

Majority of Tenancies created before 15th January 1989 will either be:

ASSURED TENANCY

Landlord can obtain possession only by proving one of the Grounds under Schedule 2 of the Housing Act 1988

ASSURED SHORTHOLD TENANCY

Landlord only needs to prove tenancy has come to end and that he has given the tenant proper notice requiring possession before Order will be made

Assured Shorthold Tenancies (AST) - Pre 28th February 1997

Created between 15th January 1989 and 27th February 1997

TO BE AN AST:

- **requirements of an assured tenancy must be met:**

- tenant is an individual (includes joint tenants);
- tenant occupies the dwelling house as his only or principal home (in the case of joint tenants, at least one of the tenants)
- tenancy does not fall into an exception of subsection 2 or 6

- **Must comply with all conditions of S.20(i) of the 1988 Act:**

- fixed term, the minimum of which being 6 months
- The Landlord has no power to bring the tenancy to an end in the first 6 months i.e. there must be no break clause.
NB/ this does not include a power of re-entry/forfeiture for a breach of any term or condition of the tenancy.

- **A S.20 notice must have been served before the commencement of the tenancy**

giving the tenant notice before entering into the tenancy that the tenancy being offered is an AST. Such notice should comply with S.20(2) and must be in the prescribed form

NB. If no S.20 notice served tenancy Assured rather than AST

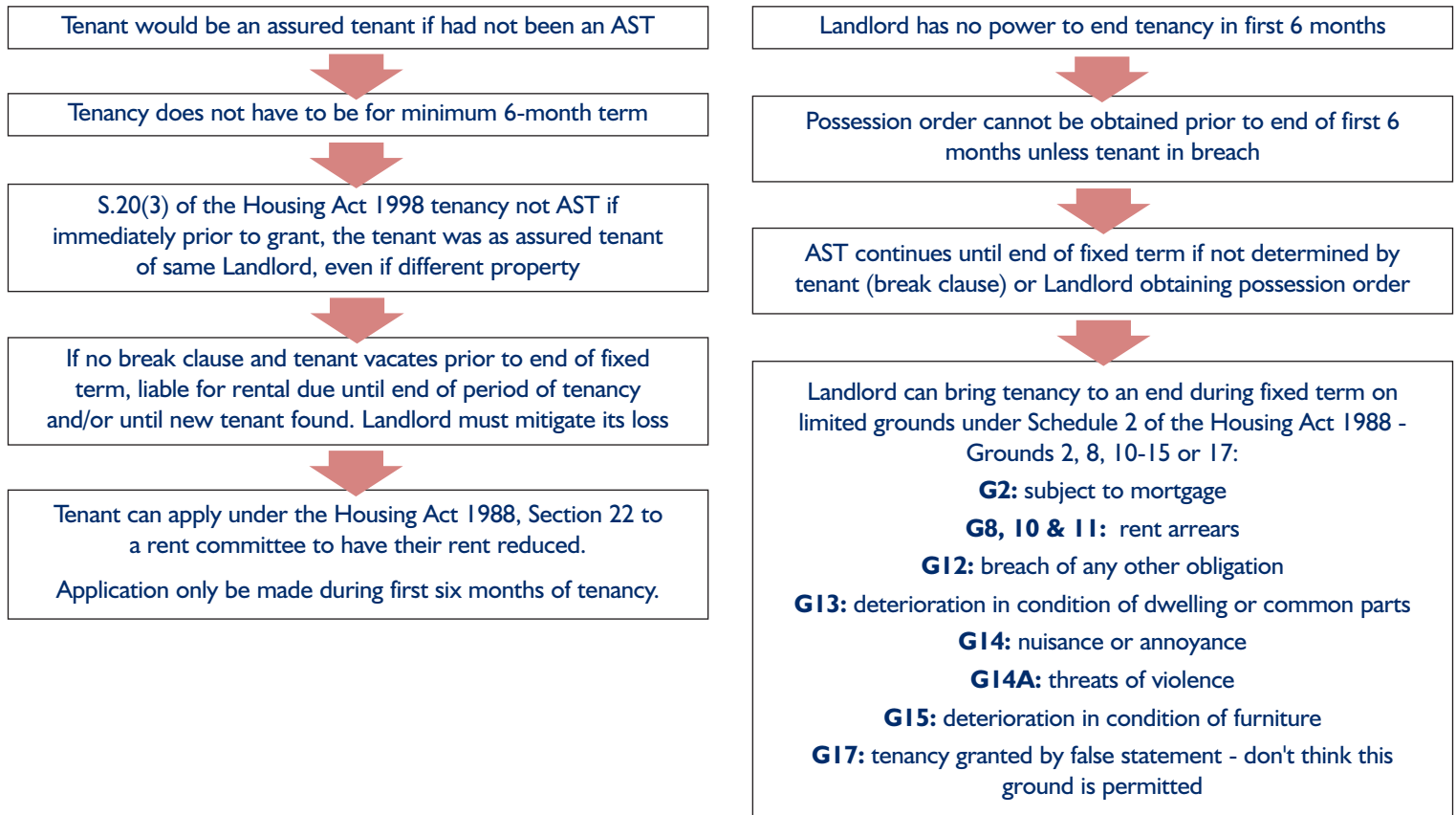
Court has no power to dispense with service of the S.20 notice

