

Residential Landlord and Tenant Covid-19 Update

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On 25th March 2020, the Coronavirus Act 2020 received Royal Assent and came in to force, bringing in to law wide ranging legal changes in light of the current Covid-19 epidemic. The 102-section Act covers various aspects of everyday life and includes provisions relating to residential tenancies. For the moment at least, all new and existing possession claims for almost all tenancies have been put on ice.

Schedule 29 of the Coronavirus Act 2020 sets out the statutory basis for the principal measures that the government have taken. Any notice to quit or notice seeking possession served once the Act took effect (i.e. on or after 26th March 2020) will need to give at least three months’ notice to be valid. This three-month notice period may be amended by subsequent regulations to up to six months; this means that the relevant government ministers can enact a statutory instrument extending the period and do not require parliament to pass another act in order for them to do so.

The measures taken apply to assured shorthold tenancies (whether the notice is given under s. 8 or s. 21 of the Housing Act 1988), assured and secure tenancies (including flexible, demoted and introductory tenancies), and Rent Act 1977 tenancies.

New versions of the prescribed forms (forms 3 and 6A) have been produced to reflect the changes although there is a technical argument as to whether the Coronavirus Act 2020 has the power to amend the previous forms 3 and 6A. It strikes us – although this will not become tested for over three months – that a judge is highly unlikely to rule a s. 8 or s. 21 notice invalid because the new forms have been used.

The new legislation is not retrospective: the new requirements do not affect the validity of notices already served prior to the Act taking effect (whether or not the claim had been

issued), nor would any change in the notice period made by subsequent regulations made under the Act invalidate notices that had already been served prior to that change.

Separately, however, Practice Direction 51Z of the Civil Procedures Rules, which govern almost all civil litigation in England and Wales, introduces a blanket stay on all proceedings for possession or enforcement for at least 90 days from 27th March 2020, with the potential for this stay to be extended further. Although claims can still be issued on the basis of a valid notice, no progress will be made towards a resolution for some time. As we have been preparing this article, PD51Z has been amended (on 20th April 2020) to incorporate a paragraph 2A. Paragraph 2A provides exceptions to the blanket stay in respect of claims against trespassers to which CPR r. 55.6 applies, applications for interim possession orders under Section III of CPR Part 55 and any application for case management directions which are agreed by all the parties. As such, certain, limited possession matters *will* now be able to proceed through court despite the Covid-19 legislation.

The legislation passed so far makes no changes to the validity period for notices, where these apply. So a notice given under s. 21 for an assured shorthold tenancy will remain valid as the basis of a claim for six months from its issue in spite of the longer notice period and the fact that any such claims will immediately be stayed; the consequence of this, for assured shorthold tenancies which did not require more than the previous two months' notice, is that landlords will for the time being only have three months to issue their possession proceedings after the expiry of a three-month s. 21 notice instead of the usual four months.

Not yet published are promised amendments to the existing pre-action protocol for social landlord possessions or extension of this to private landlords, although the government's stress on encouraging negotiations between landlords and tenants on "repayment plans" for those tenants who fall into rent arrears may give some flavour of the likely content of the latter.

None of the above changes the situation for those tenancies or licences not protected by the Protection from Eviction Act 1977, where the requirement remains one of reasonable notice for eviction and the stays on possession claims obviously have no bearing.

It appears to us, therefore, that the changes bring about, amongst other things, the following consequences,

- Notices served before 26th March 2020 are still valid and will expire on the prescribed date and the Covid-19 changes do not appear to affect that BUT any possession proceedings based upon any such notice will be stayed as soon as they are issued, except that,
 - Case management directions will be made if they are agreed by the parties, and
 - Interim possession applications under Section III of CPR Part 55 will still proceed.
- Possession claims issued by land owners seeking to evict trespassers to which CPR r. 55.6 applies will still proceed.
- Landlords attempting to evict tenants on or after 26th March 2020 will need to comply with the new provisions, including the giving of three months' notice.
- Regardless of when a notice was served, any new proceedings (except for the exceptions provided by paragraph 2A of PD51Z) will seemingly be stayed instantly but – we guess – will be getting their place in the 'queue' for as and when possession hearings start to be listed again.
- If a possession claim is already in the court system, it will now be stayed; this will cover all hearings from first possession hearings through to trials (except for the PD51Z paragraph 2A exceptions and that injunction hearings will still be heard).
- Tenants should be aware that they are still liable for rent during this 90-day period and therefore, if they are failing to pay their rent or stop paying their rent during this period, the arrears are still likely to form part of any possession claim or hearing in due course. If a tenant's arrears continue to accrue during this 90+ days, a tenant will have to pay more to reduce their debt below two months' worth of arrears (if faced with a mandatory ground 8 claim) and, in any event, may face greater difficulties in avoiding a claim for possession on a discretionary rent arrears ground.

It is too soon to tell if this is correct or not, however, and it is inevitable that some things will be tested in the courts over the next few months, although it appears to us that certain things will not be tested because they will not get in through the court doors for three months.

Finally, of course, there has to be a chance that further provisions are brought in (or the new provisions are extended) depending on how the country copes with the Covid-19 outbreak during the next three months. The situation is clearly changing on a daily basis and therefore it is difficult for landlord and tenants (or their lawyers) to predict what situation the system will find itself in in three months' time.

This article relates to the legal situation in England and Wales only. The authors believe it to be accurate but this article does not constitute legal advice. It is believed to be correct at the date of publication but, given the constantly changing situation, may go out of date quickly. Any landlords or tenants affected are strongly advised to seek their own legal advice.

21 April 2020



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