



UK BAILIFFS

SECTION 146 NOTICE GUIDE

Commercial lease breaches: the notice, the opportunity to remedy, and the decision that follows.

COMMERCIAL PROPERTY / ENGLAND AND WALES

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When is a notice needed?

Section 146 of the Law of Property Act 1925 regulates forfeiture for breach of a lease covenant or condition. For most commercial non-rent breaches, the landlord must serve a compliant notice before enforcing a right of re-entry. [1]

THE KEY DISTINCTION

The notice does not terminate the lease. It tells the tenant what breach is alleged, what must be remedied if remedy is possible, and that compensation in money is required. The next decision depends on the tenant's response and the law.

COMMON REASONS TO INVESTIGATE

Unauthorised alterations

Works or structural changes carried out without the consent required by the lease.

Prohibited use

Use of the premises contrary to a permitted-use covenant or other restriction.

Repairing breaches

A failure to comply with an actual repairing covenant, supported by evidence of condition.

Assignment or subletting

A transaction that appears to breach a consent or alienation covenant.

BEFORE TREATING IT AS A SECTION 146 CASE

Confirm the landlord has a relevant right of forfeiture in the lease; identify the exact covenant and facts; check whether the right has arisen and whether the breach continues or can be remedied. Solicitor review is especially important if the lease, evidence or right to forfeit is disputed.

Rent arrears: Section 146 is generally not the notice route for non-payment of rent. Other lease terms and legal requirements still matter. CRAR, debt recovery and possession are separate objectives. [1, 4]

What the notice must say

Section 146(1) imposes three substantive requirements. The wording and the particular facts should be settled by a property solicitor; a generic template can miss a decisive point. [1]

01 Specify the particular breach

Identify the relevant lease obligation and the acts or omissions complained of. The tenant needs to understand the case it must answer; an unclear or inaccurate allegation can undermine the notice.

02 Require remedy if the breach is capable of remedy

The statutory requirement is conditional on whether the breach can be remedied. A solicitor should assess what remedy is realistically possible and avoid assuming that a serious breach is automatically irremediable.

03 Require compensation in money

The statute requires this in any case. How compensation is framed, and whether it is later reasonable, depends on the breach and the circumstances. It is distinct from the opportunity to remedy.

THE NOTICE IS THE BEGINNING OF A PROCESS

A right of forfeiture is not enforceable under s.146(1) unless the notice has been served and the tenant then fails, within a reasonable time, to remedy the breach if it is capable of remedy and to make reasonable compensation in money. Serving a notice is not permission to change locks immediately. [1]

There is no statutory seven-day or fourteen-day period that fits every breach. What is reasonable depends on what the tenant must do, the property, access, complexity, and the evidence. [1]

Build a defensible file

Good evidence and accurate service matter as much as a clear letter. Set out the facts before choosing the route or booking any later attendance.

INFORMATION TO ASSEMBLE

01 The lease and title

Signed lease, variations, superior interests, landlord identity, forfeiture and service clauses.

02 Evidence of the breach

Dated photographs, inspection reports, correspondence, witness accounts and the exact dates of events.

03 Tenant and occupation

Tenant's legal name, service address, subtenants, actual use, residential elements and any insolvency information.

04 The remedy sought

What has to be done, how compliance can be evidenced, and any proposed compensation.

SERVICE AND RECORD KEEPING

The solicitor should confirm the correct recipient and permitted method under the lease and applicable law, including s.196 where relevant. Retain the final signed notice, method, date and proof of service. Do not assume that an email or a photograph of a posted notice establishes valid service. [1, 5]

Allow a reasonable opportunity

A calendar deadline in the notice is not a substitute for the statutory requirement to allow a reasonable time after service. The required period turns on the breach and the practical work needed. [1]

EXAMPLES OF WHAT CAN AFFECT TIME

Obtaining consent, instructing contractors, safe access, ordering materials, planning works, or removing an unauthorised use. The landlord should consider the tenant's actual response and progress before deciding on forfeiture.

