old way of doing things before the Renters Rights Act, even though a landlord could use a Section 8 ground, was that most landlords used a Section 21 notice at the end of the fixed-term tenancy to get possession back. Obviously, now that the Renters Rights Act is in, landlords are going to have to rely on Section 8. As a council, housing options officers need to understand the Section 8 process and the grounds themselves.

We do have videos later on within this module where, first, we will look at the mandatory grounds most likely to be seen by housing option services and what the evidence is, and there is a separate video looking at the most likely discretionary grounds that will be seen by council housing option services. This video is not looking at the detail. The detail comes in those further videos. What this video is about is looking at all of the grounds, many of which, in the council housing option service, you may never see or rarely see. But it's quite important that we understand there are a lot of grounds, both mandatory and discretionary, even if some of those grounds you'd never experience, say, as a caseworker working in the council's housing options service.

We're not going to go through the detail of all these grounds because, as I say, the later videos pick up the grounds most likely to be seen by housing option services and provide the detail. This is just a quick overview of all of the grounds so you can see the extent of the grounds that there are under the Housing Act 1988 that a landlord could possibly use.

Furthermore, one of the downloadable resources sets out each of these grounds and sets out the evidence base that a landlord is likely to have to show to a court to be able to obtain possession. That's a separate document that provides a lot more detail and evidence. This video will merely pretty quickly summarize and go through the grounds.

There are 26 mandatory grounds, including the sub-grounds, and 11 discretionary grounds, so that gives us 37 grounds in total, including, as I say, the sub-grounds. It's important that everybody understands that since the Renters Rights Act came in, some grounds are new, some have been amended, and some remain exactly the same as the grounds as they stood before the Renters Rights Act came in. They're split up between mandatory and discretionary grounds. Grounds 1 to 8 are the mandatory grounds, and grounds 9 and above are the discretionary grounds. That's just a quick summary around the number of grounds and the split between the mandatory grounds and the discretionary grounds.

Just remember the difference, because it's quite important to do so. If it's a mandatory ground and the landlord is able to prove the evidence required by a court for that ground, then the court must give the landlord possession. If it's a discretionary ground, it's not as simple for the landlord, because even if they're able to prove the evidence, the court on the discretionary ground can decide then if it's reasonable to grant possession, and that will include a consideration of the tenant's circumstances before deciding if it's reasonable to do so. So that's the difference, evidence-wise, between the mandatory and the discretionary grounds.

Let's just understand that some of the grounds, if you are the housing options officer watching this video, you are just unlikely to see. For example, there's a ground on needing the property back for the minister of religion. I don't think we're going to see that as a common presenting reason why somebody presents as homeless. They may be, but it's not going to be a common reason.

What we need to understand is which of the mandatory and discretionary grounds we're more likely to see for applicants presenting to the council as homeless, and then what are the rules for each of those grounds. That allows you, as a housing options officer, to decide, first, does the notice meet the rules for it to be considered to be a valid notice, and then, from the details of the landlord's claim, whether you believe the ground is likely to be proven or not in court. Related to that, you consider whether there is a possible defence that the applicant can submit to the court, a defence against the claim by the landlord for possession on that mandatory or discretionary ground.

Landlords may choose and will choose to issue a Section 8 notice and rely on several grounds, both mandatory and discretionary. So, for example, a landlord that went on the mandatory ground 7A for serious antisocial behaviour might also rely on the discretionary ground 14, for any other type of antisocial behaviour. So it's not going to be as clear-cut necessarily for council housing option services when they see a tenant

presenting with a Section 8 notice where that notice only relies on one ground. It could be a combination of grounds that the landlord is relying on to try and get possession. Why would the landlord do that? Because they might fail to prove the evidence for, say, a mandatory ground, so their backup position is also the grounds on the discretionary basis. But then it's for the court to decide not only if the ground evidence is proven, but whether it is reasonable to give possession.