An error in the Landlord's Section 20 notice may make it invalid.
(Court may overlook defects which are so obvious that no one is misled)

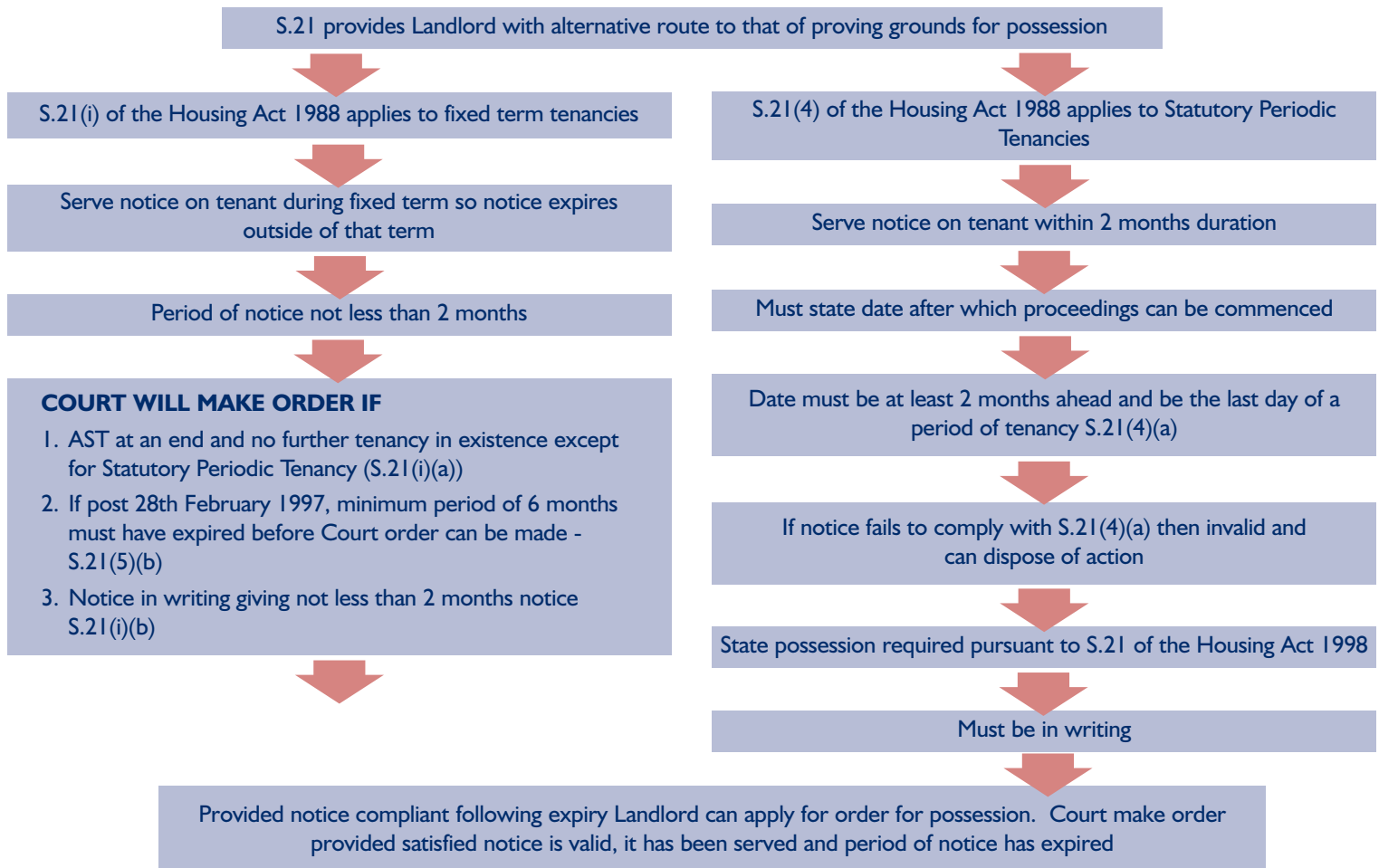
Tenant can apply under the Housing Act 1988, Section 22 to a rent committee to have their rent reduced. Application only be made during currency of original fixed term

