



## Evictions in the time of Covid-19



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# Part 1: Background and the Coronavirus Act 2020

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# Introduction

- The Coronavirus Act 2020 received Royal Assent on 25<sup>th</sup> March 2020. It passed swiftly through the law-making process for obvious reasons. Never in recent times has the country faced a global pandemic of this proportion and emergency measures were required.

# Background

- On 18 March 2020 the government promised there would be no evictions during the crisis and emergency legislation would follow
- The Bill itself, before Parliament on 23<sup>rd</sup> March 2020 focused primarily on extensions to required notices for possession across the principal housing statutes until 30<sup>th</sup> September 2020.

# Background

- From 27<sup>th</sup> March 2020, the Master of the Rolls with the Lord Chancellor's agreement has stayed all on-going possession actions brought under CPR 55 and all proceedings seeking to enforce an order for possession by a warrant or writ of possession for a period of 90 days [Practice Direction 51Z(PD) via CPR 51.2]. Matters may therefore proceed on 26 June 2020.
- Claims for injunctive relief are not subject to the stay. The Practice Direction ceases to effect on 30<sup>th</sup> October 2020.

# Background

- This will enable people to follow the health guidance and to stay in their homes (including not attending court) and covers residential tenancies, mortgagees trespassers and those licensees covered by the Protection from Eviction Act 1977.
- It does not cover cases which are excluded from protection under the PEA s.3A including people in interim accommodation.

# Background

- It is notable that greater protection is given to business tenancies by s.82 as this operates as a block on forfeiture during the relevant period. This is in accordance with the government's efforts to support small businesses during the virus outbreak. There is no equivalent protection in relation to forfeiture of residential accommodation.

# The Act in more detail

- Section 81 of the Act is headed “Residential tenancies in England and Wales: protection from eviction” and reference is made to Schedule 29 where the provisions about notice periods are contained.
- Ordinarily a landlord seeking to recover possession of residential accommodation must give notice to the tenant before they start proceedings. The period varies from case to case. So, a notice to quit (applicable to Rent Act protected tenancies) must be 4 weeks and a notice of intention to bring proceedings for a secure (i.e public sector) tenancy or assured non-shorthold (i.e. private sector post 1988 tenancy) is usually between 2 weeks and 28 days. In cases involving nuisance proceedings can start immediately. 2 month’s notice is needed for an Assured Shorthold tenancy.

# The Act in more detail

- In the case of an assured tenancy or a secure tenancy the court can dispense with the service of a notice if it is just and equitable to do. For statutory tenancies under the Rent Act 1977 there is no requirement of notice.
- The proposed changes increase the required notice to 3 months in place of the current, shorter periods. The new notice periods only apply for notices served between the start date and 30<sup>th</sup> September 2020 (“The relevant period”) when it is presumably hoped that the virus will have departed, petered out or a vaccine has been found.

# The Act in more detail

- The amendments only apply to notices served during this “relevant period”. *They do not apply to cases where the landlord has already served notice or where the landlord has already started proceedings.* This is relevant because a landlord will often issue a notice, or even start proceedings, but then negotiate payment arrangements with a tenant.
- Tenants are obviously much more likely to fall into arrears and so fail to meet the terms of any such agreement even though they would have been able to comply had they not lost work or income because of Covid-19.

# Rent Act 1977 tenancies

- s.5 of the Protection from Eviction Act 1977 is to be read to a three-month notice period for protected tenancies during the relevant period. This is in place of the four-week notice to quit previously.
- For the relevant period it will now be necessary to serve a *notice of intention to commence possession proceedings* on a statutory tenant (previously there was no requirement).

# Rent Act 1977 tenancies

- New sections (4A -F) are inserted into the Act requiring three months, notice to be given in writing.
- The notice must (4C):
  - a) describe the statutory tenancy
  - b) state the address , name of the tenant, name and address of the landlord
  - c) state that the landlord intends to start proceedings
  - d) state the ground/s relied upon and the reasons why
  - e) state the date on or after which the landlord intends to start proceedings
  - f) explain that the landlord is prohibited from relying on the notice unless three months, notice is given.

# Rent Act 1977 tenancies

- The landlord will have to satisfy the court that there has been compliance with the notice requirements and only the grounds relied upon in the notice can be pursued unless the court gives permission (4E).
- As with secure and assured tenancies the court may dispense with the notice requirements for statutory tenancies if it is just and equitable ( 4B). The same established case law will apply in these applications: see for example: *Fernandes v Parvardin* (1982) 5 H.L.R. 33, CA and *Boyle v Verrall* [1996] E.G.C.S. 144, (1997) 29 H.L.R. 436 . Landlords may seek to argue that the loss of income alone is a basis for dispensation but this is unlikely to gain traction at a time when the purpose of the new legislation is supposedly to protect tenants from eviction.

# Rent Act 1977 tenancies

- Although notices served on statutory tenants in the relevant period are likely to be few and far between the fact that the notice is not in a prescribed form may mean that there will be some scope to challenge validity.

# Housing Act 1985: secure tenancies

- Section 83 is amended to require a three - month notice period. This applies equally to cases involving the nuisance ground (Ground 2) where previously proceedings could be commenced immediately.
- Section 83 ZA of the Act which deals with notices in relation to proceedings for possession on absolute ground for anti-social behaviour is similarly amended requiring three months, notice.
- At a time of heightened restrictions on liberty and potential civil unrest it is perhaps surprising that the three month notice period has been applied even in these cases however it is likely that in a serious case the court will dispense with the need for service.