Quite a lot of the grounds are only for use by registered providers, what we commonly call housing associations – so social landlord housing associations – and there are a number of the grounds, I think four of them, which are for supported housing landlords. It's not the case that all of the grounds apply to and can be used by all private sector landlords. Some of the grounds are only specific to certain providers, such as housing associations or supported housing providers.

We're going to have a look now at the mandatory grounds first, and I've tried to summarize some of these as if on a table. Again, we're not going to go through the details of each of these grounds. As I say, the common mandatory and discretionary grounds likely to be seen by housing option services are in two further videos, which are part of this training module. This is just a summary.

Mandatory Ground 1: occupation by landlord or close family, so the landlord needs it back for themselves or a close family member. Close family members are defined, so it's not as simple as saying, "I want it back for my cousin." There is a legal definition of what a close family member is.

Ground 1A: the landlord wants it back to sell the property.

Ground 1B: the sale of the dwelling house under rent-to-buy. Here, the landlord is a private registered provider of social housing, and the tenancy is under a rent-to-buy agreement. Housing option services are unlikely to see virtually any of those.

Ground 2: sale by a mortgagee. This is a property that's subject to a mortgage, and the lender is exercising a power of sale and requires vacant possession. It might be that the landlord was a buy-to-let landlord who has a mortgage, hasn't paid their mortgage, and the lender wants it back. But in order to get it back, vacant possession is required from the landlord's tenant.

Then we have a whole series of quite complicated ones, Grounds 2ZA, 2ZB, 2ZC, 2ZD. These are all to do with possession where the superior lease ends, so the landlord's lease is under a superior lease that's ending. There are strict definitions of who can

use these grounds and how they can be used, depending on whether the landlord is relying on 2ZA, 2ZB, 2ZC, or 2ZD. The reason we won't go into that in any form of detail is if you're the council's housing option service, you're unlikely to see many of those grounds coming forward from tenants under some form of notice.

Continuing with the mandatory grounds: Ground 4, student accommodation. In the 12 months prior to the start of the tenancy, the property was let to students, and this ground can only be used by specified educational establishments.

Ground 4A again relates to students. It applies to properties rented to students which are needed for new students. This is a circumstance where the house in multiple occupation is let to full-time students and is required for a new group of students in line with the academic year. In other words, how do you get the old set of students out so you can re-let that HMO for a new set of students who are coming in when the new academic year starts, around September or October.

Ground 5 is a mandatory ground for a minister of religion. The property is held for use by a minister of religion to perform the duties of their office, and it's required for occupation by a minister of religion.

Ground 5A is occupation by an agricultural worker. The landlord requires possession to house an agricultural worker, either as an employed or self-employed worker for the landlord. Again, we're unlikely to see too many of those, though we might see some in housing options.

Grounds 5B, 5C, and 5D all relate to end of employment or the need for occupation by a person who meets certain employment requirements. These are grounds connected with tenancies provided in respect of employment or in respect of needing to end someone's employment. We may see some of those in housing option services, but not necessarily that many.

Ground 5E is our first specifically supported housing ground. The property is held for use as supported accommodation, and the current tenant did not enter the tenancy for the purpose of receiving care, support, or supervision, so that ground could be used.

Another supported housing one is Ground 5F. The tenancy is for supported accommodation, and one of the circumstances set out in the ground makes the accommodation no longer viable or suitable for the tenant. A circumstance has occurred making the accommodation no longer viable or suitable for the tenant, and

those circumstances relate to letting that accommodation as supported accommodation.

Ground 5G is quite an important one for housing option services. It is a tenancy granted to meet the main homelessness duty. This is where the property has been used as temporary accommodation for the homeless household under section 193, which is the main homelessness duty, and the council has notified the landlord that the tenancy is no longer required for that purpose. There is a rule here that the landlord can only use this ground if it's within 12 months of the date when the council has said, "We no longer require it as main duty temporary accommodation."

