

## LEGAL UPDATE: COVID-19



30 March 2020

Angela Hall, Elizabeth England and Tristan Salter of Five Paper update you as to the effect on social landlords of the current legislative and practical changes taking place in response to the pandemic

### **Introduction**

1. The landscape for residential possession proceedings has dramatically altered in the last week as the impact of COVID-19 is seen across the country. The Government has responded quickly, amending key parts of the legislation and introducing a new pre-action protocol. The last week has also seen the widespread closure of courts and an announcement that possession proceedings will be put on hold for at least 90 days. In short, it has been a dramatic week for everyone in the social housing sector.
2. This update covers the most recent information on the following.
  - Possession Proceedings
  - Remote hearings
  - Repairs & Gas Safety

### **Possession Proceedings**

3. The commencement of the Coronavirus (Emergency) Act 2020 late on the 25 March 2020 provided that statutory tenancies would immediately be subject to a three-month notice period, but explicitly excluded licences and contractual tenancies and by implication trespassers.

4. This has been somewhat trumped by the latest announcement from the Master of the Rolls and Lord Chancellor, who agreed that the court service would suspend all ongoing housing possession action for 90 days, with no exclusions.
5. This is an interesting development, aimed presumably to reduce the pressure on the County Courts, ensure social distancing, and has been made in recognition of the fact that the recent changes to the law would not, of themselves, stop possessions taking place during the emergency period, this being the government's stated intention.
6. This suspension has been put into practical affect by the insertion of a new Practice Direction 51Z:  
  
<https://www.judiciary.uk/wp-content/uploads/2020/03/PD-Possession-Final-cleared-SIGNED.pdf>
7. The new provisions **do not** apply to injunctive relief and therefore applications for instance for re-entry following an unlawful eviction can still be made.
8. It is noted that the 90 days may be extended, and it is therefore vital that landlords engage with their tenants at this time to ensure that issues such as rent arrears or anti-social behaviour do not worsen during this period.

*3 months' notice to be given to tenants*

9. The provisions set out in the Schedule to the Coronavirus Bill are envisaged to be in place until 30 September 2020 (defined as the 'relevant period'), with the power for further statutory instrument to extend the time period if required.
10. In broad terms, the provisions require the following;
  - During the relevant period, 3 months' notice must be given to all tenants of tenancies set out in the Schedule before proceedings can be commenced – including in circumstances of anti-social behaviour (ASB) - whether on a discretionary or mandatory Ground

- The Prescribed Forms of Notice have been amended to give tenants guidance on the effect of these changes

11. The provisions do not extend to;

- Licences
- Contractual tenancies
- Tenancies granted in the course of employment

12. The schedule below has a breakdown of the key legislative changes.

13. The Ministry of Housing, Communities & Local Government has published its amended Prescribed Forms of Notice for Assured Tenancies (including s.8 and s.21 forms), having indicated in the Act that there would not be any need to amend these notices because they would be ‘read as’ amended for the duration of the ‘relevant period’ without actually amending any other legislation. The new Prescribed Forms can be found at;

<https://www.gov.uk/guidance/assured-tenancy-forms>

### *Existing Notices*

14. Many landlords will have served a Notice which has either already expired or will expire in the coming weeks.

15. The amendments to the statutes below apply from the date of commencement of the Coronavirus Act 2020 (25 March 2020). Notices served prior to the commencement of the Act will be valid, with one caveat as currently drafted (in respect of statutory Rent Act tenants, as to which, see the schedule).

16. The new practice direction does not stop a landlord commencing proceedings, which is important as there is no suspension of the statutory time limits on issuing

proceedings, e.g. proceedings based on a Notice under s8 of the HA 88 have to be brought within 12 months of service of the Notice: s8(3)(c) HA 88.