# Housing Act 1988: assured tenancies

- All of the various notice periods under s.8 are extended to three months including ASB grounds save that there is a dispensation provision as with the HA 1985,s.83.
- s.21 is amended so that notice given to an AST during the relevant period is three months.

# Other tenancies

- Possession of flexible tenancies under section 107D of the Housing Act 1985 is also subject to a three month notice period.
- Sections 128 and 143E of the Housing Act 1996 are amended to ensure that introductory tenancies are subject to a three month, notice period.

# Part 2: The stay under PD 51Z and beyond

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# Guidance

- Coronavirus (COVID-19) Guidance for Landlords and Tenants:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/876500/Consolidated\\_Landlord\\_and\\_Tenant\\_Guidance\\_COVID\\_and\\_the\\_PRS\\_v4.2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876500/Consolidated_Landlord_and_Tenant_Guidance_COVID_and_the_PRS_v4.2.pdf)

- Coronavirus Act 2020 and renting:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/877744/Technical](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/877744/Technical)

# Guidance

## Covid-19 Guidance:

- *“We strongly advise landlords not to commence new notices seeking possession during this challenging time without a very good reason to do so. It is essential that we work together in these unprecedented circumstances to keep each other safe” (p.6)*
- *“We strongly advise landlords not to commence or continue eviction proceedings during this challenging time without a very good reason to do so” (p.8)*

# PD 51Z: The terms of the stay

- *“All proceedings for possession brought under CPR Part 55 and all proceedings seeking to enforce an order for possession by a warrant or writ of possession are stayed for a period of 90 days from the date this Direction comes into force”*
- 90 days = clear days so ends on Friday 26 June 2020.
- May seek an order lifting the stay - *Bovale Ltd v Secretary of State for Communities and Local Government* [\[2009\] EWCA Civ 171](#); [2009] 1 W.L.R. 2274.

# PD 51Z: The effects of the stay

*Grant v Dawn Meats* [\[2018\] EWCA Civ 2212](#)

*“a stay operates to ‘halt’ or ‘freeze’ the proceedings. In general terms, no steps in the action, by either side, are required or permitted during the period of the stay. When the stay is lifted, or the stay expires, the position as between the parties should be the same as it was at the moment that the stay was imposed. The parties (and the court) pick up where they left off at the time of the imposition of the stay.”*

# PD 51Z: What is covered?

- Proceedings covered by s. 89 Housing Act 1980 (“the giving up of possession shall not be postponed (whether by the order or any variation, suspension or stay of execution)”).
- Unclear whether covers warrants already issued. Civil listing priorities seem to assume not as they list as work that must be done: “Applications to stay enforcement of existing possession orders”

# PD 51Z: What is covered?

*UCL London Hospitals Foundation Trust v MB* [\[2020\] EWHC 882 \(QB\)](#):

- The stay does not affect injunctions.
- MB refused to be discharged & her bed was needed urgently. The Trust terminated her licence & were granted an interim injunction requiring MB to leave her bedroom.
- Para 37 applying *SSEFRA v Meier [2011] UKSC 11*
- Not a general escape route for landlords but what about interim accommodation.

# PD 51Z: What about costs?

- “A stay of an action does not mean that costs recoverable between the parties necessarily cannot be incurred” (*John v Pricewaterhouse* [2003] EWCA Civ 1720, per Pill LJ at para 10).
- Will be subject to reasonableness and proportionality.
- Exclude possibility of settlement before preparing to progress case.
- Work in relation to court orders for sale or possession remains in scope despite the stay but subject to reasonableness and proportionality - the [LAA's Costs Assessment Guidance 2018](#) at para 1.3)

# After the stay: General

- No CA 2020 amendments to legislation to protect against eviction after relevant period.
- LHA increased to 30<sup>th</sup> percentile but only for this financial year.
- Pre-action protocol to be applied to private landlords.

# After the stay: Use of the wrong form

- No new prescribed forms as such but the existing Regulations are deemed to be read subject to the new notice periods. So:
- CA Sch 29 para 10(1) provides: [“Part 1 of the Schedule to the Secure Tenancies \(Notices\) Regulations 1987 \(S.I. 1987/755\) \(notice of seeking possession\) is to be read, in relation to notices served under section 83 of the Housing Act 1985 during the relevant period, as if...”](#)
- The same drafting method applies to assured and assured shorthold tenancies (para 11 and 12).
- The form must be in the specified form “or in a form substantially to the like effect”.
- L must serve a form that is substantially the same as the form with the deemed new wording.
- Could be by manuscript amendment of an existing form.

# After the stay: Where to find the new forms

- Assured tenancies: <https://www.gov.uk/guidance/assured-tenancy-forms#form-3>
- Secure tenancies: <https://www.gov.uk/guidance/secure-tenancy-forms>
- Both contain: “This form has been changed to reflect new legislation which came into force on 26 March 2020 and should be used by landlords in England up to 30 September 2020”.
- This is not in the statute or prescribed and so have no status but probably do not affect the validity of this version – *Pease v Carter & anor* [2020] EWCA Civ 175.

# After the stay: Other defences

- Public law/Art 8 – Covid 19 guidance as a relevant consideration
- Is the rent due/where there was an agreement or promise to postpone the debt?
- Adjournment where failure to follow the pre-action protocol.



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