To be a bit clearer: if it's interim homelessness accommodation to meet an interim homelessness duty, then it's a licence, according to case law, so the landlord does not need to go to court for possession. But if it's main duty temporary accommodation and that TA is provided by, say, a housing association or a private landlord – lots of people watching this video will work for councils that use what's called "nightly let" or "nightly rate" accommodation – and if that accommodation is self-contained and provided by a private landlord, then if the landlord needs possession of that property because the person won't move out, they need to go to court. They have been granted a brand-new way of getting them out, which is mandatory Ground 5G, where it's no longer required as main duty homelessness accommodation because the council has informed the landlord of that.

Ground 5H is quite specific – occupation as stepping-stone accommodation. There aren't too many of these. A registered provider of social housing or a charity lets a property to a tenant at an affordable rent as "stepping-stone accommodation." You don't need to go into this in too much detail because there aren't many of them out there. All you need to know is that if accommodation has been provided as stepping-stone accommodation, there are certain circumstances where a mandatory ground of possession can be relied on.

Ground 6 is redevelopment. The landlord wishes to demolish or substantially redevelop the property, and the evidence is that this cannot be done with a tenant in the property. There are various issues around time limits and notice requirements. This is not a ground for "I need to put a new kitchen in." It has to be that the whole property needs to be demolished, or the whole property needs to be redeveloped, and the work cannot be done with a tenant still in occupation.

Ground 6A is a housing association ground for specific decant accommodation. It is used where the tenant has been provided with alternative accommodation by a

relevant social landlord, meaning the housing association, whilst redevelopment affecting the tenant's original home is carried out. If you're a homelessness officer, you're not going to see those cases presenting as homeless because the landlord is providing alternative decant accommodation whilst work to the person's property is carried out. It's mainly to protect the housing association legally; in most cases the tenant would simply move to the decant accommodation whilst the work is done. If the tenant doesn't move, the housing association can go to court and gain possession on Ground 6A.

Ground 6B is compliance with enforcement action. This is where the landlord is subject to enforcement action, normally issued by the council. For example, the council might have issued a prohibition order because of the condition of the property. If the landlord needs to regain possession to be compliant with the enforcement action, they can rely on Ground 6B, compliance with enforcement action, to go to court on a mandatory ground.

Ground 7 is the death of the tenant. The tenancy was passed on by will or intestacy and proceedings began within the requisite period of 12 months. It's a complicated one around where tenancies have been passed on in a will and the landlord wishes to obtain possession. As a housing options officer, you would not see many of those. Ground 7A is severe antisocial behaviour or criminal behaviour. This is only where the tenant has been convicted of one of a list of offences in the ground or has breached a relevant order put in place, perhaps by the council, to prevent antisocial behaviour, or where a closure order is in place. It's quite a complicated ground and we'll talk about it more in another video where we look at the common mandatory grounds where people are likely to present to a housing options service. Here, it's just part of the overview.

Ground 7B is no right to rent. This is used where at least one of the tenants (perhaps in a joint tenancy) has no right to rent under immigration law as a result of their immigration status, and the Secretary of State has given notice to the landlord of this circumstance. If the government has given that notice, then possession on the mandatory Ground 7B can be obtained by the landlord.

The last mandatory ground is Ground 8, rent arrears. This is where the tenant is in at least three months' rent arrears, both at the time that the notice is served and at the time of the possession hearing. In those cases, if the landlord can prove that, they can go on the mandatory ground for possession on Ground 8. It can be a bit confusing: there's a Section 8 notice, but the specific ground is Ground 8 – Section 8, Ground 8. Three months' arrears are required both at the time the notice is served and at the

time of the possession hearing. If the rent is paid weekly instead of monthly, it is 13 weeks' arrears on both occasions.

So that's our mandatory grounds for possession. As I say, in a further video we will look at the most common mandatory grounds likely to be seen by the council's housing options service. This is nothing more than an overview of all of the grounds. Now we're going to look at the discretionary grounds. It's important to understand that even if the landlord has proven the evidence for a discretionary ground, the court will then consider the test of reasonableness – whether it's reasonable, considering the evidence, the landlord's circumstances, and the tenant's circumstances, to give possession. For example, a court might say that if the tenant is going to become homeless, even though the landlord has proven the evidence for the discretionary ground, the court might decide not to grant possession because of the tenant's circumstances.