Tenancies Created on or After 28th February 1997

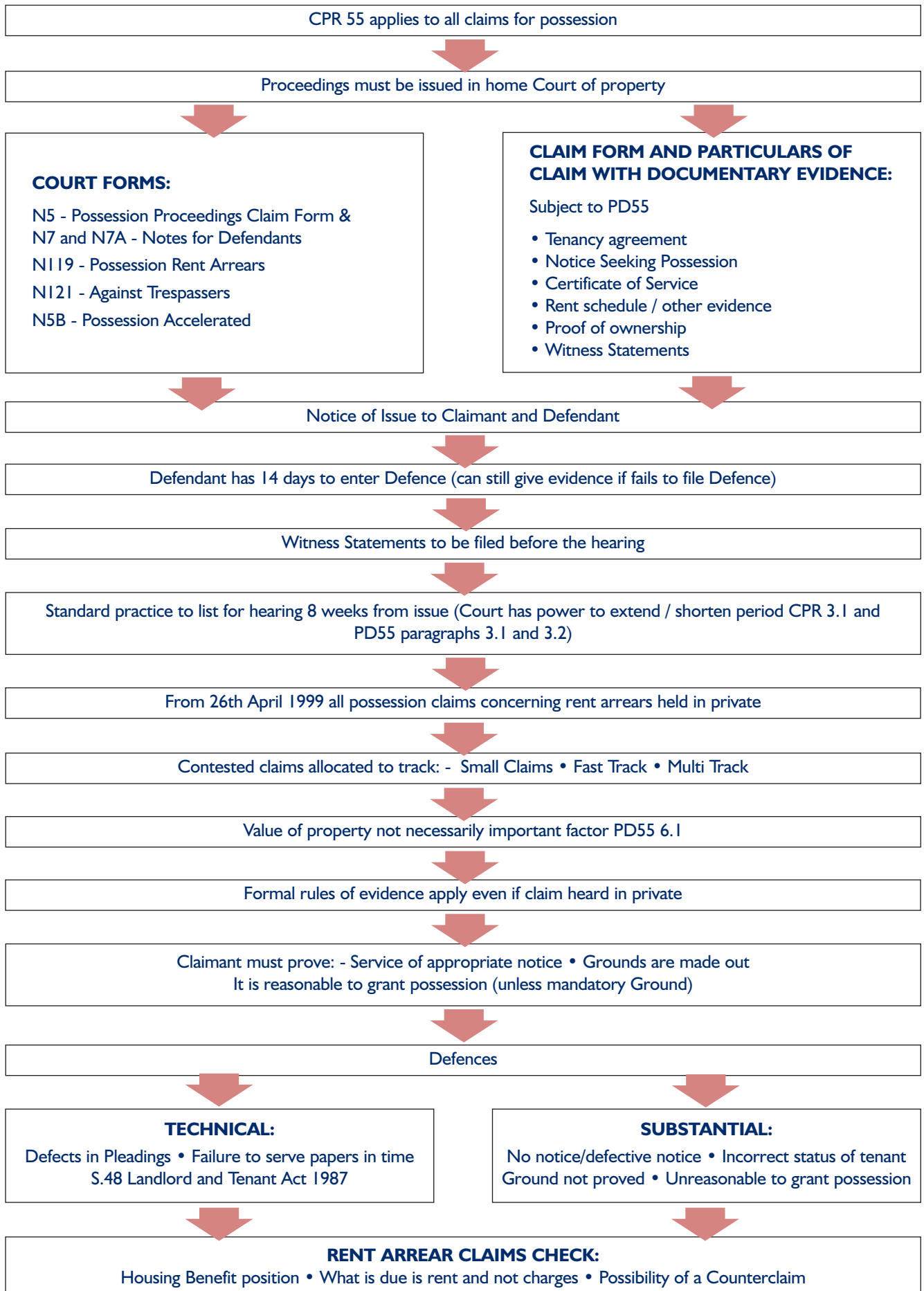
No S.20 notice required



Proceedings Pursuant to S.21 of the Housing Act 1988



Proceedings Pursuant to Housing Act Schedule 2 Grounds 2, 8, 10-15 or 17 During Fixed Term



Counterclaim or Set Off

If tenant has claim for damages can bring that into proceedings as part of Defence

If awarded damages, sum can be set off against rent arrears

If award of damages exceeds rent arrears - then absolute Defence

Common Counterclaim: Landlord in breach of repairing covenant

Tenant can still have equitable set off if amount not quantified

TENANT MUST PROVE:

Disrepair falls within Landlord's covenants • Tenant has served notice • Landlord has failed to repair

Landlord must be in breach at time of making Counterclaim

Court can order Counterclaim be heard separately

Enforcement of Proceedings

If tenant fails to vacate following order for possession instruct the Bailiff

Application to Court for Warrant of Possession Form N52

Bailiff gives date of appointment when will call at property to execute Warrant

Date can be in excess of one month from date of Application

Landlord or agent to meet Bailiff at property with locksmith if locks need changing prior to eviction

Bailiff entitled to evict any person in property even if not party to proceedings

No need for Bailiff to remove goods or chattels belonging to tenant

Landlord should not prevent ex-tenant from obtaining goods and chattels following eviction

If he does and tenant suffers loss, action by tenant under Torts (Interference of Goods) Act 1977 for return of goods or money to value thereof

NOTE TO LANDLORDS

For further details of the services offered to Landlords contact Sioban Calcott on tel: 01295 270999 or email: siobanalcott@brethertons.co.uk brethertons.co.uk