### *Pre-Action Protocol for Rent Arrears*

17. We are expecting a new Pre-Action Protocol for Rent Arrears which will address the issue of what landlords and tenants are expected to do in advance of a claim related to rent arrears accrued during the crisis. In practice, the courts will focus on the information provided by the landlord about a tenant's circumstances and any attempts made to engage and reach a repayment agreement with the tenant. Landlords are best advised to consider whether coronavirus has been a factor in the tenant falling into arrears and discuss with the tenant their entitlement to benefits and any other support which may be available. Some helpful guidance has already been published at:

<https://www.moneyadviceservice.org.uk/en/articles/coronavirus-what-it-means-for-you>

### **Remote hearings**

18. Social landlords may still have a number of hearings over the next three months, especially in relation to ASB or access. Remote hearings are relatively rare in the County Courts, but the courts appear to be trying to adapt, albeit slowly. Hopefully with the reduction of all possession cases, other hearings, including stand-alone claims for disrepair, can proceed.

19. On 22 March 2020 and 25 March 2020, the Judiciary website was updated to include guidance on remote hearings, and the Civil Procedure Rules were amended to include a new Practice Direction relating to the recording of hearings, which can be found at;

[https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil\\_GenerallyApplicableVersion.f-amend-24\\_03\\_20-1.pdf](https://www.judiciary.uk/wp-content/uploads/2020/03/Remote-hearings.Protocol.Civil_GenerallyApplicableVersion.f-amend-24_03_20-1.pdf)

<https://www.judiciary.uk/wp-content/uploads/2020/03/CPR-116th-PD-Update-video-or-audio-hearings-for-coronavirus-period.pdf>

20. Practically speaking the following things will need to be organised for every hearing:

- contact details for all parties and witnesses;
- electronic copies of paginated bundles, including statements of costs (where applicable);
- editable copies of orders sent to all legal representatives;
- information and steps to allow witnesses to swear in and give evidence, including finding out if they have any religious belief and proving them with suitable materials.

### **Repairs & Gas safety**

#### *Repairs*

21. The position in relation to access for repairs and maintenance is unchanged. There continues to be a statutory obligation on landlords to maintain and repair property. This will be especially important where there are emergency works to undertake including water ingress or loss of heating/electricity.
22. Landlords are advised to keep the health and safety of their staff in mind to provide them with hand sanitiser and masks where possible. The tenant should be asked to confirm that they have complied with the Public Health England guidance and are not in a 14-day self-isolation period. This should all be recorded to provide any evidence needed in a later trial of the issue
23. Two issues have already come to our attention. First, notices can still be served under s79 of Environmental Protection Act 1990 giving just 21 days to resolve a statutory nuisance. Section 79 includes a requirement that the landlord take steps which are “reasonably practicable” to resolve the complaint. Again, it will be vital to record any conversations with the tenant as to their health condition and resource level available

as Landlords may have to rely on the fact that additional time was needed at this time of national crisis.

24. Secondly, we know of at least firm of surveyors who have cancelled all future inspections at this time. This is likely to cause a significant delay to disrepair cases. A stay of all directions should be sought until such time that an inspection can be carried out. In our view a landlord is unlikely to face damages for a period in which no inspection of the Property was possible, even if the situation was out of the control of both the landlord and the tenant.

### *Gas Safety*

25. The Gas Safety (Installation and Use) Regulations 1998 set out the duties of all landlords to make sure that all gas appliances, fittings, chimneys and flues are safe and working efficiently.
26. Gas safety checks need to be carried out annually and both the landlord and tenant need to have a current CP12 safety certificate issued by a registered engineer. There has not been any suspension of the requirement for the gas safety certificate to be issued and gas safety engineers continue to carry out their work.
27. If you anticipate difficulties in gaining access as the COVID-19 situation progresses, you have the flexibility to carry out annual gas safety checks two months before the deadline date. Landlords can have the annual gas safety checks at their properties carried out any time from 10 to 12 calendar months after the previous check and still retain the original deadline date as if the check had been carried out exactly 12 months after the previous check.
28. You are encouraged to arrange your annual gas safety checks as early as possible, as a contingency against tenants being in self-isolation for a period of 14-days (in line with current guidelines), or gas engineers being unavailable due to illness. The two-month period to carry out annual gas safety checks should provide adequate resilience in most situations.