Ground 9 is where suitable alternative accommodation is available for the tenant. This might be a ground that can be used by a private landlord, not just a housing association. A landlord is able to demonstrate that suitable alternative accommodation is available for the tenant. These cases are unlikely to present as homeless because, by definition, there is suitable alternative accommodation. Discretionary Ground 10: any rent arrears. Whereas the mandatory Ground 8 requires three months' rent arrears at the point the notice was served and at the hearing, a landlord can go on any rent arrears at all on the discretionary ground. That doesn't mean they will be granted possession, but they can rely on Ground 10.

Ground 11 deals with persistent arrears – where the tenant is always in arrears or there are persistent delays in paying the rent.

Ground 12 is breach of tenancy, where the tenant is guilty of breaching one or more of the terms of their tenancy other than paying rent. If they breach the term on paying rent, then obviously the landlord needs to go on Ground 10 if it's a discretionary ground they're relying on. But for any other breach of tenancy, the landlord can use Ground 12.

Ground 13 covers deterioration of the property. Where the tenant, in the landlord's view, has caused the condition of the property to deteriorate, they are given a discretionary ground, Ground 13, to try and obtain possession.

Ground 14 is antisocial behaviour. The tenant or anyone living in or visiting the property is causing behaviour likely to cause nuisance or annoyance to neighbours or

the wider community. Antisocial behaviour is defined, but the evidence base needed for that could be quite significant before the court would give possession.

Ground 14A is specific to domestic abuse and only available to social landlords. A housing association, for example, can use it where they wish to evict a perpetrator of domestic abuse if the partner has fled and is unlikely to return. They can then go on Ground 14A. The idea is that a perpetrator should not benefit from committing domestic abuse by remaining in the property when the victim has had to flee. The landlord can use this discretionary ground to get the perpetrator out so that the victim can then return or the property can otherwise be dealt with.

Ground 14ZA is about rioting, and has been around even before the Renters Rights Act. This is where the tenant or another adult living at the property has been convicted of an indictable offence that took place at a riot in the UK. That does not mean the landlord must seek possession if the person has been convicted of rioting, but it means the landlord is able, if they wish, to get the property back using Ground 14ZA.

Ground 15 concerns deterioration of furniture. This is where the tenant has caused the condition of the furniture to deteriorate. It can't just be a single broken chair; there has to be evidence of a general deterioration of the furniture provided by the landlord, directly attributable to the actions of the tenant.

Ground 17 is false statement. This applies where the tenancy was granted by the landlord due to a false statement made knowingly or recklessly by the tenant, or by someone acting on their instigation or instruction. If a tenancy was obtained due to such a false statement, the landlord has the option of Ground 17, the discretionary ground of false statement.

Finally, there is a discretionary ground under supported housing – Ground 18. There were two or three mandatory grounds that could be used by supported housing providers; this is the discretionary one. It applies where the tenancy is for supported accommodation and the tenant is refusing to engage with that support. The supported housing provider can then go on discretionary Ground 18 for possession.

Be clear: it doesn't mean supported housing providers can only use the grounds related to supported housing. They can use any of the other grounds which are relevant for them to use, such as rent arrears or behaviour. But they are given some specific grounds that are just for them, to make it easier to get the supported housing unit back, and one of these is the discretionary ground where the tenant is refusing to engage with support.

There we have it: our mandatory and discretionary grounds. Remember, this is just an overview of all of the grounds. In the mandatory-grounds video we will look at the detail for the common grounds likely to present to a housing options service. Separately, in the discretionary-grounds video, we'll look at the more common discretionary grounds likely to present to a housing options service and the detail that lies behind them, to help you do your job as a housing options officer.

This is just an overview. There is a separate document in the resources section of this training module that you can download. It goes through all of these grounds and gives you a bit more detail on when the ground could be used and the likely evidence the landlord would have to present to court to be able to obtain possession.

I'll see you on another video.