SPECIAL RULE: REPAIRING COVENANTS

Where the Leasehold Property (Repairs) Act 1938 applies, a tenant may serve a counter-notice within 28 days of a relevant Section 146 notice. The Act concerns qualifying leases of seven years or more where at least three years remain when the notice is served. A counter-notice can restrict enforcement without the court's leave. Have the solicitor check the Act and any required notice wording before service. [2, 3]

AVOID THESE ASSUMPTIONS

"The breach is obvious"

The notice still needs to identify the particular covenant and breach. Evidence should match what is alleged.

"Fourteen days is enough"

The legislation uses reasonable time. More may be necessary for repairs or complicated remedial work.

"The notice means possession"

Even after non-compliance, the landlord needs a valid right to forfeit and must consider relief and any legal bar.

"Rent and breach are identical"

Non-payment of rent follows a different route. The legal character of charges must be reviewed.

What happens next?

The tenant's response controls the next step. Keep the file open to evidence of remedy, payment, disagreement and any request for more time.

DECISION POINTS

Breach remedied

Record the work and check whether any reasonable compensation issue remains. Do not book re-entry as if the breach were continuing.

Response disputed

Send the evidence and response for legal assessment. A genuine dispute about breach or remedy should be resolved before operational action.

No adequate remedy

Ask the solicitor to review the notice, elapsed time, compensation, waiver, occupation and any statutory restriction before choosing proceedings or peaceable re-entry.

Forfeiture pursued

A commercial lease may be forfeited by proceedings or peaceable re-entry where legally available. An interested person may seek relief from forfeiture. [1, 4]

NO AUTOMATIC LOCK CHANGE

UK Bailiffs should only plan any physical attendance once the client's legal authority and the correct route are confirmed. If residential occupation, insolvency, a contested breach or another protection is present, obtain specialist advice. [1, 4, 6]

Cases needing specialist advice

These are not minor formalities. They may change the notice, prevent service, bar re-entry, or alter who must approve the next step.



WHEN TO PAUSE

Residential or mixed use

A long lease of a dwelling has additional requirements before a Section 146 notice may be served. Mixed premises require careful classification. [6]

Administration or insolvency

An administrator's consent or court permission may be required for forfeiture by peaceable re-entry during administration. Take advice on other insolvency processes. [4, 7]

Waiver of the right

Conduct after knowing of a breach can affect the right to forfeit. Ask the solicitor to assess demands, receipts and communications before proceeding.

Subtenants and third parties

An underlessee or other interested party may have rights, including an application for relief. Check the structure of occupation. [1]

WHO DOES WHAT

Solicitor: legal entitlement, notice wording, service route, disputed issues and decision to pursue forfeiture. UK Bailiffs: practical support with instructed service, evidence of service and later commercial re-entry where the case is accepted and legally cleared.

Begin with the facts.

Tell us whether your aim is compliance with the lease, recovery of possession, or an assessment of both routes. We can coordinate practical support alongside your legal adviser.

STARTING PACK

- Lease, variations, title and authority to instruct.
- A short chronology with the precise breach and supporting evidence.
- Any notice already served, proof of service and the tenant's response.
- Occupation and use, including residential elements or subtenants.
- Any repair, insolvency, waiver or urgency concern.

DISCUSS A COMMERCIAL PROPERTY INSTRUCTION

0330 133 1818

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www.ukbailiffs.co.uk/section-146

SOURCES AND FURTHER READING

1. Law of Property Act 1925, s.146
2. Leasehold Property (Repairs) Act 1938, s.1
3. Leasehold Property (Repairs) Act 1938, s.7
4. HM Land Registry Practice Guide 26, section 8
5. Law of Property Act 1925, s.196
6. Commonhold and Leasehold Reform Act 2002, s.168
7. Insolvency Act 1986, Schedule B1, para. 43

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