29. In the event you are unable to gain access to the property, e.g. persistent refusal of access due to vulnerable tenants self-isolating, you will be expected to be able to demonstrate that you took reasonable steps to comply with the law. This will need to include records of communication with the tenant and details of your engineers attempts to gain access.
30. The Gas Safety (Installation and Use) Regulations do not give landlords the power to ‘force disconnection’ of the gas supply in circumstances where tenants have not facilitated access. Landlords are encouraged to seek legal advice if there are such problems.
31. If an application to court has to be made, the current advice is to make such an application in the usual way and the court manager will issue a notice of hearing and provide guidance on how the hearing will be dealt with. As set out above, the default position for the courts is to conduct hearings remotely.

### **Conclusion**

32. The unprecedented crisis will mean a change in behaviour for social landlords and an increased focus on engagement with tenants. It will be vitally important that information as to contact, either for payments of rent or access, is recorded accurately so courts can be told an accurate history of events when the courts resume their work.

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## SCHEDULE

### Key legislative changes:

<b>Tenancy to which provisions relate</b>	<b>Existing legislation which is subject to amendment for the relevant period</b>	<b>New provisions in the Schedule: Residential Tenancies Protection from Eviction</b>
Secure Tenancies	<p>Housing Act 1985</p> <p>s.83</p> <p>Secure Tenancies (Notices) Regulations 1987 (S.I 1987/755)</p>	<p>s.83(3) is omitted. This applies where a landlord relies on Ground 2 of Schedule 2 – ASB provisions, to give immediate notice that a claim for possession may be commenced. There is now no immediate notice provision even in circumstances of ASB, rather, s.83(4) applies, such that 3 months’ notice must be given.</p> <p>s.83ZA is also amended to apply a 3 month notice period to the absolute ground for possession based on ASB.</p> <p>There is a new s.83(4B) providing that all notices must give at least 3 months’ notice to the tenant</p> <p>The s.83 prescribed form needs to be amended in accordance with paragraph 10 of the Schedule</p>



Flexible Tenancies	Housing Act 1985 s.107D	s.107D(4) is now to be read as giving the tenant 3 months' notice
Assured Tenancies	Housing Act 1988 s.8  Assured Tenancies and Agricultural Occupancies (Forms) Regulations 1997 (S.I. 1997/194)	s.8(3A) now provides that 3 months' notice must be given to the tenant, including for the purpose of;  s.8(4), (4A) and 4(B)  The s.8 Notice on Form 3 needs to be amended to give effect to paragraphs 11 and 12 of the Schedule
Assured Shorthold Tenancies	Housing Act 1988 s.21  Assured Tenancies and Agricultural Occupancies (Forms) Regulations 1997 (S.I. 1997/194)	s.21 notices must give the tenant 3 months' notice, including for the purpose of  s.21(1)(b), 21(4)(a) and 21(4E)(b)  The standard form of Notice is amended to give effect to paragraphs 11 and 12 of the Schedule
Introductory Tenancies	Housing Act 1996 s.128	s.128(4A) Notices must now give 3 months' notice
Demoted Tenancies	Housing Act 1996 s.143E	s.143E(3) Notices must now give 3 months' notice
Protected and	Protection from Eviction Act 1977 s.5(1) (validity of notices to quit)	The period of Notice is extended to 3 months (para 2(1))

<p>Statutory Tenancies</p>	<p>Giving 4 weeks' notice to quit</p> <p>Rent Act 1977 s.3(4)</p>	<p>A new s.3(4C) is inserted setting out the requirements for the Notice to be valid.</p> <p>A new s.3(4D) requires the Notice to be served at the dwelling to which it relates</p> <p>A new s.3(4E) provides that special conditions apply to Grounds mentioned in Schedule 15 and 16</p> <p>A new s.3(4A) provides that proceedings for possession cannot be commenced during the 'relevant period' – currently 30 September 2020 unless:</p> <ul style="list-style-type: none"> <li>(a) The landlord has served the relevant statutory notice, which is at least 3 months' notice, and</li> <li>(b) The proceedings are commenced after 30 September 2020 (or later date if this is amended)</li> </ul> <p>s.3(4B) provides a caveat: the proceedings can be commenced without compliance with s.3(4A) if</p>
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		“the court considers it just and equitable to dispense with the requirement to comply”
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